



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

Reference: Adoption of children from overseas

THURSDAY, 3 NOVEMBER 2005

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

Thursday, 3 November 2005

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

Members in attendance: Mrs Bronwyn Bishop, Mr Fawcett and Mrs Irwin

Terms of reference for the inquiry:

To inquire into and report on:

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

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

WITNESSES

**DUGGAN, Mr Kym Francis, Assistant Secretary, Family Law Branch, Commonwealth
Attorney-General's Department 1**

**OSBORNE, Mr Matthew John, Director, International Family Law Section, Family Law
Branch, Commonwealth Attorney-General's Department 1**

**WILSON, Mr Scott Raymond, Assistant Director, Senior Legal Officer, International Law
Section, Commonwealth Attorney-General's Department..... 1**

Committee met at 11.56 a.m.

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

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

WILSON, Mr Scott Raymond, Assistant Director, Senior Legal Officer, International Law Section, Commonwealth Attorney-General's Department

CHAIR (Mrs Bronwyn Bishop)—I declare open this public hearing of the House of Representatives Standing Committee on Family and Human Services for its inquiry into adoption of children from overseas. The committee has already taken evidence in most states and territories around the country, and it has visited an adoption unit. The public hearing allows the committee to meet again with the federal government representatives involved in intercountry adoptions. Today we welcome the federal Attorney-General's Department. Copies of their submissions and others are available from the committee's web site.

This hearing is open to the public, and a transcript of what is said will be made available via the committee's web site. If you would like further details about the transcript of the inquiry, please ask any of the committee staff here at the hearing. I welcome the representatives from the Attorney-General's Department. As you have all been sworn before, I remind you that the oath still prevails.

Mr Duggan—Madam Chair, will you permit me to give just a very short response to some matters that were raised when the state of New South Wales appeared before you?

CHAIR—I was about to ask you to make an opening statement.

Mr Duggan—Sorry.

CHAIR—So here is your rebuttal.

Mr Duggan—Ms Dawson from New South Wales, in her evidence, suggested, in my view, that the Commonwealth was not living up to its responsibilities in accordance with the regulations and the Commonwealth-state memorandum of understanding that operate in this area. With respect, I think that is a misrepresentation of the situation. The involvement of the Commonwealth directly in these matters did not commence until 1998. The states had operated international adoption for decades prior to that time, virtually on their own, with assistance in facilitation of course by the department of immigration and the Department of Foreign Affairs and Trade. There had been no involvement directly by the Commonwealth until 1998, when we got involved. That involvement is predicated on the basis of the MOU. Leaving aside issues about the signing of that document, which you have highlighted very well, the agreement itself makes it clear that the intention of ministers was that the existing practices that then were undertaken by states and territories would, to the extent that they could, continue and the Commonwealth would take a very much indirect role. For example, clause 3 of that agreement states that in implementing the new regime:

... it shall do so with a minimum of disruption or alteration to existing State legislation and administrative procedures.

In terms of the new arrangements, clause 18 of that memorandum of understanding states the new arrangements will be dealt with:

... in accordance with the State *Protocols and Procedures for Developing New Programs with New Countries 1991*.

The intention was that, to the extent that that was possible, we simply adopt the practice that the states had been undertaking for such a long time because they had the expertise in this matter.

I am not for a moment suggesting that that does not now need to be reviewed. I am simply suggesting to you that the expectation of governments is that the arrangements that we currently have are what was expected in 1998. Whether that is appropriate now is a matter for government, and no doubt this committee will have some views on that. It is appropriate for government to review that in the light of the views of this committee. I simply wish to point out that New South Wales's views are not, in my view, commensurate with the documentation that exists with regard to the relationship between the states and the Commonwealth. They represent a unique view from New South Wales not shared by, as you pointed out at the time, any other state and represent a significant change to the memorandum of understanding, which was the basis upon which governments entered into this arrangement in the first place and which binds the Commonwealth in the way that it operates. I am not suggesting for one moment that we do not need to review those arrangements. No doubt you will have, as I say, some significant contributions to make to that matter. I am simply suggesting to you that the arrangements we currently have reflect that arrangement. Thank you.

