

## Inconsistencies between benefits and entitlements

### Introduction

- 4.1 Australia ratified the International Covenant on Civil and Political Rights in November 1980. Article 26 provides that people should not be discriminated against due to birth status.<sup>1</sup>
- 4.2 The committee stresses that it has received no evidence of direct legal discrimination against adoptive families in Australia. Discrimination, however, can also be indirect. Regulations and benefits may appear fair at first glance because they treat everyone the same way, but they can be discriminatory if, in practice, they disadvantage a certain group.<sup>2</sup>
- 4.3 As an example, parents needed to apply for the maternity payment, when it was first introduced, before their children were 26 weeks of age. Very few children, however, were adopted through an intercountry adoption below this age, which meant few adoptive families were eligible for the payment. This example is discussed in further detail below.
- 4.4 The maternity payment is an example of a common claim by adoption groups, namely that they are rarely consulted during the development of government policy. This has meant that many benefits and entitlements do not suit their circumstances.<sup>3</sup>

---

1 International Covenant on Civil and Political Rights, Article 26, viewed on 25 October 2005 at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).

2 Australian Human Rights and Equal Opportunity Commission, 'Frequently Asked Questions,' viewed on 27 October 2005 at <http://www.hreoc.gov.au/faqs/general.html#2>.

3 EurAdopt Australia, sub 137, p 10, Cornhill R and N, sub 33, p 11.

- 4.5 This lack of access to entitlements is additionally concerning due to the high costs of intercountry adoption. It is not uncommon for parents to spend \$30,000 to adopt a child from overseas.<sup>4</sup> The committee received evidence that some parents had sold their houses and moved to refinance their mortgage so they could afford these costs.<sup>5</sup>
- 4.6 This chapter is largely devoted to ensuring that adoptive parents and children have the same access to benefits and entitlements as birth parents and are not the subject of discrimination.

## The workplace

### Age limit for unpaid adoption leave

- 4.7 Many submissions have provided evidence that unpaid adoption leave is not available for children of five years of age. Under the *Workplace Relations Act 1996*, there is no entitlement or protection for families adopting children over five years of age. Clause 30U of the *Workplace Relations Act 1996* states:
- 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.
- 4.8 From 1999-2004, approximately 20% of children adopted from overseas were aged over five years, as the figure 4.1 on the next page demonstrates.
- 4.9 Most jurisdictions require at least one adoptive parent to stay home after receiving the child: Victoria, Queensland, Tasmania and the Australian Capital Territory require one year, New South Wales and Northern Territory require six months, and South Australia & Western Australia strongly encourage one year. Most adoptive parents support this requirement, but they argue that the leave should be better supported in legislation to complement it.<sup>6</sup>

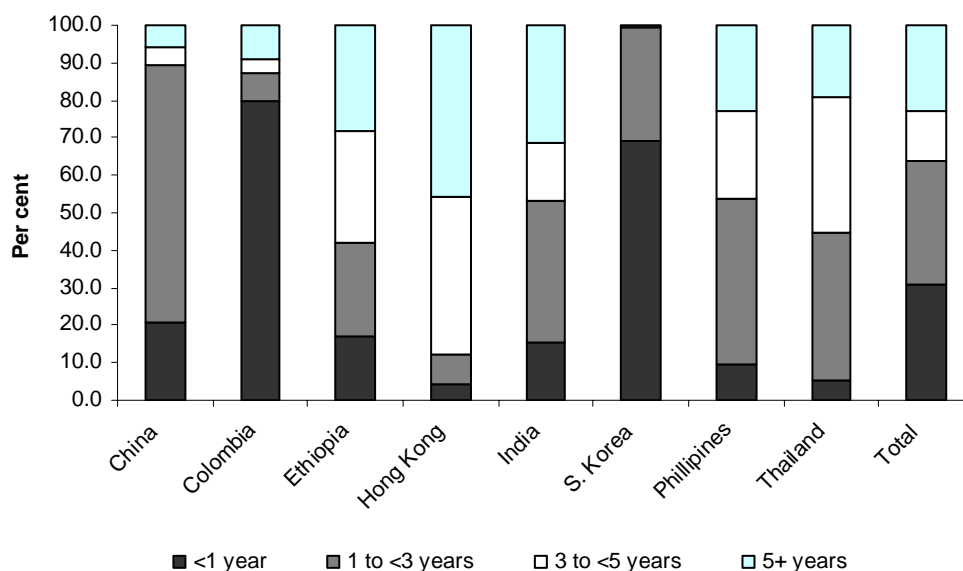
---

4 Bottrell C, T and E, sub 30, p 5, Name suppressed, sub 48, p 2, Hunt D, sub 92, p 1, Lockwood C, sub 127, p 4.

5 Nielsen S and L, sub 21, p 2, Pirani D and C, sub 121, p 7.

6 Name suppressed, sub 123, p 6.

Figure 4.1: Children legally adopted, by age of child and country of origin, 1999-2004



Source: Australian Institute of Health and Welfare, sub 135, p 9.

