



10 February 2025

Tēnā koe

Official Information Act request

Thank you for your email of 19 December 2024, requesting information about Special Needs Grants (SNG) International Custody Dispute Payments.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on each part of your request set out below.

1. ALL correspondence from parliament and the MOJ with MSD regarding this "emergency benefit"

I have interpreted this to mean any correspondence between the Ministry of Social Development and the Ministry of Justice or Parliament relevant to the policy development of the International Custody Dispute Payment. Please see attached the emails found in scope of your request.

Some information is withheld under section 9(2)(a) of the Act, to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

Some attachments are withheld under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty.

Instead, I have provided you with a copy of the final Cabinet Paper: Financial Support for Parents Awaiting the Outcome of an International Child Custody and Access Dispute. Some information in this Cabinet paper is withheld under section 9(2)(a) of the Act.

2. Note my Hague application of 18/1925 to date has never been heard therefore the matters have not "been finalised" so the basis of declining my RIGHT to this benefit is flawed.

If you don't agree with a decision we've made, you can challenge it and it can be reviewed. Please see the following link for more details: www.workandincome.govt.nz/about-work-and-income/feedback-and-complaints/review-of-decisions.html

3. Also provide the procedures and policies in place for MSD to be upholding international law under the Hague convention of which Australia is a signatory.

We have interpreted this to mean procedures and policies regarding the International Custody Dispute Payments.

Please see the following link to the Ministry's MAP page about International Custody Dispute Payments: www.workandincome.govt.nz/map/income-support/extra-help/special-needs-grant/international-custody-dispute-payment-01.html

The Ministry administers this SNG under New Zealand legislation (the Special Needs Grants Programme), not under international law. The Ministry will ask the client for verification of their Hague Convention application or order (if it is relevant to their SNG application) and the client needs to be taking all reasonable steps to have the custody and access proceedings heard as soon as reasonably practicable.

The Ministry of Justice has a website for people needing information about their rights under the Hague Convention: www.justice.govt.nz/family/care-of-children/stop-or-return-a-child/return-a-child-to-or-from-aotearoa-new-zealand/

4. Confirm who the CEO of MSD is and proof they have complied with s52 Public Service Act 2020 to notify the Minister for MSD of "inconsistencies" with the act (such as breaches of national and international law) when they are identified. THIS WOULD BE THE IDENTIFICATION.

Debbie Power is the Chief Executive of the Ministry of Social Development. Please note, the names of the Chief Executives of government departments are available on the Public Service Commission website here: www.publicservice.govt.nz/system/leaders/current-leaders.

A copy of the Convention on the Civil Aspects of International Child Abduction that was presented to Parliament can be found on the Ministry of Foreign Affairs and Trade's website at: www.treaties.mfat.govt.nz/search/details/t/1103/2120. Please note that this Convention came into effect for New Zealand on 1 August 1991.

The Convention is also included as Schedule One of the Care of Children Act 2004: www.legislation.govt.nz/act/public/2004/0090/latest/DLM318104.html. Given this Act is administered by the Ministry of Justice, their Chief Executive would be responsible for the overall implementation of the Convention, not the Chief Executive of the Ministry of Social Development.

5. Please confirm the number of emergency payments

a) applied for and

b) granted in an annual breakdown since 2018,

c) the nationalities of the applicants in both (a) and (b)

d) the total amount paid per year since the emergency benefit began.

e) the hague numbers for each matter and countries involved

Please see the attached **Appendix**, containing three tables:

- **Table 1:** Number of grants and declines for International Custody Dispute Payments as at the end of 31 January 2018 to 31 December 2024, by month.
- **Table 2:** The weekly amount paid for International Custody Dispute Payments as at the end of January 2018 to December 2024, by minimum weekly rate, median weekly rate and maximum weekly rate.
- **Table 3:** Number of grants and declines for International Custody Dispute Payments from 31 January 2018 to 31 December 2024, by country of birth.

Your request for the total amount paid per year is refused under section 18(f) of the Act, as it requires substantial collation. In order to provide you with this information, the Ministry would need to divert personnel from their core duties and allocate extra time to complete this task. The diversion of these resources would impair the Ministry's ability to continue standard operations and would be an inefficient use of the Ministry's resources. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your requests given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

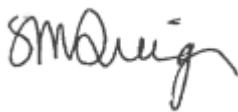
Your request for the Hague numbers for each matter is refused under section 9(2)(a) of the Act, to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

pp. 

Anna Graham
General Manager
Ministerial and Executive Services

From: [Alex McKenzie](#)
To: s9(2)(a)
Cc: s9(2)(a); [Bailey, Patricia](#); s9(2)(a)
Subject: Re: Hague Convention - financial assistance
Date: Tuesday, 24 July 2007 9:57:44 am

Hi s9(2)(a)

I have asked s9(2)(a) to set up a meeting tomorrow to provide an opportunity to discuss these issues.

Just to clarify the last points in your email.

Our Minister has given us a pretty clear direction to develop a mechanism for dealing with financial hardship in these cases and he has directed us to provide him with a draft Cabinet paper by 30 July. The urgency for this paper is not coming directly from MSD. Refer to our report of 29 June.

As you will be aware, there is one high profile case where we understand the parent will be leaving NZ next week with her two children and returning to Australia. Under our current legislation we can continue to provide financial assistance (ie a benefit) to this woman for 28 days following her departure from New Zealand. The Minister wants a provision in place to provide ongoing assistance to this person, hence the tight timeframes for this paper.

Regards

Alex McKenzie

s9(2)(a) wrote:

s9(2)(a)

Thank you for your message with attached Cabinet paper.

We remain concerned about the policy proposals and consider a meeting with relevant agencies to be necessary.

We have four areas of concern. Three are of core interest to MOJ. The later is more a treasury question.

- As we have expressed in the past, providing financial assistance to a New Zealander whose child has been ordered to return to another country may not be consistent with the intent of the Hague Convention. Careful consideration needs to be given to the consistency of the proposal with our international obligations.
- The description of the Hague Convention throughout the text of the Cabinet paper is not accurate and needs work. We are concerned that efforts are made to ensure that the Convention does not come under unnecessary criticism as this will cause a great deal of work for no change in outcome. We are also concerned about any incentive effects.
- The paper does not explain the efforts undertaken by the Central Authority to deal with concerns about finances in individual cases - perpetuating the

misinformation portrayed in the media.

- The numbers of cases talked about are small and the rationale for a comprehensive programme to deal with them seems weak.

It is not clear what the driver behind this Cabinet paper is. I understand the political concern around Hague Convention cases but other there other reasons why MSD is seeking to progress this paper? I would also be grateful if you could explain why there is urgency with regard to this paper. The timetable is short - especially given the interests that we and other agencies have expressed.

Perhaps you could suggest a time for everyone to meet to discuss the paper. That might be more efficient given your timeframes.

Regards

s9(2)(a)

From: s9(2)(a)

Sent: Wednesday, 18 July 2007 9:24 a.m.

To: s9(2)(a)

Cc: s9(2)(a) Bailey, Patricia; s9(2)(a) [@msd.govt.nz](mailto:s9(2)(a)@msd.govt.nz)

Subject: Re: Hague Convention - financial assistance

Hi all

Thanks for your message s9(2)(a). However I can assure you there is nothing sinister about the meeting not going ahead today, it's just due to the unavailability of two key people on that day. After you have read the paper, we can meet with you separately if you have concerns, as well as or instead of as a bigger group.

Again, apologies for any inconvenience,

Yours,

s9(2)(a)

s9(2)(a) wrote:

s9(2)(a)

>

>Thank you for your message. I must say that I am surprised that the
>meeting is now not going ahead. As you are aware the Ministry of Justice
>has a strong interest in these issues.

>

>Once we have considered your draft paper we may well wish to meet, along
>with other agencies, to discuss.

>

>Regards

>

s9(2)(a)

>

>

>Original Message

>From: s9(2)(a)
>Sent: Tuesday, 17 July 2007 3:03 p.m.
>To: s9(2)(a)
>Subject: FW: Hague Convention financial assistance

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>
>Original Message

>From: s9(2)(a)
>Sent: Tuesday, 17 July 2007 2:53 p.m.
>To: s9(2)(a)
>Bailey, Patricia; s9(2)(a)
>Cc: s9(2)(a)
>Subject: Hague Convention financial assistance

>
>Dear All

>
>My apologies for the short notice but I am going to have to cancel
>tomorrow's meeting.

>
>s9(2)(a) and I and our manager have basically nussed out most of the
>policy parameters of the financial assistance programme, so I suggest
>that the process from here be that I send you a draft Cabinet Paper and
>Welfare Programme for your comment on Monday 23 July. If you could get
>comment back to me by next Friday then we can have a meeting if the
>comments indicate one is needed. I then need to get the drafts through
>our signout process and up to our Minister by Monday 30 July.

>
>I hope this suits, and again apologies for any inconvenience.

>
>Yours

>
>s9(2)(a)
>
>

s9(2)(a)

Policy Analyst
Working Age People's Policy
Ministry of Social Development

s9(2)(a)

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Alex McKenzie
Ministry of Social Development
P O Box 1556
Wellington 6001
NEW ZEALAND

s9(2)(a)

[Redacted]

[@msd.govt.nz](mailto:[Redacted]@msd.govt.nz)

s9(2)(a)

Home Page: <http://www.msd.govt.nz>
Better Page: <http://www.orfu.co.nz>

From: s9(2)(a)
To: s9(2)(a) patricia.bailey@justice.govt.nz
Cc: s9(2)(a)
Subject: Cab Paper: Provision of financial assistance for parents and children in New Zealand pursuant to the Hague Convention
Date: Thursday, 12 July 2007 3:58:04 pm

Kia ora koutou

It was good to meet you all (other than Oliver) at yesterday's workshop. As mentioned, I have picked the work on the provision of financial assistance for parents and children in New Zealand pursuant to the Hague Convention from s9(2)(a)

I would like to meet with you in order to go over our draft proposals and policy design, which we intend to put to our Minister as a draft Cabinet Paper by 30 July.

Could you let me know if there are any days or times next Tuesday or Wednesday that do not suit you?

Thanks,

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s9(2)(a)
Policy Analyst
Working Age People's Policy
Ministry of Social Development

s9(2)(a)

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MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

Date 29 June 2007

Security Level: **SENSITIVE**

Report to: Minister for Social Development and Employment

HAGUE CONVENTION AND CUSTODIAL DISPUTES: FINANCIAL ASSISTANCE FOR PARENTS REQUIRED TO RETURN TO, LEAVE, OR REMAIN IN, NEW ZEALAND

Executive Summary

1. We are seeking your agreement in principle to the development of a Ministerial Welfare Programme that would provide financial assistance to a parent involved in specific custodial dispute. These are disputes that have resulted in a parent:
 - having to return a child to New Zealand as a result of a Hague Convention order
 - leaving New Zealand to return a child to the country of habitual residence of the child or children under a Hague Convention order
 - remaining in New Zealand on a temporary or visitor's permit whilst care and welfare disputes are settled.
2. In order to qualify for financial assistance a person must be a New Zealand citizen or permanent resident and must also be ordinarily resident. People on temporary or visitor's permits are therefore not normally entitled to support. In addition, if a person leaves New Zealand entitlement to support (with some exceptions) ceases.
3. The Hague Convention on the Civil Aspects of Child Abduction [the Hague Convention] is an international treaty that aims to discourage parents from removing a child from the country of habitual residence of the child until such time as any outstanding care and welfare issues are settled. If one parent decides to take the child away, the remaining parent can invoke the Hague Convention requiring the return of the child.
4. A parent who chooses to return to, or leave, New Zealand as a result of an order made under the Hague Convention often has no ability to support themselves and that child or children whilst they await the outcome of the care and welfare dispute process. (note: a parent is not 'required to' leave or return under a hague convention order. That is something they choose to do just as they chose to come to or leave NZ in the first instance.)
5. We have received three applications for financial assistance this year from a parent and child suffering hardship as a result of unresolved care and welfare issues. . All of these involved Hague Convention orders. We are, where possible, dealing with these requests on a case by case basis. This is unsatisfactory and our preferred action is to develop a comprehensive, well targeted programme to provide equitable access to assistance.

