

NAME OF COUNTRY **AUSTRALIA**

EXPLANATIONS AND QUESTIONS

If a question does not apply to your State, please answer "Not applicable".

Description

- (a) Is your country (primarily) a receiving State or a State of origin? If both, please ensure your answers to the questions clearly distinguish, when necessary, between your role as a receiving State and your role as a State of origin.

Australia is a receiving State. Where comments are made in relation to the processes governing the relinquishing of a child for adoption they are made in the context of domestic adoptions.

- (b) If your country is not yet a Party, please specify if your country is considering becoming a party to the Convention.

Australia ratified the Convention on 25 August 1998 and it entered into force on 1 December 1998.

- (c) Was your country represented at the 2000 Special Commission? Were the Conclusions and Recommendations of that meeting discussed or implemented by relevant authorities in your country?

The Principal Central Authority for the Convention (Commonwealth Attorney General's Department) and the Central Authority from the Department of Human Services in the State of Victoria represented Australia at the 2000 Special Commission. The conclusions and recommendations were discussed with the other Australian State and Territory Central Authorities. Australia was already complying with most of the recommended actions. However, a decision was made to use the recommended certificate of conformity for Convention adoptions where the adoption order is made in Australia.

Good practice

The Permanent Bureau has commenced work on a Guide to Good Practice on the Implementation of the Convention. A consultative group met in September 2004 to provide advice to the Permanent Bureau on this project. It is anticipated that the draft Guide will be circulated, in English, French and Spanish, to all Contracting States in June 2005 seeking comments and for discussion at the Special Commission.

- (a) In relation to any aspect of intercountry adoption, what examples of good practice can you report, (i) from your own country or (ii) from another country?

We find the background information provided by the Philippines and Thailand to be of a consistently high standard. Both countries provide details of the child's background, reasons for coming into care, reasons as to why the child is being placed overseas, actions taken to ensure that the child is legally adoptable and that there is no family in the country of origin, developmental and health/medical details.

We have recently re-established an intercountry adoption arrangement with Chile as they will accept applications from families able to parent a child over the age of four years. The establishment of the arrangement was easily done and not onerous as the Chilean Central Authority recognised Australia's status as a Central Authority. Chile has a specific post adoption program for intercountry adoptees wishing to search for their origins. They have had some reunions.

Within Australia we have identified the following examples of good practice:

- Preparation for adoption” seminars that clearly challenge people on the needs of intercountry adopted children particularly their racial and cultural identity
- Legislation that supports the retention of children’s original names from their country of origin
- Open adoption practice and records which allows adopted children to have ongoing contact with their birth family and for adult adoptees and birth parents to access identifying information about each other
- Information sheet for birth parents from overseas countries informing them of their rights to have information about their child placed for adoption

(b) Please indicate what topics you would suggest for future chapters in the Guide to Good Practice (in addition to “Implementation”, “Central Authority Practice” and possibly “Accreditation”).

- Post adoption issues including information preservation and exchange; contact/reunion for adult adoptees and birth families
- The development of general templates for adoption e.g. adoption assessment guidelines; post placement reporting guidelines; approval letters etc

(c) Have you experienced any major concerns or problems (i) in your State and (ii) in another State, associated with implementation of the Convention, such as a lack of implementing legislation, inadequate staffing or funding issues?

The Convention has been fully implemented in Australia.

The lack of legislation, infrastructure and staffing to implement the Convention in some countries that have ratified or acceded to the Convention has created some issues for the Central Authorities in Australia. For example, lack of staffing and infrastructure affects the capacity of a Central Authority to accept and manage an application and can make consistent and timely communication difficult.

(d) If your State has signed but not yet ratified the Convention, please indicate whether your State would like implementation assistance from the Permanent Bureau or other States. What type of assistance would be most beneficial?

Not applicable.

Questions concerning scope

Please specify any difficulties you have experienced in determining whether certain situations do or do not come within the scope of the Convention.

Relative adoptions:

There does not seem to be a consistent practice in how convention countries deal with relative adoptions even if they have ratified or acceded to the Convention. Australia usually only considers assisting relative applications in cases where the child is under guardianship of child protection authorities in the overseas country and no other relatives in that country are able to care for the child. The overseas agency dealing with the matter approaches the relevant Australian state/territory where the family member chosen to care for the child, lives. There is often confusion about how these adoptions should be handled and whether they should be managed under the Convention given that they may not comply with some aspects of the Convention. In one Australian state, Western Australia, the *Adoption Act 1994*, which became law in 2003, prohibits the adoption of a relative child.

In particular, have there been any problems in determining whether:

- (a) a child was or was not habitually resident in the State of origin;

No cases reported

- (b) a prospective adopter was or was not habitually resident in the receiving State (as e.g. in the case of a short-term or temporary resident); and

In one Australian state there have been cases where adoption applications have been approved and the prospective adoptive parents have moved to another Australian state or overseas for a short period for work purposes.

