Families with Children from China–Australia (FCC)

Submission to the Commonwealth Parliamentary Inquiry into the Adoption of Children from Overseas

Section 1

Summary

Families with Children from China – Australia (FCC)

FCC was incorporated in March 2004 in response to the growing need for a dedicated family support group representing those who have adopted children of Chinese ethnicity. The adoption program with China has grown steadily since the introduction of the bilateral agreement in Dec 1999 to the point where it is now the largest program in Australia.

Families with Children from China (Australia) is the only national parent group that acts solely for families who have adopted or are in the process of adopting children of Chinese ethnicity.

Our children enjoy a common cultural heritage and our group strives to keep our children connected to the countries of their birth and to each other. As parents, we also draw great strength from the friendships with like-minded people who share our adoption experiences.

The association's three key goals are:

a) to support families who have adopted children of Chinese ethnicity through post-adoption and Chinese culture programs
b) to encourage adoption of children of Chinese ethnicity and support waiting families
c) to advocate for and support children remaining in orphanages in China.

The terms of reference for the inquiry are that “the committee shall inquire into and report on how the Australian Government can better assist Australians who are adopting or have adopted children from overseas countries with particular reference to: Any inconsistencies between state and territory approval processes for overseas adoptions and Any inconsistencies between the benefits and

entitlements provided to families with their own birth children and those provided to families who have adopted children from overseas."

Families with Children from China would like to thank the Standing Committee on Family and Human Services for investigating the issues associated with intercountry adoption in Australia. Although adoptions are primarily the duty of the states, the Federal Government does have specific responsibilities in relation to intercountry adoption. Under the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, intercountry adoptions are under the jurisdiction of the Federal Government. The Commonwealth Central Adoption Authority is contained within the Federal Attorney General's Department. The Central Authority has delegated authority to the states but they remain the body ultimately responsible for intercountry adoptions. Thus, legislation, practices and policy that prevent willing, suitable families from adopting children in need of a family should be of interest to the Federal Government.

In this submission, FCC will provide background information for the committee with evidence of inequities and inconsistencies, drawing heavily on our members' experience of the adoption process.

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1. State Inconsistencies

The issue of differences in legislation and practice in intercountry adoption between states is significant for many adoptive families and adoption applicants. While some differences are relatively minor, others are highly significant for particular applicants and some applicants move states in order to adopt in a different jurisdiction.

1.1 Age restrictions

Currently, NSW, ACT, Queensland and Victoria have no upper age limit for adoption applicants. In these states, applicants are assessed on their ability to parent an adopted child with age being one factor that is considered in determining the suitability of applicants. However, this is not the case for the other jurisdictions. In South Australia, legislation requires that there must be no more than a 45-year age gap between the oldest parent and the child to be adopted. In the Northern Territory and Tasmania there is a maximum of 40 years between the oldest parent and the child for first adoption and 45 years for second and subsequent adoptions (in Tasmania this requirement is not legislated but it is strictly enforced nonetheless). In Western Australia, the requirements are quite complex. Applicants seeking to adopt their first child as a couple can have a maximum difference allowed between the child and the youngest of the applicants of 45 years. An applicant in WA who is single and seeking to adopt their first child can have a maximum age difference of 45 years. The maximum age difference allowed between the child and the oldest applicant is 50 years. For those couples seeking to adopt a second or subsequent child the age limits increase to 50 years between the child and the youngest applicant, and 55 years between the child and the oldest applicant. For single applicants seeking to adopt a second child the age gap cannot be more than 50 years.

These restrictions do not take into account parenting ability but result in the exclusion of many applicants who would make excellent parents to a child in need of a family. Such rules are extremely frustrating for adoption applicants because they know that while they might be excluded from adoption in one state another might deem them eminently suitable. These rules also create a potential for conflict with overseas countries as there have been numerous occasions (in South Australia particularly) where a country has assessed applicants as suitable parents for a particular child and the department involved has, without informing those parents, rejected the child on the basis that the child is too young (in one case a family was told that if a child was 3 days "too young" the child would still be rejected). This is of course most distressing for the parents, but will also mean in effect, that a child so rejected will remain without a family for a further period while their paperwork is reprocessed. This cannot be deemed to be in the best interests of the child.

Arbitrary age restrictions are also out of line with current Australian practices where childbearing is delayed and older parents are not unusual. Older applicants state that they are often more financially comfortable than younger applicants might be and are willing and often more able to invest time in parenting. It is difficult for adoption applicants to understand why arbitrary age restrictions apply to them when they can observe older parents of biological children doing a great job. The former Deputy Prime Minister, Tim Fischer, is a prominent example of someone who became a father for the first time in his mid forties. Amongst the general public Mr Fischer is universally recognised as an excellent father but had he sought to become an adoptive parent at that time he and his wife would have been excluded in Western Australia, South Australia and Tasmania. It is difficult to understand why such exclusions are in the best interests of children in need of a family. FCC agrees with the Prime Minister, John Howard, who recently stated "I have never held a view that age is a

disqualifying factor. Capacity is the thing that counts. And capacity is found in different quantities in different people at different stages of their lives."

In addition, arbitrary age restrictions for adoption placements but not for foster care or permanent care placements are inconsistent. In each of the states with adoption age restrictions foster children are placed with older parents because it is rightly considered that the ability of the carer to provide what the child needs is the primary consideration. It should be similarly considered that adoption applicants should be assessed on their merits with age being one factor to consider. Clearly, each country that sends children to Australia for adoption has their own considerations with age and adoptive families believe that it is right that this should be the case.

- **FCC recommends that the age of adoptive applicants be considered as one of the components in the overall assessment rather than the arbitrary cut off used by some states.**

1.2 Marital status

There are different requirements with regards marital status and length of relationship between jurisdictions. In NSW, Victoria, Western Australia, South Australia and the ACT married or *de facto* couples with a relationship or marriage length of between 2 and 5 years may apply. In Queensland, Tasmania and the Northern Territory couples must be married to apply, with a relationship or marriage period of 2-3 years minimum required. In NSW, Victoria, Western Australia and the ACT single applicants may adopt but in Queensland, Tasmania and South Australia they are excluded. Single applicants are accepted in the Northern Territory if they wish to adopt from a country in which the adoption is completed overseas (applicants are told that local adoption orders may not be granted to a single person).

Since *de facto* relationships are accepted in other areas of law it is difficult to understand why the distinction is made between married and *de facto* relationships in adoption law in some states. Applicants usually deal with this situation by getting married to meet the requirement but this should be unnecessary.

The issue for single applicants is more difficult and the only recourse for those in states where singles are excluded from adopting is to move states and this happens regularly. However, it is not always clear to applicants that this will be necessary since the law is not always clear cut. In South Australia it is technically possible for singles to adopt however, several applicants have been in the situation where they have been approved as adoption applicants but subsequently a departmental decision has been made that since they are single their file will not be sent overseas. One applicant in this situation was approved as an adoption applicant in South Australia but was told she would never have a child placed with her and so she moved to Victoria. In Victoria she had to begin the application process from the beginning (given the high adoption processing costs in Victoria and South Australia this was an expensive procedure), was approved again (in Victoria) and her file sent to China. This applicant adopted her little girl and after remaining in Victoria for some time, returned to her family and social support network in South Australia. She would like to adopt another child but would need to move out of South Australia again to do so.

This prevention of adoption by single people in some states is extremely frustrating for applicants because they know that in a different state they would not be excluded based on marital status. The wholesale exclusion of single applicants is inconsistent since it is recognised that children in need of alternative care are better cared for by one suitable caregiver than in institutional care and in each of these states local children in need of alternative care are routinely placed with single foster parents. This exclusion also does not recognise that single applicants may have the firm support of extended family and close friends and

ignores the fine job that the many non-adoptive single parents do in raising their children. Single applicants should not be excluded solely based on the fact that they are single, but assessed on their merits. The comparison for the children who are available for intercountry adoption is not the choice of being raised in a two parent family or a single parent family but the choice of being raised in institutional care or a single parent family. FCC has many single members who have demonstrated they are excellent parents to children adopted from China.

- **FCC recommends that all jurisdictions should consider *de facto* relationships as equitable to marriage when it comes to eligibility to submit an adoption application. Further, all jurisdictions should allow single applicants to be appropriately assessed as adoptive parents and their files sent to countries where they will meet the adoption eligibility criteria.**

1.3 Free speech in relation to adoption

In order to protect children, most jurisdictions require that the identity of children being placed for adoption not be published until the adoption is complete. Adoptive families understand the reasoning behind this and are happy to comply. However, the situation in South Australia is different in that it appears that adoptive families may not identify themselves publicly at any time without risk of prosecution. This situation came to light earlier this year when the South Australian Minister for Children Youth and Family Services announced that he would not be renewing the license of the Australians Aiding Children Adoption Agency (AACAA), the agency that had hitherto processed South Australian adoptions for thirteen years. This agency had a record of professionalism that was greatly appreciated by both adoptive families in Australian and overseas countries sending children to Australia. As a result of this decision there was an outcry of opposition from the South Australian adoptive community. Many adoptive parents currently being processed were concerned about the decision made to move the whole adoption process within the government department. In

the groundswell of disagreement, attempts were made to bring this topic up in the media. The minister's department enclosed a fact sheet in all correspondence to current applicants that said in part "Under the law, it is an offence to publish in the media the name or names or information tending to identify people who are a party to an adoption. The maximum penalty for a breach of this part of the Act is $20 000...The law still applies where the adoption order has already been granted." It was clear that adoption applicants were being told that they could not discuss the situation they found themselves in without risk of prosecution. As a result many objectors who wished to air their concerns on talkback radio were unable to discuss publicly their own adoption stories. Adelaide ABC talkback 891 hosts interviewed the Minister, Jay Weatherill, on this media ban on two separate occasions. Minister Weatherill was unable to give his opinion on whether people would be prosecuted for phoning a radio talkback program. The ABC sought legal advice and advised the adoptive community that they could not take calls for fear of people being recognised or discuss individual cases. Minister Weatherill was again asked one week later in regard to a rally on Parliament steps opposing the changes, whether the adoptive community would be prosecuted for speaking out on the steps of parliament. Once again he could not give his assurances that this would not be the case. The result of the 'media ban' was that the adoptive community was not afforded a voice to oppose the changes that the minister made even though those changes were in direct disregard of a review into the effectiveness of the agency AACAA and the review findings were in favour of the AACAA being retained. This seems to be a direct suppression of free speech.

South Australian applicants are also required to sign a "Statement of Understanding" that reads in part, 'We will seek approval of AFIS regarding any proposed publicity regarding an adopted child who may be in our care." This clause affecting media publishing of adoptive families hampers and prevents all adoptive families from sharing their stories of adoption even after the adoption is completed. It prevents children from being photographed for any achievements

be it in a local school play, football match or an award of higher esteem or from being portrayed participating in cultural events vital to their overall growth. All the things that normal family life would entail and that biological children partake in without the need to ask a government authority. This clause in the adoption act covers every aspect of media representation. This draws the conclusion that adoptive parents do not have the best interests of their children at heart and never will. This is completely unjust and impractical. South Australian adoptive parents and children are gagged for life under this legalisation as it appears to be being interpreted by the current state government.

- **It is the belief of Families with Children from China that adoptive families should not be prevented from publicly speaking about issues that impact adoptive families. Families with adopted children should not have to repeatedly contact a government official for permission every time they or their child are involved in any media representation whether about adoption or a local school event reported in their local paper.**

1.4 Fees and other costs in Australia

1.4.1 Adoption processing fees

Both the federal and state governments subsidise biological parenting in the form of provision of IVF, antenatal, obstetric and postnatal care. This may cost the Federal Government as much as $1.5 billion a year. In contrast, adoption is predominantly user pays and many families find it difficult to adopt because of the cost. However, both the federal and state governments collect fees from adoptive parents. The largest cost to adoptive families in Australia are the intercountry adoption application processing fees paid to the state departments of community services which varies from $2160 in Tasmania to $9700 in NSW (please see Table 1 below).

The jurisdictions with the highest fees (NSW, Victoria and South Australia) have a cost recovery model for intercountry adoption processing. As far as FCC has been able to ascertain intercountry adoption processing is the only service within these departments of community services for which clients are expected to pay for a substantial proportion of the cost of the service provided. NSW is the state within which fees were most recently increased (by nearly 300%) and this increase came into place despite strong protest from adoptive families and others. The NSW government avoided introducing the increase in adoption fees by regulation so the opposition and cross benchers were unable to formally oppose the introduction in parliament (please see NSW Hansard for the debate http://www.parliament.nsw.gov.au/cgi-bin/isys/isyswebext.exe?op=get&uri=/isysquery/irl8d6a/1/doc/#hit1). It is worth noting that while a hardship provision was built into the new fee structure in NSW the household incomes required to demonstrate hardship are very low at $39 100 for a 50% discount and $46 400 for a 25% discount (which would still place the fees higher than every other state except South Australia). In addition, FCC has recently been told by one of its members that the management procedures for the hardship policy have yet to be put in place and applicants who recently requested to be considered under this policy were told that the processing of their application would have to wait until procedures were developed or their application could go straight ahead if they paid full fees. They decided to pay full fees. The situation in NSW is an interesting one because fees were increased despite evidence that increasing adoption processing fees would place some families under financial stress and would not be in the best interests of children in need of placement for adoption (Please see Appendix 5 for the Families with Children from China submission to the NSW Department of Community Services on the subject of increasing adoption fees). This fee increase is an example of how adoption procedures can be substantially changed without legislative review and of how adoptive families lack an avenue for independent review of such changes. It seems amazing that such a change could be made without the approval of the Intercountry Adoption Central Adoption Authority contained within

the Federal Attorney General's Department. Clearly some regulation of the actions of state community services departments is required.

FCC believes that adoption should be about the needs of the children not the wealth of applicants and that intercountry adoption fees should be eliminated, or at the very least substantially reduced in NSW, Victoria, South Australia and the ACT. The reasons for this suggestion are several.

Firstly, each state and territory community services department subsidises local adoption processing in their own departments and in NSW, Victoria and Tasmania they also provide funding to private agencies. This results in adoption processing fees paid by adoptive families either being eliminated altogether (ie families pay no fees for local adoptions) or substantially reduced as compared to intercountry adoption processing fees. This is despite the fact that local adoptions are more expensive to process than intercountry adoptions (staffing rations are much higher in local adoptions). This dichotomy in pricing may well constitute racial discrimination but no applicants have as yet been willing to challenge the fees in court, perhaps because they lack the financial or emotional resources to do so or they fear that there may be ramifications for their application with the department involved. Since all of the departments of community services recognise that high fees are inappropriate for local adoption applicants (perhaps because they consider that high fees would place families under financial stress or because it suggests commodification of children) it should be similarly recognized as inappropriate for intercountry adoption applicants.