6. If you agree in principle with the proposal in the report we will report to you further by 30 July 2007 on the detailed design of the programme and an estimate of the costs that could be involved, including an indication of whether these could be met within existing baselines.

Recommended actions

We recommend that you:

- 1 **note** that we have identified three situations where a parent involved in care and welfare disputes is unable to access financial assistance because they do not meet the eligibility criteria for such assistance. These are:
- a parent, here on a temporary or visitor's permit, who has accompanied a child or children required to return to New Zealand in compliance with an order made under the Hague Convention.
 - a parent who is here on a temporary or visitor's permit as a partner of a New Zealander and who cannot leave the country because they are waiting a court order re the custody of children
 - a parent who resides in New Zealand and accompanies a child or children required to return to the country of habitual residence of the child in compliance with an order made under the Hague Convention.
- 2 **note** that the inability to access financial assistance can cause hardship and places already vulnerable children at risk
- 3 **agree in principle** to a Ministerial Welfare Programme that provides financial assistance to a parent who accompanies a child or children required to return to or leave New Zealand to comply with an order made under the Hague Convention or who is required to remain in New Zealand to resolve formal care and welfare matters of their child or children
- 4 **direct** officials to report back to you by 30 July 2007 on the cost, detailed design and implementation requirements for such a programme

AGREE/DISAGREE

AGREE/DISAGREE

Sue Mackwell
General Manager
Working Age People's Policy

Date

Purpose

1. This report is in response to your request for advice on how the Government could respond to people suffering financial hardship as a result of accompanying a child ordered to return under the Hague Convention . (Hague Convention order)
2. We seek your agreement in principle to our preferred option, the establishment of a Ministerial Welfare Programme, to provide financial assistance to people who, accompany their child or children because of a Hague Convention order, to return to or leave New Zealand . We also propose that a parent who has to remain in New Zealand on a temporary or visitor's permit in order to resolve a care and welfare dispute (and who is therefore in an analogous position to a person who comes to New Zealand as a result of a Hague Convention order) should be eligible for assistance under the same programme.

Problem Definition

3. Under the Hague Convention an order can be made for the return of a child or children to the country of habitual residence of the child in order for care and welfare issues to be determined.
4. This can impact in two ways:
 - (a) a parent and child or children may have to return to New Zealand
 - (b) a parent and child or children in New Zealand may have to return to another country.
5. Unless they are a returning New Zealand resident, the parent accompanying a child to New Zealand will be in New Zealand on a temporary or visitor's permit. This means that they will not be eligible for any financial assistance. In (b) the parent accompanying the child (unless they are able to work in that country) is unlikely to have any source of income once they leave New Zealand. If they had been receiving a benefit in New Zealand their entitlement to this would cease on departure.¹
6. Since the start of the year, the Ministry has received three applications for financial assistance in cases where a parent and child are facing hardship as a result of unresolved care and welfare matters. . All of these cases involved Hague Convention orders. Two of them² have

¹ Domestic Purposes Benefit can be paid for up to 28 days, Invalid's Benefit for up to six weeks and other main benefits for up to 28 days on humanitarian grounds.

attracted significant publicity, involved engagement at Ministerial level and highlighted the need to find a resolution.

7. The Hague Convention is based on the premise that countries will ensure assistance for people living in their jurisdiction, in line with their wider social support framework. However where this does not occur then the people concerned are left in a very vulnerable position. The majority of Hague Convention orders involve New Zealand and Australia. New Zealanders who accompany children who have to return to Australia under a Hague Convention order are not eligible for any financial assistance.
8. Consideration of the cases involving Hague Convention orders has highlighted a related issue that needs to be addressed. A temporary resident who is residing in New Zealand by virtue of their relationship with a New Zealander may be unable to access financial assistance when the relationship breaks down. This could lead to financial hardship for the parent and child or children while they wait the outcome of care and welfare matters. This could in turn place pressure on some parents to remove their children before care and welfare matters have been resolved and consequently result in a Hague Convention application.
9. Although the number of Hague Convention cases is small³, the impact on the people concerned is significant, and in every case puts already vulnerable children at risk. In many cases the parent returning to the country they left will be unlikely to be able to work or have access to a source of income during the time it takes to resolve the care and welfare dispute. We do not have an estimate of the number of parents involved in care and welfare cases where one of the parents is in New Zealand on a temporary or visitor's permit.
10. Appendix one provides details of the Hague Convention, the volume of judicial orders made in cases that involve New Zealand and details the two recent cases that have come to our attention. It also details the current situation with Australia, the 'other' country in most Hague Convention orders involving New Zealand.

Options

11. One option would be to continue to provide a short term policy response on a case by case basis. This option is not recommended as it is likely to lead to inequitable decisions. Short term fixes may result in precedent setting, at odds with the design of the benefit system. Providing one-off, ad-hoc solutions on a case by case basis is also resource intensive and can cause delays in the person concerned receiving assistance.
12. We considered whether there was an argument for providing financial assistance **only** to those parents accompanying a child returned to New Zealand under a Hague Convention Order. This option did not appear equitable. The three situations we have identified are analogous in that in each we have a parent involved in a Court care and welfare case in hardship because they are unable to access financial assistance.
13. Our preferred option would be to develop a Ministerial Welfare Programme to provide financial assistance for:

³ Eleven children were returned to, and 18 returned from, New Zealand in 2006 (This data is not up to date. These figures were provided in February this year when a large number of cases for the 2006 year had not been finalised)

- a parent, here on a temporary or visitor's permit, who has accompanied a child or children required to return a child to New Zealand under a Hague Convention order
 - a parent who is here on a temporary or visitor's permit as a partner of a New Zealander and who cannot leave the country because they are waiting a court order re the custody of children
 - a parent who resides in New Zealand and accompanies a child or children required to return to the country of habitual residence of the child under a Hague Convention order.
14. Establishing a new Ministerial Welfare Programme in instances where a parent has no means of support while they resolve care and welfare disputes would protect children from hardship during a particularly stressful time in their lives. The policy intent of this programme would be to provide equity of treatment for all parents in this situation. In all the situations described the child is in a vulnerable position as a consequence of the actions of their parents.
15. A comprehensive, well targeted welfare programme would provide fairer, more equitable access to assistance. Supporting parents experiencing financial hardship to enable the use of the proper forum for the resolution of care and welfare matters for their children is in the best interests of the child. The programme would need to be carefully designed to ensure that it is in keeping with the intent of the social support system. It should be time limited and available only in those cases where there is hardship.
16. Such a programme would uphold the principles of the Hague convention, supporting the central premise that unresolved care and welfare disputes should be determined by the courts. It could also be seen as a pro-active initiative to reduce the need for Hague convention orders and promote better social outcomes for children. It acknowledges that parents with no means of support may face financial pressure to leave a country before custody is resolved.
17. The main risk associated with establishing a new Ministerial Welfare Programme, especially in an area where we have little experience, is that it is difficult to gauge what the uptake of the programme will be. On average, we can expect between 10 and 15 parents involved in Hague Convention cases a year to apply for financial assistance. It is more difficult to predict the numbers of people on a temporary or visitor's visa, wishing to resolve formal custody of their children, who might apply for assistance in order to remain in New Zealand until such time as the custody dispute was settled. We would need to design the welfare programme in such a way that it did not provide an incentive for non-residents to prolong stays in New Zealand or protract court proceedings.

Possible features of the proposed Ministerial Welfare Programme

18. The Ministerial Welfare Programme would be an income and asset tested benefit payable to a parent required to:
- return a child to New Zealand under a Hague Convention order; or
 - return a child to another country under a Hague Convention order; or
 - remain in New Zealand to resolve care and welfare disputes; and
 - as a result is in financial hardship

- in accordance with the rules for Emergency Benefit, a parent would be considered to be in hardship where they have;
- no other means of supporting themselves (and their child/children), and
- cash assets of or less than:
 - \$4,300.00 if the client is single or
 - \$7,464.00, if the client is married, in a civil union or de-facto relationship

Rate of Payment

19. The rate of benefit payable would be the rate of the analogous main benefit and any other supplementary assistance to which the person was entitled. Typically in these situations the main benefit payable would be the Domestic Purposes Benefit-Sole Parent.

Period of Entitlement

20. The period of entitlement would commence from the date a parent arrived in New Zealand or, where a parent is already in New Zealand the date the application for the determination of care of and contact with the child or children was submitted. Where a parent had to leave New Zealand, the day after their entitlement ended or their day of departure whichever was the later. Entitlement would continue until the legal process was completed. This would include any rights to appeal. There would need to be safeguards to ensure that the proceedings were not being deliberately protracted. Where a parent has to return to another country it would also be necessary to allow for any assistance that might be available in that country and the residence requirements for it.

21. The decision-making process could be administered centrally through Work & Income Helpline with payments processed either centrally or at a service centre.

Consultation

22. We have consulted with the Department of Labour, Ministry of Justice, Treasury and the Ministry of Foreign Affairs and Trade on this proposal. [add in comments].

Next Steps

23. If you agree to the proposal outlined in this report we will develop the proposal further for your consideration. We will report to you further on the proposal by 30 July 2007 including:

- an estimate of the costs that could be involved, including an indication of whether these could be met within existing baselines
- the detailed work required to design a suitable programme
- implementation issues

- an implementation and communication strategy.

24. If you decide to proceed we will draft a Cabinet paper for you seeking approval for the programme. It might be necessary to make a budget bid if the costs are not able to be met within existing baselines.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

The Hague Convention on the Civil Aspects of Child Abduction

1. The Hague Convention on the Civil Aspects of Child Abduction [‘the Hague Convention’] is an international treaty that aims to discourage international child abduction. Proceedings under the Hague Convention concern the proper forum for the resolution of issues relating to the care of, and contact with, children. It does not provide the substantive resolution of these issues. An order for return simply concerns the forum in which the care and contact issues relating to children will be resolved.
2. Under the Hague Convention every state must designate a Central Authority to discharge the duties imposed by the Convention. The Secretary of Justice is the Central Authority for New Zealand exercising all the powers and duties of the Convention. The Hague Convention was implemented in New Zealand law in the Guardianship Amendment Act 1991 (since repealed and replaced by provisions in the Care of Children Act 2004).
3. The Hague Convention allows a parent to seek the return of a child to New Zealand if the child has been taken from New Zealand to another Convention country without the knowledge or consent of the left behind parent. If a child is returned to New Zealand from another country under the Convention, any dispute as to issues of parental responsibility must be resolved by the courts in New Zealand.
4. The Convention also allows a parent to seek the return of a child from New Zealand to another Convention country, where the child has been removed from that country without the knowledge or consent of the left behind parent. In these cases, any dispute as to issues of parental responsibility must be resolved by the courts in the requesting country.
5. The basic principles of the Convention are that:
 - the best interests of the child are the primary consideration
 - rights of custody of the child (which includes day-to-day care) should be determined in the country where the child usually lives
 - children should not be taken or kept overseas without the prior agreement of other people who are entitled by law to give their consent. If these people refused to consent, the correct thing would have been to seek the consent of the Court in New Zealand before the child was taken overseas.

