
The Parliament of the Commonwealth of Australia

Overseas Adoption in Australia

Report on the inquiry into adoption of children from overseas

House of Representatives

Standing Committee on Family and Human Services

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Foreword

The House of Representatives Standing Committee on Family and Human Services resolved on 16 February 2005 to conduct an inquiry into the adoption of children from overseas after reviewing the 2003-2004 Annual Report of the Australian Institute of Health and Welfare.

The committee determined its terms of reference, giving particular emphasis to identifying any inconsistencies between state and territory approval processes for overseas adoptions and any inconsistencies between the benefits and entitlements provided to families for birth children as distinct from adopted children.

There has been a massive decline in the number of adoptions in Australia in the last 35 years. In fact, the total number of local adoptions per annum has dropped from a peak in 1971-72 of over 9,000 to 73 in 2003-04. Intercountry adoption is now the dominant form of adoption in Australia. By 2003-04 intercountry adoptions represented some three quarters of total adoptions and run at 300-400 adoptions per year. By contrast, there are tens of thousands of children in foster care or other forms of out of home care. It is also significant that increasing numbers of children are being born as a result of Assisted Reproductive Technology, such as IVF (6,800 IVF live births in 2002).

Members of the committee had originally envisaged a relatively short inquiry simply comparing state, territory and Commonwealth provisions and benefits. However, it quickly became quite apparent that the issues were far more complex as the inquiry tapped into broader concerns surrounding intercountry adoptions.

By the end of the inquiry, the committee had received and authorised for publication 274 submissions, held 12 public hearings across Australia, taken formal evidence from over 100 people across the country representing governments, organisations or themselves, and heard from another 50 people at our less formal community forums. These forums are an innovation of the committee which allows individuals to come and make short statements without having made formal submissions.

In addition, the committee inspected the ACT Government's Adoptions Unit, attended two meetings of Commonwealth, state and territory intercountry adoption authorities and held an international telephone link up with an overseas adoption agency.

A stand out feature of the inquiry for Members has been the overwhelming enthusiasm of adoptive parents themselves and the great love and pride with which they hold their children. The enthusiasm is evident by the contribution so many of them make to the numerous adoption support groups who provide information, lend emotional support and bring families together at social gatherings. The committee also valued the evidence it received from those who had been adopted, including those still in parental care and those now adult, who spoke of their adoption experiences.

The committee also heard from mothers who had had their children adopted between the 1950s and 1970s when the adoption regime was harsh and indifferent to their needs.

The committee was surprised to find a general lack of support for adoption – both local and intercountry – in most of the state and territory welfare departments which are responsible for processing all adoption applications. The lack of support ranged from indifference to hostility, much to the distress of prospective parents seeking to adopt children from overseas.

State and territory intercountry adoption units are generally under resourced, leading to long queues for those seeking intercountry adoptions, long processing times and an intercountry adoption rate that remains low by international standards.

There are particular problems in Queensland where the evidence showed prospective parents had moved interstate to enable them to apply and have the opportunity of a positive outcome. In addition, New South Wales has a very low per capita intercountry adoption rate that is one eighth of the rate in Australia's leading jurisdiction, the ACT.

This lack of resources and support for intercountry adoption is part of the wider story of adoption in Australia generally. Rates of local adoptions in Australia have dropped dramatically. Parents adopting from overseas stated that their chances of adopting a child through local adoption were virtually nil.

Following the unsympathetic adoption practices between the 1950s and 1970s, the policy focus has been on the birth parents and a belief that children should maintain their biological links above all else. The term 'in the best interests of the child' seems to be used as a shield against any criticism of current adoption policy. This has led to tens of thousands of children being placed in foster care and other

forms of out-of-home care when adoption could well have been in their best interests.

Another troubling feature of the inquiry was the trepidation with which many prospective parents approached the committee, fearing that they might jeopardise their applications if they were critical of their state or territory welfare department.

The committee has come out unequivocally in support of intercountry adoptions as a legitimate way to give a loving family environment to children from overseas who may have been abandoned or given up for adoption. Intercountry adoptions can, without doubt, be in 'the best interest' of children.

The cornerstone of intercountry adoption in Australia is the international Hague Convention on Intercountry Adoption. The Convention, to which Australia is a signatory, states the principles and conditions under which intercountry adoption will operate. Implementation of the Convention in Australia is governed, in turn, by the Commonwealth-State Agreement for the Implementation of the Hague Agreement. The Commonwealth-State agreement establishes arrangements by which the Commonwealth as signatory to the Hague Convention will work with the state and territory welfare departments which are responsible for administering intercountry adoption programs.

The committee believes the Commonwealth has been very hands-off in its approach to overseas adoption despite its central authority status. This report's recommendations require an improvement of state and territory practices via renegotiating the 1998 Commonwealth State Agreement and a more active role for the Commonwealth.