CHAIR—Thanks very much for that. I think the arrangement really is very sloppy, and perhaps that is highlighted by the fact that one state failed to sign it and nobody bothered to notice—but anyway. A number of queries have been raised with us about NGOs. A lot of people wrote to the Attorney-General and asked that an NGO be put on the delegation to go to The Hague. I, as chairman, wrote to the Attorney-General and suggested that an NGO should go. I deliberately did not suggest a name or identify any particular NGO. A form letter went out, obviously, because I got the form letter too, objecting to the person that I had nominated, which I carefully had not done. So I did not think the letter got read particularly well either. Why was an NGO not considered to be taken in the first place? And what is the underlying attitude of the department, which presumably drafted the letter that I and everybody else received?

Mr Duggan—There are a few questions there. First, no delegation to that conference took NGOs as part of the government delegation. Non-government organisations were indeed present at the meeting in their own right, but they were present as non-government organisations and they were non-government organisations which had an international spread. There was the Nordic country adoption organisation and EurAdopt. There was a range of adoption non-government agencies which, as I say, had an international perspective, and that is the reason they were accredited by The Hague to attend.

CHAIR—How come they had an international perspective?

Mr Duggan—Their operations relate to more than one country. For example, the Nordic Council operates to all the Nordic countries.

CHAIR—We have NGOs that meet that description.

Mr Duggan—My point is that that accreditation was given by The Hague, not by Australia. It was given by The Hague conference itself. We wrote to The Hague and asked them whether it would be appropriate to invite an Australian NGO on that basis, and we put up a particular name because that name had been put to us. What we got back from The Hague was what I have indicated to you, that the NGOs that had been invited were those that had an international aspect—that is, they had more than one country involved.

CHAIR—Let me get that straight. You actually wrote to The Hague and suggested an NGO that should be accredited?

Mr Duggan—That is right—or could be accredited. We asked the basis upon which they could be accredited. I am happy to provide the information to the committee.

CHAIR—I think we would like to see that.

Mr Duggan—Certainly.

Mrs IRWIN—Could we have the response from The Hague as well?

Mr Duggan—Yes, indeed.

CHAIR—Why did you then not go back and suggest someone that had an international reach?

Mr Duggan—The issue of greater consultation and greater involvement of NGOs, if I can take the matter in the broad, I think is a legitimate one to have raised with the central authorities. Mrs Brisson, for example, has raised this issue with me directly just recently, and it will be a central matter on our agenda next week when the central authorities meet. I think there is a need to give greater involvement in and greater transparency to the way we operate and certainly a need to involve NGOs more thoroughly in the way that we do our business. I think that is a fair comment, if I may say so. The difficulty with going back then and trying to pick one NGO out of a very large range, because there is a significant number, was there was simply insufficient time for that.

CHAIR—They have these meetings only every four years. You had four years to think about it.

Mr Duggan—No, don't misunderstand me, I mean from the time we discovered the criteria. As I have indicated to you, we need to involve NGOs more in that process so that in the future these issues will be dealt with more quickly and they will be on our agenda more thoroughly than they currently are.

CHAIR—But that just emphasises to me the permeating attitude that it is not important and that attention has not been paid to it. What was the date of the letter you wrote to The Hague?

Mr Duggan—I do not have that in front of me. I will provide that detail to the committee.

CHAIR—Was it a month in advance, two months in advance, six months in advance?

Mr Duggan—It is fair to say that it was predicated on getting the inquiry from the NGO concerned. That is when it took place.

CHAIR—No. If you believed it was right that an NGO could have been accredited, then you should have been talking to them.

Mr Duggan—I do not dispute that for one moment, Madam Chair. I am simply indicating to you the fact of the matter was that we responded when we actually got that inquiry. I think it is a fair point to raise that we should have had more contact. As I say, it will be a significant part of our agenda next week when we meet with all of the states and territories to discuss this issue, how we might better involve NGOs in their decision-making processes, or in fact the meeting processes that we have, and just how that should be done. There are, as you know, a wide range of these bodies, so it will not be possible to have everyone at the table. We need to have some, however, better process than we do at the moment to allow for their input.

CHAIR—You can do that by an accreditation process, which is already provided for but just has not been done. There seems to be such obstacles. New South Wales has just made provision for accreditation but made it extremely difficult for anyone to actually go through the accreditation process. But now I understand they have just advertised:

Provision of intercountry adoption services in NSW

The Department of Community Services ... invites expressions of interest from eligible charitable or non-profit organisations to deliver intercountry adoption services in NSW.