Volume of Hague Convention Cases

6. The table below shows the number of final judicial orders. The numbers are small and there is considerable variation from year-to-year. Australia represents the majority of cases for children removed to, and returned from New Zealand. The number of children taken away from New Zealand has increased from 9 in 2002 to 18 in 2006.

Not sure that the statistics reflect what you are after. There are a number of cases that are resolved on a voluntary basis where the returning parent will meet the criteria outlined for need financial assistance. The 2006 figures do not include the outcomes for all applications made that year as the figures were taken at the end of February where a number of cases remained unresolved. That number will increase significantly.

Annual Statistics - Hague Convention on the Civil Aspects of International Child Abduction
Final Judicial Orders: Children Returned to New Zealand under Hague Convention orders

	Australia	England & Wales	South Africa	Chile	US	Netherlands	Scotland	Total
2002	18	1	1					20
2003	8		1	1	2			12
2004	14							14
2005	12	4			1	2	1	20
2006	7	2			2			11

Final Judicial Orders: Children Returned from New Zealand under Hague Convention orders

	Australia	England & Wales	US	Scotland	Hong Kong	Canada	Switzerland	Total
2002	8		1					9
2003	8	2		2	1			13
2004	13					2	1	16
2005	15	2	2	1				20
2006	12	5		1				18

Source: Ministry of Justice

The legal situation for New Zealanders required to return to Australia under a Hague Convention order

11. In 2001 changes to Australian Immigration legislation provided that a New Zealander must either be an Australian citizen or permanent resident to claim social support. After a New Zealander has been granted Australian permanent residence, they will still need to complete a 2 year stand-down period before they will be eligible for most Australian core benefits.
12. In 2002 a new Social Security Agreement (ASSA) came into force which limited reciprocal provision to pension and disability support payments for New Zealanders in Australia. In 2003 the potential gap in the agreement was raised by the Chief Judge of the NZ Family Court with the Minister for Social Development and Employment. At the time neither was aware of any actual cases. A report was prepared by the Ministry's International policy team and provided to the Australian Family and Community Services and Indigenous Affairs (FaCSIA). As a result there was an acknowledgement that if either New Zealand or Australia identified a case where Australia's policies had any unintended effects, it should be brought to the other's attention with the aim of resolving the issue.
13. Approaches were made to FaCSIA in respect of s9(2)(a) case, but Australia advised that they were not willing to provide coverage for these types of cases under their domestic law or under the Agreement, although the children themselves can access some support from the Australian government. As the figures on volume in paragraph 9 show, Australia is the country of destination for a majority of the Hague convention orders. However, New Zealanders are also legally able to work in Australia, and it is difficult to know whether the lack of government income support is likely to cause hardship in a significant number of cases. Only two such cases have come to our attention to date.

From: s9(2)(a)
To: s9(2)(a)
Subject: [Fwd: Hague Convention:Report Paper]
Date: Wednesday, 4 July 2007 10:35:38 am
Attachments: [MSDHagueConvention230607.doc](#)

FYI

----- Original Message -----

Subject: Hague Convention:Report Paper
Date: Tue, 26 Jun 2007 14:35:18 +1200
From: Patricia Bailey <Patricia.Bailey@justice.govt.nz>
To: s9(2)(a)

Hello s9(2)(a),

Thank you for forwarding the draft paper through.

As you will see I have tracked a few changes more about terminology than anything.

One matter that does arise is that the Hague Convention applies to children only. There is no ability to direct or require a parent to return with the children. May seem quite a small point, but is very important to the operation of the convention.

I did note that the statistic provided do not reflect a true picture of the volume of work or numbers of returns for 2006.

I would also suggest that the number of applications per year may give a more accurate or true reflection of the number of cases that assistance may be sought in one year. If a taking parent returns voluntarily they will still require the same level of assistance.

Happy to discuss.

Kind regards.

Trish Bailey
Central Authority
Ministry of Justice
Tahu o te Ture
PO Box 180
Wellington
New Zealand
++64 (04) 918 8827 telephone
++64 (04) 918 8820 fax

Patricia.Bailey@justice.govt.nz

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Thank you.

From: s9(2)(a)
To: s9(2)(a); Patricia Bailey; s9(2)(a)
Cc: s9(2)(a); Alex McKenzie; s9(2)(a)
Subject: CabpaperHCv#2.doc
Date: Wednesday, 25 July 2007 10:10:05 am
Attachments: [CabpaperHCv_2.doc](#)

Hello all

Please find attached the latest version of the Cabinet Paper on the amendment to the Special Needs Grants Welfare Programme. Not much time until the meeting but if you could have a quick look, that would be greatly appreciated.

As requested earlier to MoJ, we would also really appreciate any information on the average duration of care and contact proceedings in the Family Courts that you can provide, and a gender breakdown on the figures you provided s9(2)(a) with earlier.

We look forward to meeting you at 12 today.

Regards,

--

s9(2)(a)

Policy Analyst
Working Age People's Policy
Ministry of Social Development

s9(2)(a)

*
*

Aide-memoire: Financial support for parents awaiting the outcome of an international child custody and access dispute.

- 1 This paper seeks Cabinet approval to provide financial assistance under the Special Needs Grants Ministerial Welfare Programme to adults and dependent children involved in international custody disputes in a limited number of circumstances.
- 2 These cases fall within the ambit of the Hague Convention on Child Abduction which is now part of New Zealand law.
- 3 The Ministry of Justice has concerns in relation to one category which applies to a parent who is a New Zealand resident or citizen and in New Zealand because they have wrongfully removed their children from their country of habitual residence. At the conclusion of court proceedings, if an order is made to return the child to its country of habitual residence the abducting parent if they return with the child may be eligible for financial assistance under the proposal.
- 4 It is not uncommon for a parent to return a child voluntarily once notified that an application has been made for a Hague Convention order rather than wait for the Court order. The exclusion of this group raises some concerns for the Ministry.
- 5 The Ministry's concerns are that this:
 - May act as a disincentive for people to attempt to reach agreement in the country of the child's habitual residence about where the child will live;
 - Is inequitable, in that assistance is not available to a parent who after wrongfully removing or retaining their child in New Zealand, voluntarily decide, as a result of an application for a Hague Convention order, to return with the child to the child's country of habitual residence;
 - May undermine a current initiative between New Zealand and Australia, (approximately 70% of abduction cases), to actively encourage trans-border mediation as a means of assisting parties to reach an amicable resolution of the issues in dispute;
 - May be difficult to administer at a practical level. The eligibility criteria appear sound and will assist in reducing the incentive to wrongfully remove a child but there may be difficulties in assessing people's financial circumstances once they have left NZ. This remaining risk can only be minimised by careful policy guidance for applying the legislation governing special needs grants in these circumstances.
- 6 If Ministers decide to proceed with the proposal they might wish to consider doing so on the basis that it is extended to include that group of people currently excluded from assistance i.e. those who are involved in a Hague Convention process but return voluntarily rather than wait for the Court order. The potential number of applicants who could apply in this group would be approximately ten per annum but we expect that those who met the qualifying criteria to be a much smaller number.
- 7 If you agree you may wish to propose a change to Recommendation 3.4 to read:

3.4 a parent who is in New Zealand as a New Zealand permanent resident or citizen, but accompanies overseas a dependent child or children voluntarily returned following a Hague Convention application or required to return to the country of habitual residence of the child or children, pursuant to an order made in compliance with the Hague Convention.

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OFFICIAL INFORMATION ACT
DRAFT

From: s9(2)(a)
To: s9(2)(a); [Alex McKenzie](#); [David Rea](#)
Subject: [Fwd: Aide-memoire forMSDHCpaperdoc.doc]
Date: Friday, 10 August 2007 12:01:07 pm
Attachments: [Aide-memoire forMSDHCpaperdoc.doc](#)

I have spoken to s9(2)(a), the manager in Justice who is dealing with this issue. She has agreed to the changes we've proposed in the aid memoir, particularly focussed on the new wording proposed to the recommendation 3.4 - she is happy with s9(2)(a)'s proposed wording, thank you s9(2)(a)!

We will draft a briefing for Mr Maharey today and get it to Debbie as soon as possible. I've told Debbie about this issue and she is expecting the briefing. She confirmed that it WILL be Mr Maharey at SDC. I will call TReasury and inform them of the background to this as well.

DAvid, I think there is quite a strong chance that officials will be called in at the SDC meeting, given all of this - I will plan to go to the meeting, but I think it would be good if you are also able to attend.

----- Original Message -----

Subject:[Fwd: Aide-memoire forMSDHCpaperdoc.doc]

Date:Fri, 10 Aug 2007 11:28:13 +1200

From:Helen Walter s9(2)(a)

To: s9(2)(a)

s9(2)(a), Bailey, Patricia

<Patricia.Bailey@justice.govt.nz>, s9(2)(a)

CC: s9(2)(a)

s9(2)(a), Alex McKenzie

s9(2)(a) <@msd.govt.nz>, s9(2)(a)

Thank you for sending through your draft aid-memoir to your Minister. Please find attached some comments clarifying that the change you are seeking relates to extending eligibility for the proposed welfare programme to people where a hague order application has been lodged, but a final order has not been made. This was my understanding of the issue s9(2)(a) and I were discussing last night. We have checked this with our operational policy team and would be able to recommend this change to our Minister.

We would not be able to recommend to our Minister that he supports the change as it is presently drafted, as this would open the eligibility criteria too much, and not be able to be implemented by us - we would not have a clear basis for determining that people needed to return to the country overseas to have the child custody dispute resolved.

I would also ask that you consider again your fourth bullet point under paragraph 4 (new paragraph 5 in our comments) - We have no concern with the first part of this but we **do** have systems in place to assess people's financial circumstances, and it is our practice to provide clear policy guidance in the administration of all discretionary welfare programmes such as this.

Please contact me as soon as possible to discuss these comments and let me know if you are able to make the changes requested.

Thanks

s9(2)(a)

s9(2)(a)

----- Original Message -----

Subject: Aide-memoire for MSDHCpaperdoc.doc

Date: Fri, 10 Aug 2007 10:17:50 +1200

From: s9(2)(a)

To: s9(2)(a)

CC: s9(2)(a)

Hi

Further to my earlier email and the phone message - I've attempted to amend the memoir so that it is clear that we are talking about those people who know that they are the subject of an application and return voluntarily before an order is received.

I assume that this is what Justice means because otherwise they would not know what the approximate numbers are.....

There is a big difference between including anyone who goes back purely voluntarily and people who volunteer to go back because an application for a Hague Convention order has been made.

s9(2)(a)

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From: [Patricia Bailey](#)
To: s9(2)(a)
Cc: s9(2)(a)
Subject: Re: CabpaperHCv FINAL DRAFT VERSION
Date: Tuesday, 7 August 2007 11:39:05 am
Importance: Low

Hi s9(2)(a)

The paper looks good. And thank you for circulating the paper for consultation.

One point and that is the suggested amendments to the appendix were not included, which is a shame.

One other point, you mention three cases where Hague orders were made. If you are referring to the s9(2)(a) case, no orders for return were made. The return was voluntary.

Kind regards.

Trish Bailey
Central Authority
Ministry of Justice
Tahu o te Ture
PO Box 180
Wellington
New Zealand
++64 (04) 494 9732 telephone
++64 (04) 499 0279 fax

Patricia.Bailey@justice.govt.nz

>>> s9(2)(a) @msd.govt.nz> 7/08/2007 9:08 a.m. >>>
Dear all

Please find attached the final draft version of the above Cabinet Paper, which has now been released for Ministerial consultation by our Acting Minister. We expect to have any comments back from him by tomorrow lunchtime.