Secondly, high adoption processing fees place an onerous burden on families. Intercountry adoption is a costly process. For families adopting from China the costs associated with the required traveling to China, the need for accommodation and a guide, legal costs and a donation to the orphanage to care for the (mostly disabled) children who remain in care is $20 000-30 000. This is a

significant amount of money for average families to gather. However, it is an indication of the attitude that underlies the high fees in some jurisdictions that when the increase in intercountry adoption fees in NSW was being debated in parliament that the Minister for Community Services stated that since intercountry adoption is a costly process it is reasonable to increase the government's revenue gathering from adoptive families (http://www.parliament.nsw.gov.au/cgi-bin/isys/isyswebext.exe?op=get&uri=/isysquery/irl9f8c/4/doc/#hit1).

However, a contrasting view is that the role of government is to assist those who already have a heavy financial burden associated with the addition of a child to their family, not to make it more difficult. There is no doubt that the high costs associated with adoption and the lack of government support for adoptive families results in some suitable families being unable to adopt and places a huge financial burden on others. It is particularly difficult for families who wish to adopt more than once. Financing adoption is not problematic for some families however, others have sold their homes, refinanced their homes, taken up second and third jobs and borrowed money to pay for the costs of adopting their children. Paying the costs of adoption may be particularly difficult for younger, less well established families who may already be struggling to pay a mortgage. That families must have one parent home full time with their child post-adoption for a significant period of time can make it even more difficult. The goal of the departments of community services in each jurisdiction should be to strive to place children in families who can best care for them, not best pay government fees. Adopted children should be considered within a wider framework as being members of Australian society and as such their families should not have onerous burdens imposed on them. The government plays an important role in assisting those who are disadvantaged, and adopted children, by virtue of their background of maternal separation, institutionalisation or abuse, are disadvantaged.

Finally, adoption and birth are comparable methods of family formation under the law and since birth is highly subsidised by government, adoption should be similarly supported. If biological families were required to pay all the costs involved with birth it would be considered outrageous and an unreasonable burden on families. It should be similarly considered that a cost recovery model for adoption processing is inappropriate. It is illogical and frustrating that intercountry adoption applicants should be charged so much more than local adoption applicants for what is essentially the same service. It is similarly illogical and frustrating that adoption processing fees so widely differ between jurisdictions. Greater funding from government is required so that adoption applications can be efficiently processed without placing an onerous burden on adoptive families. It is worth noting that in New Zealand, which is similar to Australia in that adoptions are processed by a government department, no intercountry adoption processing fees are charged.

Table 1. Intercountry and local adoption processing fees in each state

Jurisdiction	First Intercountry adoption	Second and subsequent intercountry adoptions	Local adoptions
NSW	$9700	$6900	$2782
South Australia	$8377	$7450	$1629 1st adoption $1019 2nd adoption
Victoria	$6250	$4950	FREE
Northern Territory	$6100		FREE
ACT	$4154		FREE
Western Australia	$2246		$750
Tasmania	$2280		$1710

Queensland	$2053		$530 or free for special needs

- **FCC believes that adoption should be about the needs of the children not the wealth of applicants and that intercountry adoption fees should be eliminated, or at the very least substantially reduced in NSW, Victoria, South Australia and the ACT.**

1.4.2 Immigration fees

Federally, families pay $1245 in visa application fees to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) for each child they adopt. This amount is usually indexed annually. This payment covers the processing of the child's medical assessment via Health Services Australia (HSA) (all costs associated with carrying out the child's medical are in addition to the DIMIA fee) and the issuing of a permanent resident visa. In the albeit unlikely event that the for whom a visa is originally applied (there have been instances where a child has died between allocation and adoption) the DIMIA fee is not refunded and the same amount would be payable if another child were allocated to the family. Australians living overseas who give birth are not required to pay substantial fees in order to bring their child into Australia and nor should Australian's whose child joins their family via adoption. It is worth noting that New Zealanders who adopt from other countries pay only $140 for their child's visa. In addition to this cost, for families adopting from China, there is an additional payment of $120.00 to be made for the "Grant of Australian Citizenship" The fees paid to DIMIA are substantial at a time when there are many other expenses occurring due to the imminent travel to the child's country.

- **FCC recommends that the Federal Government abolish or significantly reduce the fees associated with immigration and citizenship.**

1.5 Arbitrary rules

Each state has its own rules and procedures that are often arbitrary in nature and can be frustrating, difficult and illogical for adoptive families. One example of this is the different ways in which jurisdictions approach criminal records checks. All adoption applicants are required to have criminal records checks throughout the adoption process. Adoption applicants understand the reason why this is the case and do not have a problem with this happening. All adoption applicants require a criminal records check at least twice (often three or more times) during each adoption application process. In most jurisdictions criminal records clearances are obtained via a federal police name check costing about $35 each. However, in NSW the Department of Community Services insists that clearances are obtained via a fingerprinting check through the NSW Police Service costing $187 each time. Thus, for one couple, over $1000 might be spent just in obtaining criminal records clearances during the adoption process. Not only is this an unnecessary cost (adding to the huge expense of intercountry adoption), it is often practically difficult to do since in many police stations fingerprinting can only be carried out when no one is being held in the cells and it can take several attempts to get it done. In addition, it could be argued that fingerprinting adoption applicants is not a good use of police resources. From a logical perspective is very difficult to understand why fingerprinting is required in NSW but is unnecessary in all other jurisdictions.

Queensland is another state with a rule out of step with other jurisdictions, this time in relation to medical checks. Medical checks are carried out in each state and territory during the adoption process and again, adoption applicants understand and accept the necessity of this. In all jurisdictions but Queensland it is left to the expertise of doctors to determine what tests might be required to ascertain the health of applicants. However, in Queensland, every adoption

applicant must undergo a chest X-ray, presumably to rule out tumors or tuberculosis. This rule is nonsensical since it is generally considered that such investigations should only be carried out if medically indicated (especially tests involving radiation) and as it only covers the chest it does not consider what might be hiding in the rest of the body. Again, this is another example of unnecessary expense for adoption applicants and inconsistency of process across jurisdictions.

- **FCC recommends a review of state policies with the aim of standardization and removal of arbitrary policy that impact adoption applicants.**

1.6 Ease of adopting

There are great differences from jurisdiction to jurisdiction in the ease of adopting. Ease of adopting depends not only on legislative requirements and affordability (as already discussed) but on the approach of the department involved in processing adoptions, their staffing levels, the experience, knowledge, skills and attitudes of staff members, and processing timelines. While there may be different circumstances in each jurisdiction that make residents more or less likely to adopt, looking at the number of adoptions per capita still gives an indication of the ease of adopting in each jurisdiction. Table 2 (below) shows the number of adoptions in relation to the population in each jurisdiction using figures from 2003-2004. As can be seen the ACT has the most adoptions per capita and NSW the fewest (if NSW had adoptions at the same rate per capita as the ACT there would have been 540 adoptions to that state alone). The difference between NSW and Victoria is particularly striking, as it would not be expected that there would be significant differences in the desire of people to adopt between these jurisdictions. It is also striking that the smaller jurisdictions generally 'perform' better than the larger ones and this may be directly attributable to staffing levels in the adoption processing sections of the departments of community services in each jurisdiction. It has been the

experience of FCC applicants that in most jurisdictions applicants receive no encouragement to adopt a child from overseas and varying levels of discouragement. One assumption from this is that the level of discouragement is a measure of how overworked and therefore under-resourced staff are within a particular department.

Table 2. Completed adoptions in each jurisdiction per capita in 2003-2004

Jurisdiction	Population	Number of adoptions	1 adoption per…
NSW	6,731,400	66	101,991
VIC	4,972,800	86	57,823
QLD	3,882,000	49	79,224
WA	1,982,200	44	45,050
SA	1,534,300	72	21,310
TAS	482,100	22	21,914
ACT	324,000	26	12,462
NT	199,900	5	39,980
Total	**20,108,700**	**365**	**55,092**

Figures from the Australian Institute for Health and Welfare
http://www.aihw.gov.au/publications/cws/aa03-04/aa03-04.pdf
and the Australian Bureau of Statistics
http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6949409DC8B8FB92CA256B
*Note: New Zealand, which has adoptions processed by a government department but with no fees involved has approximately 1 intercountry adoption per 28 000 population

There are particular problems and challenges in some jurisdictions that have been identified by FCC. In Victoria, increased publicity about international adoption has led to increasing interest in the programs and there is currently a 6 month delay between applicants submitting an application and being able to attend the education sessions required before assessment can begin. In NSW, processing is slow at each stage with the most significant delay being a greater

than 6 month wait for final approval after social workers recommendations are made. These uncertain wait times are extremely frustrating for applicants because adoption processing is already a lengthy process. Long, irregular and uncertain delays become even more frustrating for applicants under the current 'user pays' system addressed elsewhere in this submission. In both Victoria and NSW FCC believes these delays are directly attributable to inadequate levels of staffing. In Victoria it is of concern to FCC that while approximately one third of adoption applicants are currently choosing to adopt from China the preparation of adoption application files to send to China, receipt of information of children matched with applicants and the organisation of travel falls to a single part-time social worker in the department. While this position is currently held by a very capable individual well-regarded by FCC, it is clear that the demands of the ever-growing China program have already outstripped that person's weekly hours; and should the position ever be held by a less capable employee, the impact on the China program (and therefore on families already approved for adoption) would be retrograde and severe.

As previously mentioned, the government department responsible for adoptions in South Australia used to outsource intercountry adoption processing to a private agency. This system seemed to work quite well according to South Australian members of FCC (and it is worth noting that of jurisdictions with populations over 1 million South Australia has previously had the greatest number of adoptions per capita). However, earlier this year the relevant minister made an abrupt decision to cease outsourcing adoption processing. Currently, adoptive families in South Australia are very concerned as to how their relevant government department, with no recent experience in processing intercountry adoptions, will manage to efficiently process applications. Many adoption applicants in South Australia are very angry that this drastic change was made against the recommendations that an inquiry into intercountry adoption made and that they are without recourse. Adoption applicants in the Northern Territory are also affected by this change as applications had been processed by the private

agency in South Australia and will now be processed by an inexperienced department. Adoptive families in other states are dismayed that the only alternative to government processing of adoption applications in Australia has been summarily shut down.

Adoptions in Queensland have been problematic for some time with a history of promises of improvement from government that have not been fulfilled. In 2002, the Queensland Department of Child Safety ceased accepting new applications because they were overwhelmed with the number of applications they needed to deal with. The Department committed to processing 100 applications a year and advised prospective applicants that when they completed “restructuring” and had processed the backlog, that they would resume accepting applications. More than two years later the application backlog had not been caught up with (less than100 files per year had been processed) but due to the agitation of adoptive families in the media it was announced that new adoption applications would be accepted for a limited time. During the two months of opening over 800 people lodged expressions of interest (the first step in the adoption process). Clearly the Department would not be able to process 800 applications and so they instituted a “pre-assessment assessment” in which applicants are ranked on their desirability as adoptive parents on self-completed material before undergoing any formal assessment. This ranking is used to determine when applicants will be invited to take the next step in the adoption process. In reality this means many applicants will never have the opportunity to be formally assessed and it will likely be several years before new adoption applications will be accepted again. The situation in Queensland is considered so bad that many adoption applicants have moved states in order to be able to adopt. This has been particularly the case with those who have adopted one child and wish to adopt another because they cannot wait for the process to open again, especially if they are approaching overseas country age limits to adopt. Prospective applicants have informed FCC that departmental workers have actually advised applicants to move. The strategy of closing new adoptions for years does not

appear to have achieved the desired outcome of more smoothly managing adoption applications. Rather it results in huge backlogs that have not been cleared, and causes enormous amounts of stress for adoption applicants. The Queensland government needs to appropriately resource adoption processing.

- **FCC recommends that the departments of community services be kept accountable for their performance in processing intercountry adoptions by the Central Adoption Authority and be required to adequately resource adoption processing and support.**

1.7 Legislation related to children in the family

Different jurisdictions have different rules in relation to adopting when there are already children in a family. Most jurisdictions require that the child being adopted be younger than the youngest child already in the family. In Victoria it is required that the child be at least 1 year younger than the youngest child. In NSW it is required that the child be at least 2 years younger than the youngest child in the family. These requirements are based on the idea that disrupting the birth order is not a good thing and that it is normal for children to join families as the youngest member. However, international research has not shown that it is advisable that children be adopted as the youngest. These requirements ignore that adoption is different from birth and that any child joining a family will result in changes in relationships within a family and ignores that it is now quite common for there to be disruptions in birth orders when families are blended via remarriage. While it may be more complex if a child joining a family disrupts the birth order this should not preclude placement and there should not be a mandate of a particular age gap between children. As many children in need of adoption are older, this legislation can prevent families who are willing and able to adopt an older child from doing so.

The ACT does not have legislation preventing adoption outside of the birth order and there have been a number of very successful placements where children

were not the youngest in the family at adoption. Queensland has legislation requiring that adoption applicants have no more than four children in their care (under the age of 18) in order to be able to adopt. This legislation to prevent larger families from adopting is despite the fact that parents who choose to have many children are committed to parenting and have obvious experience. There are several large adoptive families in Australia who clearly demonstrate that large families can work extremely well (one mother of many is so highly regarded that she presents adoption education classes in the ACT at the request of the department).

Legislation or policy that prevents families from adopting out of the birth order is another example of an arbitrary and nationally inconsistent restriction that should be removed.