The accreditation provisions of the *Adoption Act* ... came into effect on 1 July 2005. Eligible organisations can now apply to the Children's Guardian for accreditation to provide local and/or intercountry adoption services. More information is available ...

from DOCS. The Children's Guardian has authority over intercountry adoptions only because federally the minister for immigration delegates that authority to a particular person in each jurisdiction; is that the case?

Mr Duggan—I understand that to be the case. I will check that, and, if there is anything new to provide you, we will do that.

CHAIR—If their Children's Guardian is going to be the person to determine whether or not people are suitable to accredit and that person has any authority only because of the delegation from the federal minister, we have a real input here into what accreditation means, don't we?

Mr Duggan—I do not wish to constantly fall back on the MOU, but of course I am going to do that again, because the responsibility for accrediting rests squarely with the states and territories under that document.

CHAIR—The responsibility for doing it may, but that does not mean that there should not be a federal involvement in saying what are the proper things that ought to be in it.

Mr Duggan—There may in the future be greater involvement by the Commonwealth. As I say, in terms of the memorandum of understanding, up until now this matter has been dealt with on a state basis.

CHAIR—We are in the situation now where we do not have any accredited bodies anywhere.

Mr Duggan—That is true.

CHAIR—We had one in South Australia, and that was strangely taken away, but nobody else has had one either—and the Commonwealth can accredit themselves.

Mr Duggan—Certainly without a change to the memorandum of understanding, that is not the way the system operates at the moment. That is not to say the Commonwealth could not do that in the future.

CHAIR—But you would need more than half a person paying attention to intercountry adoptions, wouldn't you?

Mr Duggan—Absolutely. That is right. If this committee makes recommendations for a greater role for the Commonwealth, and I suspect that might be the case, there would need to be a decision by government to provide greater resources in that regard.

CHAIR—What sorts of resources do you reckon you would need?

Mr Duggan—That question has been raised before with us. I think the reality will always be that individual assessment of applicants for their suitability for intercountry adoption will always remain a matter for the states and territories, because that is where the expertise lies. The domestic adoption program of course will always remain a matter for the states, unless of course they refer the power to the Commonwealth; but assuming that does not happen—on that basis it is difficult to assess. I would not have thought the resources would need to be enormous. I would think five or six people perhaps could operate it, because they would not be doing that detailed assessment work. I have to admit that I have not sat down and actually done the numbers, but I would not have thought they would be a huge impact. It would be numbers of that sort.

CHAIR—Four or five people?

Mr Duggan—Possibly. We have not done the work, so it is difficult to estimate it, but we have some understanding of what is required. We would need a different mix of skills from what we currently have.

CHAIR—One of the things that we have heard as we have gone around the states and territories is that there are clearly people who are anti-adoption working in adoption bureaucracies. That spills over into intercountry adoptions, and it spills over into the sorts of requirements and rigours that they put the would-be adopting parents through, even right down to the selection of who are the contracted—they are all contracted—social workers. It seems to me that there should be at least an Australia-wide standard of what the appraisal is. I can understand that different states may say they will not approve same-sex couples and, whilst most states allow both married and de facto couples, certain agencies from which we adopt of course

have their own very strict criteria. But it does seem to me that there should be some harmonisation of the sort of standard that would-be adoptive parents reach.

Mr Duggan—The reality, as you pointed out, is that it is not a matter that the Commonwealth has the power to force on the states at this stage with the kinds of arrangements that we have. The states could choose to make those arrangements themselves. They have chosen not to up to now.

CHAIR—We know we can always persuade the states with specific purpose grants, don't we?

Mr Duggan—Generally that is successful.

Mr FAWCETT—This is hypothetical because we do not actually have the states' agreement to put in place a federal template. But, given that in many other areas we have reference groups so that people who have an affinity with the issue guide some of the people who run, if you like, the national level bureaucracy for it, are there any other areas in Attorney-General's where people from the community are involved in a particular area and form a reference group? If such a thing were put in place for overseas adoptions, do you think that would work within your current way of operating within A-G's? It would not be an executive body but a reference group which would say, 'Here's an issue you need to consider.'

Mr Duggan—My primary area of responsibility of course is in relation to family law. You would be aware there has been a range of reference type groups, including this committee in fact, which have been major players in reform agendas in that area in the last two to three years—in fact, even longer than that. I would have thought the answer to your question is yes. It depends of course on what sort of group that would be, whether it has a remit for initial or ongoing reform.