- (c) the removal of the child was or was not "for the purpose of adoption" in the receiving State (as e.g. where the child is initially moved to the receiving country on a temporary basis or for foster care, and later on adoption is considered)?

No cases reported.

General principles for protection of children

- (a) What are the different types of care available to a child in need of care and protection in your State?

In Australia, children and young people who are removed from their birth families due to child protection concerns can be placed in a range of alternative care options. Preference is normally given to placing a child within a family system. Generally, the placement within the extended family network (kinship care) is considered as the first option. If this is not possible, children and young people are placed in foster care or residential care depending on their needs. Long-term foster care, permanent care and adoptive placements are considered for children requiring long-term stable placements.

- (b) Please specify the procedures or other measures in place to ensure that due consideration is given to the possibilities for placement of the child within the State of origin before intercountry adoption is considered (the principle of subsidiarity - see Article 4 b) and Preamble, paragraphs 1-3).

All children requiring alternative care are placed in Australia.

- (c) What are your procedures to establish if a child is adoptable?

In the case where a child is placed voluntarily for adoption, the adoption legislation in all States and Territories requires birth parents to be counselled about the effects of an adoption after the child is born and prior to consent being taken. The State and Territory legislation specifies certain periods of time that must elapse between the counselling and the signing of formal consent. Further, a period must elapse before that consent becomes effective. Where a birth parent is unable to give consent or cannot be found, the Court may dispense with such consent. A range of legal orders may be used to place a child who is in the care of the State due to child protection concerns into the permanent care of another family. These include permanent care orders and Family Court orders.

- (d) What procedures are in place to ensure that consent to an adoption is given in accordance with Article 4 c) and d) of the Convention?

In the case of domestic adoptions, the legislation of each Australian State and Territory makes provisions similar to those set out in articles 4(c) and 4(d) of the Convention.

- (e) Do you make use of the Model Form for the "Statement of consent to the Adoption"? See < www.hcch.net >, "Intercountry Adoption", "Practical Operation Documents", "Annex B to the Special Commission Report of October 1994".

Consent forms for adoption in Australia are specified in the State and Territory Adoption Acts or under Departmental administrative processes.

- (f) Have you applied the "Recommendation concerning the application to refugee children and other internationally displaced children of the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption"? See Annex A to the Special Commission Report of October 1994.

This recommendation is not applicable in Australia as declared in the Instrument of Ratification pursuant to the Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption.

- (g) How is the eligibility and suitability of prospective adoptive parents assessed in your country (see Article 5 a))?

All applicants for adoption must meet specified legislative and other criteria in their respective State or Territory to be eligible to apply for adoption. Applicants are assessed in relation to their suitability in accordance with the State and Territory Adoption legislation. The legislation specifies the requirements applicants must meet in order to be approved. These requirements centre on the applicants' capacity to parent an adopted child.

- (h) What preparation (counselling, education or training) is given to prospective adoptive parents to prepare them for the intercountry adoption?

All applicants must attend information sessions, seminars or education groups as part of their preparation for adoption. These are comprehensive and cover a range of issues associated with the adoption of children from overseas.

- (i) Please also specify the measures / procedures in place to ensure that the requirements concerning the counselling of prospective adopters are complied with (see Article 5 b)).

The education groups or seminars cover a range of issues for adoptive parents. If necessary, applicants may be referred for individual counselling about specific issues in their application. The assessing caseworker may address issues arising in the individual assessment of applicants for adoption. Prospective adoptive parents may not proceed with an adoption without complying with counselling and education requirements.

- (j) Please specify any post-adoption services established or contemplated in your country (see Article 9 c)).

Australian States and Territories provide a range of post adoption services. Australian adoption legislation encourages openness in adoption and generally allows contact between the parties to an adoption. Post adoption services also assist people adopted within Australia or from overseas to access information about their adoption and to seek to reconnect with their birth family, country or culture as appropriate.

Central Authorities

- (a) Please specify any of the functions under Chapter IV of the Convention performed directly by your Central Authority or Central Authorities.

In Australia, the Commonwealth Central Authority (CAN) is primarily responsible for the fulfillment of Australia's international obligations under the Convention. The Australian States and Territories undertake the casework and processing for all applications made under the Convention. A State Central Authority (CAR) is established in each Australian State and Territory for this purpose and for ensuring that the adoption process complies with all Convention requirements. The reason for this arrangement is that in Australia, the Federal (Commonwealth) government

has constitutional power relating to treaties, while the State and Territory governments retain constitutional power to regulate adoptions.