- **FCC recommends that families should be assessed on their individual circumstances and abilities rather than on arbitrary regulations.**

1.8 Experiences that are a result of the state departments having a monopoly on adoption services

It is not uncommon for adoption applicants to encounter difficulties with individual staff members in the departments of community services or with their contract social worker. These difficulties can arise because of personality clashes, differences in personal philosophy or lifestyle, and be completely unrelated to an applicant's ability to effectively parent an adopted child. The ability of applicants to negotiate these difficulties varies greatly. Unfortunately, since the departments of community services have a monopoly in processing adoption applications the workers in these departments have an enormous amount of power over applicants. This power imbalance can result in extremely negative experiences for some applicants and many applicants are very fearful of offending departmental workers, with good reason. Based on FCC members' feedback it is

likely that some first-time applicants, or adoptive families hoping to adopt again, might not contribute individually to this inquiry because of the fear that speaking negatively about their department will impact their application. This fear is reasonable. In 1998, after problems with adoption processing were raised in the public arena, a client satisfaction survey was distributed in NSW. At the time, many applicants stated that they did not want to share their experience because they feared negative ramifications. The entirety of the final report was not released publicly because it was thought that families could be identified however, it was given to social workers within the NSW Adoptions Branch and individuals were recognized by social workers and applicants have reported to FCC that they were made to account for their statements. Many members of FCC have expressed that they will not be making a submission to the Commonwealth Parliamentary Inquiry into Adoption of Children from Overseas because they fear that it might negatively impact their current or future adoption application.

Applicants also report feeling patronized by some departmental staff. For families adopting from China a common way in which this manifests is when families are waiting to receive news that they have been matched with a child. Adoptions from China are processed via a central adoption body in Beijing and processing occurs more-or-less consistently worldwide. Thus, via communication with applicants overseas, adoption applicants in Australia are aware of when they should be hearing news of the result of their application. However, the departments do not inform applicants that they have received information on a child until they have translated reports and had health reports on the child reviewed. Since applicants are so aware of when they should hear news they commonly contact their department in between reports on a child being sent to Australia and completion of translation of reports and health review. It is not uncommon for workers in the departments to tell applicants that they have received no news, for applicants to believe these assertions and for applicants to be plunged into despair thinking that they have been overlooked when in fact a

child has been matched with them and the departments know this. The departments follow this procedure to protect adoption applicants in case the child that has been matched with a family is deemed unsuitable (which can happen for health reasons or because the child is outside the age for which an applicant is approved). However, the current process causes much grief for applicants adopting from China, is extremely patronizing and does not avoid the heartache of a child being rejected by the department because applicants will find out about this anyway. The fact that applicants report being lied to during this procedure should be of serious concern, especially since it is expected that adoption applicants be entirely honest with these same social workers.

A further difficulty that exists because the departments have a monopoly is that when adoption processing is particularly slow, which happens at different times in different jurisdictions, applicants have no alternative service to which they can apply. It is clear that state governments need to either adequately resource adoption processing (but not by requiring adoption applicants to pay for this resourcing) or to outsource adoption application processing (with adequate funding from government). It is likely that part of the difficulty with funding adoption processing exists because the departments in charge also deal with child protection, which is also reportedly chronically under-resourced and rightly viewed as a priority. It might make sense for adoptions to be removed to a different area of government. Adoption processing should perhaps be compared to supports for pregnancy, birth and neonatal care rather than child protection when it comes to need for support, and perhaps adoptions should be placed under the jurisdiction of the departments of health in each state.

Private services in NSW and Western Australia have been seeking accreditation to process intercountry adoption applications for some time. These applications are hampered by what seems to be a philosophical objection to private agencies in the departments of community services. It is not assisted by the fact that the departments of community services are in charge of evaluating applications

(surely a conflict of interest). Australian adoptive families do not desire a system similar to that in the United States where there is little regulation and many private agencies with questionable and inconsistent practices. However, if the departments of community services do not wish to process adoptions (and it is worth noting that they are not required to meet the standards that they are requesting private agencies to meet), then provision should be made for private agencies, supported by government, to consistently process adoption application.

It should be made clear that while there are some staff within the adoption processing sections of the departments of community services in Australian jurisdictions who have been described by FCC members as unprofessional and obstructive, there are many staff who FCC members have experienced as working extremely hard in a difficult environment and are caring and sensitive to the needs of adoption applicants. It is worth remembering that this is no ordinary bureaucratic processing function - families involved in the intercountry adoption process are often under a great deal of stress caused by lack of information, fear of being rejected, and the normal pressures of anticipated parenthood. Combine this with an overburdened bureaucracy and tensions can come quickly to a head. A little kindness and honesty from an adoption social worker can go a long way and adoption applicants greatly appreciate sensitive adoption social workers.

- **FCC recommends appropriate human and financial resources be available to those processing adoption applications and that in some cases, this may involve outsourcing these functions to a private agency.**

2. Discrepancies in entitlements between adoptive and biological families

2.1 Maternity payment

Maternity payment is currently a one-off payment of $3 079 that is "paid to families following the birth (including stillborn babies) or adoption of a baby. It recognises the extra costs incurred at the time of a new birth or adoption of a baby." (http://www.familyassist.gov.au/internet/fao/fao1.nsf/content/payments-maternity_payment). Thus, support for adoptive families is included in the stated purpose of Maternity Payment however, the overwhelming majority of adoptive families are excluded from receiving Maternity Payment because eligibility requirements state that adopted children must be less than 26 weeks of age at placement.

In Australia there are approximately 250 000 babies born each year. In contrast, there were but 443 placement adoptions in 2003-2004. Of these, 370 were intercountry adoptions and 73 were local adoptions and only 216 of these children were under the age of 1 at the time of placement into a family (Adoptions Australia, 2003-2004 http://www.aihw.gov.au/publications/cws/aa02-03/aa02-03.pdf). For those children adopted from overseas it is unlikely that more than a handful of them would have been under the age of 26 weeks at placement because of the bureaucratic, legal, social, practical and political reasons associated with their adoptions. In local adoptions, the procedures in most states ensure that children are older at placement, though their birth parents may have made an adoption plan for them at birth. Unfortunately data is no longer collected on the age in months of children adopted under the age of one, however, it would not be unreasonable to suggest that 85% of all adoptive families and greater than

90% of intercountry adoptive families are ineligible for Maternity Payment because of the 26 week age restriction. The 26 week age restriction thus, is a *de facto* form of discrimination against adoptive parents

There are two compelling reasons why the age restriction associated with maternity payment should be removed. Firstly, regardless of the age of their child all adoptive families must take a significant (mandated in most cases) period of leave from work at the time of placement. According to the Family and Community Services Department, Maternity Payment was introduced in the spirit of the International Labour Organisation's convention on maternity protection and although it is available to mothers who don't work, one of its aims is to help families financially due to loss of income when a child is born or adopted. In looking at the issue of paid maternity leave the Human Rights and Equal Opportunity Commission specifically asked the question of whether adoptive families should qualify for paid maternity leave and if there should be a restriction on the age of the child at placement to qualify. They consulted with adoptive families on this issue and the conclusion was that there should be no age restriction of any kind affecting eligibility of families for post-placement government support (http://www.hreoc.gov.au/sex_discrimination/pml2/index.html). Please see Appendix 1 for the Australian Intercountry Adoption Network (AICAN) submission on paid maternity leave to HREOC.

As outlined in AICAN's submission, adoptive families need support to assist them in providing the intensive post-placement care their children require. It is uniformly recognized by adoption experts that the older the child at adoption the more difficult their transition period and the more intensive the parental care they require (please see Appendix 2 Issues for paediatric health and other child care professionals to consider in treating the post-institutionalised child). In recognition of the increased needs of children adopted at older ages the departments of community services in each state and territory require families adopting older children to undergo additional relevant education and to have a higher level of

skill, support and commitment than families adopting babies. Thus, families adopting older children are more in need of government support not less and there is no reason to exclude any adoptive family from support based on the age of their child.

Most of the children adopted from overseas to Australia have spent considerable time in institutional care. The inadequacy of the institutional environment as a place for children to grow has been well documented and is the reason why orphanages no longer exist in Australia. The physical and emotional deprivations of institutionalisation result in damage to the child and it is known that a child who has been deprived during critical developmental stages through being institutionalised needs intensive, strong and consistent parenting in order to mitigate the damage. Professor R. Federici, a developmental neuro psychologist at Virginia State University stated that "the importance of aggressive reattachment and reparenting for a young child coming out of an institutional setting is of paramount importance as the child has had a loss of maternal attachment, stimulation and developmental experiences ranging from birth to 24 months with the damaging effects of early childhood deprivation expanding exponentially as the child becomes older and remains in institutional care." (http://www.drfrederici.com). Adoptive parents frequently find the first months, even years with their new child to be extremely mentally and physically taxing. It is also a very difficult time for the child who is adjusting to a completely new environment.

In recognition of the special needs of newly adopted children the state government departments of community services that process adoptions have an expectation that one parent will remain home with the child for an extended period post placement. In NSW and Victoria adoptive parents are required to sign an undertaking that one parent will be at home full time with the child for 6 and 12 months respectively. Parents in the ACT, Queensland and Tasmania are told that they are required to ensure that one parent will be home full time for 1 year. In the Northern Territory the expressed requirement is one parent home for 6

months. In South Australia and Western Australia the departments strongly encourage one parent to be a full time carer for 1 year. These expectations apply to double and single parent families. While some adoptive parents may resent the compulsion that exists in some states with regards to leave from work, most adoptive families believe that these requirements are reasonable and in the best interests of the children involved. However, they also believe that as the Federal Government provides support to assist biological families so should they support adoptive families.

It is also important to note that many families find the adjustment period for their child extends well beyond one year and even where a child is school age parents are often advised to delay sending the child to school or to homeschool. . Thus, since adoptive families are required to forego one income regardless of the age of their child, they should be eligible for government support benefits that are designed to assist with the costs associated with maternity leave.

In addition to providing funds to substitute with income forgone, maternity payment is designed to assist with the direct costs of the addition of a child in a family and this leads to the second reason why all adoptive families should be eligible for Maternity Payment. The costs associated with the adoption of a child remain consistent regardless of the age of the child. Adoptive parents have all the same costs that biological parents have when a new child joins their family and the costs of purchasing clothes, toys, furniture etc are not reduced if children are older at adoption. However, adoptive families also have additional direct costs associated with the adoption of their child including state adoption processing fees, legal fees, visa fees and travel costs that families whose children join them via birth are not subject to (government subsidisation of birth versus user pays for adoptive families will be discussed later). While giving birth can be cost free, families adopting a child via intercountry adoption are subject to fees and costs of between $15-40 000. Thus, the additional costs of the adoption itself mean that the Maternity Payment would be an even greater help to adoptive

parents and it is illogical to suggest that families adopting an older child should not receive similar support as biological families and families adopting an infant of less than 26 weeks of age.

Thus, the restriction on the age of the child adopted to be eligible for Maternity Payment should be removed from the Social Security Act and eligibility backdated to the instigation of this payment (ie July 2004). All families having children join their family via adoption should be eligible for Maternity Payment regardless of the age of the child. There are very few adoptions in comparison to the number of births and it would cost the government very little to make the Maternity Payment available to all adoptive families. However, removal of the age restriction associated with Maternity Payment would mean a lot to individual families in terms of removal of discrimination and provision of financial support at a time of great expense. The Minister of Family and Community Services has suggested that the age restriction on maternity payment might be increased but that there needs to be an upper age limit. This is simply not the case, there are very few adoptions of older children (only 26 children 5 years or older were adopted in 2003-2004 Australia-wide; Adoptions Australia, 2003-2004 http://www.aihw.gov.au/publications/cws/aa02-03/aa02-03.pdf) and as has been described families adopting older children need support. An arbitrary age limit does not reflect an understanding of the needs of adopted children and is unacceptable to adoptive families. The age restriction needs to be abolished (an examination of adoption leave legislation in NSW, see section 2.3.1 for details, shows one way in which this could be handled).

- **FCC recommends that the age restrictions for Maternity Payment removed and that it is completely unacceptable for the age restrictions to be increased. Adoptive families should automatically be equitably included in any future family policy.**

2.2 Maternity immunisation allowance

The Maternity Immunisation Allowance is "a non-income tested payment (of $213.60) to encourage parents to immunise their children. It is for children born on or after 1 January 2003, between 18 and 24 months of age, who have been fully immunised. The Maternity Immunisation Allowance is not income tested and may also be paid for stillborn babies and children who die shortly after birth" (http://www.familyassist.gov.au/fao/what_why_how/07_maternity/02.html). As with the maternity payment many adoptive families do not qualify for the maternity immunisation allowance because of the age of their child at placement. This is despite the fact that many children older than 2 years of age arrive in Australia having not been immunised at all or with incomplete immunisations. There is the same necessity for immunisation of these adopted children as for children born into their families or for children adopted at a younger age. There is no reason not to apply the Maternity Immunisation Allowance to all adoptive families meeting the non-age related requirements within 2 years of placement.

- FCC recommends that age restrictions for the maternity immunization allowance be removed.

2.3 Leave Entitlement Issues

2.3.1 Unpaid Leave

As already described, in all cases of adoption one parent must take leave from work. However, current federal legislation and the relevant legislation in most states and territories distinguishes between the adoption of a child under the age of 5 years and the adoption of a child over the age of 5 years in determining eligibility for unpaid adoption leave. In these cases, it is stated that to qualify for adoption leave the child must be less than 5 years of age at placement (see Appendix 3 for examples of wording in legislation). NSW and the ACT are the only jurisdictions in which adoption leave is available to an employee adopting a child who is 5 years or older (legislation in NSW was changed in 2003 to remove the limitation of leave protection to those adopting children under the age of 5 years. The debate on this change can be read at

http://www.parliament.nsw.gov.au/cgi-bin/isys/isyswebext.exe?op=get&uri=/isysquery/irl8d6a/7/doc/#hit1). Thus, in most of Australia, people who adopt children who are 5 years of age or older are not protected by leave legislation and are at risk of losing their jobs when they adopt. This is a real risk that is of great concern to families adopting older children.

Legislation that restricts adoption leave eligibility to those adopting children under the age of 5 years reveals an ignorance of the characteristics of children being adopted at this age and of current adoption practice and it reinforces a belief that children adopted at 5 years of age or older are independent, not in need of intensive care and would commence schooling immediately on placement in a family. This is simply not the case. Children being adopted at 5 years of age or older have generally lived in one of two situations (sometimes a combination of both). These situations are: having lived in an institution in a third world country where it is likely they experienced emotional and physical deprivation; or having lived in an abusive family environment in Australia and been removed from the care of that family. The majority of older children who have been adopted come from overseas and need additional help to adjust to a new language and culture when they come to Australia.