4.10 Families with Children from China have stated in their submission that only NSW and ACT have adoption leave without the age limit.<sup>7</sup> The NSW Government amended its legislation in October 2003.<sup>8</sup>

4.11 Submissions to the committee have argued that the problem when older children are adopted is they require intensive parenting – much more than for a child of the same age that has had a normal upbringing. The older the child is, the greater the level of support should be:<sup>9</sup>

All children who have been institutionalised, suffer to some degree (from mild to extreme) attachment issues – that is an ability to bond and to trust to primary caregivers. ... Prematurely placing a previously institutionalised child, with attachment issues, in another institutionalised setting where there are many carers – childcare may impact on their ability to form a bond of trust with their parents and impact on their future relationships.<sup>10</sup>

7 Families with Children from China-Australia, sub 86, p 33.

8 NSW Government, *Industrial Relations Amendment (Adoptions Leave) Bill 2003*, viewed on 28 October 2005 at [http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/897de67f7a0fadebca256d48002e6d80/\\$FILE/b03-079-22-p02.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/897de67f7a0fadebca256d48002e6d80/$FILE/b03-079-22-p02.pdf).

9 Lockwood C, sub 127, p 4.

10 Wilson L and Turner S, sub 70, p 12.

- 4.12 Australians Adopting European Children (AAEC), amongst others, have informed the committee that the Human Rights and Equal Opportunity Commission (HREOC) has recommended 'the age restriction for qualification for unpaid adoption leave be removed'.<sup>11</sup>
- 4.13 Given that a significant number of children are aged over five when they are adopted and that they have considerable parenting needs, the committee sees no reason why the five year age limit should be retained.

### Recommendation 6

- 4.14 **The Minister for Employment and Workplace Relations:**
- **amend the *Employment and Workplace Relations Regulations 1996* to remove the five year age limit for adoption leave and encourage the states and territories to make similar amendments to their workplace legislation; or**
  - **contingent on enactment of section 94ZJ of the *Workplace Relations Act 1996* (the Act) as proposed in Schedule 1 of the *Workplace Relations Amendment (Work Choices) Bill 2005*, amend the Act to remove the five year age limit in the meaning of an 'eligible child' for the purposes of adoption leave and encourage the states and territories to make similar amendments to their workplace legislation.**

### Leave in Commonwealth agencies

- 4.15 The *Maternity Leave (Commonwealth Employees) Act 1973* makes no reference to adoption. That legislation's main provision is section 6, which is titled, 'Absence from duty in relation to childbirth.' As this heading suggests, a woman will only be granted maternity leave when she gives birth to a child. Under this section, a woman giving birth to a child is entitled to 12 weeks paid leave and another 40 weeks of unpaid leave.
- 4.16 The committee received evidence that some Commonwealth agencies provide adoption leave equivalent to that which birth parents are entitled. These include the Department of Health and Ageing and the Department of Industry, Tourism and Resources.<sup>12</sup>

11 AAEC, sub 16, p 18; Cornhill R and N, sub 33, p 7.

12 Wilson L and Turner S, sub 70, p 13.

- 4.17 On the other hand, the Australian Taxation Office provides no additional leave for adoption.<sup>13</sup> The Department of Defence provides one week of paid adoption leave and the option of applying for a further 65 weeks of unpaid parental leave.<sup>14</sup>
- 4.18 The committee can see no reason for this discrepancy between birth and adoptive parents. What makes matters additionally difficult for adoptive parents is that, as discussed earlier in this chapter, many jurisdictions require adoptive parents to take one year off work for intensive parenting and attachment.
- 4.19 The committee believes these arrangements discriminate against adoptive parents and the leave provisions in the *Maternity Leave (Commonwealth Employees) Act 1973* should also apply to them.