In all Australian States and Territories, there is legislation that permits the delegation of certain functions to accredited bodies. At this time, no Australian State has accredited a non-government organization to process individual adoptions. Prior to 1 April 2005 South Australia had such an accredited body, which processed applications under the supervision of the South Australian and Northern Territory Central Authorities. The Agency operated in both South Australia and the Northern Territory.

- (b) Please indicate the number of personnel employed by your Central Authority to deal with intercountry adoption, their experience and qualifications, and what type of training they have received. (Where personnel undertake other functions, count them only for the amount of time spent on intercountry adoption, for example, if a person spends 50% of their time on intercountry adoption, count them as 0.5 of a person.)

The Commonwealth, State and Territory Central Authorities employ/contract a range of staff to undertake the functions as follows:

Central Authority	Number of Social work positions	Number of Administrative Staff	Number of Contracted Adoption Assessors	Number of Legal Staff	Total number of Dept. Staff
Commonwealth Attorney General's Department		.2		.6	.8
Victoria Department of Human Services	5.5	2.7	32	Consultation as required	8.2
New South Wales Department of Community Services	5	4	30	1 (for consultation)	9
Queensland Department of Child Safety	5	3.5	40	Advice available from departmental legal service	8.5
Australian Capital Territory Community Services	2	1	5	1(for consultation as required)	3
Tasmania Department of Health & Human Services	4	2	6	-	6
South Australia Department of Families & Communities	6	3	10	-	9
Western Australia Department for Community Development	3	2.5	14	0.5 (for consultation)	5.5
Northern Territory Family & Community Services	2	1	0 (currently recruiting)	1(for consultation)	3

Note: Contracted case or social workers are not full time employees but work under contract to the Departments. They undertake a number of tasks associated with the adoption process such as education, assessment of applicants and post placement supervision and reporting.

- (c) What procedures are in place to ensure continuity of experienced staff and training for new staff?

All staff receive induction and ongoing training. New staff appointed to professional positions are required to meet minimum essential criteria relating to qualifications, skills and experience for the position.

- (d) Have you experienced difficulties with regard to the establishment or operation of the Central Authority, for example, difficulties over funding or resources?

In Australia, the Commonwealth Attorney General's Department is the Principal Central Authority [CAN] and each State and Territory has established a Central Authority [CAR] to carry out the functions required under the Convention. The Federal government and individual State and Territory governments respectively fund the CAN and CARS.

- (e) Please provide details of any difficulties you have experienced communicating with "central" Central Authorities in other countries or with provincial Central Authorities (in your own country or other countries)?

There have been some issue of communication with Central Authorities especially when there are several Central Authorities in one country and individual inquiries need to be made to each. Where languages are different between the two countries, communication becomes more complex and time consuming as emails, letters etc need to be translated. This takes time and can result in some misunderstanding or lack of clarity regarding information sought. Significant time zone difference also makes communication more difficult.

The practice of expecting additional documentation from receiving countries such as the requirement to sign an additional written formal agreement when both countries have signed the Hague convention appears onerous.

In one case, adoptions have not proceeded because of an inability to conclude an additional agreement required by the State of origin.

Another issue that arises is that in the country of origin, the requirements for establishing a program are directed at agencies and do not take into account Central Authority to Central Authority arrangements.

Accreditation

At the Special Commission meeting in September 2005, the first day will be devoted to an examination of accreditation issues. Your responses to this part of the questionnaire will be very helpful to the Permanent Bureau in the planning and preparations for that day.

Accredited bodies

- (1) Please indicate whether your country uses or intends to use accredited bodies in intercountry adoption. If so, please provide details on the topics (a) to (m) below.

- (a) Please provide details (including powers and resources) of the authority or authorities, which grant accreditation.

Most States and Territories have the power to accredit a body under the Convention.

- (b) How many bodies have been accredited by your country? Federal States may provide the number for each state or province. If possible, please indicate how many bodies have been refused accreditation.

None at present.

In South Australia and the Northern Territory, an agency was accredited under the Convention to conduct certain services in the intercountry adoption process. Services provided by the accredited body included assessment of prospective adoptive parents; education sessions for applicants and supervision and monitoring of children in placement. From 1 April 2005 South Australia and the Northern Territory conduct all of the intercountry adoption services from within government through the State Central Authority.

No other Australian State or Territory has conducted services through an accredited body.

- (c) Please give a brief outline of your accreditation criteria, guidelines or legislation.

State and Territory Adoption legislation sets out the approval requirements/requirements for accreditation for an adoption agency. In addition, an agreement between the Commonwealth and the State and Territory Governments sets out the criteria in relation to the accreditation of bodies under the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. A copy of the relevant part of the Commonwealth State Agreement is attached and labelled 'attachment1'.