As a result of their history, children placed in a family for adoption, who are 5 years of age or older are facing enormous challenges, as are their families. Parenting a newly adopted older child, while incredibly rewarding, also requires a tremendous input of time and effort. Families adopting older children should be protected from the worry of losing their job or being demoted while caring for their newly adopted child. The Human Rights and Equal Opportunity Tribunal's report 'A Time to Value' recommended that the age restriction for qualification for unpaid adoption leave be removed. Legislative change to provide all adoptive families with access to unpaid leave entitlements would have very little impact on the majority of employers but would be of great importance to the families

currently excluded by age restrictions. It is also important to note that while some awards and workplace agreements do not restrict unpaid adoption leave to those adopting a child under the age of 5 years, many do (for example, In NSW the Miscellaneous Workers' Kindergartens And Child Care Centres; in SA, the South Australian Academic Staff Academic Award)

2.3.2 Paid Leave

i. *Paid leave entitlements*

In addition to unpaid adoption leave not being available to people adopting older children, there is nothing that protects adoptive parents from being discriminated against in comparison to biological parents with respect to paid leave. Thus, many awards and workplace agreements that have paid maternity leave do not have paid adoption leave, or they have adoption entitlements that are much less than maternity entitlements. According to the Work and the Family Unit of the Department of Employment and Workplace Relations (2002) 29% of workplace agreements have paid maternity leave but only 1% have paid adoption leave. Figures are not available on the proportions of awards that have paid maternity leave and paid adoption leave but according to the ACTU the ratios are likely to be similar. It is often very difficult for employees to have this situation changed since they are often the only person in their workplace who has adopted a child and their employers and union representatives often have no knowledge of adoption.

Adoptive families find it difficult to understand why they are not automatically given the same paid leave as biological families and such discrepancies are extremely frustrating, especially given the high costs of adoption and the degree to which birth is subsidised by the community. Legislative protection is required to ensure that adoptive families receive fair treatment with regards to paid leave. Appendix 4 provides examples of awards and workplace agreements that provide equitable and inequitable paid maternity and adoption leave. Currently discrimination against adopted children or adoptive parents is not a form of discrimination under state or federal laws. If it were then adoptive families would

have an avenue of appeal available to them that would prevent them being disadvantaged.

ii. Flexible return to work

Some awards and workplace agreements contain flexible work return provisions for primary caregivers up until their child is a certain age (2 years is common). In cases of adoption it would be appropriate to have a similar flexibility for adoptive families with the length of time from placement rather than the age of the child being the determinant. Again, this is something that is difficult to change and adoptive families as a small group require legislative protection.

- **FCC strongly recommends that workplace legislation in all jurisdictions be amended to include equivalent periods of leave, leave conditions and return to work arrangements for all families. This should be independent of the age of the child coming into an adoptive family.**

3. Other Problems

3.1. Lack of Consultation

The general population has such little knowledge of the needs of adopted children and their parents that if there is no consultation with adoptive families about matters that generally affect all families, the results are lack of support for adoptive families. The maternity payment and adoption leave issues are examples of this. It is clear that in the formulation of legislation and policy that affects adoptive families that consultation with adoptive families is needed and some sort of formal process should be instituted to ensure that this vulnerable group is included in the future.

3.2. Number of children needing families

The departments of community services in each jurisdiction consistently state that there are more adoption applicants than children in need of adoption. This statement is interpreted by prospective applicants as intended to dissuade individuals from pursuing adoption (particularly applicants without a history of infertility), to argue for the exclusion of single or older applicants (in some jurisdictions) and to excuse the under resourcing of adoption processing. However, it is simply not the case that the number of adoption applicants exceeds the number of children needing adoption. For instance, in China it is estimated that there are from several hundred thousand to a million children in institutional care. China could accept many more applications from Australia than it currently does without any difficulty. The only thing stopping this from happening is the difficulty of adopting under the current Australian processes. In addition, there are many children internationally in institutional care who will not grow up in a family without intercountry adoption, who are not available for adoption by Australian applicants because Australia does not have an adoption agreement with the country in which they live. The issue of the development of new adoption programs will be discussed later in this submission. The issue of

departmental workers making untrue statements about the number of children needing families must also be addressed as part of standard performance management procedures.

- **FCC believes structures need to be put in place to enable the Central Adoption Authority to ensure that each jurisdiction is acting in the best interests of the children in need of adoption.**

3.3. Opening of New Programs

This section is contained in part 2 of the FCC submission and it is requested that it remain confidential

3.4. Immigration Health Requirements

Many of the children in need of adoption in overseas countries are children with special needs. In China, it is estimated that between 50 and 80% of children in the orphanages have a special need of some kind. Many of these special needs are relatively minor but others are more serious. Currently, Australia has migration health requirements that apply to adopted children. Whilst these health requirements currently do not appear to be preventing children with special needs coming to Australia (there have been a number of children from China with minor to moderate special needs adopted to Australia) adoption applicants wishing to adopt a child with special needs are often extremely anxious about whether their child will be granted a visa. With adoptions from China the adoption is finalised before health checks are carried out and a visa issued, and families have had to consider the prospect of their legally adopted child being refused entry to Australia. Refusal of visas for adopted children on health grounds has happened before. However, where decisions have been appealed, the child has eventually been granted entry to Australia. This is extremely distressing for adoptive families, can be costly and time consuming and begs the question of what happens to the child while appeals are being made. In addition, FCC's

experience is that many staff in the departments of community services discourage families wishing to adopt a child with a special need from doing so because of the risk of complications in getting the child into Australia. This is not in the best interests of children. Children with special needs are often greatly disadvantaged in their countries of origin and have an extremely bleak future (more so even than that of healthy children in institutional care). However, in a family situation with medical care available they are able to thrive and grow to be a productive member of society.

Currently, there is the provision for health waivers to be applied to visas for adopted children. These waivers should be routinely applied to adopted children without it being necessary for appeal. Biological children of Australian citizens residing overseas are not required to meet health requirements in order to enter Australia and nor should adopted children of Australian citizens. The removal of health requirements for adopted children will not result in a deluge of adopted children with minor to moderate special needs coming to Australia, however, it will remove one area of stress for adoptive families and allow some precious children to thrive in a family.

- **FCC recommends that a policy be instituted of routinely applying health waivers to visas for children for adoption.**

3.5. Financial support for adoptive families

One of the biggest hurdles to families adopting are the financial costs involved in adoption. Many other Western countries provide direct financial support to adoptive families to assist with the direct costs of adoption.

The US Government provides one of the most significant financial support packages for adoption. The US Taxation system allows a tax credit of up to US$10,390 for qualifying expenses paid to adopt an eligible child (including a

child with special needs). The adoption credit relates to each attempt to adopt an eligible child and although it would appear that the credit can be taken over successive taxation years the maximum credit per adoption is US$10,390. The adoption credit is an amount subtracted from a taxpayer's tax liability (in the Australian taxation system it would be referred to as an 'offset'). The adoption credit is not available for any reimbursed expenses (some US employers also reimburse their staff for adoption expenses; such benefit is also excluded from the adoptive parent's taxable income).

The US IRS defines qualifying expenses as including reasonable and necessary adoption fees, court costs, attorney fees, travelling expenses (including amounts spent for meals and lodging while away from home), and other expenses directly related to and for which the principal purpose is the legal adoption of an eligible child. An eligible child must be under 18 years old, or be physically or mentally incapable of caring for himself or herself.

Although means tested the income limit is high. A taxpayer earning US$155,860 or less, will not have their credit affected; those with an income between US$155,860 and US$195,860 will have their credit reduced; those earning more than US$195,860 are not eligible for a credit. Further details on this can be obtained from http://www.irs.gov/publications/p968/index.html

Although the Canadian Government does not currently offer adoptive parents a taxation credit or rebate a private member's bill to include a CAD$4000 tax credit system into the 'federal' tax system was tabled prior to 2004. However, debate did not proceed in 2004 and the Bill lapsed when the Canadian election was called.

At the second tier of Canadian government, the provincial (state) level Quebec is understood to offer a tax credit to its residents of $7500. Like Australia, adoption

in Canada is provincially (state) based and managed and so it would seem, at least part of their taxation system is also provincially based.

An adoption taxation credit along the lines of the US system but at a rate of, say, AUD$10,000 (equivalent to approximately a third of the actual cost of some adoptions) would have only cost $3.7million in 2003-04 in relation to overseas adoptions (based on AIHW statistics on the numbers of overseas adoptions). The budgetary impact of a taxation credit for local adoption can be largely ignored because the costs are substantially less than those associated with overseas adoption and the number of adoptions small (only 73 local adoptions occurred in Australia in 2003-04).

Some may argue that an adoption tax credit (offset) would encourage more people to adopt from overseas (not an undesirable prospect as it would give more children families they desperately deserve) and thus drive up the impact on the Federal Budget. However, it may encourage more people to give up expensive infertility treatments earlier and thus offer offset savings from the Medicare budget.

An alternative to a tax credit (offset), but still utilising the tax system, would be a rebate along the lines of the out of pocket medical expenses rebate (currently 20% of expenses over a threshold value) in the current Australian taxation system.

Between 1975 and 1986, Australian based adoption related expenses were eligible for a rebate at the rate of 30% to consessional expenditure over $2000 in a year and that is another option that could be explored. Many European countries have adoption expenses as tax deductible. However, if this option were to be instituted in Australia it would be necessary for all adoption related expenses (including travel and overseas fees) to be covered, as this is the most substantial portion of adoption costs.

An alternate model would be to use the infrastructure of the Family Assistance Office, rather than the taxation system, to make a one-off (per child) Adoption Payment.

Regardless of the delivery methodology, there should be no exclusions on eligibility based on the age of the child at adoption. Exclusions could be imposed for such things as adoptions by relatives (for instance a step-parent legally adopting their spouses birth-child etc).

- **FCC recommends that some form of financial support to assist adoptive families with the costs associated with adoption be instituted.**

Appendix 1

Australian Intercountry Adoption Network Submission to the Human Rights and Equal Opportunity Commission inquiry into paid adoption leave

27/5/02
Australian Intercountry Adoption Network
P.O. Box 7420

Bondi Beach NSW 2026

Paid Maternity Leave Submission
Sex Discrimination Unit
Human Rights and Equal Opportunity Commission
GPO Box 5218
SYDNEY NSW 1042

Re: Valuing Parenthood: Options for Paid Maternity Leave: Interim Paper 2002

Dear Commissioner Goward,

This submission is written on behalf of the Australian Intercountry Adoption Network (AICAN). AICAN is the national network of 20 non-government organisations involved in intercountry adoption in Australia. AICAN represents thousands of Australians; people who have been adopted from overseas and their families, and people interested in intercountry adoption. AICAN's philosophy is founded on the belief that:"the child, for the full and harmonious development

of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." (Preamble to UN Convention on the Rights of the Child). Where at all possible, children should remain in their birth family, if this is not possible, they should be placed in a suitable family in their birth country. However, if this is not possible, intercountry adoption into an approved family is preferable to institutional life in the birth country.

The paper "Valuing Parenthood: Options for Paid maternity Leave" (VP) released by the Human Rights and Equal Opportunity Commission discussed the issues that surround the idea of provision of paid maternity leave in Australia. Throughout the paper, questions are asked of the reader and questions 28 and 29 pertain to adoptive families. Question 28 asks "Should a paid maternity leave scheme provide payments to adoptive parents?" and Question 29 asks "If paid leave is made available to adoptive parents, should eligibility be limited to parents with adopted children of a particular age" This submission addresses these two questions. The situation of adoptive families discussed in this submission are families in which the adoption is described as a 'placement adoption' and excludes relative and 'known' adoptions.

Question 28: Should a paid maternity leave scheme provide payments to adoptive families?

Any scheme that provides for paid maternity leave should also provide an equitable paid adoption leave. Adoption is a means of family formation in which a child that cannot be cared for by the family he/she was born into becomes a permanent member of another family. Under the law of each state in Australia, an adopted child is as much a member of their family as a child brought into a family via birth (AIHW, 2001). However, there are differences between the ways in which families are formed via adoption and birth that make some consider that adoptive families do not require

the same level of support that biological families do. This reveals a lack of understanding of adoption as currently practiced in Australia.

Chapter 7 of VP discusses the objectives of providing paid maternity leave, and supplies the reasoning behind why paid maternity leave is important to women. For analogous paid adoption leave not to be provided to adoptive mothers it would be necessary to show that leave on the adoption of a child is less important to adoptive mothers than leave on the birth of a child is to biological mothers. It will be explained here that this is not the case and that adoptive mothers need leave from work just as much as biological mothers.

The reason for the importance of maternity leave are divided into 4 sections within Chapter 7. The issues contained in Sections 7.3 “Enabling women to combine work and family” and 7.5 “Economic security for women” are identical for both biological and adoptive mothers (as is the case in families formed via birth, the woman is usually the primary caregiver of an adopted child) and so will not be discussed further. However, the reasons contained within Sections 7.1, 7.2 and 7.4 are slightly different for adoptive mothers and so will be discussed in detail.

Section 7.1 Health and welfare of mothers and newborn children

This section is divided into two subsections. Section 7.1.2 “Maternal recovery” describes the health needs of a woman after childbirth and concludes that some leave from work is necessary for a woman to recover from birth.

Adoptive mothers do not give birth and therefore do not require time to physically recover from an adoption. It is probably this fact that results in the questioning of the need for leave at the time of the adoption. Although, current legislation provides for 52 weeks unpaid leave on the adoption of a child under the age of 5 years (this age limitation is a problem that will be

discussed later) there is nothing that protects adoptive parents from being discriminated against in comparison to biological parents with respect to paid leave. Thus, many awards and workplace agreements that have paid maternity leave do not have paid adoption leave or have adoption entitlements that are much less than maternity entitlements. According to the Work and the Family Unit of the Department of Employment and Workplace Relations 29% of workplace agreements have paid maternity leave but only 1% have paid adoption leave (HREOC, 1999). Figures are not available on the proportions of awards that have paid maternity leave and paid adoption leave but according to the ACTU the ratios are likely to be similar (Pers. Comm, 2001).