Please do contact me or Alex if you have any queries. Thank you all very much for your help, which was invaluable in the preparation of this work.

Regards,
--

s9(2)(a)
Policy Analyst
Working Age People's Policy
Ministry of Social Development

s9(2)(a)

*
*

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From: s9(2)(a)
To: s9(2)(a); [Patricia Bailey](#); s9(2)(a);
s9(2)(a); [Alex McKenzie](#); s9(2)(a);
s9(2)(a)
Subject: CabpaperHCv FINAL DRAFT VERSION
Date: Tuesday, 7 August 2007 9:08:08 am
Attachments: [CabpaperHCv FINAL DRAFT VERSION.doc](#)

Dear all

Please find attached the final draft version of the above Cabinet Paper, which has now been released for Ministerial consultation by our Acting Minister. We expect to have any comments back from him by tomorrow lunchtime.

Please do contact me or Alex if you have any queries. Thank you all very much for your help, which was invaluable in the preparation of this work.

Regards,

--

s9(2)(a)
Policy Analyst
Working Age People's Policy
Ministry of Social Development

s9(2)(a)

*
*

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OFFICIAL INFORMATION ACT

From: s9(2)(a)
To: s9(2)(a)
Cc: s9(2)(a) [Bailey, Patricia](#)
Subject: RE: CabpaperHCv_4.doc
Date: Monday, 30 July 2007 9:58:21 am
Importance: High

Hi s9(2)(a)

I think that term was probably used as a generic term to cover a range of circumstances. Perhaps best to go back to the terms the Convention uses which are custody and access. I think though it would be helpful if after the first reference to either you put in brackets after custody 'day-to-day care and guardianship' and after access 'contact' because these reflect the terms we now use in other parts of COCA.

In regards to the comment about vexatious cases....The application made to the Court is for return of the child. In order to prove this the applicant must show that the child has been wrongfully removed, the removal of the child was in breach of the applicant's rights of custody, that rights of custody were being exercised or would be being exercised but for the wrongful removal and the child habitually resides in the other country before being removed. It is not a proceeding to determine custody and access. A basic premise of the Convention is that those disputes are best dealt with in the country of the child's habitual residence.

However if one of the 6 alternate defences is established the Court is no longer bound to return the child. The Court may exercise its discretion to refuse to order return. In doing so the Court may consider the best interests and welfare of the child in relation to the defence raised. In terms of the grave risk defence for instance, it might be the a child's medical condition (physical or mental) etc that is being alleged will place the child at grave risk if they are to return.

Hope this is helpful. Please call to discuss if you wish.

Regards

-----Original Message-----

From: s9(2)(a)
Sent: Friday, 27 July 2007 11:28 a.m.
To: s9(2)(a)
Subject: Re: CabpaperHCv_4.doc

Hello again. I have received the following query from DoL that I think you would be best placed to comment on:

Question: the term "care and welfare dispute" interests us. Is this a standard phrase? Is it based on the Care of Children Act 2004? We had thought we were talking purely about custody including access rights, but does the term you use imply that we are in fact talking about other aspects of a child's guardianship and wellbeing?

If we are talking about other aspects - e.g. schooling. Medical treatment - , there is perhaps a risk of vexatious cases, where people seek to prolong a stay in New Zealand by applying to the Family Court for an order in regard to other matters. Checking with the Convention wording, it appears to be explicit that it is about custody and access. Suggest these are the words used throughout the paper in the interests of clarity re both financial support and immigration aspects, unless there is a strong rationale for other wording.

Can you advise please? I do know that the terms used on CoCA are care and contact, rather than custody and access, but am not sure on the

other points.

Thanks,

s9(2)(a)

s9(2)(a)

wrote:

> Kirsten

> Cabinet paper is looking much better. Thanks for incorporating our

> feedback. Some tweaks in track changes attached.

> Regards

> s9(2)(a)

>

> s9(2)(a)

> | Policy Manager, Family Law and

> Medico-Legal | Public Law | * Ministry of Justice* | Level 12, Charles

> Fergusson Building| PO Box 180 WELLINGTON | s9(2)(a)

>

>

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> =====

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> e-mail, and destroy any copies.

> Thank you.

>

> =====

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>

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s9(2)(a)

Policy Analyst

Working Age People's Policy

Ministry of Social Development

s9(2)(a)

*

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Hi s9(2)(a)

Some comments attached. Still waiting on some figures for you from Courts. Should be through soon.

You'll notice that I've added in that the CE of MSD is one of the people who could be exercising his rights of custody in seeking to have a child returned and has done so on several occasions. The HC is not just to protect the situation as between parents but is as we stress to protect children from the harmful effects of abduction.

Trish, can you look at the para on assistance please. I don't think I've got it right.

s9(2)(a)

Senior Adviser | Family Law and Medico-legal | Public Law

s9(2)(a)

| Email s9(2)(a)

Ministry of Justice | Tahu o te Ture

PO Box 180 | Charles Fergusson Building, Bowen Street| Wellington

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Thank you.

From: [Patricia Bailey](#)
To: s9(2)(a)
Subject: Cab cttee paper template
Date: Monday, 30 July 2007 1:05:51 pm
Attachments: [finalCabpaperHCv_4 .doc](#)
Importance: Low

Hello,

I have had a quick look and made a couple of very small suggested changes with track change. While the paper does raise a number of concerns it is looking pretty good.

Kind regards.

Trish Bailey
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Patricia.Bailey@justice.govt.nz

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Thank you.

From: [Alex McKenzie](#)
To: s9(2)(a); Patricia.Bailey@justice.govt.nz; s9(2)(a)
s9(2)(a)
s9(2)(a)
Cc: s9(2)(a)
Subject: Hague Convention (DRAFT CABINET PAPER)
Date: Thursday, 26 July 2007 2:18:29 pm
Attachments: [CabpaperHCv_4.doc](#)

Afternoon all

s9(2)(a) is away from the office today, but in her absence I have attached a further draft of the Cabinet paper. I would be grateful if you could provide any comments by 11.00am tomorrow morning as we need to have the paper with our Minister on Monday.

The costings are still provisional, and once finalised we will need to discuss the funding options with the Treasury.

Of interest, I understand that the children and parent to which we refer in case two, left NZ yesterday. This means that we can continue to pay the Domestic Purposes Benefit to the parent until 21 August 2007.

Could you please copy any comments to myself, Kirsten and Christina. I am away from the office tomorrow (Friday)

Regards

Alex

Alex McKenzie
Ministry of Social Development
P O Box 1556
Wellington 6001
NEW ZEALAND

s9(2)(a)

s9(2)(a) @msd.govt.nz

Home Page: <http://www.msd.govt.nz>



MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

Date: 27 March 2008

Security Level: **UNCLASSIFIED**

Report to: Minister for Social Development and Employment

INTERNATIONAL CUSTODY DISPUTE PAYMENT UPDATE

Recommended Actions

We recommend that you:

- 1 **note** that this paper provides you with an update on uptake of the International Custody Disputes payment which was introduced on 17 August 2007, and alerts you to a minor issue related to it
- 2 **note** that on 17 August 2007 a new payment was introduced to provide financial assistance to people who travel to New Zealand on temporary permits to resolve custody disputes, and New Zealanders who travel overseas to resolve custody disputes in accordance with an order under the Hague Convention
- 3 **note** that MSD has been directed to monitor uptake of the payment in consultation with the Ministry of Foreign Affairs and Trade, Ministry of Justice, and the Department of Labour, and report back to you in March 2008
- 4 **note** that the Ministry of Social Development will report back in 12 months with information on uptake of the ICD payment and any recommendations, if required, to improve the payment criteria

ss(2)(a)

Acting General Manager
Working Age People's Policy

Date

Hon Ruth Dyson
Minister for Social Development and
Employment

Date

Purpose of the Report

- 1 This report provides you with an update on uptake of the International Custody Disputes payment (ICD payment) since it was introduced on 15 September 2007, and alerts you to a minor issue related to it.

Background

- 1 On 17 August 2007 a new payment, the International Custody Disputes (ICD) payment was introduced to provide assistance to parents involved in international custody disputes who are experiencing financial hardship and:
 - are in New Zealand on a temporary permit, and have accompanied a dependent child or children required to be returned to New Zealand pursuant to an order made in compliance with the Hague Convention,
 - are in New Zealand on a temporary permit, and have voluntarily returned to New Zealand with a dependent child or children in order to resolve a custody and access¹ dispute,
 - have entered New Zealand on a temporary permit as the partner of a New Zealander, and remain in New Zealand when the relationship ends in order to resolve a custody and access dispute, or
 - are in New Zealand as a New Zealand permanent resident or citizen, but accompany overseas a dependent child or children required to return to the country of habitual residence of the child or children, pursuant to an order made in compliance with the Hague Convention.
- 2 When the payment was introduced MSD was directed to monitor uptake of the payment in consultation with the Ministry of Foreign Affairs and Trade, Ministry of Justice, and the Department of Labour, and report back to you in March 2008.

Progress to Date

Uptake

- 3 Since the ICD payment became available on 17 August 2007 the Ministry has received six applications for financial assistance under the relevant section of the Special Needs Grant Welfare Programme. Five of the six applications have been approved and financial assistance made available. Of the five people receiving financial assistance three are in New Zealand, and two are in Australia.
- 4 This uptake of the ICD payment is in line with assumptions used to estimate expenditure on the payments, and changes to appropriations sought to cover the cost of the payments.

¹ Under the Care of Children Act the terms used are “day to day care” and “guardianship” and “contact” respectively.

Minor Issue - Costs of maintaining accommodation in New Zealand

- 5 One recipient of the ICD payment in Australia has queried whether financial assistance is available to cover the costs of maintaining accommodation in New Zealand while people receiving the ICD payment are overseas. The accommodation portion of the ICD payment requires that a person occupy a residence to receive assistance with accommodation costs related to it. This means that people receiving the ICD payment while overseas cannot receive accommodation assistance for any residence in New Zealand.
- 6 The ICD payment is designed to assist people in hardship and be 'a last resort under humanitarian grounds'. We do not currently provide payments for accommodation costs in New Zealand for people who travel overseas in other circumstances. We consider that it is appropriate that additional financial support to cover accommodation in New Zealand is not provided to people receiving the ICD payment overseas and do not propose taking any further action in regard to this issue.

Risks

- 7 At the time the ICD payment was introduced there were some concerns about making a payment of this nature available. In particular there were concerns that
 - the ICD payment could be seen as incentivising abduction of children, that the payment could encourage some recipients to prolong custody proceedings,
 - that only making the payment available to New Zealanders who travel overseas as the result of an order under the Hague Convention and not to New Zealanders who travel overseas to resolve custody disputes voluntarily is inequitable.
- 8 We have consulted with the Ministry of Foreign Affairs and Trade, Ministry of Justice, and Department of Labour. They have indicated that given the short time that the benefit has been in place it is too early to be able to make any meaningful comment. The ICD payment has been available for a short period and it is possible that negative effects could still become evident over time.

Future Report

- 9 The ICD payment has been in place for a relatively short period of time (approximately seven months) and it may not be possible to fully assess uptake of the ICD payment and any negative flow-on effects until the payment has been available for a longer period.
- 10 We will report back again in 12 months with information on uptake of the ICD payment and any additional recommendations.