- (d) What is the process by which accreditation is granted?

The process of applying for accreditation varies between the States and Territories. In New South Wales, the application is made to the Office of the Children's Guardian who has been delegated by the Director-General of the Department of Community Services (the NSW Central Authority) to carry out the function of accrediting bodies to provide adoption services. The application must include evidence of how the adoption service provider can meet the adoption standards. In other States and Territories, the application is made to the Minister who has responsibility for community services or the Secretary for the respective social welfare department.

- (e) If possible, please provide an electronic copy of your accreditation criteria, guidelines or legislation, and any translations into English, French or Spanish.

We have attached a copy of the Commonwealth /State accreditation criteria. Please note that the accreditation criteria are in addition to the requirements of the State and Territory Adoption legislation for the approval of agencies.

For examples of state accreditation criteria we have attached an electronic copy of the Western Australian *Adoption Act 1994* and the *Adoption Regulations 1995*. The NSW guidelines are available at www.kidsguardian.nsw.gov.au (select ADOPTION tab).

- (f) How is the supervision of accredited bodies carried out in your State (Article 11 c))? Are there regular reporting requirements (including financial reporting) by the accredited body to the supervising authority?

During the period of accreditation of a body in South Australia and the Northern Territory, supervision occurred through meetings between the Agency and the Central Authority, and reporting arrangements as specified between the governing body of the Agency and representatives of the government, including the Central Authority.

- (g) How is the performance of the accredited body assessed or evaluated?

Currently not applicable.

During the period of accreditation of a body in South Australia and the Northern Territory an assessment of the operation of the accredited body occurred at specified times.

- (h) Has the competent supervisory authority encountered any difficulties in relation to (f)?

Prior to 1 April 2005, the State Central Authority in South Australia and the Northern Territory conducted certain services through a contractual relationship with an accredited body. This necessitated an added layer of governance in monitoring and managing the standards of services to ensure compliance with the Convention.

- (i) Are you aware of any acts or behaviour by accredited bodies or approved bodies or persons that contravened your accreditation criteria? Please also provide details of any sanctions or penalties applied?

In South Australia difficulties arose with the State Central Authority not being fully informed about the operation of the accredited agency. This was not strictly in accordance with the contractual relationship with the Central Authority, for example, advising applicants about children they may be allocated for adoption before allocation had been formally approved by the Central Authority as per the contractual conditions.

- (j) What are the conditions for renewal of accreditation?

Currently not applicable.

- (k) Have you experienced any difficulties in obtaining assistance or cooperation from other Central Authorities in regard to accredited bodies?

No.

- (l) Have you experienced any difficulties or concerns regarding the supervision of accredited bodies in other countries?

No.

- (m) Do you consider that standard or model accreditation guidelines would assist countries in developing appropriate safeguards or procedures?

We would support the development of minimum standards and guidelines for accreditation of bodies involved in intercountry adoption arrangements.

- (2) Has your country authorised foreign accredited bodies to undertake intercountry adoptions in your country (see Article 12)?

No. In some countries Australia has appointed a representative to undertake certain tasks associated with the adoption process. The representative may be required to be approved or authorised to be involved in adoptions by the authorities in that country.

- (a) What steps are involved in the process of authorisation?

Not applicable.

- (b) What supervision of foreign authorised bodies occurs?

Not applicable.

- (c) Have you experienced any difficulties regarding a body accredited in one State and authorised to act in another State?

The Commonwealth and the State and Territory Government Agreement which sets out the criteria for the accreditation of bodies under the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption allows for States and Territories to enter into arrangements with a body accredited in

another Australian State or Territory.

- (3) If your State has decided not to use accredited bodies, please explain the reasons and indicate what has influenced the decision.

No decision has been made not to use accredited bodies. In South Australia a decision was made by the Cabinet of the State Government to conduct intercountry adoption from within government to reduce duplication and maximise the opportunity to provide services in the best interests of the children.

- (4) What particular issues concerning accreditation would you like discussed on the Accreditation Day (17 September)?

- Transparent fees and costs paid in respect of intercountry adoption
- The linking of the fees to donations to processing costs
- The issue of conflict of interest
- The adoption of the principle of a child centred practice rather than an adult centred approach
- Processes to ensure the preservation of and access to records obtained in the course of providing services.
- Accreditation of agents by their home central authority.

- (5) Would you like to see a chapter on Accreditation developed for the Guide to Good Practice for Intercountry Adoption? What issues do you think should be covered in this chapter?