However, leave from work is required for adoptive mothers for a different reason. Adoption provides a family to a child that does not have one to care for them. It is a child centred practice. It is the needs of the child, rather than those of the mother that necessitate that one parent care full time for a newly adopted child. The majority of children adopted in Australia come from overseas. Of the 377 placement adoptions in 2000-2001, 289 or 77% were intercountry adoptions (AIHW, 2001). The vast majority of these children have spent considerable time in institutional care. The inadequacy of the institutional environment as a place for children to grow has been well documented (Bowlby, 1951; Ainsworth, 1962 and others) and is the reason why orphanages no longer exist in Australia. The physical and emotional deprivations of institutionalisation result in damage to the child which is manifest in indiscriminate affection, extremely demanding or attention seeking behaviours, social unrelatedness with peers, autistic-like behaviours, hyperactivity, aggression, temper tantrums, no cause and effect thinking, no concept of time, past or future (Goldfarb, 1943; 1945; Spitz, 1945). It is known that a child who has been deprived during critical developmental stages through being institutionalised needs intensive, strong and consistent parenting in

order to mitigate the damage (Zeanahm 1993; 1996). Professor R. Federici a Developmental Neuropsychologist at Virginia State University stated that “the importance of aggressive reattachment and reparenting for a young child coming out of an institutional setting is of paramount importance as the child has had a loss of maternal attachment, stimulation and developmental experiences ranging from birth to 24 months with the damaging effects of early childhood deprivation expanding exponentially as the child becomes older and remains in institutional care.“ (Federici, 2002). Adoptive parents frequently find the first months, even years with their new child to be extreme mentally and physically taxing. It is also a very difficult time for the child who is adjusting to a completely new environment.

The State government community service departments recognise the need for newly adopted children to have consistent, intensive parental care. In NSW adoptive parents must sign an undertaking that one parent will remain at home with the child for at least 6 months. In Victoria they must agree to 12 months leave (although this may be reviewed by a social worker after 6 months), in the ACT 12 months, in WA 12 months, in Tasmania 12 months, in Queensland 12 months. SA does not have a blanket policy on this but 12 months absence from work is highly recommended.

It would be inconceivable that adoptive parents be compelled both by the needs of their child but also by their state government to spend considerable time absent from work and at home with their child and not be supported as biological parents in provision of maternity leave. The definition of maternity is "characteristic to motherhood," it is not exclusive to those giving birth therefore paid maternity leave could be made available to adoptive mothers even without a change of name.

Section 7.1.2 Breastfeeding; describes how breastfeeding is important to our society and how leave from work helps women to establish and maintain breastfeeding.

Few are aware that many adoptive mothers also breastfeed their children. This is an ancient practice (described by Hippocrates) and continuing to this day (Gribble 2001). Breastfeeding for the adoptive mother is more difficult than for most biological mothers. Establishing lactation takes time and effort and as there are no newborn adoptions in Australia it can be difficult to teach a child accustomed to bottle feeding to breastfeed. Leave from work helps adoptive mothers to breastfeed their child.

Section 7.4 Direct cost of children; describes how the addition of children imposes an economic burden on household finances. The costs described here are the same for adoptive parents as for biological parents, however, adoptive parents have additional costs associated with adoption that biological parents do not have.

Both the federal and state governments subsidise biological parenting in the form of provision of IVF, antenatal, obstetric and postnatal care. The breakdown of some of the costs of subsidisation of childbirth by the Federal Government follow (sourced from AIHW, 1999). Public hospital costs of Pregnancy, childbirth and puerperium in 1998-1999 were $738 103 000 and care of newborns and other neonates was $285 191 000. Approximately 92.3 % of this was paid by the Federal Government producing a total of $944 500 362 for hospital care. In addition Medicare benefits for obstetrics paid was $57 657 000 and IVF was funded $36 806 282. This gives a total of $1 038 963 644 (that is over $1 billion) for those aspects of childbirth. This does not include money paid by government for GP visits for pregnancy care, pregnancy diagnosis, pathology tests, anaesthesia, ultrasound, PBS, and the subsidisation of birth in private hospitals. The real figure could be as high as $1.5 billion paid by government to subsidise childbirth in Australia.

In contrast, adoption is predominantly user pays and many families find it difficult to adopt because of the cost. Both the Federal and State Governments collect fees from adoptive parents. Moneys are paid to the State Departments of Community Services (varies between states from approximately $800 in Queensland to over $6000 in Victoria), State Police, Statutory Authorities and Department of Immigration and Multicultural Affairs. The total cost in Australia can be more than $10 000. As most adoptions are intercountry, there are then also additional costs associated with travel to the child's country of origin and legal fees in that country that can range into the tens of thousands. Many families go into debt in order to adopt.

It should also be noted that the other government payments designed to support families, namely Maternity Allowance, Maternity Immunisation Allowance and the 'Baby Bonus' are availability in a limited way to adoptive families. The restriction on the age of the child attached to the Maternity Allowance is particularly bad excluding approximately 85% of adoptive families from being eligible (AIHW, 2001). Whilst Chapter 6 of VP addressed the issue of systemic discrimination against mothers it did not examine the institutional prejudice against adoptive families that is manifest in such restrictions that do not take into consideration the needs of the adopted child or their family. A scheme of paid maternity leave that did not include adoptive families would further disadvantage already disadvantaged families however, paid adoption leave would assist with the costs of adopting a child and help compensate for lost income due to one parent not working but caring for the new child.

In Section 9.2 of Chapter 9 of VP the social benefit of supporting families via paid maternity leave is considered. It is stated that the health development of children is of value to our country. Adopted children should be considered within a wider framework as being members of Australian society and as such their families not excluded from any government support. The government plays an

important role in assisting those who are disadvantaged and many of the children adopted in Australia, by virtue of their background of instutionalisation or abuse, are disadvantaged.

It should be kept in mind that there are very few adoptions in Australia as compared to births (approximately 400 adoptions as opposed to approximately 250 000 births). The cost to any scheme of including all adoptive families in any paid maternity leave is insignificant in comparison to the total cost of any scheme and to the benefit to individual adoptive families.

Question 29: If paid leave is made available to adoptive parents, should eligibility be limited to parents with adopted children of a particular age

Any paid adoption leave should not be limited by the age of the child. Current federal legislation (Workplace Relations Regulations 1996) distinguishes between adoption of a child under the age of 5 years and adoption of a child over the age of 5 years and states that to qualify for adoption leave the child must be less than 5 years of age at placement. Thus, people who adopt children who are 5 years of age or older are not protected by leave legislation and are at risk of losing the jobs when they adopt. This, however, reveals an ignorance of the characteristics of children being adopted at this age and of current adoption practice and a belief that children adopted at 5 years of age or older are independent, not in need of intensive care and would enter school immediately on placement in a family. For any paid adoption leave to contain the same restriction would be perpetuating this same error.

Children being adopted at 5 years of age or older have generally lived in one of two situations (sometimes a combination of both). These situations are; having lived in an institution in a 3rd world country where it is likely they experienced emotional and physical deprivation or having lived in an abusive family environment and been removed from the care of that family. In addition, most

older children have been adopted from overseas and need to adjust to a new language and culture when they come to Australia.

As a result of their history, children being placed in a family for adoption, who are 5 years of age or older are facing enormous challenges, as are their families. Adopting the older post-institutionalised child presents with an even greater risk than the infant-toddler. In remembering how children have lived in institutional settings, the older child has been exposed to even more years of vitamin and nutritional deficiency syndrome, poor medical care, a lack of developmental-educational experiences, in addition to being even further detached from maternal-caretaker relationships. (Federici, 2002). The role of parents in adopting an older child is to help the child heal the pain of the past and to adjust to life in their new family. This is an enormous task, one not to be undertaken lightly and one which requires a tremendous input of time and effort. The magnitude of the choice to adopt an older child is one recognised by the state community services departments that oversee adoption. They require that applicants wishing to adopt an older child undergo more stringent assessment, attend more education seminars and be able to demonstrate a greater level of parenting skills than those adopting younger children. Adopting an older child is, in general, more challenging than adopting a younger child.

It is also important to consider that even though an older child may be chronologically older, their emotional development will parallel the length to time they have been permanently placed with their adoptive family (Hopkins-Best, 1998). Thus experts agree that a three year old placed for 6 months in their adoptive family will exhibit the emotional maturity of a 6 month old (Melina and Roszia, 1993)

It should be clear that people adopting older child need to take time off from paid employment when a child is placed with them and the requirement of the departments of community services in each state to take leave from work for the

aforementioned 6-12 months is regardless of the age of the child. Where a child is school age parents are often advised to delay sending the child to school or to homeschool.

This letter has outlined how vital it is for adoptive families to take leave from work at the time of adoption. If it is just as important for adoptive families to have time off from work to care for their new family member as it is for biological families then surely it is just as important for the government to provide them with the same support. As Sex Discimination Commissioner you are in a unique position. Previously, legislation that affects adoptive families such as the provision of Maternity Payment, has been instituted without consultation with those that understand adoption in Australia and have a vested interest. The adoption community appreciate it greatly that you have asked these questions concerning adoption and maternity leave. You are now in a position to be a ground breaker in addressing the discrimination that adoptive families face in Australia when it comes to supporting them in the way they need.

Sincerely,

Ricky Brisson
AICAN

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Appendix 2

Issues for paediatric health and other child care professionals to consider in treating the post-institutionalised child

Introduction

Each year there are over 10 thousand intercountry adoptions worldwide. Many of these children have spent at least some of their life in an orphanage, experiencing institutional care, which has had a far-reaching impact on them. Most of these children will have some interaction with paediatric health or other childcare professionals in the months and years after their adoption. However, because theirs is a relatively rare situation it is understandable that knowledge of their special needs is outside the experience of most professionals. Nevertheless, given information, professionals can use their specialised skills to assist parents and play an important role in the lives of adoptive families. This article aims to provide a background on the experience of children in institutional care and highlight issues for health or other childcare professionals to consider in caring for a post-institutionalised child. These issues include: developmental delays, over friendliness or “over attachment,” sleep issues, peer interaction and language acquisition, food, hospitalisation, over friendliness or “over attachment”, developmental delays, “hidden” symptoms, issues of diagnosis, and consideration of the needs of the parents.

The experience of children in institutions

Institutional neglect

The experience of a child in an institution is very different from that of a child in a family. Though institutions vary widely in the quality of care they provide, they generally have high child to caregiver ratios, which do not allow for individualized attention; they may also be lacking in heating, cooling, space, toys and nutrition. The physical and emotional deprivations of institutionalisation can result in a raft

of problems including: a range of health issues, trouble with forming relationships (attachment difficulties), physical and developmental delays and language and sensory integration issues.

The most serious deprivation of institutionalisation is the lack of a consistent and sensitive caregiver with whom the child can trust and form a healthy attachment. Development of trust and a secure attachment normally occurs through interactions in which a primary caregiver meets a child's needs in an appropriate manner resulting in reduction of discomfort and in feelings of relief. This cycle of need-distress-gratification-relief-need is ordinarily repeated many thousands of times in the first years of a child's life but is absent or greatly reduced in the experience of institutionalised children. The absence of this attachment cycle in the early years of a child's life can be incredibly damaging and impact their ability to develop relationships and function in society.

Developmental processes

High child to caregiver ratios also limit the physical experiences of children who may be restricted to a cot/room for extensive periods of time, may spend very little time in interaction with any adult and are unlikely to have treatment for any physical special need they have. As a result, many children will not meet gross or fine motor milestones during the time they are institutionalised. Nutritional deprivation or contamination of food or water with toxins such as lead or mercury can also impact development and health. Some children will experience sexual or physical abuse and infectious diseases and parasites are easily transmitted in the collective living conditions of an institution.

Health risks

Many of the medical issues that need to be considered post adoption are obvious to medical practitioners who know to routinely test for infectious disease and parasites, reliability of immunization record and to organize developmental, hearing, sight and dental checks within an appropriate time frame. Guidelines for

health care professionals are readily available on these topics and references are easily identified via a Medline search for example, however, there are matters that may be less obvious but are nonetheless important to consider.

Different children will be impacted differently by institutionalisation, not just because the quality of care they experience may vary but also because their internal resources for dealing with their environment and care or lack of care will be different. Some children, potentially those adopted at a younger age, will appear to emerge relatively unscathed but others may be profoundly affected. Few children will have all of the problems discussed here and many problems will likely be evident only for a short period of time. Children are remarkably resilient and sensitive caregiving results in incredible healing for a large proportion of children. However, it is vital that appropriate care be given in order for healing rather than exacerbation of problems to occur. Health and other child care professionals have an important function in assisting and supporting parents in their caregiving and play an extremely influential role in providing expert advice.

Developmental delays

Children who have spent an extended period of time in institutional care are often developmental delayed and retarded in growth due to physical and emotional deprivation. Children will often have three different “ages,” a chronological age, a developmental age and an emotional age, which may vary widely from one another. Their developmental age will depend upon the care they have received prior to adoption. In many institutions, babies are left lying on their backs for extended periods of time and preschool aged children may be restricted to a cot for most of the day and therefore have poor gross motor skills. Even older children are likely to have had a limited opportunities for physical or fine motor activities and thus, will compare poorly to children in families. However, children often experience enormous catch up growth developmentally and physically after placement and can benefit from the assistance of physical therapy and early intervention services. It is also worth considering that although there is often

rapid improvement post-placement, some children have permanent damage as a result of their early experiences. Children's emotional age will be related to the quality of relationships the child has had prior to placement. If the child has not had sensitive care from a primary caregiver their emotional growth will be severely retarded. Many suggest that the emotional age of the child is linked to the length of time they have been in a family. Thus, a 5 year old adopted at 3 years will have an emotional age close to those of a 2 year old born into their family and may express this in their needs and behaviour.

What professionals can do:

- ***Arrange for developmental assessments shortly after placement, understanding that they can assist in tracking the child's progress but may not be a good indication of the long-term prospects for the child.***
- ***Refer to early intervention services and do not assume that delays will be transient or be ameliorated without assistance.***
- ***Consider the emotional age of the child in determining how tests might be administered, matching testing procedure with emotional maturity rather than chronological age (e.g. hearing or sight tests).***
- ***Provide practical suggestions that may assist a child in overcoming delays.***

Over friendliness or "over attachment"

Over friendliness to strangers (called indiscriminate affection in the literature) is a common behaviour in post-institutionalised children. In institutions, where there are few carers, children learn to be cute and engaging in order to maximize adult attention. This is a survival mechanism since children who receive no human touch are at increased risk of morbidity and death. Post-placement, children sometimes seek to be attractive to strangers, seeing every adult as a potential new caregiver. Perhaps because most caretakers in institutions are women and have failed them, many children show a definite preference for men (alternatively

they may be scared of men). Children presenting indiscriminate affection need to learn that there are different types of relationships with adults and that family is something special. Parents have had success in teaching their children this by limiting the opportunity for contact with other adults and instructing those adults that they interact with of the boundaries they have set with their child. Younger children may be easily confined to their parent's arms. Older children may be told with whom they may cuddle (initially it is advisable that this is only mum and dad) or hold hands or talk and specific instruction on relationships provided. Emphasis can be placed on how parents care for their children and that children in families do not need to look after themselves. Explaining to children the concept of "circle of care" is often helpful in aiding children understand the inner sanctum of family and how extended family, friends and acquaintances are spread out like ripples on a pond; the distance from the centre indicating the closeness of the relationship.