### Recommendation 7

- 4.20 **The Minister for Employment and Workplace Relations introduce amendments to the *Maternity Leave (Commonwealth Employees) Act 1973* so that adoptive parents in the Commonwealth public sector receive equivalent leave conditions to birth parents and encourage the states and territories to make similar amendments, where necessary, to their workplace legislation.**

### Negotiated workplace arrangements

- 4.21 In the 2002-03 biennial report on workplace agreements, 4% of certified agreements included paid adoption leave, up from 2% for 2000-01. This report also states that 4% of Australian workplace agreements included paid adoption leave in 2002-03.<sup>15</sup>
- 4.22 By contrast, paid maternity leave was included in 10% of certified agreements in 2002-03, up from 7% in the previous period. Paid maternity

13 Wilson L and Turner S, sub 70, p 13.

14 Department of Defence, *ADF Pay and Conditions Manual*, section 5.6, 'Parental leave,' viewed on 5 September 2005 at [http://www.defence.gov.au/dpe/pac/211/7321\\_1.html](http://www.defence.gov.au/dpe/pac/211/7321_1.html).

15 Department of Employment and Workplace Relations and the Office of the Employment Advocate, *Agreement making in Australia under the Workplace Relations Act – 2002 and 2003*, (2004), pp 57, 96, viewed on 1 November 2005 at <http://www.workplace.gov.au/workplace/Category/ResearchStats/Agreement/AgreementmakinginAustralia.htm>.

- leave was included in 8% of Australian workplace agreements in 2002-03.<sup>16</sup>
- 4.23 Negotiated workplace arrangements, therefore, are less likely to have paid adoption leave than they are to have paid maternity leave.
- 4.24 The Australian Chamber of Commerce and Industry and the Business Council of Australia announce their national work and family awards on an annual basis. In 2004, the adoption leave arrangements in some of the winning firms included:
- 3M Australia had one week of paid leave;
  - the Queensland Department of Education and the Arts had six weeks paid leave; and
  - the University of South Australia had 12 weeks paid leave.<sup>17</sup>
- 4.25 The committee received evidence of indirect discrimination in negotiated workplace arrangements. Many flexible return to work provisions, which allow parents to balance their work and families, discontinue when the child turns two years of age. One adoptive mother had to give up her job because her 'stay at home period' required by the adoption authorities continued past her child's second birthday.<sup>18</sup>
- 4.26 One of the key pieces of guidance on work/family balance in negotiated workplace arrangements is *Improving the Work and Family Balance*, published by the Office of the Employment Advocate. It includes model clauses for paid maternity and paternity leave, but not paid adoption leave.<sup>19</sup>
- 4.27 The committee would prefer that negotiated workplace arrangements provided the same coverage of leave for both adoptive and birth parents. The guidance issued by the employment and workplace relations portfolio should put adoption and parental leave on an equal footing.
- 

16 Department of Employment and Workplace Relations and the Office of the Employment Advocate, *Agreement making in Australia*, pp 57, 96.

17 Department of Employment and Workplace Relations, *Australian Chamber of Commerce and Industry and Business Council of Australia National Work and Family Awards 2004 – Winning Workplaces*, (2004), pp 15, 51, 53, viewed on 1 November 2005 at <http://www.workplace.gov.au/workplace/Category/Publications/Workandfamilypublications.htm>.

18 Freeden A and C, sub 58, p 5.

19 Office of the Employment Advocate, *Improving the Work and Family Balance* (2000) pp 23, 24, viewed on 1 November 2005 at [http://www.oea.gov.au/graphics.asp?showdoc=/home/publications/publications\\_title.asp&SubMenu=5](http://www.oea.gov.au/graphics.asp?showdoc=/home/publications/publications_title.asp&SubMenu=5).

## Recommendation 8

- 4.28 **The Minister for Employment and Workplace Relations ensure that the advisory material issued by that portfolio (in particular the Office of the Employment Advocate):**
- **make reference to adoption leave;**
  - **suggest that making adoption entitlements equivalent to maternity and paternity entitlements reduces the risk of discrimination; and**
  - **advise that adoption entitlements should be calculated on the period that the child has been in the care of the parent, rather than the child's age.**

## Parenthood

### Maternity payment

- 4.29 The maternity payment was first introduced on 1 July 2004 and could only be claimed for children under the age of six months. The payment is approximately \$3,000, but is set to increase periodically. This will take effect from 1 July 2006, when the maternity payment will rise to \$4,000 and will then increase to \$5,000 as of 1 July 2008.<sup>20</sup>
- 4.30 The Committee had many requests to raise this time limit. There are very few adopted children below 26 weeks of age when their adoptive parents take responsibility for them. As shown in figure 4.1, only 31% of children adopted between 1999 and 2004 were less than one year old.<sup>21</sup>
- 4.31 There are many examples of adoptive families missing out on the entitlement for the maternity payment. For instance, one family went through bureaucratic delays in finalising the adoption, which in turn put

---

20 Department of Families and Community Services, *Maternity Payment – Extending the Age Limit on Adopted Children*, viewed on 28 October 2005 at <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/budget/budget2005-wnwd08families.htm>.