File Reference :

From: [Patricia Bailey](#)
To: s9(2)(a)
Subject: 20080326ICDReporttoMinisterDyson.doc
Date: Thursday, 27 March 2008 3:37:31 pm
Attachments: [20080326ICDReporttoMinisterDyson .doc](#)

Hello s9(2)(a)

Thank you for the opportunity to comment.

The paper overall looks good.

I have made a couple of comments or suggestions to paras 7 and 8. I do think the issues you mention are very important and need to be monitored separately over time. It may be that at the twelve month review a clearer picture may be available.

Kind regards

Trish Bailey
Central Authority
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Patricia.Bailey@justice.govt.nz

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Thank you.

From: [Patricia Bailey](#)
To: s9(2)(a)
Subject: Re: HC/ICDP issues for report back by COP Wednesday
Date: Tuesday, 18 March 2008 2:22:09 pm

Hello s9(2)(a),

My apologies for not responding sooner, but as indicated earlier I was going on leave and would not have an opportunity to respond prior to the date requested.

I think it is very early days for me to report anything useful. As with all new initiatives there was an initial delay in receiving information about the financial assistance and qualifying criteria from MSD. I think we received advice of the financial assistance from the Ministry of Social Development in December 2007. That information was disseminated to counsel instructed by the Central Authority in Hague cases on receipt and I have received very positive feedback to the material provided.

There were the usual teething problems with local offices not having information or knowledge of the new assistance but your office was most helpful in resolving those issues.

In several cases the Central Authority has provided information about the assistance to persons who may require financial assistance in Hague matters on their return to the habitual state, but I am not aware if a grant was actually applied for or if they were successful.

Kind regards

Trish Bailey
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++64 (04) 494 9732 telephone
++64 (04) 499 0279 fax

Patricia.Bailey@justice.govt.nz

>>> s9(2)(a) 17/03/2008 11:28 a.m. >>>
Hi s9(2)(a)

I am currently preparing a report for our Minister with an update on the International Custody Dispute payment that we established in August last year and need comment from MOJ about any negative effects that have become apparent so far.

I emailed contacts at MFAT, DOL, and MOJ a month ago looking for feedback but have noticed today that I have not had a response from MOJ. I sent the email to Patricia Bailey. I'm not sure if you might be a more appropriate person to talk to about this and have sent this to you just in case.

I have attached the original email that I sent out which outlines the information we are seeking. I will be noting in the paper that the payment has been in place for a relatively short period of time meaning that any negative effects may not be evident, and recommending that the Minister invite us to report back in another year on issues related to the payment.

We are due to submit the report to our Minister on March 27 so I would

be grateful if you could get back to me by COP Wednesday with a response, or if there is someone you think it would be better to talk to for this.

Please don't hesitate to call me if you would like to discuss this further

Thanks

s9(2)(a)

Hi s9(2)(a) Patricia, and s9(2)(a)

You may recall the Cabinet paper MSD submitted last year seeking agreement to pay social assistance for International Custody Disputes. This paper also agreed to provide an update to our Minister on any issues arising since its introduction in August 2007.

I am preparing the March report-back on uptake of the International Custody Disputes Payment and alerting the Minister to any issues that have arisen.

I am aware that you contributed to this paper and wondered if there were any issues related to the payment that may have come up within your areas that we might wish to consider in this paper.

In particular we would like to know if your agencies have had any indication that the payment not being available to New Zealanders travelling overseas voluntarily to resolve a custody dispute (without an order under the Hague Convention) has created any additional problems (such as people who would have travelled voluntarily waiting until an order under the Hague Convention is made in order to receive the payment).

I would appreciate it if you could let me know by close of play on Tuesday if there are any issues you would like to raise. Don't hesitate to contact me if you have any questions about this.

A copy of the August Cabinet paper is attached for your reference.

Thanks

s9(2)(a)

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s9(2)(a)

Graduate Policy Analyst
Working Age People's Policy
Ministry of Social Development

s9(2)(a)

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Chair
Cabinet Social Development Committee

FINANCIAL SUPPORT FOR PARENTS AWAITING THE OUTCOME OF AN INTERNATIONAL CHILD CUSTODY AND ACCESS DISPUTE

Proposal

- 1 This paper seeks Cabinet approval to provide financial assistance under the Special Needs Grants Ministerial Welfare Programme to adults and accompanying dependent children involved in custody and access disputes in the child's country of habitual residence and who have no other means of financial support.
- 2 The proposal would provide financial assistance to:
 - a parent, in New Zealand on a temporary permit, who has accompanied a dependent child or children required to be returned to New Zealand pursuant to an order made in compliance with the Hague Convention;
 - a parent, in New Zealand on a temporary permit, who has voluntarily returned to New Zealand with a dependent child or children in order to resolve a custody and access¹ dispute;
 - a parent who has entered New Zealand on a temporary permit as a partner of a New Zealander, and who remains in New Zealand when the relationship ends in order to resolve a custody and access dispute; and
 - a parent who is in New Zealand as a New Zealand permanent resident or citizen, but accompanies overseas a dependent child or children required to return to the country of habitual residence of the child or children, pursuant to an order made in compliance with the Hague Convention.

Executive summary

- 3 The Hague Convention on the Civil Aspects of Child Abduction (the Hague Convention) is an international treaty that seeks to protect children from the harmful effects of their wrongful removal or retention across international boundaries and to ensure the prompt and safe return of children to their country of habitual residence. The Convention seeks to protect the rights of the child to continuing contact with both parents and to ensure that decisions concerning day-to-day care and contact are made by a Court in the child's country of habitual residence. If one parent decides to take the child to another country, the remaining parent can, by invoking the Hague Convention, require the return of the child to the child's country of habitual residence until such time as welfare and care issues are resolved. The Convention is given effect in New Zealand law (subpart 4 of the Care of Children Act 2004) and is summarised in Appendix 1.

¹ Under the Care of Children Act the terms used are "day to day care" and "guardianship" and "contact" respectively.

- 4 Some recent cases have highlighted an issue for parents and children who may not be able to financially support themselves, who do not qualify for social assistance and who are in financial hardship.
- 5 In order to qualify for financial assistance under the Social Security Act 1964, a person must be a New Zealand citizen or permanent resident and must also be ordinarily resident in New Zealand². People on temporary permits (which include visitor's permits) are not entitled to State support. In addition, if a person leaves New Zealand payment of most financial assistance ceases³.
- 6 Therefore a parent who chooses to return to, or leave, New Zealand as a result of an order made pursuant to the Hague Convention to return the child to their country of habitual residence may have limited or no access to financial support whilst awaiting the outcome of the custody and access dispute process. The Ministry of Social Development has received three applications for financial assistance this year, each involving a parent and child facing hardship as a result of limited means and unresolved custody and access disputes. The Ministry has, where possible, responded to these requests on a case-by-case basis. The inability to access financial assistance can cause hardship and can place already-vulnerable children at risk.
- 7 The number of people involved in trans-national custody and access disputes may be expected to rise along with the natural increase in mixed-nationality marriages. The policy intent of this proposal is to provide assistance to children who are in danger of being in severe hardship as a consequence of the actions of their parents, at least one of whom is likely to be a New Zealander. As noted in paragraph 2, four particular situations have been identified where a parent may be unable to access financial assistance.
- 8 I am seeking the Committee's agreement to the provision of assistance under the Special Needs Grant Ministerial Welfare programme to a parent and an accompanied dependent child or children who are awaiting the resolution of a custody and access dispute and who have no other means of support. This assistance would be provided on a discretionary basis where there is no other means of financial support available. Payment would be made up to a maximum equivalent to the weekly sole parent rate of a main benefit plus, for those in New Zealand, the applicable rate of Accommodation Supplement (based on location and household composition).
- 9 It is difficult to estimate the number of parents who will become eligible for assistance under this Programme, as the number of applications made pursuant to the Hague Convention varies considerably from year to year. Assuming that existing cases are covered initially and that five new cases are granted each year, this proposal will require an increase in the Special Needs Grants appropriation in Vote Social Development of \$0.250 million in 2007/2008, increasing to \$0.260 million in 2010/2011.
- 10 I propose that this be funded from an underspend in the Training Incentive Allowance (TIA). This underspend arises from lower than forecast expenditure in this appropriation.

² Exceptions are in place for refugees.

³ There are a small number of very specific exemptions to this set out in s 77 of the Social Security Act 1964. For example, the Domestic Purposes Benefit can continue to be paid for 28 days overseas as long as the beneficiary maintains his or her eligibility to that benefit. In addition, New Zealand's eight social security agreements generally provide that New Zealand Superannuation, Invalids Benefit, and Widows Benefit can be paid in the agreement country indefinitely.

Background – problem definition

Hague Convention

- 11 The Hague Convention on the Civil Aspects of Child Abduction (the Hague Convention) is designed to protect children from the harmful effects of their wrongful removal or retention across international boundaries. New Zealand acceded to the Convention in 1991 and it was given effect in New Zealand domestic law, firstly in the Guardianship Amendment Act 1995 and more recently in the Care of Children Act 2004.
- 12 A key principle of the Convention is that the Court in the child's country of habitual residence is best placed to decide long-term care arrangements for the child. Therefore return of the child to his or her country of habitual residence is seen in most cases to be in the best interests of the child. Return does not involve any determination of the merits of the case.
- 13 The objectives of the Convention are to:
 - protect children from the harmful effects of their wrongful removal or retention across international boundaries;
 - ensure the prompt and safe return of children to their country of habitual residence (not that of the left-behind parent);
 - secure protection of rights of contact for the non-abducting parent;
 - protect the child's right to continuing contact with both parents;
 - ensure that decisions about day-to-day care and contact are made by the court in the child's country of habitual residence.
- 14 Under subpart 4 of the Care of Children Act, an order can be made that a child who has been wrongfully removed or retained in breach of the "rights of custody" or right of access of the other parent, or other persons, including the Chief Executive of the Ministry of Social Development, be returned to the country of habitual residence of the child (and the other parent) in order for care and welfare issues to be determined. If the parent wishes to take part in the proceedings, he or she would often want to return to the country of the child's habitual residence. This can impact in two ways:
 - (a) a parent and child living overseas may have to return to New Zealand; or
 - (b) a parent and child in New Zealand may have to return to another country.
- 15 Social assistance may or may not be available to parents and children in these situations. When it is not, the people concerned can be left in a very vulnerable position.

Financial assistance for parents subject to orders made in compliance with the Hague Convention

- 16 If not a New Zealand resident, a parent who accompanies a child to New Zealand will be in New Zealand on a temporary permit. This means that they will not be eligible for any financial assistance under the Social Security Act 1964. In the situation set out in paragraph 14(b) above, the parent accompanying the child (unless they are legally able to work in the other country) may not have any regular source of income once they leave New Zealand. If they were receiving a benefit in New Zealand, payment would cease on departure, although there is discretion to continue payment for a limited period (for example, up to 28 days in the case of a person receiving a Domestic Purposes Benefit).