At the same time that children are seeking the attention of strangers (or sometimes apart from this behaviour), children may strive to distance themselves from their parents, particularly their mother and may appear to be very independent. Thus, children may avoid making eye contact, avoid physical contact, be stiff while being held or act in such a way as to attempt to make themselves undesirable to their parents. Fear of intimacy is behind this behaviour as post-institutionalised children have experienced multiple caregiver loss and learnt that they can rely only on themselves. This can be very difficult for parents, particularly the mother who is often the primary caregiver and the focus of the child's rejection (many children will be somewhat accepting of their father while vehemently rejecting their mother). It can also be easy for parents to come to consider that their child is naturally independent and to allow them to maintain emotional distance. This however, is not in the child's best interest as healthy independence can only grow from healthy dependence on a primary caregiver and the long-term consequences of accepting distancing are serious. Families

may need to be supported by family, friends and professionals if they are not to take the rejection of their child personally.

Parents often find that they are able to assist their child to trust and build attachment with them by being responsive to their needs and gently persisting with closeness, not accepting the rejection at face value. It is not a case of forcing closeness on a child but providing closeness in ways that the child finds acceptable and gently increasing their tolerance over time. If a child rejects comfort from a parent, the parent should remain with the child and continue to attempt to comfort them. Activities that build trust and maximize close physical contact can also assist; for example, carrying the child in a sling (note: since children are rarely carried in institutions, many do not initially know how to hold on when being carried), cosleeping, cobathing, swimming together, playing games that initiate eye contact, dancing together, massage and hand feeding. These activities can be a beginning for reinstating the attachment cycle that was disrupted by institutionalisation. Assisting the child to develop a secure attachment with a primary caregiver may be the most difficult part of parenting a child with past hurts. There is a continuum of attachment from securely attached to severely attachment disordered. As children with severe attachment disorder may exhibit extremely antisocial behaviour as they grow (including aggression, lying, cruelty and self destructive action) and find it difficult to function in society, early intervention on building attachment is vital.

Some children rather than rejecting parental care become what some view as “over attached,” usually to the mother, and cannot tolerate being out of her sight. In fact, such children are insecurely attached and, fearing loss of another mother, determine to never leave her side. This can be wearing for mothers, however, resolution can only be achieved if the mother gives her child the closeness needed, allowing separation only when the child is ready to do so, moving from short periods of separation to longer and emphasizing the permanence of the

relationship. Forcing separation will have the opposite affect of what is desired and will prolong insecurity of attachment.

Over friendliness, premature independence and "over attachment" can be challenging for parents not just because they may be difficult to deal with but also because Western culture values independence in children.

What professionals can do:

- ***Support parents in their measures to deal with overfriendliness or "over attachment" and parenting in a way that promotes attachment.***
- ***Encourage parents whose child is rejecting them not to take it personally and to persist in striving for closeness with their child.***
- ***Refer families of children with severe attachment issues to professional assistance.***
- *Listen as parents describe their concerns, understanding that some children with a disordered attachment will present very well in public and save their troublesome behaviour for home.*

Sleep Issues

Sleep problems are very common in newly adopted, post-institutionalised children and can be the most challenging aspect of parenting in the first year post-adoption. Both difficulty in getting to sleep and night waking may occur and last for months to years. It is not unusual for a newly adopted child to take several hours to go to sleep at night and to wake a dozen times per night or more in distress. However, sleep difficulties are not the problem that needs to be solved, rather they are a symptom of an underlying issue. Possible reasons for sleep difficulties may be a result of trauma, an inability to feel safe, or that night has been an unsafe time for them in the past.

For most post-institutionalised children, adoption is a traumatic event. Their placement is often abrupt, with little or no preparation given to the child who experiences a change in caregivers and a drastic change in environment. Communicating to the child what is happening to them is often difficult because of language differences. Children may be able to consciously control their reaction to the stress of the new environment during their waking hours but in a more relaxed state during sleep their anxiety and or anger is exposed. Night is also a time when grief can more easily surface and the losses that a child has experienced are revealed.

Children may also have difficulty sleeping because they do not feel safe and to sleep well a feeling of safety is required. The upheaval in the child's life means that they know that any change is possible. They may fear what changes may happen while they are asleep and fight sleep, sleep with their eyes open or wake in fear during the night. Night can also be an unsafe time in an institution as are there generally few caregivers at night (one per 20 children is common). Thus, if children are being abused, it is likely to happen at night, resulting in feelings of unsafety at night.

Since sleep difficulties are a symptom of a deeper problem, sleep training techniques such as controlled crying/comforting are not suitable for children who have lived in an orphanage. Such techniques can cause further damage to an already hurt child as they learn that they cannot trust their parents to respond to their cries. However, in responding sensitively to children's cries at night, parents may assist the child in working through the trauma of placement, or other past traumas, and in feeling safe in their new environment. Being with the child as s/he goes to sleep is advisable. Some families find that co-sleeping, placing the child's bed next to or in the same room as the parents' bed alleviates symptoms. Co-sleeping in particular is mentioned by many parents as being pivotal not just in improving sleep for everyone (note: it can take a couple of weeks for parents to become accustomed to cosleeping) but also in promoting trust and

attachment. Remaining close to the child during the day and maximising physical contact at every opportunity (for example; avoiding the use of prams and baby chairs but instead using arms, sling or lap) will also assist in building trust, attachment and improving sleep. It is important to realise however, that no intervention is likely to result in immediate alleviation of sleep difficulties but that time is required. Parents whose child has severe sleep difficulties will need to find strategies to assist them in coping with the situation. This may include catching up on sleep during the day or on weekends, sleeping whenever the child sleeps, suspending non-essential activities and garnering assistance from family or friends to maintain the household.

What professionals can do:

- ***Support parents as they deal with sleep deprivation and parenting in a way that is outside the cultural norm.***
- ***Assist in developing strategies for dealing with sleep problems/deprivation.***
- ***Encourage parents by assuring them that they are doing something important by being there for their child at night and pointing out that every time their child exhibits distress is an opportunity to provide comfort and thus strengthen attachment.***
- ***Provide advice on ways to help the child to feel safer (some elements of "protective behaviours" programs can assist with older children).***

Peer interaction and language acquisition

It is conventional wisdom that children need to socialize with other children in a group environment in order to develop social competence. However, group childcare environments are not appropriate for the post-institutionalised child in the immediate post-adoption period. If children are placed in a group care environment they may become stressed because it reminds them of the institution they came from and they fear abandonment. Alternatively, they may

seem to fit right in and wish to spend more time there, finding the closeness of family life stressful and wishing to avoid the intimacy there. Neither of these situations are in the child's best interests. Some families of post-institutionalised children find that the needs of their child may necessitate delaying schooling or homeschooling. If entry into daycare or school is necessary, the introduction should be made gradually. Each child needs to be considered individually as responses to alternative care varies widely and thus, it is not possible to give absolute timeframes or protocols that are applicable to all.

It is often suggested to migrant families that daycare or school may be helpful in language acquisition. However, as mentioned, group childcare environments are problematic for post-institutionalised children and since their adoptive families speak English, it is in interactions with parents and siblings that the new language is best acquired. It also needs to be recognized that issues associated with language acquisition for post-institutionalised children may be different from migrant children learning English as a second language. This is because migrant children are generally learning English within the context of speaking their first language at home and often after having obtained competence in their first language. However, post-institutionalised children most often do not have parents who speak their first language. In addition, children may not have developed age appropriate language competency prior to placement because the low child to caregiver ratio in institutions means that children associate primarily with same aged peers with similar language deficiencies. Thus, the building blocks of language may have been missed, presenting special issues for language acquisition.

What professionals can do:

- ***Support parents in any requests they make with regards making entry to daycare or school easier for their child.***

- ***Take care not to inadvertently usurp the parental role and be sure to assist the child to distinguish between themselves as temporary part-time caregivers and the parents as permanent family.***
- ***Not accept inappropriate affection from the child and discuss any concerns you have with the parents.***
- ***Observe language acquisition carefully and refer to speech therapy if necessary.***

Food

There are several situations in which food can be an issue for the post-institutional child. Because many children have experienced food scarcity in institutional care they may hoard or overeat. This problem is usually mitigated with time and allowing the child to have free access to food (placing nutritious snacks where the child can reach them or packing a lunch box for the child to carry around). Restricting access to food may make the problem worse. Children may also not have developed the capacity to recognise the feeling of satiety or hunger since they have been given food on a schedule and regardless of individual need. Parents may need to encourage their child to make a connection between body signals of hunger or fullness and their relationship to food.

Some children may not have experienced much variety in food and may need a gradual transition to other foods. In some cases, children may have been sustained solely on bottle feeds well past the age at which solid food would normally have been introduced and may refuse solid food. Problems with different textures may be a sensory integration issue, children may also have an overactive gag reflex or may be lacking muscle development to chew food.

It is also common for children to regress in eating habits at the time they are adopted. Regression is a frequently observed response to trauma and, as discussed previously, placement is traumatic. Children may also seek to regress

in order to experience some of the nurturing that they missed out on earlier in life. Thus, children capable of feeding themselves may wish to be fed, children long weaned may request bottle feeding and some children pursue breastfeeding with their new mother. Regression should not be viewed as a problem but as an opportunity for nurturing. Adoptive families are encouraged to provide times where their child can be 'babied' and to bottle feed even if the child is well beyond the normal age of weaning.

What professionals can do:

- ***Refer eating problems to specialist speech pathology if necessary.***
- ***Support parents in "babying" their child.***
- ***If concerned about dental caries, suggest preventative measures that do not involve weaning from the bottle.***

Hospitalisation

Hospitals and the procedures that happen there can be frightening for any child but for post-institutionalised children there are additional reasons why they might be anxious. The hospital environment, for many children, is reminiscent of the institution in which they once lived and this can create great fear, as they may believe they will be abandoned at the hospital. In the short term they may react to this stress by shutting down, disassociating, talking incessantly, becoming hyperactive, or uncooperative (note: these symptoms may be seen in any stressful situation and some post-institutionalised children suffer from post-traumatic stress disorder). Some parents have found that even a day visit to a hospital can disrupt the child for several weeks. Thus, time in a hospital should be minimised and for example it may be helpful to arrange for the child's history to be discussed with health care professionals via telephone and for waiting before an appointment to be minimised (parents may suggest that they wait outside the hospital building and be called by mobile phone when their child is to be seen). In addition, post-institutionalised children who are hospitalised may

need to have their parents with them at all times, regardless of their age. The potential seriousness of the long-term consequences of not doing this cannot be understated. If the child feels that they have been abandoned in the hospital because their parents have not been allowed to remain with them the attachment relationship that has been developed since adoption may be severely damaged. If the primary caregiver of a child is ill or requires hospitalisation this can be extremely scary for children who may regress or otherwise express their anxiety.

What professionals can do:

- ***Assist in modifying hospital procedures in order to minimise time spent in the hospital environment and to allow parents to remain with their hospitalised child at all times, including at night.***
- ***Be understanding if the child is difficult or uncooperative because of fear/anxiety.***
- ***Explore delaying procedures that require hospitalisation to allow the child time to adjust to life in their new family and for strengthening of relationships prior to another stressful event.***
- ***Make accommodations to minimise the impact of parental hospitalisation on the child.***

"Hidden" symptoms

Some unusual behaviours may present in post-institutionalised children that may not at first appear to be connected to a child's history but are indeed related.

Children who have been institutionalised may have difficulty in recognizing the signals their body is sending them. Such abnormal physical responses have already been discussed in relation to feeding but can also present in relation to pain responses and waste elimination. Thus, children may have an abnormally high tolerance to pain and may not recognize the need to go to the toilet (for example, physical discomfort may be expressed as emotional discomfort or as anger). The lack of recognition of body signals in relation to food and waste

elimination is a direct result of the regimented life of an institution where eating, sleeping and toileting are on a schedule, regardless of body signals. A separation of body signals and action results in the quenching of normal response in some children. High pain thresholds can result, as caregivers are consistently unable to respond to a child's pain or discomfort. Parents of newly adopted children who exhibit an inability to recognize body signals may need to assist their child to make a connection between what their body is experiencing and why they are experiencing it.

Lack of a responsive primary caregiver can also result in a child not developing normal object constancy (since the primary caregiver is the first 'object') and they may have difficulty in recognising/recalling the existence of something they cannot see or in distinguishing their own boundaries. An example that illustrates how this is revealed is a school aged child who stands in front of a parent with eyes covered saying, "you can't see me". This "real space" conceptual incapacity fuels its emotional counterpart and a child seen to commit a naughty deed may deny responsibility expressing the same emotional lack of objectivity (sometimes referred to as "crazy lying"). Underdeveloped object constancy is another reason why children may find separations from parents difficult. Responsive caregiving and playing baby games that involve breaking and regaining contact (eg peek-a-boo) and reliability in returning after separations can assist children in developing this vital developmental milestone.

In addition, since primary caregivers act as regulators of infant physiology and emotion, children who have lacked this external regulator do not develop normal self-regulation and have difficulty dealing with stress. Thus, post-institutionalised children may appear loud or hyperactive, be disorganised in their behaviour and have difficulty managing and recognising emotions. Parents sometimes describe how their child oscillates from being in control to being out of balance. In situations where the child is out of balance they find that bringing the child

physically closer to them, limiting choice (essentially acting as an external regulator) and reducing stress is of assistance.

Another impact of non-responsive care in institutions is that post-adoption some children expect that their parents will be similarly unresponsive and so do not cry when they are hurt or in need. For instance, children have been known to be sick during the night but will not call out to awaken their parents but will lie in their vomit and waste until morning. A baby who does not cry when upset, hurt or in need because they do not think their parent will respond is not a “good” baby but a badly hurt child who is internally distressed but unable to express it. Such children need to be taught that parents care for their children and want them to ask for help. Parents can assist their child by watching them carefully for any signs of discomfort, intervening to provide what is needed as early as they can. Children may also appear very happy after only a few days post-placement, laughing, joking and being engaging. However, this response has a similar root as “over friendliness” in children believing that they need to be attractive to adults in order to survive and families and professionals should not be fooled that the child has “settled in.”