Clearly the very significant reforms the government has undertaken in relation to family law have benefited significantly from having the input of a broad range of stakeholders. I can think of three or four reports in the last three years that reflect that. So my general way of operating is that we do involve stakeholders of that sort. The most significant ongoing family law forum, for example, generally is chaired by the Chief Justice of the Family Court but involves all stakeholders, and particularly non-government agencies attend that body. Yes, I could see that there would be potential for something similar in this area.

Mr FAWCETT—Getting back to resources, I accept your comment that you have not sat down and crunched the numbers and worked out what you would need, but can you give me your general gut feeling? If a model were put in place whereby a Commonwealth group were interacting with other countries, with The Hague, and setting a framework which the states then implemented, would that kind of thing be workable with the five or six people whom you have mentioned? So, essentially, we do everything to set the framework, interact with people overseas and get to the point where the child arrives in Australia with their parents, and then the state implements from there, having gone through that selection process as part of it.

Mr Duggan—The reason I am being a little hesitant is that we have never before been involved in the actual process of checking and testing the checks and balances which exist in the

countries of origin. The states have always done that in the lead state process, which you would be aware of.

Mr FAWCETT—Which I think has been rather haphazard, given some of the feedback we have had.

Mr Duggan—That is the approach, as you know, that operates. We have not done that. That matter has been the responsibility of the states. Indeed, the most recent proposal for looking again at the protocols suggested that, as you may be aware, the lead state concept be retained. So we have not actually done that sort of accreditation type work. My area would need a mixture of skills. The current ones would not be sufficient. I have predominantly lawyers working for me. We would need a mixture of skills. Lawyers would still be necessary, it seems to me, but we would need a mixture of skills, which we do not currently have.

Mr FAWCETT—Is there any potential for having a cross-departmental approach whereby someone like AusAID works with A-G's and, rather than just saying, 'This country has identified that it has an agency it is happy for us to work with,' it identifies where Australia actually wants to target its foreign aid and then works with countries of particular need to help them not only in country—the classic AusAID stuff—but also, as part of that, to develop their capacity to come under The Hague to set up intercountry adoptions. Would you feel comfortable with that approach?

Mr Duggan—I think Western Australia made a similar suggestion, that the Commonwealth should be actively involved in liaising with AusAID to identify particular countries where some assistance might be useful in terms of expanding our program. With respect to Western Australia, I think that is a very sensible suggestion. In terms of the other area that we look after, international family law, our main priority is international parental child abduction. We have just recently received money from AusAID to assist the Papua New Guinea authorities in setting up the necessary infrastructure in Papua New Guinea to deal with situations where there are parental child abductions to or from that jurisdiction. So it is a similar sort of request and I think there is much to be said for this. As I say, it is a matter we could certainly take on board and ought to, and we will indeed approach AusAID on that basis.

CHAIR—In relation to the convention itself, doesn't it require a separation of aid and the adoption process?

Mr Duggan—Absolutely, and Australia would not propose to require, if you like, an outcome. I think you would be aware from some of the evidence presented to this committee that in some countries there appear to be enormous numbers of children who ought to be available for intercountry adoption. At least part of the difficulty is that some of those countries do not have the infrastructure in place to ensure that children and parents go through the appropriate checks and balances before intercountry adoption is considered. We would be working with those countries to assist them with that infrastructure without at any stage suggesting that the only way we would do that is if we got a quota; there would be no link in that regard. But it may well be in Australia's interests in a more general sense to assist those countries to have that infrastructure in place with a long-term view of there being a general increase in intercountry adoption, if that were the appropriate outcome.

CHAIR—I do think it is really quite unsatisfactory that we have states negotiating agreements on behalf of the nation. I find that quite improper. For instance, Tasmania—I think they have South Africa, don't they?—gave evidence to us that, quite frankly, they could not afford to do it, they did not have the resources, and they just were not going to do it. I think it is South Africa they have.

Mr Duggan—Yes.

CHAIR—It is interesting that, really, we have not had any new agreements at all since we ratified.

Mr Duggan—We have had no bilateral agreements. During that period there have been a number of attempts to set up new programs, and we have written and are about to write to Vietnam. I think it has been indicated—

CHAIR—Yes.

Mr Duggan—It has been mentioned to you in that regard. The only delay with that has been that we are translating the letter to make sure we show appropriate respect to the country by having the letter go in their language rather than ours.

CHAIR—So that means the Commonwealth will be doing that?

Mr Duggan—Absolutely.

CHAIR—That is as it should be.