Financial assistance for New Zealanders returning to Australia under Hague Convention Orders

- 17 The majority of orders made in compliance with the Hague Convention that relate to New Zealand concern travel to or from Australia. In 2001 changes to Australian immigration legislation provided that a New Zealander must also hold Australian citizenship or permanent residence in order to claim social support in Australia. After a New Zealander has been granted Australian permanent residence, they will still need to complete a two-year stand-down period before they will be eligible for most Australian core benefits.
- 18 In 2002 a new Social Security Agreement between New Zealand and Australia (the ASSA) came into force which limited reciprocal provision to pension and disability support payments for New Zealanders in Australia. In 2003 the potential gap in the agreement was raised by the New Zealand Principal Family Court Judge with the Minister for Social Development and Employment. At the time neither was aware of any actual affected cases. A report was prepared by the Ministry's International Policy team and provided to the Australian Family and Community Services and Indigenous Affairs (FaCSIA). As a result there was an acknowledgement that if either New Zealand or Australia identified a case where Australia's policies had any unintended effects, it should be brought to the other's attention with the aim of resolving the issue.
- 19 An approach has been made to FaCSIA in respect of one of the recent cases, but Australian officials advised that they do not intend to provide coverage for these types of cases under their domestic law or under the ASSA, although the children themselves can access some support from the Australian government. New Zealanders, however, are able to work legally in Australia without applying for a permit to do so, and it is difficult to know whether the lack of government income support is likely to cause hardship in a significant number of cases.

Impact on families

- 20 While the number of Hague Convention cases is small, the impact on parents and children is significant, and in cases where a parent has limited resources this may put already vulnerable children (and parents) at risk. A New Zealand parent with limited resources who has to return to the country they left will be unlikely to be able to work there (New Zealanders going to Australia are able to work but if the children are young this might not be practical) and may have no access to a source of income during the time it takes to resolve the custody and access dispute.
- 21 Since the beginning of 2007 the Ministry of Social Development has received three applications for financial assistance in cases where a parent and child are facing hardship as a result of unresolved custody and access issues. Two have attracted significant publicity, involved engagement at Ministerial level, and highlighted the need to find a resolution. Further details are contained in Appendix 2.

Other custody and access disputes involving people temporarily in New Zealand

- 22 Consideration of the cases involving orders made pursuant to the Hague Convention has highlighted a related issue. A person on a temporary visa who has entered New Zealand on the basis of their relationship with a New Zealander will be unable to access financial assistance under the Social Security Act if the relationship breaks down. Once the relationship breaks down they will no longer be in a position to apply for permanent residence (should they wish to remain in New Zealand) if they do not meet the criteria for other

residence categories. This could lead to financial hardship for that parent and their children if they must await the outcome of protracted custody and access proceedings.

- 23 It also places the parent at risk of being in New Zealand unlawfully once the current permit expires. This could influence the parent to remove the child from New Zealand before custody and access matters have been resolved, which may result in a subpart 4 application⁴.
- 24 A person who returns voluntarily to New Zealand on a temporary residence permit in order to resolve a custody and access dispute could be in an analogous position to a person who returns under a subpart 4 order.

Options for providing financial assistance

Status quo

- 25 The Ministry of Social Development could continue to attempt to provide short-term responses on a case-by-case basis. I do not favour this approach, as providing one-off ad hoc solutions on a case-by-case basis is resource-intensive, can cause delays in assistance for the person concerned, and may lead to inequitable decisions. Short-term fixes may also result in precedent setting, at odds with the design of the benefit system.

Support only for orders made in compliance with the Hague Convention

- 26 I considered whether there was an argument for providing financial assistance only to those parents accompanying a child returned to New Zealand under an order made in compliance with the Hague Convention and not to parents who may be in similar circumstances but with regard to whose children the Convention has not been invoked. This approach does not appear equitable. While, in principle, a State's responsibilities to its residents are rather different to those to non-residents, the situations are analogous in that in each there is a parent involved in a Court case involving the custody and access of children, who is in hardship because they have limited financial resources.

New Zealanders returning overseas to attend other custody and access disputes

- 27 At this time I do not propose to provide financial assistance to New Zealanders who go to a foreign country to attend to custody and access disputes in situations where the child is not required to return to that country pursuant to the Hague Convention. In cases where a parent is not able to travel there are often options available to them to participate or to be represented in proceedings (for example, video conferencing and legal representation).
- 28 Not providing assistance to a parent in this situation may, however, be seen as inequitable given the proposal to provide assistance to a parent who accompanies a child who is required to return to the country of habitual residence. It could potentially advantage a parent who removes a child who subsequently becomes subject to an order made in compliance with the Hague Convention over a parent who goes voluntarily to a foreign country to participate in custody and access proceedings. This could be seen as condoning such abductions.

⁴ The immigration issues discussed above do not relate to Australians, who enter New Zealand freely under the Trans Tasman Travel Agreement without any limit on the time they can spend here – they do not apply for a visa to either enter or remain in New Zealand, or to work here.

- 29 I will therefore be directing officials from the Ministry of Social Development to closely monitor the provision of financial assistance to adults accompanying dependent children involved in custody and access disputes. This will include providing advice on whether there is reasonable justification and a need to extend assistance to this group, and working with the Ministry of Foreign Affairs and Trade (given that Ministry's consular role in advising people overseas who visit New Zealand Embassies, Consulates and High Commissions), the Ministry of Justice and the Department of Labour.

Proposal

Support for resolution of formal custody disputes involving temporary residents

- 30 None of the options discussed above appear to meet our current needs. I therefore propose that a new section in the Special Needs Grants Programme be established to provide financial assistance for:

- a parent, in New Zealand on a temporary permit, who has accompanied a dependent child or children required to be returned to New Zealand in compliance with an order made pursuant to the Hague Convention;
- a parent, in New Zealand on a temporary permit, who has voluntarily returned to New Zealand with a dependent child or children in order to resolve a custody and access⁵ dispute;
- a parent who has entered New Zealand on a temporary permit as a partner of a New Zealander, and who remains in New Zealand when the relationship ends in order to resolve a custody and access dispute; and
- a parent who is in New Zealand as a New Zealand permanent resident or citizen, but accompanies overseas a dependent child or children required to return to the country of habitual residence of the child or children, in compliance with an order made pursuant to the Hague Convention.

Provision under the Special Needs Grants Ministerial Welfare Programme

- 31 The Special Needs Grants Ministerial Welfare Programme is already designed for people who are in hardship and makes provision for a wide variety of circumstances to be addressed. The provision of financial support via this mechanism would be:

- discretionary and not an entitlement;
- contingent on the person being in hardship;
- non-recoverable and non-taxable;
- made as a weekly grant rather than as a one-off grant or a benefit;
- set at up to a defined maximum rate⁶ with a payment set at the applicable rate of Accommodation Supplement available to those applicants residing in New Zealand;
- subject to a specified income and asset test; and

⁵ Under the Care of Children Act the terms used are "day to day care" and "guardianship" and "contact" respectively.

⁶ This means that the rate will not vary for circumstances; as, for example the Invalid's Benefit rate does in comparison to the Domestic Purposes Benefit.

- straightforward to administer as systems and payment mechanisms and an appropriation are already in place.

Proposed policy parameters

32 The provision of financial assistance in these situations must be carefully designed to ensure that it is in keeping with the intent of the social support system. I propose that the programme be available only in cases where all other available resources have been exhausted or are being pursued and there is hardship. I propose that the provision of financial assistance to a parent accompanying a dependent child in New Zealand or another country who is awaiting the outcome of custody and access proceedings be subject to the following parameters, which are broadly consistent with other provisions found in the assessment of financial assistance for hardship:

- an applicant in New Zealand must be legally present but not legally able to work in New Zealand, or, if legally able to work, unable to find suitable employment⁷;
- an applicant must be the primary caregiver of a dependent child who is the subject of an order made in compliance with the Hague Convention, except for the situation referred to in paragraph 30 above, where a parent is in New Zealand on a temporary permit having voluntarily returned to New Zealand with a dependent child or children in order to resolve a custody and access dispute;
- the applicant must have exhausted or be pursuing all other avenues of financial support that might reasonably be available to him or her including employment (for example the person may be able to apply for a work permit), family support, community support, support from the child's other parent (child support or other), other New Zealand government support and support from their home Government. (Applicants will be required to make applications for child support and spousal support where appropriate);
- the payment will be contingent on sufficient evidence being received that the applicant's immigration status is legal and that there are in fact active Court proceedings concerning the child's custody and access;
- the payment will be granted for set periods which will be linked to the timetable for Court proceedings, and the applicant will also be subject to the normal requirement to advise the Ministry of Social Development of any change in circumstance that may affect their payment;
- payment shall cease when the applicant, if unable to work legally in New Zealand, receives a residence or work permit and obtains suitable employment, leaves the country, or, in the case of the applicant gaining day-to-day care of the child or children, 28 days after the date on which the final parenting order is made;

⁷ It should be noted that immigration officials have discretion, under Section 35A of the Immigration Act 1987 to grant a temporary permit to someone who does not currently hold a permit. In practical terms, this means that someone whose permit has expired may be granted a temporary permit to remain in New Zealand. Further note that "suitable" employment is a term currently in use in the social assistance system and takes account of childcare and other responsibilities.

- payment will be made on a weekly basis up to a maximum rate equivalent to the sole parent rate of main benefit⁸ plus for applicants living in New Zealand an amount equivalent to the Accommodation Supplement⁹ they would receive if they were a New Zealand resident; and
- any income received will reduce the payment dollar for dollar.

33 As is the case with all payments made under the Special Needs Grants Welfare Programme, this payment will be discretionary with assistance being a last resort under humanitarian grounds (relieving hardship), and not an entitlement.

Advantages of establishing a payment mechanism

- 34 Providing financial assistance in instances where a parent has limited means of financial support while they resolve custody and access disputes will help to protect children from hardship during a particularly stressful time in their lives. The policy intent is to provide assistance to children who are in danger of being in severe hardship as a consequence of the actions of their parents, at least one of whom is likely to be a New Zealander.
- 35 A comprehensive well-targeted provision will provide fairer, more transparent and more efficient access to assistance than ad hoc provision. Providing a form of support to parents who are experiencing financial hardship would also better support the use of the proper forum for the resolution of custody and access matters for children, and is in the best interests of the child.
- 36 While I remain concerned about incentive effects that may be placed on parents involved in custody and access disputes to abduct children over international borders, I consider this risk to be relatively low because of the significance of other factors that will need to be taken into account by any parents considering such as action. Making this provision may in fact diminish some risk of the removal of children who are habitually resident in New Zealand if the primary reason for the removal is the financial hardship of a parent. It acknowledges that parents with little means of support may face financial pressure to leave a country before a care dispute is resolved.

Risks of establishing a payment mechanism

- 37 The main risk associated with establishing the new mechanism in an area where we have little experience is that it will be difficult to gauge what the uptake of the payment may be. For example in 2006 there were 31 applications for a child to be returned from New Zealand and 62 for a child to be returned to New Zealand. About 70% of applications result in a child being returned either voluntarily or by judicial order. However not all of these will result in a parent requiring financial assistance. It is more difficult to predict the numbers of people on a temporary permit, wishing to resolve formal custody and access of their children, who might apply for assistance in order to voluntarily remain in New Zealand until such time as the custody and access dispute is settled.

⁸ The rate of Domestic Purposes, Widows or Unemployment Benefit payable to a sole parent is currently \$255.65 per week after tax.

⁹ The maximum rate of Accommodation Supplement payable is \$225 per week to a sole parent with two or more children living in central or northern Auckland.

- 38 There is a risk that the payment will provide an incentive for some people on temporary permits to prolong stays in New Zealand or to protract Court proceedings. The mechanism has, however, been designed to minimise this incentive by requiring confirmation to both Work and Income and the Department of Labour of the ongoing Court proceedings.
- 39 There is also a risk that providing financial support in these situations may be seen as incentivising the abduction of children rather than the following through of custody and access proceedings in the child's country of habitual residence.
- 40 An associated risk is that that where resolution of the Family Court proceedings is prolonged, a parent (and any children) on a temporary permit may become well settled and may attempt to make a case for residence on that basis. The Department of Labour are aware of this risk.
- 41 Finally, there is a risk that providing this form of assistance may dissuade other governments from providing similar types of assistance to New Zealand citizens in their country. On balance, my view is that it is important to get the support in place while we continue to work with other governments in the medium-to-long term.