Self-soothing is common in post-institutionalised children, using such methods as finger sucking, rocking, head banging or masturbation. It is unwise for parents to seek to forcibly remove self-comforting behaviours from their children. However, self-soothing is a sign that a child is in need of comfort and such behaviours should be gently discouraged with the parent attempting to be a source of comfort to the child. It is important that the child not be made to feel that they are doing something shameful in self-soothing.

Some post-institutionalised children self-mutilate by scratching or biting/hitting themselves or pulling off fingernails. In some cases they are hurting themselves because they have the poor physical boundaries and abnormal physical responses described earlier and causing pain is a way of feeling something. In

other cases, neglect has left children feeling unlovable and deeply shameful and their self-harm is in response (this sense of shame is also seen in out of proportion responses to correction, lack of confidence, performance anxiety or perfectionism). In still further cases, self-mutilation occurs in response to stress and as a distraction from emotional pain. In order for self-mutilation to be extinguished, the root cause of the behaviour needs to be addressed. Sensory integration therapy, reducing stress and assisting the child to develop a secure attachment are helpful in reducing self-mutilation.

Post-institutionalised children are often bossy and controlling in relationships having been used to needing to look after themselves. Post adoption they seek to control their world because being in control equals safety. This is an artefact of anxiety and one that needs to be resolved so that the child can learn to trust their parents to care for them. Parents may need to constantly remind children that it is their job to look after them and that they do not need to look after themselves. Providing preparation for changes/transitions can also assist the child to feel safer. Allowing the child to control everything will be counterproductive in the long term.

It is tempting to think that a child from deprived conditions should be given as much stimulation as possible in order to help them to catch up. However, this is not a good idea as children are under an incredible amount of stress post-placement as they learn to survive in a new world. This stress has been measured in high cortisol levels and is evident in some of their behaviours. For instance, it is common for children to be hypervigilant meaning that they never relax but watch everything very carefully, seeking patterns and understanding of what is required of them. This often results in children picking up new things very quickly. However, minimisation of stress should be something that parents aim for and since post-institutionalised children have been used to a very small, predictable world it is advisable for parents to also restrict the flow of new things so there is not too much for the child to have to process.

The stress that children are under and the limited world in which they have lived, leads to other problems. Many children have difficulty with any transition (e.g. from wake to sleep, from home to out etc) and may take a long time to be comfortable in a new environment or with new people. Routine is often very important to children, as predictability helps them to feel safer. When meeting a new person, it may take months of interaction before the real personality of the child is revealed (many children are very good at masking their real selves/putting on a brave face). In addition, many experiences normal to children in families are foreign to them and extreme reactions to situations such as seeing a dog or walking on grass are to be expected. Older children may not know how to play with toys and need to be taught how to play.

Many children exhibit great grief at the loss of previous caregivers. Exhibition of grief is a sign that the child had been attached to their caregiver and this is a good thing as the child can transfer this attachment to their new parents. A child who does not grieve a previous caregiver may not have been attached to anyone and may have difficulty building attachment without prior experience of an attachment figure. Thus, allowing the child to grieve is important and if possible, it is helpful to maintain contact with previous caregivers.

What professionals can do:

- ***Support families as they deal with these "hidden" symptoms and validate their concerns (especially important because family and friends may discount the reality of these issues).***
- ***Encourage parents in providing sensitive caregiving and a structured, limited environment.***
- ***Understand that it can take a long time for a child to be comfortable in a new situation or with new people, including professionals, and that continuity of care is important.***

- ***Support families as they deal with the distressing manifestations of their child's hurt.***

Issues of diagnosis

Issues associated with trauma, abuse or neglect can make diagnosis and treatment of other problems difficult. Thus, a holistic, multidisciplinary approach is required. Although the effects of institutionalisation on children can be devastating and long lasting, not all of the problems that a child presents with may be a result of institutionalisation.

It is also easy to forget where post-institutionalised children have come from when they present well groomed and looked after with their caring adoptive family. Thus, it is easy to make assumptions about what to look for based on the child's current environment and not their previous one and miss opportunities for early diagnosis and treatment.

What professionals can do:

- ***Take the child's history into account when diagnosing and devising treatment plans.***
- **Not assume that all the problems that the child presents with are a result of institutionalisation.**

Consideration for the parents

When a family adopts a child from an institution they are taking a step into the unknown. Often little is known about the child they are adopting and there is no way for them to predict how the child will adjust to being in their family and what problems will arise. The initial adjustment of a child post-adoption can last for a very long time, at least a year, sometimes longer. The best-prepared family may find themselves surprised by what they encounter, thus, the parents of a post-institutionalised child also have special needs. A parent or a 4 year old who has

been with them since birth is not in the same position as a parent of a 4 year old who has only been in the family 6 months. Society considers that the birth of a child into a family, though a joyful event, is also difficult and support is often forthcoming at this time, however, adoption of a child, particularly an older child is often not similarly supported. Lack of support and understanding from those around them can add to the isolation that new parents feel. Parents can find it especially difficult to explain to others the special needs of their children, for example if their child has age appropriate cognitive development but is emotionally delayed. In many cases, the initial period of caring for their child will be physically exhausting but also emotionally exhausting as they invest their energies in seeking to help their child. Further, the development of relationship between parent and child is a two way process in which both the child and parent must participate. Depending upon their history this will be easier for some parents than others. Parenting can bring to the surface previously unrecognised personal difficulties that should be dealt with, as it is through self-awareness that problems in this area can be overcome. Although this article presents a quite extensive list of potential issues that families might face, it is far from exhaustive and families may have other concerns not mentioned here.

What professionals can do:

- ***"Prescribe" rest and avoidance of outside activities if parents are overdoing it and seeking to get back to normal too quickly.***
- ***Support parents by providing a listening ear and not dismissing concerns expressed about their children.***
- ***Recognise that you may not be able to materially change the situation for the family but your support, caring and encouragement can make a big difference to the parents' ability to cope.***
- ***Understand that some parents may not have a basis for comparison of normal child development and will need assistance in identifying where their child is in need of help.***

- ***If appropriate, explore with parents how their history and how they were parented may impact difficulties they have in providing sensitive caregiving to their child.***
- ***Be aware that families may be dealing with a multitude of issues and if they do not follow a course of treatment immediately this does not mean that they are not serious about helping their child but that they may have more urgent priorities.***
- ***Ask parents "what can I do to help?"***
- ***Provide parents with positive reinforcement for the hard work they are doing with their children.***
- ***Retain the lines of communication open with parents, understanding that you are all seeking to care for the child, but in different ways and each must be able to hear and respect the others viewpoint.***

Adopted and foster children who have not been institutionalised

A significant proportion of children adopted via intercountry adoption have not experienced institutionalisation but resided in foster care prior to adoption. This is generally a much better situation for children and means that many of the issues described here are less likely to occur. However, even children who have been in excellent foster care since shortly after birth have still experienced multiple loss of caregivers and a dramatic change in environment at adoption. Thus, they may still grieve post-adoption and for example have sleep difficulties that have a root in feeling unsafe. Generally the more moves a child has experienced the greater the impact and, as with every new placement, the cycle of attachment needs to be reinstated. The approaches for building attachment with post-institutionalised children also apply here. Foster children with histories of abuse, neglect and/or multiple placements will present with many of the same issues as post-institutionalised adopted children and similar care strategies may be helpful.

Conclusions

This article presents a summary of the issues with which post-institutionalised adopted children may present and ways in which health and other child care professionals may assist them and their families. It is very important that it be kept in mind that not all children present with these issues and that for many children the problems they have a relatively short lived. Post-institutionalised children are not abnormal and to pathologise them because of their history does them and their families a great disservice. Rather, the responses described here are normal reactions to an abnormal environment. Children are not meant to live in institutional care but in families and for many children growth in a family after adoption provides them the opportunity to heal from past hurts. Although the immediate post-placement period can be challenging for families seeing their child grow and heal is something that parents and those who have assisted them find particularly rewarding.

This version dated 2/04

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* Recommended reading

Karleen Gribble is the mother of two children, one born to her and the other adopted as an older child from institutional care in China. Her adopted child came home with a physical disability and developmental delays that have necessitated consultation with and treatment by a wide range of health and other child care professionals. This article has arisen out of her experience as she found that providing information to professionals about the affects of institutionalisation helped facilitate communication, optimised individualization of care and provided her with the assistance she needed to help her daughter. Karleen is also a scientist (BRurSc, PhD) and is Adjunct Research Fellow in the School of Nursing, Family and Community Health at the University of Western Sydney, NSW, Australia where her research focuses on adoptive breastfeeding and the non-nutritional impact of breastfeeding.

Appendix 3

Examples of legislation dealing with adoption leave

Commonwealth

WORKPLACE RELATIONS REGULATIONS 1996 - REG 30F
Basic Principles
(1) Under this Division, if a child under the age of 5 years is placed with an employee for adoption, the employee and the employee's spouse are entitled between them to unpaid adoption leave totalling 52 weeks to care for the child.

WORKPLACE RELATIONS REGULATIONS 1996 - REG 30U
Effect on adoption leave if child is 5 years of age or more If Division 2 adoption leave has been granted to an employee on the basis that the child will be under the age of 5 years on the day of the placement, the employer may cancel the leave if the child is not under the age of 5 years on that day.

South Australia

INDUSTRIAL AND EMPLOYEE RELATIONS ACT 1994 - SCHEDULE 5
Schedule 5—Minimum standard for parental leave
1—Definitions
In this Schedule—
adoption means the adoption of a child who is not the natural child of the employee or the employee's spouse, who is less than five years of age, and who has not lived continuously with the employee for six months or longer;

Queensland

INDUSTRIAL RELATIONS ACT 1999 - SECT 21
21 Notices and documents--adoption leave

(1) This section applies if an employee wants to take adoption leave.
(2) The employee must give the employer--
(a) for long adoption leave--written notice of any approval to adopt a child at least 10 weeks before the expected date of placement of the child for adoption purposes (the "expected placement date"); and
(b) written notice of the dates on which the employee wants to start and end the leave, as soon as practicable after the employee is notified of the expected placement date but, in any case, at least 14 days before starting the leave.

INDUSTRIAL RELATIONS ACT 1999 - SECT 17
17 Definitions for pt 2
In this part--
"adoption leave" means short adoption leave or long adoption leave.
"child", for adoption leave, means a child who is under the age of 5 years, but does not include a child who--
(a) has previously lived continuously with the employee for a period of at least 6 months; or
(b) is the child or stepchild of the employee or employee's spouse.
"long adoption leave" means leave taken by an employee to enable the employee to be the primary caregiver of an adopted child.

Western Australia

MINIMUM CONDITIONS OF EMPLOYMENT ACT 1993 - SECT 32
Interpretation in Division 6
32 . Interpretation in Division 6
In this Division —
“ adoption ” , in relation to a child, is a reference to a child who —
(a) is not the child or the step-child of the employee or the employee’s spouse or de facto partner;
(b) is less than 5 years of age; and
(c) has not lived continuously with the employee for 6 months or longer;

MINIMUM CONDITIONS OF EMPLOYMENT ACT 1993 - SECT 33 Unpaid parental leave, entitlement to

33 . Unpaid parental leave, entitlement to

Subject to sections 35, 36(1) and 37(1), an employee, other than a casual employee, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of —

(a) the birth of a child to the employee or the employee's spouse or de facto partner; or

(b) the placement of a child with the employee with a view to the adoption of the child by the employee.

An employee is not entitled to take parental leave unless he or she —

(a) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the employer; and

(b) has given the employer at least 10 weeks' written notice of his or her intention to take the leave.

(3) An employee is not entitled to take parental leave at the same time as the employee's spouse or de facto partner but this subsection does not apply to one week's parental leave taken by the employee and the employee's spouse or de facto partner immediately after —

(a) the birth of the child; or

(b) a child has been placed with them with a view to their adoption of the child.

(4) The entitlement to parental leave is reduced by any period of parental leave taken by the employee's spouse or de facto partner in relation to the same child, except the period of one week's leave referred to in subsection (3).

NSW

INDUSTRIAL RELATIONS ACT 1996 - SECT 55

What is parental leave?

55 What is parental leave?

(1) For the purposes of this Part, "parental leave" is maternity leave, paternity leave or adoption leave.

(2) "Maternity leave" is leave taken by a female employee in connection with the pregnancy or the birth of a child of the employee. Maternity leave consists of an unbroken period of leave.

(3) "Paternity leave" is leave taken by a male employee in connection with the birth of a child of the employee or of the employee's spouse. Paternity leave consists of:

(a) an unbroken period of up to one week at the time of the birth of the child or other termination of the pregnancy ("short paternity leave"), and

(b) a further unbroken period in order to be the primary care-giver of the child ("extended paternity leave").

(4) "Adoption leave" is leave taken by a female or male employee in connection with the adoption by the employee of a child under the age of 18 years (other than a child who has previously lived continuously with the employee for a period of at least 6 months or who is a child or step-child of the employee or of the employee's spouse). Adoption leave consists of:

(a) an unbroken period of up to 3 weeks at the time of the placement of the child with the employee ("short adoption leave"), and

(b) a further unbroken period in order to be the primary care-giver of the child ("extended adoption leave").

(5) For the purposes of this Part, "spouse" includes a de facto spouse.

Appendix 4 Examples of equity and inequity in paid maternity and adoption leave

Awards and Workplace agreements with equitable maternity and adoption leave

TEACHERS (CATHOLIC INDEPENDENT SCHOOLS) (STATE) AWARD 2004 (NSW)

12.2 Adoption Leave

(a) A teacher who applies for adoption leave under Part 4 of Chapter 2 of the Industrial Relations Act 1996 and is granted such leave by the employer in accordance with these provisions, shall be entitled to payment of adoption leave under the same (or comparable) conditions as those set out in this clause in relation to paid maternity leave. Provided further that adoption leave shall only be payable in respect of one adopting parent of a child.

OPTUS EMPLOYMENT PARTNERSHIP AGREEMENT (2003) (NSW)

Optus parental leave benefits include:

(a) Parental Leave - maternity leave, adoption leave and leave to the primary care giver provision of an eight week remuneration based payment to the following employees:

(i) maternity leave employees; and

(ii) paternity leave or adoption leave employees who take at least eight weeks paternity or adoption leave for the purpose of being the primary care giver to a child, or adopted child of the employee.

