

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

**Output 1.3**

**Question No. 43**

**Senator Harradine asked the following question:**

Is the Department working on any other adoption agreements with other countries? If so, which countries?

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

The Federal and State Central Authorities have agreed that new programs will only be developed with countries which have ratified or acceded to the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption. As each new country joins the Convention the Department contacts the country to investigate the possibility of establishing a program with that country.

Once the initial contact is made a State or Territory Central Authority takes responsibility for developing a new program and a representative from that State or Territory Central Authority visits the country concerned to establish the necessary contacts and arrangements. In the last two years the possibility of programs with Burkina Faso, Moldova, Lithuania, Mauritius, Burundi, Brazil, Bulgaria, Estonia, Latvia, Guatemala and Belarus, has been investigated and a new agreement has been finalised with Lithuania.

India and Thailand have ratified the Convention during this period but Australia already has established programs with both those countries.

The Department is in the process of writing to the following countries which have ratified or acceded to the Convention since 1 April 2004: Uruguay; Guinea; Portugal, Madagascar, South Africa and Turkey.

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**Output 1.3**

**Question No. 44**

**Senator Harradine asked the following question:**

Is the Department doing anything to remove disincentives and financial penalties to potential intercountry adoptive couples who would like to adopt a child from overseas?

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

The Department, as the Federal Central Authority, does not charge any fees for the work that it does in this area. The fees charged by State and Territory Central Authorities for processing applications are primarily a matter for each State and Territory.

The Department's understanding is that a significant proportion of the costs incurred by adoptive parents are fees and charges imposed by the country of origin of the child. These charges vary from country to country and are not matters over which the Department has any control. Other significant costs are travel expenses to the child's country to finalise the adoption.

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**Output 1.3**

**Question No. 45**

**Senator Ludwig asked the following question at the hearing on 24 May 2004:**

What are the projected allocations for both the Attorney-General's Department funded program and the FaCS funded program for 2004-05 and across the forward estimates for this program?

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

	Attorney-General's Department	Department of Family and Community Services
2004-05	\$29.399m	\$30.444m
2005-06	\$29.978m	\$30.361m
2006-07	\$30.554m	\$30.481m
2007-08	\$31.823m	\$30.992m

A breakdown of the allocation in 2004-05 was provided to the Committee at the hearing on 24 May 2004. The allocation is not broken down in the out-years.

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**Output 1.4**

**Question No. 46**

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

Regarding the international law office advice on whether Hicks and Habib were being held legally, please provide when the advice was sought, and when it was given.

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

Consistent with the practice of successive Governments, information is not given on whether or not legal advice has been sought, or on the content of any advice that may have been given.

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**Output 1.4**

**Question No. 47**

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

Raise with the Office of International Law the issue of the duration of detention and whether that affects the legality of detention.

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

Consistent with the Standing Orders of the Senate, it is not appropriate for an answer to be provided to a question that seeks a legal opinion. That said, by way of general information, the duration of detention can be one factor in determining whether detention is arbitrary under international law.

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**Output 1.1**

**Question No. 48**

**Senator Ludwig asked the following question at the hearing on 12 May 2004:**

Is there likely to be a response to the Joint Standing Committee on Treaties inquiry [into the Optional Protocol to the Convention against Torture]?

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

As the JSCOT report's recommendation is consistent with the Government's current position on ratifying the Optional Protocol, the Government considers that a formal Government response to the Report is unnecessary. This is consistent with usual practice.

On 4 February 2004, the Attorney-General's Department (AGD) made a submission to the Committee jointly with the Department of Foreign Affairs and Trade (DFAT) and the Department of Immigration and Multicultural and Indigenous Affairs, which set out the Government's serious procedural and substantive concerns with the Optional Protocol. At the JSCOT public hearing on 9 February 2004, AGD and DFAT officers provided further evidence to the Committee on matters related to the Optional Protocol.

JSCOT Report 58, of its Inquiry into the Optional Protocol, recommends against the Government taking binding treaty action in respect of the Optional Protocol at this time. JSCOT's majority report notes that it accepts the Government's concerns about the Optional Protocol.

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**Output 1.6**

**Question No. 49**

**Senator Ludwig asked the following question at the hearing on 24 May 2004:**

Regarding the review of the intellectual property legislation, what has happened in relation to the outstanding matters?