Yes, the issues listed in (4) and the following:

- Good Practice Standards on areas such as the assessment of children's needs
- Sound training and assessment of prospective adoptive parents
- Confidential record keeping about children's backgrounds
- Agreement not to place children's photographs and details on the internet
- Protocols for accessing information from countries for families who adopt

Approved bodies and persons

- (6) Please indicate whether your country uses or intends to use approved bodies or persons (see Article 22(2)) in intercountry adoption. If so,

The Australian Commonwealth and State and Territory Governments have already agreed in principle that they will only accredit a body that satisfies the established criteria in relation to the accreditation of bodies under the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. These criteria do not include the accreditation of individual persons.

- (a) How many bodies or persons have been approved by your country to provide adoption services in accordance with Article 22(2)?

One body was previously approved in South Australia and the Northern Territory to perform some of the functions in relation to articles 15 to 21 under the Convention.

Since 1 April 2005, the accreditation notice was not renewed and all intercountry adoption services are now provided from within government.

- (b) Do you grant approval to persons or bodies from abroad?

No.

- (c) What are the guidelines by which approval is granted (if different from 1(c))?

Not applicable.

- (d) What is the process by which approval is granted and renewed?

Not applicable.

- (e) How is the supervision of approved bodies or persons carried out in your State (Article 22(2))?

Not applicable.

- (f) Has your country made a declaration under Article 22(4)?

Australia has declared that pursuant to Article 22.4 of the Convention children habitually resident in the territorial units of Australia may be adopted only by persons resident in countries where the functions of the Central Authority are performed by public authorities or bodies pursuant to the Chapter III of the Convention.

Procedural aspects

- (1) Please indicate any operational difficulties that have been experienced, including in particular:

One of the major concerns arising is the onerous post placement reporting requirements of some Convention countries. In some countries, regular post placement reports are required for several years after a child is placed and legally adopted by the family. While post placement supervision and reports for 12 months to 2 years are manageable, anything beyond this time is onerous on both the family and Central Authority. The continued involvement of a Central Authority in a family over several years is not reasonable or practical particularly if the child's placement has been assessed as appropriate and stable. Adoptive placements in Australia are generally only supervised for a period of 12 months. Once an adoption order has been finalised and the child is legally the child of the adoptive parents there is no obligation on the parents to inform the Central Authority of their current address nor is there a mandate on behalf of the Department to trace the family and request the completion of outstanding reports. The continued provision of post placement reports in some countries has associated costs for families for translation and legalisation of the documents.

- (a) obtaining accurate and sufficient health and social information on the child;

Sufficient and accurate medical and social information about the child is essential. We have seen significant progress in the amount and quality of information given by the countries of origin.

- (b) obtaining accurate and sufficient information on prospective adoptive parents;¹

Not applicable.

- (c) obtaining an accurate estimate of fees to be paid by adoptive parents prior to adoption and / or travel to collect the child;²

Difficulties have arisen where the Central Authority specifies that no fees are required but accredited bodies do expect fees or donations from families.

- (d) documentation requirements, including requirements for legalisation or authentication of documents, or the acceptance of documents by the other country;

¹ The Convention, Articles 15 and 16.

² See Report of the Special Commission of 2000, page 42, paragraph 7.

There can be very different requirements for documentation between countries. It would be helpful to have standard requirements that most countries would accept and which are put together in a consistent manner e.g. one set of documents in the language of the receiving country and one set in the language of the State of origin of the child both notarised, legalised and authenticated. List of same documents in same order e.g. birth certificates, marriage certificates, medical certificates, referees, financial statements, approval letters, assessment report. We appreciate that some countries' adoption laws may prevent this.

The preparation of documents and the use of apostilles required by some countries. make the documents more time consuming more costly to applicants.

- (e) obtaining the agreements required in Article 17;

Not applicable.

- (f) receiving post-placement reports from adoptive parents or Central Authorities;³

Not applicable.

- (g) translation requirements;

Not applicable.

- (h) time taken to process Convention cases.

In general countries of origin such as the Philippines and Thailand do ensure that processes are completed expeditiously. However, all adoptions of children into Australian are subject to the Australian immigration requirements. There are other countries where there are significant delays often due to factors outside the control of the Central Authority.

- (2) Do you permit prospective adopters, once their eligibility and suitability have been established, to make their own arrangements for contacting directly the placement agencies in the country of origin?

All arrangements for adoption **must** be made by the Australian State and Territory Adoption Authorities. Prospective adopters are not permitted to contact the country of origin of the child to make any arrangements to facilitate a matching placement of a child.

- (3) Has the practice referred to in the preceding question given rise to particular problems of which you are aware?

See response above

- (4) Please provide details on the breakdown of placements in the Receiving State. What steps have been or are being taken in your country to address this problem (Article 21)?⁴

If there is a placement breakdown, the Central Authorities in Australia will ensure that the child is placed in another approved adoptive family and advise the overseas Central Authority.