21 Australian Institute of Health and Welfare (AIHW), sub 135, p 9.

their adoptive child at 28 weeks of age.<sup>22</sup> They were not eligible for the payment.

- 4.32 In May 2005, the Government increased the age limit from 26 weeks to two years and backdated the payment to when it was first introduced.<sup>23</sup> Although this change is very welcome, a significant proportion of adopted children will still not be eligible. As also shown in figure 4.1, over 30% of children adopted between 1999 and 2004 were above 3 years of age.<sup>24</sup> As one submission stated:

Even if the age is increased to two years, many intercountry adoptive families will miss out. Considering that most of the children in overseas countries waiting for an adoptive family are older than 2 years and there is a chronic need for Australian families to open their homes to these children, it is essential that there are no restrictions on the age of the arriving children. Families who adopt older children have just as much need for the financial assistance the maternity payment brings, as families who adopt the younger children. An example where an older age criterion is already in place is the Baby Bonus tax relief package for families. That benefit continues to be available until the children turn 5 years, suggesting that the Federal Government is well aware of the value of providing support to families with children beyond infancy.<sup>25</sup>

- 4.33 A common theme in the evidence to the committee is that all adoptive families, no matter what the age of the child when placed with the family, should be entitled to the maternity payment.<sup>26</sup>
- 4.34 Adoptive families incur the same costs as biological parents in preparing for the arrival of the child and yet receive no help from either federal or state governments in this regard.

I had to purchase a cot, pusher, high chair, car seat and clothing. On top of this my state department has a policy that one parent must stay at home full time with the child for 12 months after

---

22 Hunt D, sub 92, p 1.

23 Department of the Treasury, *Budget measures 2005-06*, Budget Paper No. 2, Canberra, May 2005, p 167.

24 AIHW, sub 135, p 9.

25 Rosenwald T, sub 189, p 7.

26 Lyn, transcript 3 August 2005, p 14, Ford J, *Accepting Children Everywhere*, transcript 16 August 2005, p 65, Wilson L, transcript 17 August 2005, p 25, Cornhill R and N, sub 33, p 4.



placement – in order to facilitate good attachment and bonding within the new family ...<sup>27</sup>

- 4.35 The Human Rights and Equal Opportunity Commission recognises that an older adoptive child would incur greater expenses than a newborn baby would. HREOC recognises in its 2002 report, *A time to value*, that costs incurred by adoptive families were equal to or higher than birth families. HREOC recommends that there should be no age restriction for adopted children for receiving the maternity payment.<sup>28</sup>
- 4.36 The committee agrees that it would be equitable for parents to receive the maternity payment when they adopt an older child. There is a spike in household costs regardless of whether the child is a baby or not. The committee therefore, makes the following recommendation.

### Recommendation 9

- 4.37 **The Minister for Family and Community Services remove the age limit for adopted children's eligibility for the maternity payment but require the claim to be made within 26 weeks of the child being placed in the care of adopting parents.**

### Maternity immunisation allowance

- 4.38 The maternity immunisation allowance is a non-income tested payment to encourage parents to immunise their children. This allowance is approximately \$200 and is a one-off payment per child. It is for children born on or after 1 January 2003, between 18 and 24 months of age, who have been fully immunised.<sup>29</sup>
- 4.39 Committee received a number of stories of people just missing out on this allowance because they adopted their children just as they were turning two. Other parents had difficulty in having the child's overseas immunisations being recognised in Australia.<sup>30</sup> For instance, a representative of Adopting Children Everywhere explained to the committee their experience:

27 Smith L, sub 19, pp 2-3.

28 Human Rights and Equal Opportunity Commission, *A time to value, Proposal for a national paid maternity leave scheme*, Sydney, 2002, viewed on 28 October 2005 at [http://www.hreoc.gov.au/sex\\_discrimination/pml2/recommend.html](http://www.hreoc.gov.au/sex_discrimination/pml2/recommend.html)

29 Australian Government, Family Assistance Office, viewed on 31 October 2005 at [http://www.familyassist.gov.au/fao/what\\_why\\_how/07\\_maternity/02.html](http://www.familyassist.gov.au/fao/what_why_how/07_maternity/02.html).