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

The Minister for Industry, Science and Resources and the Attorney-General released the final report of the Intellectual Property and Competition Review Committee on 6 December 2000. A Government response to the report was issued on 28 August 2001.

The current situation in relation to specific copyright issues dealt with in the Government response is set out below.

**Copyright term:** At the time of the announcement of the response to the report, the Government had no plans to review the term of copyright protection. Since then the Australia-US Free Trade Agreement (AUSFTA) has been concluded. It includes an obligation for the parties to have a minimum copyright term of life of the author plus 70 years for works and 70 years from publication for films and sound recordings.

**Digital Agenda review matters:** A number of recommendations in the report suggested that matters be further reviewed as part of the three-year review of the amendments introduced by the *Copyright Amendment (Digital Agenda) Act 2000*. These included Recommendations 3 (library and archives provisions, right of first digitisation and technological protection measures); 4 (computer software); and 5 (caching – temporary reproductions). These issues were included in the terms of reference issued to Phillips Fox under its consultancy for the Attorney-General's Department in 2003 for the research and analysis conducted as part of the review of the Digital Agenda reforms. The Phillips Fox report is being considered by the Government as part of the broader review of those reforms. To the extent that the Phillips Fox analysis and recommendations are inconsistent with what has been agreed in the AUSFTA, the latter will determine the Government's approach.

**Crown ownership of copyright:** The Government decided in December 2003 to refer the whole issue of Crown ownership of copyright to the Copyright Law Review Committee (CLRC). The CLRC has received 66 submissions in response to its Issues Paper and is holding consultations with stakeholders before preparing its draft report. It is due to report to the Government by 4 December 2004.

**Collecting societies – code of conduct:** The code of conduct for copyright collecting societies, which was being developed at the time of the announcement of the Government response to the report, has since been finalised and adopted. The review of the provisions of the Copyright Act relating to declaration of collecting societies is still in progress.

**Collecting societies – ACCC mechanism:** The Government agreed that the Australian Competition and Consumer Commission (ACCC) should have a role in assisting the Copyright Tribunal in

performing its functions in relation to voluntary licences by collecting societies. The Government accepted that the ACCC should be required by statute to issue guidelines on conditions of licences that are reviewable by the Copyright Tribunal and that the Copyright Act should expressly give the Tribunal discretion to take the ACCC guidelines into account and to admit the ACCC as a party to proceedings.

The Attorney-General's Department is progressing this matter in conjunction with other proposals for more extensive amendments to the operation of the Copyright Tribunal set out in the Copyright Law Review Committee's Report on the *Jurisdiction and Procedures of the Copyright Tribunal*. Work on a proposed Government response to this report is well advanced. The introduction of implementing legislation will of course depend on its place in the Government's overall legislation program.



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**Output 1.6**

**Question No. 50**

**Senator Ludwig asked the following question at the hearing on 24 May 2004:**

What is the total that the Attorney-General's Department has spent for FOI courses with the Australian Government Solicitor in the last 12 months, or if it is more relevant, what is the cost per person?

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

For the 12 month period ending on 24 May 2004, there were 11 registrations for officers of the Attorney-General's Department to attend FOI courses provided by the Australian Government Solicitor. The 11 registrations cost the Attorney-General's Department a total of \$4120. Six of the registrations cost \$445 each, and five registrations cost \$290 each.

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**Output 1.6**

**Question No. 51**

**Senator Ludwig asked the following question at the hearing on 24 May 2004:**

How many FOI courses in total are being offered by the Australian Government Solicitor?

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

The AGS offers two general courses about the FOI Act and seven other courses which cover specific aspects of the FOI Act. AGS courses can be modified and customised to suit the exact needs of particular agencies. In the current calendar year, the AGS anticipates conducting approximately 55-60 FOI courses throughout Australia. Information about all the FOI courses offered by AGS is at <<http://www.ags.gov.au/whatweoffer/seminars/foi.htm>>.

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**Output 1.7**

**Question No. 52**

**Senator O'Brien asked the following question at the hearing on 24 May 2004:**

Can the Attorney-General provide the Committee with a copy of the correspondence on the revised Commonwealth policy on native title determination applications?

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

It would not be appropriate to disclose this correspondence, which is a formal communication between the former Attorney-General and the Prime Minister, regarding the revised Commonwealth policy on native title determination applications.