- (5) Legalisation of foreign documents can be very time consuming for Contracting States. At the Special Commission on the Apostille, Evidence and Service Conventions in November 2003,⁵ a recommendation was made concerning the

³ See the Convention, Article 20.

⁴ The number of placement breakdowns is sought in the new draft Statistics Form.

⁵ See "Conclusions and Recommendations adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions", 2003, page 5, available on the Hague Conference website

1993 Convention. The Report states that:

"The Special Commission stressed the usefulness of linking the application of the Hague Adoption Convention of 1993 to the Apostille Convention [the 1961 Convention Abolishing the Requirement of Legalisation for Foreign Public Documents]. In light of the high number of public documents included in a typical adoption procedure, the Special Commission recommended that States that are party to the Adoption Convention but not to the Apostille Convention consider actively becoming party to the latter."⁶

Would you favour a similar recommendation from the forthcoming Special Commission meeting for the 1993 Convention?

No, the preparation of documents under the Apostille Convention in this way is more time consuming and more costly to applicants.

- (6) DNA testing has been used to establish identity (if, for example, consent is in doubt). Can you provide details of such cases, including the cost and procedures involved?

Not applicable.

8. Private international law issues

- (1) The Convention does not determine which authorities have jurisdiction to grant or amend / revoke an adoption nor which law applies to the conditions governing, or the effects of, an adoption.
- (a) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the jurisdiction of the authorities to grant or amend / revoke an adoption?

Not aware of any cases.

- (b) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the law or laws to be applied to the conditions governing, or the effects of, an adoption?

Not aware of any cases

If the answer to either or both of these questions is "yes", do you wish the Permanent Bureau to study these questions further?

- (2) Issues of applicable law may arise when bodies accredited in one Contracting State act in another Contracting State (Article 12), for example:
- whether and to what extent agents of that body are authorised to act and bind their principal;
 - whether they have exceeded or misused their authority.

Have you experienced any difficulties in this respect (see also the *Hague Convention of 14 March 1978 on the Law Applicable to Agency*)?

9. Recognition and effects

- (1) Have your courts used the Recommended Model Form "Certificate of Conformity of Inter-country Adoption"? See < www.hcch.net >, "Inter-country Adoption", "Practical Operation Documents", "Annex C to the Special Commission Report of October 1994".

Certificates of Conformity are issued by the State and Territory Central Adoption Authorities and not by the Court. The Recommended Model Form is used by the Central Authorities in Australia.

- (2) Have you knowledge of any difficulties that have arisen in obtaining certificates under Article 23(1)?

In our experience, adoptive parents are sometimes given the compliance certificate and the certificate is not provided to the State or Territory Central Authority. An original should be given to the adoptive family and a copy or another original sent directly to the relevant Australian Central Authority.

- (3) Do you have information about any case in which recognition of a Convention adoption has been refused under Article 24?

No.

- (4) Are there any circumstances in which you would recognise the validity of a foreign adoption coming within the scope of the Convention despite Convention procedures or requirements not having been followed?

No.

Please specify any other difficulties that have arisen in relation to Chapter V of the Convention.

Not applicable.

10. Payment of reasonable charges and fees

- (1) Please quantify the costs and expenses charged or fees paid in your country in respect of inter-country adoptions (Article 32(2)). Is this information freely available and accessible to prospective adoptive parents and competent authorities?

Yes. All fees are published by the Central Authority in their general adoption information.

STATE/TERRITORY	FEE FOR FIRST APPLICATION [in Australian dollars] (1)	FEE FOR SUBSEQUENT APPLICATION [in Australian dollars]
New South Wales	\$9,700	\$6,100
Queensland	\$53(application) \$2,000(assessment)	\$53(application) \$2,000(assessment)
South Australia	\$8,200	\$7,450
Tasmania	\$2,280	\$2,280
Victoria	\$6,250	\$4,950
Western Australia	\$2,276	\$1,400
Australian Capital Territory	\$4,154	\$4,154
Northern Territory (2)	\$6,023	\$5,623

Notes:

1. Some States/Territories have provision for fee waivers/hardship policy for applicants. Applicants must also pay fees for immigration sponsorship of

the child (\$1,235) and translation, the preparation of documents for overseas and court fees if the adoption is finalised in Australia.

2. In the Northern Territory (NT) the fee noted refers to the average fee incurred. NT fees vary slightly according to source country selected by the applicant.

- (2) Have you had any experiences with the use of fee caps, established and publicised appropriate fees, established expediting fees, or other similar controls?

No. The Australian States and Territories require any fees and costs paid overseas to be transparent.

- (3) Do you have any comments on the practice in some countries of requiring a mandatory contribution by adoptive parents for the support or development of child protection services in such countries?

Any donations whether mandatory or voluntary should be transparent and paid after the child has been placed with the family. The issue of fees and costs for agencies in India requires resolution by the Central Adoption Resource Agency.