Mrs IRWIN—You just stated that you have made attempts to set up new programs. What was the outcome of that? What feedback did you get?

Mr Duggan—Perhaps I will get back to you in writing in relation to individual countries. We have tried that with a number of countries. I will take that on notice rather than just try to guess.

Mrs IRWIN—That would be appreciated.

Mr Duggan—I will respond in relation to each country in turn so that you have exactly the information that we have. But Australia would regularly write to a number of countries as they joined, for example, the convention to seek to engage them. Of course some countries are not interested in programs with Australia, for a whole range of reasons. Sometimes their programs are very small and they tend to want their children, if they are to be adopted at all, to be in close proximity. That is the case not in all European countries but in some. So it is not necessarily the case that, because countries join the convention, they will be interested in a program with Australia. Obviously our geographical position is difficult for them, and they often have very small programs. Certainly some of the Eastern bloc countries are quite small countries with very small programs, and they are more interested in putting their children with countries close by, effectively. So we will undertake to get you that information.

Mrs IRWIN—Thank you.

CHAIR—Just to get it straight, you think there is a place for NGOs that are properly skilled and have capacity?

Mr Duggan—That is interesting—if I can just relate some of our experiences during the special commission. The relationship between the state central authorities in Australia and the countries with which we have programs is very good in terms of the cooperation between Australia and those countries, and that was recognised at the special commission. It is fair to say, however, that that is not the case for all countries. We heard, for example, of where one country simply sent 700 files to a resource country and said, ‘Please find us children’—something that Australia would never do.

Mrs IRWIN—What country was this?

Mr Duggan—I would prefer not to say, because there was no evidence about it. Anecdotally, that is what was happening. The reason for my mentioning that is there was for at least a couple of the countries an indication of a preference for dealing with accredited bodies, because they did not exert the sort of pressure which some countries—in particular, some European countries whose programs have expanded exponentially in a very short period—appear to be placing on source countries. So there was an indication in the special commission that some of those countries actually preferred to deal with accredited bodies. But some of those also dealt with us, and they did not have the same concerns about the central authorities in Australia.

So I think it is significant that New South Wales has moved in the way that it has. I know that each of the states and territories is very cognisant of the need to consider accredited bodies. It is arguably a way of getting more resources into this area without governments having to find the financial wherewithal to do that. My suspicion is that this would be an ongoing issue and that it will be considered more and more by governments, particularly those governments that are obviously finding some difficulty in providing additional resources to the area.

CHAIR—One of the things that have come out in evidence is that there does seem to be, shall we say, a tension due to the fact that the adoption group, the people responsible for checking on people, are the same sort of people who are used to dealing with totally dysfunctional families, both parents and children, and there is almost an assumption that there is dysfunction, because that is the work they do. I guess the argument comes through that NGOs do not have that difficulty.

Mr Duggan—They simply would not be involved in that sort of child protection work, that is quite so. A number of countries use accredited bodies very successfully. On the other hand, a number of countries successfully use central authorities. It can be done. Of course, the convention allows for that, and that is Australia’s current position. But, because governments are generally finding it difficult to find resources to fund all of their priorities, my suspicion is that in the future there will be greater pressure to consider accredited bodies.

CHAIR—I think the most staggering statistic came from New South Wales, where the director of DOCS said they really wanted to get back to their core business, which was to look after the 105,000 children who were the subject of complaints they had to check out from something like 216,000 logged reports. They have something like 31,000 children in out-of-home care. With all those problems going on, 24 children were adopted domestically—I think

that was the number. That just tells the story, doesn't it? The number of children who were adopted from overseas was way below the per capita average from smaller jurisdictions. So there does seem to be real problems there: (a) they do not want to do it; and (b) they have an enormous anti-adoption culture, it seems to me.

Mr Duggan—It is difficult for me to comment on those sorts of matters other than to simply say that the New South Wales Department of Community Services have undergone significant review and expansion in recent days because of the issues that have beset that organisation. I say no more than that. They are currently undertaking an enormous expansion, and it may well be that there will be other resources available for this area. I do not know; it is a matter for New South Wales. But certainly that organisation have gone through very significant review and change in the last few years and are still doing that.

We deal with the adoption-specific areas. Certainly the view that we get is that there is not this anti-adoption culture that you have heard evidence of—and I respect the fact that there has been a lot of evidence before you about that. That is not the impression that we get. Certainly the convention itself suggests that intercountry adoption ought to be viewed as effectively a last resort so that children are routinely placed within their country where that is possible, and that is the convention to which the Australian government has signed up.