However, as has already been indicated to the Committee, the revised policy, as set out in the correspondence, is as follows:

*Onshore native title determination applications*

Under the revised policy, the Attorney-General will consider intervention at first instance in onshore native title matters where important matters of policy are involved. The decision to intervene will be made on a case-by-case basis, and will take into account the extent of the Commonwealth's interests in a matter, the position of other parties and any resource implications. The Commonwealth will continue to become a party in appropriate circumstances to protect Commonwealth property interests.

*Offshore native title determination applications*

It has been, and remains, Commonwealth policy to become a party to applications seeking recognition of native title offshore. Under the revised policy, the Commonwealth aims to resolve through mediation those applications for the recognition of native title rights and interests offshore that are consistent with the High Court's decision in *Commonwealth v Yarmirr; Yarmirr v Northern Territory*<sup>1</sup> (*Croker*) and where there is sufficient connection material and evidence. This approach is consistent with the Commonwealth's four consent determination negotiation principles.

The Commonwealth will continue to oppose and, if necessary litigate, where native title applicants assert rights that are not consistent with *Croker* or where issues are raised that have not yet been the subject of judicial consideration. For example, the Commonwealth continues to oppose claims seeking recognition of native title rights beyond Australia's territorial sea.

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<sup>1</sup> [2001] HCA 56 (11 October 2001)

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**Output 1.7**

**Question No. 53**

**Senator O'Brien asked the following question at the hearing on 24 May 2004:**

When was the last time a government responded to a report on native title?

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

Reports on native title have been prepared by the Aboriginal and Torres Strait Islander Social Justice Commissioner since 1994. There have not been any formal Government responses to any of these reports.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
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**Output 1.7**

**Question No. 54**

**Senator Ludwig asked the following question:**

Aboriginal and Torres Strait Islander Legal Services:

- a) What provisions have been made for staff entitlements and other wind down costs for existing ATSILS who may not be successful in the upcoming tender process?
- b) What will happen if the timeline for the proposed tender process is extended? Will existing ATSILS be expected to continue past December 2004?
- c) Is it expected that all existing ATSILS will stay right up until 30 December 2004? If not, how will existing ATSILS manage the caseload of clients over this period?
- d) Is it expected that Community Legal Centres and Legal Aid Commissions will pick up the extra caseload?
- e) What is the current status of the Indigenous Justice Strategy discussion paper and who has it been sent to? When was it sent to these organisations, and how much time did they have to respond? What other consultation processes were put in place?

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

Responsibility for Aboriginal and Torres Strait Islander Legal Services will transfer from Aboriginal and Torres Strait Islander Services (ATSIS) to the Attorney-General's Department on 1 July 2004. The answers to questions (a) to (d) below are based on advice from ATSIS.

- a) Employee entitlements and liabilities will be the responsibility of individual ATSILS. ATSIS has no supervisory or monitoring role in relation to the human resource management responsibilities of individual ATSILS. ATSIS is currently developing a Transition Plan to develop final policies and guidelines in relation to staff entitlements and the management of any closedown or transition issues. Final arrangements and guidelines are still being determined.
- b) If the timeline for the transfer to new service providers is extended, the funder (ATSIS or the Attorney General's Department) can make a variation to the program funding agreement (PFA). This includes a variation to extend the length of the agreement, a variation to funding or anything else necessary, such as performance information.
- c) It is expected that all existing ATSILS will be operational until 31 December 2004. If there are difficulties with a particular provider, arrangements will be made to ensure clients are not disadvantaged and a full range of services is provided. Every effort will be made to ensure there is as little disruption to services as possible, and that transition processes are run effectively. A transition plan to ensure continuity of service will be a requirement in the final Request for Tender. Once final decisions have been made in relation to the progress of the tender, current service providers will be advised immediately and appropriate arrangements will be made. ATSILS are being kept aware of developments and any timetable changes through a regularly updated section on the ATSIS website.