30 Smith L, sub 19, p 3, Bottrell C, T and E, sub 30, p 3, Name suppressed, sub 31, p 2.

Both my children were ill and were on catch-up programs, so they came in older and were on half dosages for their immunisations. That caused issues with Centrelink, the immunisation board and our doctor. Every time we had a immunisation done it caused another set of letters and phone calls to do the rounds. Your child cannot go to child care because it has not been immunised and you obviously do not qualify for any bonus for having them immunised. You do not qualify as you would if you had your birth child at that stage.<sup>31</sup>

- 4.40 Many adoptive families do not qualify for the immunisation allowance because of the age of the child at placement. As shown in figure 4.1, approximately half of the children adopted into Australia are over two years of age. Further, because of their background, many of them do not have all the required immunisations, if they have any at all.<sup>32</sup>
- 4.41 The age limit of two years appears to discriminate against adoptive families because there is either little time to get the immunisation up to date before the adoptive child's second birthday or the child is older than two years of age when entering the country.
- 4.42 If birth parents have two years to organise their children's immunisations before applying for the allowance, then a similar period should be available for the parents of children adopted from overseas.
- 4.43 The South Australian Department of Health has an immunisation calculator that can estimate the immunisations required for a child to catch up on its vaccinations.<sup>33</sup> The minimum period is usually 12 months, which suggests that two years would give enough time to manage any complications.

### **Recommendation 10**

- 4.44 **The Minister for Family and Community Services amend the eligibility criteria for the maternity immunisation allowance in the case of children adopted from overseas so the eligibility period is two years after the child's entry to Australia.**

31 White M, transcript 16 September 2005, p 65.

32 Freedon C and A, sub 58, p 5, Families with Children from China-Australia, sub 86, p 33.

33 South Australian Department of Health, *Immunisation calculator*, viewed on 28 October 2005 at <http://www.health.sa.gov.au/immunisationcalculator/immcalc.asp>.

## Other financial assistance

- 4.45 During the inquiry, there was widespread support in submissions for financial relief from adoption costs.<sup>34</sup> As noted earlier in the chapter, these parents typically pay up to \$30,000 per adoption whereas birth parents receive significant government subsidies.
- 4.46 Historically in Australia, governments have occasionally supported parents in meeting adoption expenses. In 1971, the Commonwealth allowed adoption expenses, such as legal and agency fees, to be a tax deduction. This policy decision became section 82JA of the *Income Tax Assessment Act 1936*.
- 4.47 In 1975, the Government discontinued this tax deduction and replaced it with a general concessional rebate. Taxpayers could elect to receive either \$540 or 40% of eligible expenses, whichever was greater. A variety of expenses were declared eligible, including adoption expenses and medical fees. This system was implemented through sections 159N and 159X of the *Income Tax Assessment Act 1936*.
- 4.48 By 1985, this system had changed to a 30% rebate on these eligible expenses for any amounts in excess of \$2,000. The Government of the day decided to cancel the rebate, however, because it was typically only used by higher income earners and the activities in question were already subject to high levels of government subsidy.<sup>35</sup>
- 4.49 A number of countries overseas provide financial assistance to parents who adopt a child. In the United States, adoptive parents are eligible for a dollar for dollar tax rebate on adoption expenses up to US\$10,390<sup>36</sup>
- 4.50 Other countries provide similar assistance. For example, Denmark gives a subsidy of approximately DKK 39,000, which is approximately \$8,500 in Australian currency.<sup>37</sup> Sweden provides a subsidy of SEK 40,000, which is approximately \$7,000.<sup>38</sup>

---

34 Expectant Parents Group of Canberra and Regional NSW, sub 159 p 5, McKinley L, sub 158, p 2, Pirani D and C, sub 121 p 3.

35 Commonwealth of Australia, *Reform of the Australian Tax System, Draft White Paper* (1985) Australian Government Publishing Service, p 101.

36 Internal Revenue Service, 'Topic 607 - Adoption Credit,' viewed on 9 September 2005 at <http://www.irs.gov/taxtopics/tc607.html>.

37 Ministry of Science, Technology and Innovation, 'Foreign citizens in Denmark are generally covered by Danish rules for adoption,' viewed on 9 September 2005 at <http://www.workindenmark.dk/Adoption>.

