

**WENDY AND MARK STEWART
SUBMISSION FOR ENQUIRY INTO
ADOPTION OF CHILDREN FROM OVERSEAS**

Thankyou for the opportunity to provide this submission. We have already adopted a little girl from China and are looking to adopt again in the near future.

1. Inconsistencies between state and territory approval process

In South Australia the most obvious inconsistency is the age restriction. Not only is the required age gap of 45 years between parent and child the lowest of any State, it also applies to either parent. In other words, a 47 year old with a 25 year old spouse is no more able to adopt a 1 year old child than a couple who are both aged 47.

To quote Prime Minister Howard in a statement he made just yesterday,

"...I have never had a view that age is a disqualifying factor. Capacity is the thing that counts."

(ABC TV 7.00pm News, 20 April 2005).

We could not agree more. In our opinion there is no genuine basis for any disqualifying factors when deciding on who should be allowed to adopt. Other States have considerably more lenient age restrictions than South Australia. However, some also still discriminate, totally unfairly in our view, against same sex couples or single parents.

Our clear preference would be for legislation in line with Regulation 35 of the Victorian Adoption Regulations 1998 wherein age is one of a number of factors, including health, personality, financial circumstances and stability of character, that are taken into consideration when considering the suitability of someone

wanting to adopt. In other words, they have to consider if you have the capacity to be a good parent.

One further issue we would like to raise in terms of inconsistencies within our State's legislation is the process for reviewing decisions. In South Australia, Regulation 16 of the Adoption regulations 2004 states that a person who is dissatisfied with a decision by the Chief Executive of the Government agency with responsibility for overseas adoption has to appeal to the Minister. The Minister can choose to convene an adoption board to review the decision but may also dismiss the request for review if he/she considers it "frivolous or vexatious" or if it has already been subject of a "review" (the Regulations do not state what kind of review). There is no right of appeal on the Minister's decision.

Since the Chief Executive and the Minister are required to have a significant working relationship, it would clearly be in the interests of procedural fairness for such decisions to be taken elsewhere, as in New South Wales and Victoria where reviews are undertaken by independent tribunals - refer S189 of Adoption Act 2000 (NSW) and S129A of Adoption Act 1984. Please note that we are not claiming any impropriety, just that it is important to remove any perceptions of bias that could undermine confidence in the review process.

2. Inconsistencies in benefits and entitlements

Adoptions from many countries, including China, only occur when the child is over 26 weeks old. As a result, those adopting from such countries are the only new parents to miss out on the Maternity Payment. Even multi-millionaires can receive it but not us.

To understand why this is particularly unfair, you need to consider the direct cost of overseas adoptions which are often over \$30,000. Then you have to consider the indirect costs. Setting up for an adoptive child is at least as expensive as

setting up for a new born baby, often more so if you factor in shoes, clothes and other items required for an older child. There are also hidden costs, such as payments for medical and life insurance and superannuation, that are effectively compulsory for adoptive parents attempting to prove their willingness to provide for their child.

Finally there is the requirement in many States for at least one parent to take extended time away from the workplace. The Human Rights and Equal Opportunities Commission (HREOC) addressed this matter in its paper, *A Time to Value – Proposal for a National Paid Maternity Leave Scheme* (2002) with the finding that such schemes should include at least one adoptive parent (Item 14.5). We would go further and suggest that both adoptive parents in the case of couples adopting have access to paid leave. This is due to the unique nature of the bonding process with an adoptive child, many of whom have to deal with severe separation anxiety, and also the requirement for both parents to travel overseas.

Please note that the recommendation 4 of the HREOC paper cited above recognises that the age of an adoptive child is not relevant when determining an entitlement to adoption leave. The same arguments are valid for the Maternity Payment.

As adoptive parents, we have promised to love and support our child, to educate her and give her every possible opportunity. We even provided several letters to that effect to the Chinese authorities. Given the present Commonwealth Government's obvious desire to increase Australia's population, we believe that support for parents prepared to make such commitments would not go amiss. In addition to the Maternity Payments and paid adoption leave schemes the Commonwealth could forgo some or all of the immigration fees involved in overseas adoptions, or allow for such fees, along with State Government fees, travel costs, donations to overseas orphanages etc, to be tax deductible.

3. Other Issues

We cannot speak for other States but in South Australia there is an expectation for adoptive parents to celebrate their child's original culture and ensure that they are aware of their background. This is something we have taken on willingly and along with a number of others we are actively developing programs to assist other adoptive parents in these endeavours. However, we are hampered in these efforts by legislation that was designed to provide privacy for those involved in intra-country adoptions. Under the law as it stands we are even technically at risk of prosecution within this State if we make any public display of our child's origins or even our own status as adoptive parents. We respect the reasons for such legislation but do not believe it applies to our own situation.

The answer to this would be Commonwealth legislation covering overseas adoptions. State agencies could still be accredited to provide the necessary services but working to a process, and fee structure, that would apply nationwide and therefore provide a level of consistency that is currently lacking.

Thank you for your time.

Wendy and Mark Stewart


21 April 2005