- d) Under the existing Policy Framework, clients who are unable to be assisted by ATSILS are referred to alternate service providers, such as Legal Aid Commissions, Community Legal Centres or other legal assistance programs. The impact from the final Request for Tender may depend upon the ultimate criteria to be determined by Government. However, it is anticipated that legal service providers will establish good relationships with agencies who deliver associated services.
- e) The Indigenous Justice discussion paper was distributed for comment on 2 March 2004. The discussion paper was sent to participants of the NAJAC Summit, held in November 2003, Australian, State and Territory governments who had participated in the revision of the National Indigenous Justice Strategy, and members of the Legal and Constitutional Reference Committee.

It was distributed to the following Australian Government agencies: Aboriginal and Torres Strait Islander Services, Australian Institute of Criminology, Indigenous Business Australia, and the Departments of the Prime Minister and Cabinet, Health and Ageing, Employment and Workplace Relations, Immigration and Multicultural and Indigenous Affairs, Family and Community Services, Education Science and Training, and Transport and Regional Services.

State and Territory Government agencies provided with the paper were: NT Department of Justice, NSW Department of Aboriginal Affairs, NSW Attorney-General's Department, ACT Department of Justice and Community Safety, ACT Law Courts, Victorian Department of Justice, Victorian Department of Aboriginal Affairs, QLD Department of Aboriginal and Torres Strait Islander Policy, QLD Department of Premier and Cabinet, WA Department of Justice, Tasmanian Department of Justice and SA Attorney-General's Department.

The discussion paper was sent to the following non-Government organisations on 2 March 2004: National Aboriginal Justice Advisory Council; Loddon Mallee Regional AJAC; Grampians Regional AJAC; Melbourne Regional AJAC; Gippsland Regional AJAC; Victorian AJAC; NT AJAC; ACT AJAC; NSW AJAC; WA Law and Justice Agreement Development Group; National Aboriginal and Islander Legal Services Secretariat (Chair); Northern Australian Aboriginal Legal Aid Service; Victorian Aboriginal Legal Service; Sydney Regional Aboriginal Corporation Legal Service; WA Aboriginal Legal Services; National Network of Indigenous Women's Legal Services, North Queensland Women's Legal Service; National Aboriginal Community Controlled Health Organisation; Victorian Aboriginal Community Controlled Health Organisation; Victorian Aboriginal Education Association; Secretariat of National Aboriginal and Islander Child Care; QLD Indigenous Education Consultative Body; Torres Strait Justice Negotiation Committee; Ngooderi-Mabuntha Justice Association; Circle Sentencing (Nowra); Winnunga Nimmityah; Allira Multifunctional Aboriginal Children's Service; Ngunnawal Aboriginal Corporation; Kalwun AICCA; Cunnamulla Primary Health Care Corporation; Karbul Indigenous Placement Agency; Mackay Aboriginal and Torres Strait Islander Corporation for Alternative Care and Foster Care Service; Aboriginal Legal Right Movement SA; Kimberley Aboriginal Medical Services Council and the Aboriginal Education and Training Council WA. Additional copies of the paper have been provided to these organisations on request.

Responses to the paper were due by 8 April 2004. This date was later extended until 19 April 2004.

In the preparation of the discussion paper there were consultations with relevant Australian and State and Territory government agencies. Those agencies are included in the list above.

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**Output 2.1**

**Question No. 55**

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

If you could take on notice the question of inconsistency with the deaths in custody inquiry report. [the requirement that clients cannot have prior convictions in order to receive legal assistance].

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

This is a matter for the Department of Aboriginal and Torres Strait Islander Services. However, we understand that the Report of the Royal Commission into Aboriginal Deaths in Custody was taken into consideration in the development of the Exposure Draft and is referred to in the document. We have been advised by ATSISS that any inconsistency results from the need to address priorities, such as services for women, emerging since the release of the Report in 1991.

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**Output 2.1**

**Question No. 56**

**Senator Ludwig asked the following question at the hearing on 24 May 2004:**

Who sparked the inquiry as to whether or not there could be two positions?

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

The Selection Panel recommended to the former Attorney-General, the Hon Daryl Williams AM QC MP, that one or both of the short listed candidates be appointed as an Examiner in the Australian Crime Commission. Concurrently, the Attorney-General's Department consulted with the Chief Executive Officer of the Australian Crime Commission, Mr Alastair Milroy, as to whether the ACC needed two Examiners to complete the relevant work.



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**Output 2.1**

**Question No. 57**

**Senator Ludwig asked the following question at the hearing on 24 May 2004:**

Provide the process of creating the two positions.