38 The Swedish Intercountry Adoptions Authority, *Adoption - but at what price?* (2003) p 29, viewed on 2 November 2005 at <http://www.nia.se/english/forsta.htm>.

- 4.51 In deciding whether to recommend financial assistance for Australians adopting from overseas, the committee was mindful of a number of factors. Firstly, the overall priority for intercountry adoptions in Australia is increasing the volume of files without unduly compromising the quality of assessments. The committee would prefer that public resources were applied to reducing this bottleneck, rather than putting extra pressure on it.
- 4.52 Secondly, if resources are to be given to the adoption community, the committee is of the view that their interests will be better served if they can develop a significant profile in the policy arena. The report makes recommendations in this regard in chapter five.
- 4.53 Thirdly, the maternity payment will increase in future to \$5,000 which, if the committee's recommendations earlier in the report are implemented, will be available to all adoptive parents. This should assist adoptive parents in meeting their expenses.
- 4.54 Finally, chapter three demonstrated that members of the adoption community recognise that they have some responsibility for meeting the costs of intercountry adoptions.
- 4.55 Given these circumstances, the committee does not believe that additional financial assistance by way of taxation deductions for intercountry adoptions is warranted at this stage.

## Identity

- 4.56 A common complaint during the inquiry from adoptive parents is the difficulty they have in making arrangements for their children, especially in relation to school enrolments, passports, birth certificates and Medicare. For example:

The passport application form asks for a citizenship certificate or Australian birth certificate. We provided our daughter's citizenship certificate since she was born overseas. In order to process her citizenship we provided all her Chinese documentation plus the documentation from the Adoption Branch of the NSW Department of Community Services. If she has a legal citizenship certificate why does the Passport Office require all the Chinese documentation again?

At the passport interview at the Post Office I took all her Chinese documentation just in case but the Post Office person said they

were not required. During the interview she phoned the Passport Office to double check. Then a month later I was asked by the Passport Office to fill out a Form B11 to declare that we are our daughter's legal parents. This should not be necessary.<sup>39</sup>

4.57 Another submission stated:

Only this week – as means of assessment in enrolling in a Victorian pre-school, my friend was asked to supply a birth certificate for such consideration by the Committee – determining who were the lucky ones to be accepted. A certificate of Abandonment – is a discriminatory tool that can be used as a form of discrimination – to vet or weed out based on prejudicial viewpoints – one of which may be an abandoned child. While that might sound odd – there are many discriminatory practices that exist and the fact that this child will need to go through life – constantly being asked for a birth certificate – even when she gets her car licence, opens a bank account etc – is simply not good enough.<sup>40</sup>

4.58 The remainder of this chapter examines how governments can ensure that adoptive families have the same level of access to these services as birth families.

## Birth certificates

4.59 The primary document for a child to establish their identity is a birth certificate. The typical practice in most jurisdictions is that, when the adoption is finalised in an Australian court, a birth certificate can be issued for that child. For example, section 23 of the *New South Wales Births, Deaths and Marriages Registration Act 1995* states that if a State adoption order is made, then it must be registered. Section 49 provides for the Registrar to issue certificates, 'certifying particulars contained in an entry'.

4.60 One problem occurs with Chinese adoptions. As discussed in chapter two, these adoptions are recognised under Australian law when they are finalised by the Chinese authorities. Therefore, they do not trigger the requirements for being registered in states or territories because there is no domestic court order for adoption. Therefore, they cannot be issued with an Australian birth certificate. In evidence, the New South Wales

---

39 Wills S, sub 125, pp 1-2.

40 Moriarty D, sub 224, p 1.

Department of Community Services discussed the documents that parents receive in this case:

They get three different types of certificates: an adoption certificate and two notary certificates. One talks about abandonment, another talks about their innate parents being unknown and there is an adoption one also – and obviously they get a passport.<sup>41</sup>

- 4.61 The department suggested that it was the agreement making process itself and the system of lead states (one state or territory takes responsibility for negotiating an agreement) that led to this problem:

The agreement-by-agreement negotiations about how all of that documentation works and what documentation you do get and do not get is problematic. There ought to be a common principle that the child comes with the relevant documentation and then perhaps receives a local birth certificate. This is a function of the differences and inconsistencies between individual agreements.<sup>42</sup>

- 4.62 The alternative view is that the pieces of legislation relating to birth certificates in the states and territories have not kept pace with intercountry adoption practice. The committee believes that the states and territories could have updated their legislation to take into account the principle behind the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998*, namely that Australia recognises some overseas adoptions without the necessity of them being processed through domestic courts.