Consultation

- 42 The Ministry of Justice, the Ministry of Foreign Affairs and Trade, the Department of Labour and the Treasury have been consulted on this proposal. Their comments have been incorporated into the paper.

Ministry of Justice Comment

- 43 The Ministry of Justice has concerns with the proposal in relation to the fourth category: a parent who is a New Zealand resident or citizen and in New Zealand because they have wrongfully removed the children from their country of habitual residence. If an order is made to return the children then the abducting parent may be eligible for financial assistance under the proposal. The Ministry is concerned that it sends the wrong message to abducting parents and gives the appearance of condoning the child's abduction. It may also act as a disincentive for people to attempt to reach agreement in the country of the children's habitual residence about where the children will live.
- 44 The detail of the proposal has been improved during consultation and the Ministry of Justice supports the qualifying criteria which links assistance to children's needs, hardship and means testing. The Ministry however has residual concerns because of the significant risks identified above. These risks that can only be minimised by careful policy guidance for applying the legislation governing special needs grants in these circumstances.

Financial implications

- 45 It is difficult to estimate the number of applications that might be received for financial assistance. The number of applications made under the Hague Convention varies considerably from year to year. Not all of these applications result in an order, either because children are returned voluntarily or the application is not successful (refer Table 1 below). It is also very difficult to assess the numbers of parents who may be here on a temporary permit waiting for a dispute to be resolved. The Department of Labour does not hold any information about numbers of parents who enter New Zealand specifically to resolve Family Court cases.

Table 1: Hague Convention Applications and Judicial Orders 2003-2006

	For children to be returned from New Zealand		For children to be returned to New Zealand	
	Applications	Final judicial orders	Applications	Final judicial orders
2003	27	13	33	12
2004	29	16	38	14
2005	34	20	38	20
2006	31	18*	61	11*

* The figures for final judicial orders for 2006 are not yet complete because not all applications have been considered.

- 46 For costing purposes it has been assumed that around 10% of Hague Convention cases represent a situation where a parent has no means of financial support and is in hardship. It has been assumed that similar number of voluntary cases will also meet these criteria.
- 47 Table 2 below sets out the estimated annual cost of providing financial assistance in Hague Convention cases where a parent is in New Zealand to resolve a custody and access dispute. Estimates are provided for average durations of payment of 12, 24 and 36 months, where the maximum payment rate is received, are CPI-adjusted, and assume that the average number of grants per year is five.

Table 2: Estimated Cost of Providing Assistance to Parents involved in Hague Convention Cases and in Cases Where a Parent is in New Zealand to Resolve a Custody and Access Dispute

	Estimated Expenditure		
	12-month duration	24-month duration	36-month duration
2007/2008	\$120,000	\$250,000	\$370,000
2008/2009	\$120,000	\$250,800	\$380,000
2009/2010	\$120,000	\$250,900	\$380,000
2010/2011	\$130,000	\$260,000	\$390,000

- 48 The estimated increase in expenditure on Special Needs Grants is set out in Table 3 below. This assumes an average of five grants per year and a payment duration of 24 months, but for the following reasons I anticipate that actual expenditure will be less:
- some people will receive less than the maximum rate of analogous Accommodation Supplement;
 - some cases will be resolved very quickly (for example, after one Court hearing);
 - it will not be sustainable for many people to rely on this support for an extended period and other options for support will found (for example, applying for a work permit and working in New Zealand, or working in Australia, or applying for Australian residency at the earliest opportunity and after two years gaining access to Australian social security benefits).

- 49 I propose that this expenditure be funded from an underspend in the Training Incentive Allowance (TIA). This underspend relates to lower than forecast expenditure in this appropriation.

Table 3: Changes to Appropriations

Vote Social Development Acting Minister Steve Maharey	\$m – increase/(decrease)			
	2007/08	2008/09	2009/10	2010/11 and outyears
Benefits and Other Unrequited Expense: Training Incentive Allowance (funded by revenue crown)	(0.250)	(0.251)	(0.251)	(0.260)
Benefits and Other Unrequited Expense: Special Needs Grants (funded by revenue crown)	0.250	0.251	0.251	0.260

Human rights implications

- 50 At this time I do not propose to provide financial assistance to New Zealanders who go to a foreign country to attend to custody and access disputes in situations where the child is not required to return to that country pursuant to the Hague Convention. Not providing assistance to a parent in this situation may be seen as inequitable.
- 51 I will therefore be directing officials from the Ministry of Social Development to closely monitor the provision of this financial assistance.

Legislative implications

- 52 The introduction of a new part to a Ministerial Welfare Programme does not require any change to legislation. Following approval from Cabinet, I will sign an amendment to the Special Needs Grants Ministerial Welfare Programme.

Regulatory impact and compliance cost statement

- 53 A regulatory impact and compliance cost statement is not required because the proposal does not result in an amendment to legislation or regulation.
- 54 Where the parents concerned apply for temporary permits to enable them to remain in New Zealand to resolve custody matters, these would be considered in line with normal policy on a case-by-case basis.

Gender implications

- 55 The proposal is gender neutral, although anecdotal evidence would indicate that the majority of applicants will be women.

Disability perspective

56 There are no specific implications for people with a disability.

Publicity

57 The amendment to the Special Needs Grants Ministerial Welfare Programme will be published in *New Zealand Gazette* and tabled in the House of Representatives. The Ministry of Social Development will provide information concerning the availability of financial assistance under this proposal to the Department of Labour, the Ministry of Foreign Affairs and Trade and the Ministry of Justice.

Recommendations

58 It is recommended that the Committee:

- 1 **note** that the Hague Convention on the Civil Aspects of Child Abduction is an international treaty that seeks to protect children from the harmful effects of their wrongful removal or retention across international boundaries, to ensure the prompt and safe return of children to their country of habitual residence and for decisions on care and contact to be made by a Court in that country, and has been incorporated into New Zealand law in the Care of Children Act 2004;
- 2 **note** that people who are in New Zealand on temporary immigration permits do not have access to financial assistance under the Social Security Act 1964 and that when people leave New Zealand most assistance ceases immediately;
- 3 **note** that the following groups of people have been identified as currently being unable to access any financial assistance through the social support system:
 - 3.1 a parent, in New Zealand on a temporary permit, who has accompanied a dependent child or children required to be returned to New Zealand in compliance with an order made in compliance with the Hague Convention;
 - 3.2 a parent, in New Zealand on a temporary permit, who has voluntarily returned to New Zealand with a dependent child or children in order to resolve a custody and access dispute;
 - 3.3 a parent who has entered New Zealand on a temporary permit as a partner of a New Zealander, and who remains in New Zealand when the relationship ends in order to resolve a custody and access dispute; and
 - 3.4 a parent who is in New Zealand as a New Zealand permanent resident or citizen, but accompanies overseas a dependent child or children required to return to the country of habitual residence of the child or children, pursuant to an order made in compliance with the Hague Convention.
- 4 **note** that since the beginning of 2007, the Ministry of Social Development has been made aware of three applicants who are in one of the groups identified in recommendation 3 above, who are in financial hardship for whom no provision is currently available through the social support system;

- 5 **agree** that a new section be inserted into the Special Needs Grants Ministerial Welfare Programme (a Welfare Programme approved under section 124(1)(d) of the Social Security Act 1964) to allow payment of non-taxable non-recoverable discretionary hardship grants in the situations outlined in recommendation 3 above;
- 6 **agree** that the payment will be subject to the following parameters:
- 6.1 an applicant must be accompanying a dependent child or children in New Zealand or in another country pursuant to an order to return the child to that country made pursuant to the Hague Convention on the Civil Aspects of Child Abduction; or in New Zealand while analogous custody and access proceedings are resolved in the New Zealand Family Court;
 - 6.2 an applicant must be legally present in New Zealand but not legally able to work in New Zealand, or, if legally able to work, unable to find suitable employment;
 - 6.3 an applicant must be the primary caregiver of a dependent child who is the subject of an order made in compliance with the Hague Convention, except for the situation referred to in recommendation 3.3 above, where a parent is in New Zealand on a temporary permit having voluntarily returned to New Zealand with a dependent child or children in order to resolve a custody and access dispute;
 - 6.4 an applicant must have exhausted or be pursuing all other avenues of financial support that might reasonably be available to him or her;
 - 6.5 payment shall be contingent on sufficient evidence being received that the applicant's immigration status is legal and that there are in fact active Court proceedings concerning the child's care, contact and welfare;
 - 6.6 payment shall be granted for set periods which will be related to the timetable for Court proceedings, and the applicant will also be subject to the standard requirement to advise the Ministry of Social Development of any change in circumstance that may affect their payment;
 - 6.7 payment shall cease when the applicant, if unable to work legally in New Zealand, receives a residence or work permit and obtains suitable employment; leaves the country; or, in the case of the applicant succeeding in gaining day-to-day care of the child or children, 28 days after the date on which the final parenting order is made;
 - 6.8 payment will be made on a weekly basis up to a maximum rate equivalent to sole parent rate of main benefit plus the applicable rate of Accommodation Supplement that the applicant would receive if a New Zealand resident; and
 - 6.9 any income received by the applicant will reduce the payment of the grant dollar for dollar.
- 7 **note** that it is difficult to estimate the number of parents who will qualify for support and hence the costs of providing support, as the number of Hague Convention cases and judicial orders vary from year to year and only a proportion of the cases will be a parent and child with no other means of financial support;

- 8 **approve** the following fiscally neutral adjustment to appropriations to provide financial assistance to adults accompanying dependent children involved in custody and access disputes in the child's country of habitual residence with no impact on the operating balance or debt;

Vote Social Development Acting Minister Steve Maharey	\$m – increase/(decrease)			
	2007/08	2008/09	2009/10	2010/11 and outyears
Benefits and Other Unrequited Expense: Training Incentive Allowance (funded by revenue crown)	(0.250)	(0.251)	(0.251)	(0.260)
Benefits and Other Unrequited Expense: Special Needs Grants (funded by revenue crown)	0.250	0.251	0.251	0.260

- 9 **agree** that the changes to appropriations for 2007/2008 and outyears be included in the 2007/2008 Supplementary Estimates and that, in the interim, these expenses be met from Imprest Supply;
- 10 **invite** the Minister for Social Development and Employment to approve and sign an amendment to the Special Needs Grants Ministerial Welfare Programme to give effect to the decisions in recommendations 5 and 6 above; and
- 11 **direct** the Ministry of Social Development in consultation with the Ministry of Foreign Affairs and Trade, the Ministry of Justice and the Department of Labour to monitor the uptake of financial assistance to adults accompanying dependent children who are involved in custody and access disputes, and to report to the Minister for Social Development and Employment by March 2008, including, if necessary, any recommendations for changes to the payment criteria.

Hon Steve Maharey
Acting Minister for Social Development and Employment

Date:

The Hague Convention on the Civil Aspects of Child Abduction

The Hague Convention on the Civil Aspects of Child Abduction (the Hague Convention) is an international treaty that aims to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the country of their habitual residence, as well as to protect the child's right to continuing contact with both parents.

Proceedings under the Hague Convention concern the proper forum for the resolution of issues relating to the care of and contact with children. They do not provide the substantive resolution of these issues. An order for return simply concerns the forum in which the custody and access issues relating to children will be resolved. An order for return also gives effect to the rights of custody or access of the other parent.