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

On 4 April 2003, the former Attorney-General, the Hon Daryl Williams AM QC MP, agreed to a process to recruit an Examiner for the Australian Crime Commission. The process included: advertising nationally; seeking nominations from members of the ACC Board; seeking such other nominations as the Attorney-General directed; and establishing an interview panel comprising Commonwealth and State or Territory representatives. The interview panel was to provide a shortlist to the Attorney-General and the Minister for Justice and Customs for their consideration.

Advertisements for an Examiner in the ACC were placed in major metropolitan newspapers on 9 and 10 May 2003. Fifty-one applications were received. Five applicants were considered suitable for interview. Interviews were held on 27 June 2003. The selection panel was made up of: Mr Mick Keelty, Commissioner, Australian Federal Police (Chair); Mr Richard McCreadie, Commissioner, Tasmania Police; Ms Linda Reynolds (then Chief of Staff to Senator the Hon Chris Ellison, Minister for Justice and Customs); and Mr Robert Cornall, Secretary, Attorney-General's Department. Following completion of the interviews the Selection Panel selected two applicants as suitable for appointment to the position of Examiner in the ACC. The Attorney-General's Department advised the Attorney-General and Minister for Justice and Customs that the ACC CEO, Mr Alastair Milroy, considered that the increased workload of the ACC required two additional Examiners and the ACC was in a financial position to employ two additional Examiners.

The two applicants selected by the Selection Panel were interviewed by the former Attorney-General and the Minister for Justice and Customs on 18 July 2003. Referees' reports were requested from both candidates. The last referee's report was received and provided to the Attorney-General and the Minister for Justice and Customs on 26 August 2003.

The Attorney-General's Department prepared a draft letter for the Attorney-General to write to the Prime Minister seeking his approval for the Minister for Justice and Customs to consult with the members of the Inter-Governmental Committee on the Australian Crime Commission (IGC-ACC) on the proposed appointment of two Examiners in the ACC (as required under subsection 46B(2) of the *Australian Crime Commission Act 2002*). The draft was sent to the Attorney-General's office on 17 September 2003.

There was a change of ministerial portfolios on 7 October 2003. On 20 October 2003, the incoming Attorney-General, the Hon Philip Ruddock MP, agreed to continue the process approved by the previous Attorney-General and sought the Prime Minister's approval for the Minister for Justice and Customs to consult with the IGC-ACC. On 3 November 2003, the Minister for Justice and Customs consulted in writing with his IGC-ACC colleagues about the two proposed appointments as Examiners in the ACC on the two proposed appointments

On 1 December 2003, the Government approved the two appointments for Federal Executive Council consideration. Following consideration by the Federal Executive Council the Minister for Justice and Customs issued a media release on 23 December 2003 about the appointment of Mr John Hannaford and Mr Tim Sage as Examiners in the ACC. Their appointments commenced on 12 January 2004 and 19 January 2004 respectively.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
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**Output 2.1**

**Question No. 58**

**Senator Ludwig asked the following question at the hearing on 24 May 2004:**

How much of the money spent on the current National Crime Prevention Program was administration and program expenditure and how much was spent on staffing.

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

Between 1 July 1999 and 30 April 2004, \$6,873,579 has been spent on staffing and administration costs and \$20,218,544 has been spent on projects. For part of the period it is not possible to give separate figures for staffing and administration. Staffing and administration includes expenditure on salaries, travel and accommodation, office and communication expenses.

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**Output 2.1**

**Question No. 59**

**Senator Ludwig asked the following question at the hearing on 24 May 2004:**

Provide the number of the positions in the National Crime Prevention Programme that are currently still there and which positions were vacated, and provide the substantive positions.

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

As at 1 June 2004, there were 13 positions in the Crime Prevention Branch.

1 x SES Band 1

2 x Executive Level 2

6 x Executive Level 1 (two filled on by non-ongoing staff; one filled by an AGD officer on higher duties)

3 x Australian Public Service Level 6 (two vacant)

1 x Australian Public Service Level 3.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
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**Output 2.1**

**Question No. 60**

**Senator Ludwig asked the following question at the hearing on 24 May 2004:**

Is the appointment to the advisory committee for the National Community Crime Prevention Programme Grants likely to be at your [the Minister for Justice and Customs'] recommendation?

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

Yes.