- 4.63 Such amendments have been required since 1998 and the committee believes they should now be made. As suggested by Adoption Support for Families and Children, these new birth certificates are not to hide the adoption, but to give the children a single, widely recognised document that, 'will affirm their birth details and their adoption to their parents'.<sup>43</sup>

### **Recommendation 11**

- 4.64 **The Attorney-General approach the relevant ministers in the states and territories and request they amend their legislation for the registration of births so that adoptions completed overseas recognised by Australian law will be registered and lead to the issue of a birth certificate.**

41 Griffin M, transcript, 12 October 2005, p 6.

42 Dawson S, transcript, 12 October 2005, p 6.

43 Adoption Support for Families and Children, sub 141, p 14.

## Eligibility for citizenship

- 4.65 The typical method for a child adopted from overseas to gain citizenship is under section 10A of the *Australian Citizenship Act 1948*. There, the adoptee of an Australian citizen will automatically become a citizen themselves if they are in Australia when the adoption is finalised.
- 4.66 This provision excludes expatriate adoptions and adoptions under the China program. In these cases, the children may apply for citizenship under section 13(9), which gives the Minister a general discretion to grant citizenship to an applicant under the age of 18.
- 4.67 Where the children of Australian citizens are born overseas, section 10B gives them the right to Australian citizenship by descent, provided an application is made for them before they turn 25. This provision does not apply to our two cases of adoption above, however, because section 10B requires these individuals to be children of Australian citizens at the time of their birth. Being adopted to an Australian citizen after their birth is insufficient.<sup>44</sup>
- 4.68 Clearly, section 10B discriminates against children who are adopted overseas to Australian citizens because they do not have the same rights to citizenship by descent as children who are born overseas to Australian citizens. Section 10B needs to be amended.

### Recommendation 12

- 4.69 **The Minister for Immigration and Multicultural and Indigenous Affairs introduce legislation to amend the *Australian Citizenship Act 1948* so that children either adopted or born overseas to Australian citizens have equivalent rights to Australian citizenship by descent.**

## School enrolments

- 4.70 The committee received evidence that adoptive parents in Victoria face additional hurdles in managing their children's enrolments in schools. The Australian Society for Intercountry Aid to Children, Victoria stated:

Certainly for our young lady, who is just completing year 12 this year, we were only asked to send a copy of the visa three months ago. She entered as a five-year-old and is now 18....

---

44 Rosenwald T, sub 189, p 9.

... it would be the third time that I have sent it.<sup>45</sup>

- 4.71 This approach appears to be based on the definition of what constitutes a valid enrolment, which in Victoria includes:

A birth certificate or equivalent for Australian-born students; residency evidence, passport or travel documents for non-Australian-born students ...<sup>46</sup>

- 4.72 This difficulty does not occur in some other states. For instance, in Brisbane the committee heard:

... when you try to enrol a child in a school and you have a Queensland adoption certificate your life is easy.<sup>47</sup>

- 4.73 In the view of the committee, once a child is adopted to Australian parents and becomes an Australian citizen, then they should be treated the same as Australian-born children. It appears that the Victorian requirements are based on a lack of awareness of the needs of children adopted from overseas. The committee trusts that if this matter is raised at a high enough level, it will be rectified.

### **Recommendation 13**

- 4.74 **The Minister for Education, Science and Training approach the relevant state and territory ministers requesting that school enrolment procedures for intercountry adopted children who are Australian citizens are the same as for children born in Australia.**

## **Passports**

- 4.75 Another issue raised in submissions is the large variation in knowledge exhibited by counter staff when adoptive parents are trying to obtain passports for their children. For example:

Many adopting parents in the China program keep in contact with each other (via an Australia-wide internet community) and in comparing stories about passport applications we are finding a lot of inconsistent responses by the responsible departments. Most

45 Chandler G, transcript, 3 August 2005, p 19.

46 Department of Education and Training, 'Guidelines for School Census - Counting Students for Statistical Returns' viewed on 2 November 2005 at <http://www.sofweb.vic.edu.au/standards/census/faq1.htm>.