CHAIR—Nobody has any problem about that. If they could find a loving home that was within their own country, that would be just fine. That would be a lovely outcome. But clearly it is not there. We have taken evidence of the condition of some of the children by the time they get here, and it is just heartbreaking.

Mr Duggan—This area is quite interesting. If I can just reflect again on our experience in the special commission. What became clear from the countries which, for want of a better word, I call source countries was that they had the view that there were more applications being made to them now than there were children available. To some extent that gets back to the issues that we raised previously about the ability, if you like, of there being the appropriate infrastructure to ensure that children were properly put up for adoption. I do not think anyone doubts that in some of those countries a significant number of children suffer poverty and injustice. Whether they are then available simply for people to adopt is another matter, and whether the checks and balances are in place still remains an issue. But their view was that they were actually getting more applications from overseas countries than they had children available.

Mr FAWCETT—There are some countries where there is not a Hague agreement—we have no agreement with them in terms of adoptions and the local infrastructure just cannot cope with the number of children; hence they are not available because they have never been processed. So they do not know who is available, but the reality on the street is there are one million kids.

Then there are countries like China, with whom we do have an agreement. There is one agency within China. Behind that agency are hundreds of orphanages full of children who need placement, but the agency that we are dealing with does not actually have places. That story has been told to us both verbally and in written submissions. If we can undertake a more proactive role of identifying countries of need—and sometimes just the existence of lots of orphanages does not actually constitute the fact that we should be getting engaged in giving them more aid—and targeting where we (a) give aid and (b) help them establish the infrastructure to put those

checks and balances in place so at least those kids have a chance, I think that is a far more proactive and morally responsible view than saying, 'There is no process; therefore there is no need for us to act,' and ignoring the fact that there is a huge amount of suffering of and injustice to those kids in the countries where there is no process in place.

Mr Duggan—I absolutely agree with that. I think it is another reason why the Commonwealth government has been so involved in The Hague process generally. You may be aware that The Hague itself is able to give assistance to those countries. Indeed, you may be aware of the circumstances of Guatemala, which arguably joined the convention before it in fact was ready to do so. The program with Guatemala was suspended throughout many countries. The Hague has recently been to Guatemala to assist, and in the special commission just gone, Guatemala was represented at very senior levels with an undertaking, if you like, that it would now start to do precisely the sorts of things you are talking about.

Indeed, as I say, Australia has been a major contributor, perhaps even punching above its weight, in relation to The Hague. Jenny Degeling now works in The Hague. She used to run the area that I am now working in. We are proposing having, if the minister is interested in it, a regional conference in Australia to talk about the children's conventions generally, because of course there is not just this one. We recently went to Malaysia, who joined The Hague in 2002. Matthew went to Malaysia to engage in a seminar looking at the potential for Muslim countries, in particular, being more involved in the children's conventions area and in other conventions as well. It certainly is in Australia's best interests to encourage that.

The bilateral arrangements that we have for child abduction perhaps give us a bit of a blueprint for how we might even think about that sort of thing for other areas in relation to children. We have an agreement with Egypt, and we are about to undertake an agreement with Lebanon on intercountry parental child abduction which recognises and respects the differences between us and them, particularly as regards sharia law, and provides a framework that we can move forward with in relation to Muslim countries.

CHAIR—Lebanon is essential because of the number of Australian kids who disappear in Lebanon when they go home for a so-called visit.

Mr Duggan—Absolutely. That is why the Australian government has recognised Lebanon as a priority, and the Lebanese government is very cooperative in that regard. So we are quite hopeful that in the very near future the minister, once this has obviously gone through the Executive Council process and so on, will be in a position to sign.

CHAIR—So you are saying Lebanon has signed or ratified?

Mr Duggan—We have an agreed text. This is as regards a bilateral agreement between Australia and Lebanon on intercountry parental child abduction. But it is part of the engagement process that the Australian government is currently involved in in looking at how we can engage with Muslim countries, particularly in relation to The Hague generally.

CHAIR—So that would mean you would try to impose the conditions of The Hague convention on a non-ratifying country by way of a bilateral agreement.