An award that has flexible return to work as comparable to maternity leave

SA AMBULANCE SERVICE AWARD

24.15.2.1. in the case of a female employee:
1. worker part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable;
2. work part-time in one or more periods at any time from the seventh week after she has given birth to a child until the child's second birthday;
3. work part-time in one or more periods at any time from the date of the placement of a child with employee for adoption until the second anniversary of the date:
24.15.2.2. in the case of a male employee:
1. work part-time in one or more periods at any time after his spouse has been given birth to a child until the child's second birthday;
2. work part-time in one or more periods at any time from the date of placement of a child with the employee for adoption until the second anniversary date.
(note unpaid leave only available if the child is under 5 years)

Inequities in paid leave

VICTORIAN PUBLIC SERVICE (NON - EXECUTIVE STAFF) CERTIFIED AGREEMENT 2001 (Paid maternity leave 12 weeks, adoption leave 6 weeks)
43.2 Maternity Leave
(a) A female Employee other than a casual employee who has at least 12 months continuous paid service, will be entitled to the equivalent of 12 weeks paid maternity leave, to be taken in connection with the birth of her baby either before and/or after the birth. The Employee will also be entitled to the equivalent of 12 weeks paid maternity leave if she has a miscarriage of her pregnancy where it has advanced to at least 20 weeks. If she is the primary care giver, she will be entitled to a further period of unpaid leave, but the total of her paid and unpaid leave must not exceed 52 weeks. If she does not qualify for paid maternity leave, she will be entitled to take up to 52 weeks unpaid maternity leave. An Employee who has been on leave without pay in excess of 52 weeks does not have an entitlement to paid maternity leave whilst on such leave without pay.

43.4 Adoption Leave
(a) If an Employee other than a casual employee is adopting a child and has at least 12 months continuous paid service, he or she will be entitled to 6 weeks paid adoption leave in connection with the adoption of the child if he or she is the primary care giver, or 1 weeks paid adoption leave if he or she is the secondary care giver. Adoption leave can be taken either before and/or after the adoption.

VICTORIA UNIVERSITY OF TECHNOLOGY ENTERPRISE BARGAINING AGREEMENT 2000 - 2003 (Paid maternity leave 12 weeks, adoption leave 12 weeks if child under 1 year and 6 weeks if child over 1 year)

28.1 Maternity Leave
28.1.2 A member of staff who has served for a continuous period of not less than twelve months and who provides a certificate from a registered medical practitioner stating that she is pregnant and specifying the day on which it is

expected she will be delivered shall be entitled to:

28.1.2.1 leave on full pay for a continuous period of twelve weeks to be taken within the period commencing six weeks prior to the expected date of delivery and concluding twelve weeks after the actual date of delivery;

28.3 Adoption Leave

28.3.1 An employee who submits satisfactory evidence of being an approved applicant for the adoption of a child, or otherwise becomes legally responsible for the care of a child, and of the date of placement of that child shall be entitled to:

28.3.1.1 where the child is at the date of adoption under twelve months of age, leave on full pay for a continuous period of twelve weeks commencing from the date of placement;

28.3.1.2 where the child is at the date of adoption twelve months or more than twelve months of age, leave on full pay for a continuous period of six weeks commencing from the date of placement;

CHARLES STURT UNIVERSITY (ACADEMIC STAFF) ENTERPRISE AGREEMENT 2000-2003 (Paid maternity leave 9 weeks, adoption leave 12 weeks if child under 1 year and 3 weeks if child over 1 year)

39. MATERNITY LEAVE

Eligibility

39.1. All female employees (other than casual employees) shall be eligible for maternity leave.

Entitlement

39.2.1 Full-time or part-time employees who immediately prior to the expected date of birth have completed forty (40) weeks of full-time or part-time employment with the University shall be eligible for a maximum of nine (9) weeks of salary at their ordinary salary from the date when maternity leave commences.

40. ADOPTION LEAVE

Entitlement

40.2 Prior to the date of taking custody of a child, an employee who has completed forty (40) weeks of continuous full-time or part-time service with the University shall be entitled to adoption leave on the following basis where the employee is the child's primary carer:

(i) nine (9) weeks of paid leave at the employee's ordinary salary, commencing on the date of taking custody of a child who is up to twelve (12) months of age;

(ii) three (3) weeks of paid leave at the employee's ordinary salary, commencing on the date of taking custody of a child who is older than twelve (12) months

THE OPSM GROUP AGREEMENT 2004 (Paid maternity leave 6 weeks, no paid adoption leave)

5.12 Paid Maternity Leave

5.12.1 The employer will provide a maximum of six weeks paid maternity leave to all full and part-time employees who have a minimum of twelve months' continuous service with the employer and to eligible casuals (as defined at clause 5.11.2). It is a matter of choice for the employee if she elects a lesser period or any paid leave at all.

Appendix 5 Families with Children from China Submission to the NSW Department of Community Services on the Subject of Increasing Adoption Fees

Director-General
NSW Department of Community Services
Locked Bag 28, Ashfield. NSW. 1800.

Dear Mr Shephard,

We wish to comment on the draft strategy, Intercountry Adoptions: a Reform Proposal for NSW (the proposal can be downloaded at http://www.community.nsw.gov.au/adoptions/pdf_files/intercountry_adoptions.pdf). In particular I wish to focus on the proposed fee structure. DoCS are proposing that fees be increased from under $3000 to nearly $10000. We will present arguments that will outline why this fee structure is inappropriate.

DoCS already funds private adoption service providers

In the reform proposal it is suggested that it is necessary to change DoCS pricing structure in order for entry of private service providers to be viable. The inference is that private service providers could not compete with the current costs charged by DoCS. However, there is no evidence produced to substantiate the statement that costs of a private service provider would be significantly higher than that currently charged by DoCS and neither the terms of reference and the KPMG report have been made available to stakeholders. It could be the case that private service providers would have lower overheads, be significantly more efficient than DoCS and thus be competitive with fees held at the current level. Further, this discussion ignores the fact that there are already private service providers for adoption services for local adoptions in Anglicare, Barnardos and

Centrecare. The current private adoption service providers, are funded by DoCS. Why would not private service providers in intercountry adoption not also receive funding from DoCS in order to provider their services at a reasonable cost? Funding support for private organizations providing a community service is well established in NSW.

The paper does not mention the costs of processing local adoptions, are these also under review? The current fee structure has little difference in costing between local and intercountry adoption although local adoptions are almost certainly more costly to process than intercountry adoptions. Should intercountry adoption fees be increased in the way described while local fees remain unchanged it needs to be asked why this would be the case? Is it racial discrimination? Are children being discriminated against on the basis of their nationality? Families with children adopted via intercountry adoption strongly object to their families being treated differently because of the nationality of their children.

Adoption is supposed to be about the needs of children

The prelude to the proposal recognizes that intercountry adoption is an important means of providing families for children who need them. This is also stated in the National Minimum Principles in Adoption agreed upon by the Council of Social Welfare Mininsters “if children cannot grow up in their own family, they are entitled to grow up in a permanent, secure and loving family environment” and is recognized by the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption which states that “intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her state of origin.” There are of necessity costs associated with intercountry adoption in traveling to the child’s country of origin. There are also fees in country associated with legal

requirements and providing support for the children who remain in care. Such fees are understandable given the under-resourced nature of welfare services in the countries from which children are adopted to Australia. These costs no doubt exclude some suitable and willing families from adopting a child in need of a family, which may be regrettable but is understandable. However, it is not reasonable for a government department like DoCS to place such an enormous financial barrier in front of applicants in Australia, preventing children from being adopted from families who would be willing and able to provide for their special needs if not for the onerous burden of approximately $10 000 in fees from the NSW government. How is this in the best interests of children in need of families? Does DoCS provide a service for children or a service for wealthy couples? Criteria for selection in 3.1.6 and 3.1.7 of the draft standards for adoption service providers does not include “wealth,” should they?

Adoption and birth are comparable methods of family formation

It needs to be recognised that adoption is a permanent, valid means of family formation that is on par with birth and adopted and biological children share the same legal status. However, both the federal and state governments subsidise biological parenting in the form of provision of IVF, antenatal, obstetric and postnatal care. The breakdown of some of the costs of subsidisation of childbirth by the Federal Government follow. Public hospital costs of Pregnancy, childbirth and puerperium in 2001-2002 were $738 685 000 and care of newborns and other neonates was $326 432 000, producing a total of $1 065 117 000 for hospital care. This does not include money paid by government for IVF, antenatal consultations, pathology tests, anaesthesia, ultrasound, PBS, postnatal care and the subsidisation of birth in private hospitals (total cost $329 549 000) or the subsidisation of the private health insurance system. The real figure could be higher than $2 billion paid by state and Federal Government to subsidise childbirth in Australia. Adoptive families begrudge the fees they have to pay to

their own governments when they, as taxpayers, have already paid for these services in their taxes. They feel that if the government is prepared to provide free services to biological families they should do the same for adoptive families. It is interesting to note that using the above figures each baby born in Australia costs government about $8000. Comparing these costs to those currently charged by DoCS would suggest that in order for families to be treated equitably regardless of whether children join their families via adoption or birth, decreasing the current level of fees by approximately $1000 would be required. How could increasing intercountry adoption fees in NSW distribute the costs of intercountry adoption more appropriately? Increasing fees will result in increased inequity between biological and adoptive parents.

There are other models for distributing the costs of adoption

It may be true that some states have higher adoption fees that NSW currently does, however, this is by no means universal. Western Australia ($2236), Tasmania ($1998), Queensland ($2000) and ACT ($2825) are either less than or at about the same level of current costs in NSW. No state has fees even close to approaching those proposed. DoCS needs to investigate other ways of funding adoption services than increasing fees.

In many western countries governments take a proactive role in assisting families to adopt children in need of a family to care for them. In neighboring New Zealand, where adoptions are processed by the Department of Youth and Family (equivalent to DoCS), there are no fees. In Sweden, adoptive families receive a cash grant of $4400, in the USA, families receive a tax credit of $10000 which may be used over several years (some states in the US provide additional subsidies) and in Quebec, a tax credit of $7500 applies to adoptive families. Some European countries like the Netherlands have all adoption related expenses including fees and travel costs as tax deductible. This governmental support recognises adoption as a valid means of forming a family and helping

children find permanent families. It is clear from the proposal document that DoCS only investigated the cost of processing adoptions within DoCS with the view that adoption applicants should be paying for the full cost. Exploration of other ways of paying for the costs of processing adoption should be investigated. Placement of a $10000 fee for each child born would be an onerous burden on biological families, $10000 in fees for adoptive families is similarly burdensome.

Commodification of children

Adoption professionals in Australia have often been disparaging of the costs charged by private agencies in such countries as the US, indicating that this amounts to commodification of children. However, many US agencies charge less than the fees currently being proposed by DoCS. With such high fees DoCS can be accused of engaging in the commodification of children in need and exploitation of the desire applicants to add to their family via adoption.

If greater funding is needed by docs in order to be more efficient, greater funding from the state and Federal Governments should be obtained
This is an area in which DoCS has not been proactive. Applicants, understanding the under-resourced nature of Adoption and Permanent Care Services, have asked staff at different times whether it would be helpful for them to bring this issue to their local members but have not received any encouragement to do so. DoCS have also played no role in educating other state and Federal Government departments and other bodies of the needs of adoptive families and addressing current inequities. Many adoptive families do not meet the requirements for a number of government payments designed to support families. Maternity Allowance, Maternity Immunisation Allowance and the 'Baby Bonus' are either unavailable to most adoptive families or are available only in a limited way. DoCS have also not provided education of state and Federal Governments or employer/employee groups on the issue of employment leave requirements of adoptive parents. Thus, huge inequities in relation to paid adoption leave exist

and for instance although 29% of workplace agreements have paid maternity leave, only 1% have paid adoption leave. Further, some families find they are not entitled to any leave under state or federal legislation because leave is only mandated when children are 4 years of age or younger. Thus, an employee adopting a child 5 years of age or older is in a position where their job is unprotected- they may lose their job or be demoted- when they adopt a child. DoCS should be taking a proactive role in educating relevant bodies of the needs of adopted children and their families. That funding is clearly an issue for Adoptions and Permanent Care Services is likely to at least be partially because they have not alerted government of the need.

Disadvantaging already adopted children

Introduction of the proposed fee structure may also disadvantage children already adopted via intercountry adoption. This is because higher fees will make it more difficult for families who have adopted one child to adopt another. In listening to adult intercountry adoptees it is often expressed that being the only adoptee in a family is not desirable. However, higher fees may make it impossible for some families to adopt another child.

Keeping the best interests of the child paramount

Placing families under financial strain cannot be in the best interests of children. As previously mentioned, intercountry adoption is a costly process to start with and in addition to this the special needs of adopted children mean that one parent must remain at home with the child for at least 6 months. This is also a requirement of DoCS. However, many children will require more than 6 months before entering school or any alternative care but their families may be unable to give them the care they need because of the costs of adoption imposed by DoCS. This is not in the best interests of the child. Adopted children should be considered within a wider framework as being members of Australian society and as such their families should not have onerous burdens imposed on them. The government plays an important role in assisting those who are disadvantaged

and adopted children, by virtue of their background of maternal separation, instutionalisation or abuse, are disadvantaged.

It should also be acknowledged that a proportion of applicants will have characteristics that make them eminently suitable as adoptive parents but may also make them less likely to be wealthy. For example, those with experience in parenting and commitment to parenting may be more likely to struggle to pay the level of fees proposed because such parents may already have children and be more likely to be a single income household, having one parent home full time. Point 1.4.1 of the draft standards states that the child's needs and the family's capacity to meet those needs should be matched, however, some well qualified applicants will be excluded if fees increase.

Conclusion

Adoption is supposed to focus on providing families for children who need them. Placing barriers in front of families who would be excellent parents for children in need and excluding families from applying on the basis of lack of wealth is unconscionable from a department who supposedly has the needs of the children as paramount. The seriousness of DoCS in consulting with stakeholders on this matter needs to be questioned given the inadequacy of advertisement of the reform strategy amongst stakeholders and the very tight time frame for submissions. Many families who would be affected by this strategy would not have heard of it. Further consultation with stakeholders is required.

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