47 Sue-Belinda, community statements, transcript, 21 July 2005, p 57.



have no problems getting passports for their children. Some have problems at the Post Office and some like me have no problems at the Post Office but are having problems within the Passport Office.<sup>48</sup>

- 4.76 Although counter staff need to ensure that no fraudulent activity is taking place, a more knowledgeable, sympathetic approach would be more appropriate. On some occasions, parents have found the attitude of staff to be confronting:

In that particular instance, the gentleman at the counter said to our friend, 'How do we know the child is actually yours?' This is the attitude we are finding...<sup>49</sup>

- 4.77 Once again, it appears that adoptive parents and their children are being discriminated against through ignorance because they are not high-volume clients of government departments.
- 4.78 The committee has received suggestions that the answer to this problem is better training for counter staff.<sup>50</sup> The committee agrees. To counter the effect of staff turnover, the training should be repeated at regular intervals.

## Recommendation 14

- 4.79 **The Australian Passport Office implement a regular training program for their counter staff and counter staff at post offices so they can effectively deal with queries and applications from intercountry adoptive parents.**

## Medicare

- 4.80 Similar to the case studies above in relation to birth certificates, school enrolment and passports, adoptive parents were concerned about the service standards and lack of empathy from Medicare staff.<sup>51</sup> One submission stated:

... I had to fight Medicare when I brought her home to get her enrolled in the name that I had chosen, even though I had a

48 Wills S, sub 125, p 2.

49 Turner S, transcript, 17 August 2005, p 24.

50 Wills S, sub 125, p 2, Wilson L, transcript, 17 August 2005, p 25.

51 Plohberger A, sub 110, p 7, Name suppressed, sub 99, p 2.

document from the Department of Human Services stating what her new name was and what her previous name was and I had all the adoption documentation. I was treated like I was trying to [enroll] an alien. The person that processed my application was rude and totally uncaring and was speaking very loudly in front of all the other people who were waiting in the Medicare office. I did not think it was appropriate that everyone else should be hearing what my daughter's background was; that is her private story.<sup>52</sup>

4.81 And:

Medicare advised me that after some processing, and all documents being well, I would be issued with a separate Medicare card for my three children. I didn't understand why my children would be on a separate card from mine. As a proud new parent, I was anticipating that I would receive a Medicare card with my three children's names appearing below my name – just like every other family in Australia receives. The reason I was given for the separate card was *“because my children were adopted, they would be on their own separate card, for a 12 month period, in case the adoption did not work out and the children returned to Romania”*. I was speechless, almost.<sup>53</sup>

4.82 Because of the high level of health issues for intercountry adopted children, Medicare is a key contact for almost all adoptive parents. In particular, it appears that adoptive parents tend to be more sensitive to how they are treated by Medicare than any other department because they approach this organisation very soon after they return to Australia from picking up their children.

4.83 Given that the breakdown rates in Australian adoptions are very low, the attitude that the children should be on a separate card for 12 months until the court makes the final adoption order upsets a lot of clients for little return to the department.

4.84 Below is a further example of the lack of appreciation of the circumstances of adoptive families:

We submitted our Medicare form for our daughter on return from overseas and were issued with a card for her. On our first visit to Medicare there was much confusion about why our daughter had an individual card and was not on a family card. We explained that both parents had individual cards and that our daughter had

---

52 Lyn, community statements, transcript, 3 August 2005, p 14.

53 Plohberger A, sub 110, p 7.

recently been adopted. The suggestion was that we should all be included on one card. So, we agreed that we would think about it. On subsequent visits we were asked why this child had not signed the form and our response was that she could not sign her name given she is the child in the stroller! Then at another visit to the above office, we were again advised that we should have a family card. After asking what that meant, we were advised that if we did this there would be a waiting period... We have not had the energy to deal with Medicare again on this issue.<sup>54</sup>

- 4.85 Technically, it appears that the entitlements and benefits under Medicare are the same for birth and adoptive parents. Adoptive parents advised the committee that, rather than wait for the child's card to be issued, they purchased the required medical services immediately and then planned to later retrospectively claim the Medicare benefits once the card was processed.<sup>55</sup>
- 4.86 The great bulk of the evidence about Medicare from adoptive parents, is that Medicare does not make them feel like parents. The committee believes this should be rectified.

### **Recommendation 15**

- 4.87 **The Minister for Human Services should encourage Medicare to introduce a policy for children adopted from overseas. Such a policy should:**
- **ensure staff are discrete with adoptive parents;**
  - **include regular training of staff;**
  - **expedite the issue of the Medicare card; and**
  - **include the children on the parent's card where parents so wish.**

---

54 Name suppressed, sub 99, p 2.

55 Wilson L and Turner S, sub 70, p 15, Cornhill R and N, sub 33, p 9, Plohberger A, sub 110, p 7.