- (4) Do you have any comments on or experiences of uneven processing amongst countries due to large disparities in fees (for example, applications from countries that offer higher fees may be processed more quickly)?

No.

- (5) Are you aware of any instances of disparity between professional salaries or fees charged for adoptions compared to other forms of legal work? (For example, large legal fees may be charged for adoption, while standard or lower fees are paid for other family law matters such as divorces – see Article 32(3).)

We are not aware of this issue in any in the work we do. We are not able to compare the fees set for Australian applicants as opposed to applicants from other countries.

- (6) Are you aware of any significant differences in fees charged for intercountry adoption by regional or provincial authorities?

We are not aware of any regional differences, as we do not come across this issue in the countries with whom we currently have intercountry adoption arrangements.

- (7) To what extent, if any, are intercountry adoption fees used (a) to support or develop the national childcare and protection system; or (b) to contribute to funding resources of Central Authorities or accredited bodies?

As a receiving country, we are not in a position to make a comment on this. In Australia, adoption fees paid by prospective adoptive parents contribute towards providing the intercountry adoption service.

- (8) Do you have any other comments about reasonable or unreasonable costs and expenses or fees?

We strongly support transparency and openness in respect of all fees paid for adoption services for both receiving and sending countries. The fees should cover the legitimate costs of the adoption.

- (9) Are you aware of any other problems arising from the payment of fees or charges in your country or in other countries with which you have adoption arrangements?

When Australia establishes a new program, fees are clarified and set as part of the negotiations.

11. Improper financial gain

- (1) Please indicate the laws (including criminal sanctions), measures and procedures in place to give effect to the principle that no one shall derive improper financial or other gain from an activity related to an intercountry adoption (Article 32(1)).

Under Australian State and Territory adoption legislation it is an offence to make an unauthorised adoption arrangement and derive any financial gain.

- (2) Are you aware of any instances of success in enforcing penalties to discourage improper financial gain?

This has been done in local adoption matters successfully but not in any intercountry adoption arrangements.

- (3) Are you aware of any difficulties in the enforcement of laws or regulations or in prosecution of criminal activity?

No.

- (4) Apart from the measures referred to in Question 11(1) above, have any other preventive measures been taken in your country to combat improper financial gain?

The State and Territory Adoption Acts prohibit any person making unauthorised arrangements and provide for person to be imprisoned or fined if they commit an offence.

- (5) Please provide details of any measures taken to prevent solicitation (e.g. through inducements to consent) of children for adoption (Articles 8 and 29).

The State and Territory Adoption Acts prohibit any person making unauthorised arrangements and provide for person to be imprisoned or fined if they commit an offence. This includes any inducement to obtain consent.

- (6) Have you experienced any difficulties in obtaining co-operation or assistance from other States in eliminating practices that lead to improper financial gain?

There have been some issues in obtaining clarity with some Central Authorities and accredited bodies about fees and costs. The issue of a donation being made at the time of the placement of the child can create some difficulties. The donation looks more like a fee than a donation. Where the amount of the 'donation' had increased at the time of the placement from what was expected, the applicants experience the request as an unexpected pressure and set back.

12. Relative adoptions

Do you have any comments on the application of the Convention procedures to relative (inter-family) adoptions?

In Australia, relative placements are considered for children and young people who are removed from their birth families due to child protection concerns. Relative applications from overseas should only be considered in the same circumstance that is where a child is under guardianship of child protection authorities in the overseas country and no other relatives in that country can care for the child. In Western Australia the amendments to the *Adoption Act 1994* in June 2003, does

not permit a person to adopt a relative child. Provision exists within the Family Court system for orders for the day-to-day care and long-term parental responsibility for relative children. This change is based on the view that adoption by a relative confuses the biological bonds within a family.

13. Children with special needs

What policies or programmes do you have to ensure that children with special needs are given the same opportunity to find a family through intercountry adoption as other children?

Children with special needs are placed with Australian families. These include older children, children with difficult backgrounds and sibling groups. Due to Australian Immigration requirements, we are unable to place children with significant medical problems and disabilities in Australia.

14. Other forms of cross-border child care

International foster care, transnational *kafala* and other forms of child care with a cross-border element are not covered by the 1993 Convention, but by the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*: See for example its Articles 3 e) and 33(1).

- (1) Is your country involved in international placements of children other than for purposes of adoption?

No.

- (2) Are you aware of any difficulties concerning such placements?

Not applicable.

- (3) If your country is not yet a Party to the 1996 Convention, is your country actively studying ratifying or acceding to it?

Australia ratified this Convention on 29 May 2003.

15. Avoiding the Convention

Are you aware of any attempts to circumvent the Convention or to avoid protections afforded to children, including the moving of children or birth parents to other countries?