Mr Duggan—That would be a matter for government. We would hope that, with greater dialogue and engagement, Muslim countries would feel able to join The Hague convention. That is our hope. As you are probably aware, The Hague has a range of conventions in areas outside that involving children which are also of very great benefit to Australia. So clearly from our point of view it would be preferable if it were possible for Muslim countries to join in The Hague generally and then particularly in relation to intercountry recognition of judgments and those sorts of things. There are very many of those, which are quite useful. So that is our primary aim in that engagement. Whether the government would see it appropriate to expand the bilateral arrangements with those countries to other areas is a matter for government, but I simply put it forward as something that has happened in relation to that area.

Mrs IRWIN—I do not know whether this question has been asked but, if family law matters are matters of federal jurisdiction, why are adoption matters state based?

Mr Duggan—The family law jurisdiction of the Commonwealth is limited generally to children of a marriage, for example. In relation to children who are of a de facto union, there was in fact a reference of power from the states throughout the 1980s, depending on the state. The Commonwealth does not have a general power in relation to children. In relation to country adoption, of course, it would presumably rely more on international affairs power. But the predominant responsibility constitutionally for adoptions, particularly domestic adoptions, will always remain a matter for the states, unless the states refer that power to the Commonwealth.

CHAIR—But the relevance of the Family Law Act is that, because the adoption of children from China is completed in China, we need some provision to deal with them when they come to Australia; hence the regulations in the Family Law Act apply.

Mr Duggan—Yes, that is right.

CHAIR—But there is still one difficulty there that we are addressing, and that is those adopted from China have no guarantee that they will gain citizenship because the discretion rests with the minister. There has not been a problem to date. If the child comes into Australia as a ward of the guardian, they automatically become citizens under section 10A, I think, of the Immigration Act. That does not apply where the adoption takes place overseas. I do not know whether that is because for the most part Chinese babies or children are coming here. But it can also apply where expats have adopted in another country, whatever country it is. If the adoption is completed there, there is no guarantee that they will (a) get a visa or (b) become citizens.

Mr Duggan—You are aware that we have done a bit of work of late in relation to those issues and we managed to—

Mrs IRWIN—There was a recent case, wasn't there, in the United States?

Mr Duggan—There is also a recent case in the Family Court of Australia: the Dehms, I think. It was in the newspapers, so I am not giving away confidences. There is an issue in the way that the Chinese authorities are currently dealing with expatriate adoptions. We were able to convince the Chinese authorities that the child would be accorded citizenship in Australia, and the child was able to leave with that family, happily. We are not certain that that agreement is a general

one, however. We are still negotiating with the Chinese authorities on precisely the sorts of issues that you are raising.

CHAIR—I think we have this problem in Washington at the moment too.

Mr Duggan—One issue that certainly was exercising a number of source countries in relation to expatriate adoptions was the sort of difficulty that you are now alluding to, and that is that in some countries they will actually go to the States—I think the US is one—and not immediately gain citizenship. Indeed, in some circumstances those children were then abandoned and they became stateless, of course, which is a dreadful situation for those children. That issue was quite heatedly debated in the special commission.

CHAIR—I still do not understand why there was a change. There was an announcement of a change in policy. You used to be able to apply straightaway for citizenship for a child where you had adopted the child overseas and you had been there for 12 months and all that sort of thing—you had actually adopted the child; it was your child. That application would cost about \$120. Now the policy is you must first apply for a visa, which costs \$1,350, and the visa is discretionary. If you do not get the visa, you cannot have citizenship. That is the policy that has been introduced. We asked why on many occasions. I think the reasons we got were, firstly, it was an antitrafficking measure, but that does not make any sense at all. You should be investigating the parents, not the poor, unfortunate child. The parents should be the ones who are vetted. Secondly, they wanted to treat all adoptees coming into the country in the same way. That is not a good reason either. As I understand it, that policy announcement has not gone into legislation. It is policy. I still am at a loss to understand why. It was not even done by a minister. It was done by an acting minister at the time who could not answer why either.

Mrs IRWIN—I think the rest of the committee feels the same way as the chair does. It is very frustrating when you are an Australian citizen and that can happen.

Mr Duggan—You raised this issue with us last time we appeared. We passed your concerns on to the department of immigration, which to some extent reiterated the answer. So I can take it no further than that. It is not an area upon which we have influence, unfortunately.

CHAIR—We will accept as an exhibit the ad placed by the New South Wales government in the *Australian* of 2 November.

Resolved (on motion by **Mr Fawcett**):

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

CHAIR—I declare this meeting closed and thank everyone for their attendance, particularly Hansard.

Committee adjourned at 12.44 pm