Under the Hague Convention every state must designate a Central Authority to discharge the duties imposed by the Convention. The Secretary of Justice is the Central Authority for New Zealand exercising all the powers and duties of the Convention. The Hague Convention was implemented in New Zealand law in the Guardianship Amendment Act 1991 (since repealed and replaced by provisions in the Care of Children Act 2004).

The Convention allows a parent to seek the return of a child to New Zealand if the child has been taken from New Zealand to another Convention country without the consent of the left-behind parent who has rights of custody or access to the child. If a child is returned to New Zealand from another country under the Convention, any dispute as to issues of parental responsibility must be resolved by the courts in New Zealand.

The Convention also allows a parent to seek the return of a child from New Zealand to another Convention country, where the child has been removed from that country without the knowledge or consent of the left-behind parent who has rights of custody or access to the child. In these cases any dispute as to issues of parental responsibility must be resolved by the courts in the requesting country.

APPENDIX 2

s9(2)(a)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: [Alex McKenzie](#)
To: s9(2)(a) [Bailey, Patricia](#); s9(2)(a)
Subject: Hague Convention Paper
Date: Wednesday, 22 August 2007 1:49:58 pm

Afternoon all

The Hague Convention paper was ticked off by POL this morning. It will go back to Cabinet on Monday and the Minister will sign the amendment to the SNG Welfare Programme after Cabinet, effective Tuesday 28 August.

Thank you to you all for your assistance in getting this paper through.

Regards

Alex

s9(2)(a) wrote:

Dear Alex

Further to your correspondence with Trish, could you please copy me in to future progress reports regarding this Cabinet paper.

Many thanks.

Regards

s9(2)(a)

s9(2)(a) | Policy Manager, Family Law and Medico-Legal | Public Law | **Ministry of Justice** | Level 12, Charles Fergusson Building | PO Box 180 WELLINGTON | s9(2)(a)

From: Bailey, Patricia
Sent: Tuesday, 21 August 2007 8:45 a.m.
To: s9(2)(a)
Subject: Fwd: Re: Financial Assistance: Hague Cases

Hi s9(2)(a)

Looks like the paper will take another week or so to get through.

Kind regards

Trish Bailey
Central Authority
Ministry of Justice
Tahu o te Ture
PO Box 180
Wellington
New Zealand
++64 (04) 494 9732 telephone
++64 (04) 499 0279 fax

Patricia.Bailey@justice.govt.nz

>>> Alex McKenzie §9(2)(a) [@msd.govt.nz](mailto:alex.msd@govt.nz) 20/08/2007 3:52 p.m. >>>
Hi Trish

The paper did not go through Cabinet today and I understand it has been deferred to POL this Wednesday. Apparently the issue was that the Minister of Immigration had not been briefed on the paper.

Will let you know when things are clarified. What it means is that Cabinet sign off won't happen until next Monday (27th).

The §9(2)(a) case to which you refer, we can continue to pay the benefit for 28 days and at this stage the new provision will come into force before that period expires so Work and Income will contact the person once the new provision is available.

Regards

Alex

Patricia Bailey wrote:

>Hello Alex,

>

>I wonder if you may be able to assist. There is a young woman who is to return to Australia this Wednesday the 22nd August, accompanying her young baby ordered to return under the requirements of the Hague convention.

>

§9(2)(a)

>

>I would appreciate if her case worker §9(2)(a) could be advised of the new initiative / assistance that may become available to §9(2)(a) within the next week or two. It would make the return less stressful for the mother if the mother had access to some financial assistance on her return.

>

>

>Kind regards,

>

>Trish Bailey

>Central Authority

>Ministry of Justice

>Tahurangi

>PO Box 180

>Wellington

>New Zealand

>+64 (04) 494 9732 telephone

>+64 (04) 499 0279 fax

>

>Patricia.Bailey@justice.govt.nz

>

>

>=====

>

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Alex McKenzie
Ministry of Social Development
P O Box 1556
Wellington 6001
NEW ZEALAND

s9(2)(a)

[REDACTED]

[REDACTED]

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Better Page: <http://www.orfu.co.nz>

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NEW ZEALAND

s9(2)(a)



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RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: [Alex McKenzie](#)
To: [Patricia Bailey](#)
Cc: s9(2)(a)
Subject: Re: Financial Assistance: Hague Cases
Date: Monday, 20 August 2007 3:53:06 pm

Hi Trish

The paper did not go through Cabinet today and I understand it has been deferred to POL this Wednesday. Apparently the issue was that the Minister of Immigration had not been briefed on the paper.

Will let you know when things are clarified. What it means is that Cabinet sign off won't happen until next Monday (27th).

The s9(2)(a) case to which you refer, we can continue to pay the benefit for 28 days and at this stage the new provision will come into force before that period expires so Work and Income will contact the person once the new provision is available.

Regards

Alex

Patricia Bailey wrote:

>Hello Alex,

>

>I wonder if you may be able to assist. There is a young woman who is to return to Australia this Wednesday the 22nd August, accompanying her young baby ordered to return under the requirements of the Hague convention.

>

s9(2)(a)

>

>I would appreciate if her case worker s9(2)(a) could be advised of the new initiative / assistance that may become available to s9(2)(a) within the next week or two. It would make the return less stressful for the mother if the mother had access to some financial assistance on her return.

>

>

>Kind regards.

>

>Trish Bailey

>Central Authority

>Ministry of Justice

>Tahu o te Ture

>PO Box 180

>Wellington

>New Zealand

>++64 (04) 494 9732 telephone

>++64 (04) 499 0279 fax

>

>Patricia.Bailey@justice.govt.nz

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s9(2)(a)

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RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: s9(2)(a)
To: s9(2)(a)
Subject: Re: Paperre financial assistance.
Date: Wednesday, 8 August 2007 9:36:21 am

Hi s9(2)(a)

Thanks for this. We are happy to remove reference to the parent "residing" in NZ and just say that they are "in " NZ.

I look forward to getting your other comments this morning,

s9(2)(a)

s9(2)(a) wrote:

>Hi s9(2)(a)

>I will get something back to you tomorrow. I want to clarify something
>now. The Ministry is concerned about the 4th category. My comment
>this morning however was in respect of how it is described. You talk of
>providing assistance to a parent who "resides" in New Zealand. They
>are 'in' New Zealand because they have wrongfully removed their children
>here. The way it is described suggests that they ordinarily live here
>which is not the case as the HC could not be invoked if that was the
>case. One of the preliminary steps that has to be established is that
>the child was habitually resident in the country they came from.

>Regards

>

>-----Original Message-----

>From: s9(2)(a) [mailto:s9(2)(a)@msd.govt.nz]

>Sent: Tuesday, 7 August 2007 10:24 a.m.

>To: s9(2)(a); Alex McKenzie

>Subject: Re: Paperre financial assistance.

>

>Dear s9(2)(a)

>

>Thank you for your voicemail message of this morning outlining your
>concerns. I have summarised them as follows and have set out our
>comments in italics:

>

>You do not agree with the inclusion of the "fourth bullet" group of
>applicants -New Zealand parents who have to return to another country
>accompanying a dependent child who is the subject of a Hague Convention
>order.

>

>/Our primary comment is that the four categories of applicants were
>established in our June paper to our Minister and accepted by him at
>that time. We strongly believe that there is a justification for
>including this fourth group and that not to do so would make it less
>likely that children would be returned to their countries of habitual
>residence by New Zealand parents. We do not agree that these people
>should not be considered New Zealand residents./

>

>You feel that the risks outlined in paragraph 42 have been too lightly
>dismissed.

>

>/We would be happy to incorporate some more of your //views on this
>point.// Could you please send me some text for inclusion by lunchtime
>tomorrow./

>
>You would like making application for residency to be included as a
>separate criterion
>
>/We consider that this point is already covered by the requirement that
>the person must make use of all other available resources, which would,
>of course, include employment. We will ensure that this point is brought
>out in our operational guidelines./

>
>s9(2)(a) we would of course be willing to incorporate any Departmental
>comment the Ministry of Justice would like to provide if you still do
>not feel that the paper reflects your views. If you wish us to do this,
>please send me the text also by lunchtime tomorrow.

>
>Yours

>
>s9(2)(a)

>
>s9(2)(a) wrote:

>
>
>
>
>>Hi s9(2)(a)
>>Hows progress on the paper? Could you send me a copy or give me a call
>>
>>
>
>
>
>

>>please?
>>Regards,
>>S
>>* *

>>
>>*s9(2)(a) *| Senior Adviser | Family Law and Medico-legal |
>>Public Law Phone (04) 494 9929| Email
>> s9(2)(a)
>><blocked::mailto:s9(2)(a)>
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>

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s9(2)(a)

Policy Analyst
Working Age People's Policy
Ministry of Social Development

s9(2)(a)

*

*

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

From: s9(2)(a)
To: s9(2)(a)
Subject: Q6MLPK.doc
Date: Wednesday, 8 August 2007 12:30:53 pm
Attachments: [Q6MLPK.doc](#)

Hi s9(2)(a)

I am trying to ensure that the reference to the Convention and/or CoCA are all correct, but am a bit confused about orders that are made from overseas for parents to come to NZ. Presumably they are not made under CoCA but under the bit of legislation of the foreign country that incorporates the Hague Convention? Perhaps I am just getting mixed up. Anyway, I have highlighted in green every time I have made a reference to the order and would be very grateful if you could possibly take a look.

If you don't have time, can you please leave a message on my phone about what the rules should be (I am just going to a one hour meeting).

Thank you

--

s9(2)(a)
Policy Analyst
Working Age People's Policy
Ministry of Social Development

s9(2)(a)

*
*

From: s9(2)(a)
To: s9(2)(a)
Subject: Financial assistance paper
Date: Wednesday, 8 August 2007 10:41:01 am
Attachments: [CabpaperHCv FINAL DRAFT VERSION.doc](#)
Importance: High

Hi s9(2)(a),

Comment on paper attached. We would like a Ministry comment inserted into the paper.

"The Ministry of Justice has concerns with the proposal in relation to the 4th category: a parent who is a NZ resident or citizen and in NZ because they have wrongfully removed the children from their country of habitual residence. If an order is made to return the children then the abducting parent may be eligible for financial assistance under the proposal. The Ministry is concerned that it sends the wrong message to abducting parents and gives the appearance of condoning the child's abduction. It may also act as a disincentive for people to attempt to reach agreement in the country of the children's habitual residence about where the children will live.

The detail of the proposal has been improved during consultation and the Ministry supports the qualifying criteria which links assistance to children's needs, hardship and means testing. The Ministry however has residual concerns because of the significant risks identified above. These risks that can only be minimised by careful policy guidance for applying the legislation governing special needs grants in these circumstances."

Family Court statistics are at reception on level 10.

Regards

s9(2)(a) | Senior Adviser | Family Law and Medico-legal | Public Law
s9(2)(a)

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Thank you.

From: s9(2)(a)
To: alex.mckenzie001@msd.govt.nz; Bailey, Patricia; s9(2)(a)
Subject: CabpaperHCv_4.doc
Date: Friday, 27 July 2007 10:27:14 am
Attachments: [CabpaperHCv_4.doc](#)

s9(2)(a)

Cabinet paper is looking much better. Thanks for incorporating our feedback. Some tweaks in track changes attached.

Regards

s9(2)(a)

s9(2)(a) | Policy Manager, Family Law and Medico-Legal | Public
Law | **Ministry of Justice** | Level 12, Charles Fergusson Building | PO Box 180
WELLINGTON | s9(2)(a)

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