No. Unauthorised adoption arrangements are prohibited under Australian State adoption laws and Australian Immigration laws.

16. Additional safeguards and bilateral arrangements

Please describe any additional safeguards, requirements or procedures, which you apply to Convention adoptions (*i.e.* over and above those which are set out in the Convention itself). Are these applied generally or only in relation to particular States?

All intercountry adoptions are subject to Australian Commonwealth, State and Territory adoption legislation, which have stringent and clear requirements that must be met.

Have you made agreements with one or more other Contracting State (see Article 32(2)) with a view to improving the application of the Convention? If so, please specify with which States and what matters are covered by the agreements.

No.

Do you have any comments on the efficacy of bilateral arrangements:

- (a) with non-Contracting States? Are Convention safeguards applied?

Australia has continued to work with a number of countries under bi-lateral arrangements and these arrangements have been reviewed in light of their compliance with the principles of the Hague Convention.

- (b) with Contracting States? Do they improve the operation of the Convention? Have they caused any difficulties?

No.

17. Limits on number of States with whom co-operation is possible

In making arrangements for intercountry adoption (whether as a receiving State or as a State of origin), have you found it necessary to confine co-operation under the Convention to a limited number of other Contracting States? If so, please explain the reasons (e.g. no appropriate accredited body, lack of resources to process applications from large number of States, etc) and indicate what has influenced the choice of these States.

The Australian Central Authorities understand that in principle the Convention allows working relationships to be developed with all other countries that have ratified or acceded to the Hague Convention. However, the Australian Central Authorities, for various reasons may not develop these arrangements. Some reasons include:

1. A Central Authority may not have been established in the overseas country.
2. A Central Authority may be established but does not have the resources to manage inquiries or applications in accordance with Convention requirements. Even where a Country has established a Central Authority, the necessary infrastructure may not be in place to allow an adoption to occur. In some countries this has resulted in the Australian States and Territories appointing a representative to undertake specified tasks associated with the adoption process.
3. Countries may have legislation that imposes significant additional requirements on a receiving country prior to a program commencing. In some cases, these requirements appear onerous particularly when applied to adoptions carried out directly by other Central Authorities (although they may be necessary for adoptions carried out by accredited bodies).
4. Countries may advise that they do not want to place their children in Australia due to geographical distance or they do not consider that they have any significant cultural or political ties with Australia.
5. The costs of establishing new programs are substantial.
6. The children that need families from a particular country may not correspond with the characteristics of children that adoption applicants in Australia feel able and qualified to parent.
7. A number of programs have very complex internal requirements and expectations about length of stay in the country while the adoption process is completed which creates some issues for applicants in terms of time, requirements to travel more than once to a country or needing to stay for significant periods of time (usually several weeks) and an increased financial commitment.

SUGGESTIONS FOR THE SEPTEMBER SPECIAL COMMISSION

18. Do you regularly hold seminars, training sessions or workshops on the Adoption Convention in your State? Would you welcome participants from other countries? Would you find it helpful if there was a consistent way to announce such activities to other States? Do you have suggestions?

The Australian Central Authorities hold biannual Central Authority meetings on the Adoption Convention where the Commonwealth and all States and Territories Central Authorities are represented. We would welcome any overseas representatives that wished to attend these meetings.

Every three to four years an adoption conference is convened in Australia with representatives invited from other countries. At the most recent conference held in April 2004, the Central Authorities of several overseas countries attended. Australian Central Authorities welcome the opportunities created by other countries to meet with their counterpart Central Authorities in overseas countries to discuss matters of practice and cooperation in the interests of children subject to intercountry adoption.

19. In the current negotiations for a new Convention on the International Recovery of Child Support and other Forms of Family Maintenance, an Administrative Co-operation Working Group has been established to examine and report on practical problems and issues of administrative co-operation between authorities. Would you favour the establishment of a similar group for the 1993 Convention?

In contrast to the new maintenance convention, the 1993 Convention is well established and understood by the States parties. There does not appear to be the same need for a separate intermediate body to examine and report on practical problems and issues of administrative cooperation. Where these difficulties arise it has in the past been possible to resolve them directly with the Central Authority concerned. The addition of a further level of discussion may add an unwarranted complexity to the resolution of these matters. We remain open to the views of other States parties.

20. Please indicate which topics you consider priority issues for the Special Commission in September 2005, and their degree of importance.

- Fees
- Accredited bodies
- Unwarranted pressure on countries of origin to accept more applications than the number of children needing adoptive families would warrant
- Consistent practices e.g. in dossier compilation, number of post placement reports expected, assessment of adoptive parents guidelines, post placement report guidelines

21. Any other suggestions, comments and observations are welcomed.