In essence, the committee seeks better harmonised, more efficient and more accountable processing of applications for intercountry adoptions at the state and territory level. In turn, the Commonwealth must take greater responsibility for establishing and managing overseas adoption programs.

At the same time, the Commonwealth should take a number of administrative and legislative steps to remove inconsistencies between the benefits and entitlements provided to families for biological and adopted children.

One of the ways in which under resourced government state and territory welfare departments could become more efficient is if accredited non government organisations take on some of the applicant screening and assessment work. There is provision for non government organisations to have such a role in the Hague Convention and the Commonwealth-State agreement and it is a common practice overseas. By their track record, the states and territories have not delegated adoption processing enthusiastically to non government organisations in the past - although there are some late signs that this may be changing. The committee is

keen to see properly trained and resourced accredited bodies help process adoption applications.

I would like to thank the many individuals and organisations who have contributed to the inquiry in one form or another and who have generously shared their time and information. For some people, sharing their experiences on the record has been difficult and distressing and the committee thanks them for their courage and involvement in the inquiry.

Completion of the inquiry would not have been possible without the diligent and enthusiastic support of my colleagues on the committee, particularly my Deputy Chair, Julia Irwin MP. A special mention must also go to Harry Quick MP who became so engrossed in the inquiry that he travelled to China to visit orphanages there for himself! I would also like to thank the Committee Secretary James Catchpole and the members of the secretariat team whose work was of an outstanding nature.

I believe that our recommendations, if implemented, will strengthen Australia's intercountry adoption programs. These children overseas will face a better future in a loving family in Australia than living on the street or in an orphanage in their country of origin. As indicated in Appendix A, the Committee also believes that an inquiry into domestic adoption practices could also truly be in 'the best interests of the child'. I commend to you the report.

A handwritten signature in black ink, reading "Bronwyn Bishop". The signature is written in a cursive, flowing style.

Hon Bronwyn Bishop MP
Chairman



Membership of the Committee

Chairman Hon Bronwyn Bishop MP

Deputy Chair Mrs Julia Irwin MP

Members Hon Alan Cadman MP

Ms Kate Ellis MP

Mrs Kay Elson MP

Mr David Fawcett MP

Ms Jennie George MP

Mrs Louise Markus MP

Mr Harry Quick MP

Mr Ken Ticehurst MP

Committee Secretariat

Secretary Mr James Catchpole

Inquiry Secretary Mr David Monk

Senior Research Officer Ms Margaret Atkin

Research Officer Ms Belynda Zolotto

Administrative Officers Ms Kyriaki Mechanicos

Ms Emily Shum



Terms of reference

The House of Representatives Standing Committee on Family and Human Services has reviewed the 2003-2004 Annual Report of the Australian Institute of Health and Welfare and resolved to conduct an inquiry.

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 (intercountry placement adoptions) 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.



List of abbreviations

AACAA	Australians Aiding Children Adoption Agency
ABC	Australian Broadcasting Corporation
AIHW	Australian Institute of Health and Welfare
AIWA	Adoptions International of Western Australia
ARCS	Adoption Research and Counselling Service
ASFC	Adoption Support for Families and Children
AusAID	Australian Agency for International Development
BMI	Body mass index
DFAT	Department of Foreign Affairs and Trade
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
DOCS	Department of Community Services
ESWS	Eastern Social Welfare Society
ICAB	Intercountry Adoption Board



List of recommendations

Recommendation 1

The committee recommends that the Attorney-General renegotiate the Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (hereinafter referred to as the Commonwealth-State Agreement) with the states and territories. (*para 2.20*)

Recommendation 2

The Attorney-General's Department continue to be the permanent chair of the Intercountry Adoption Central Authorities Meetings to oversee the agenda which will drive the commonality of adoption policy, resources and quality frameworks. (*para 2.44*)

Recommendation 3

In renegotiating the Commonwealth-State Agreement, the Commonwealth shall ensure a greater harmonisation of laws, fees and assessment practices, including:

- more general, principle-based criteria in legislation;
- more robust, transparent and documented practices; and
- standardised assessments across the jurisdictions.

These harmonisations should be developed in consultation with stakeholders such as adoption support groups, adopted children and adopted parents. (*para 3.43*)

Recommendation 4

The Attorney-General request the New South Wales Minister of Community Services to insert the eligibility criteria for adoptive parents in legislation and regulation, rather than the *Government Gazette*. (*para 3.45*)

Recommendation 5

In renegotiating the Commonwealth-State Agreement, the Attorney-General put the case to the relevant state and territory ministers for these jurisdictions to ensure that they establish consultative committees with adoption stakeholders, which include the following characteristics:

- majority stakeholder representation;
- a chairman independent of the department;
- access to adequate information on agency processes and costs;
- monitoring agency efficiency, among other roles; and
- publishing the committee's recommendations and the government's response. (*para 3.76*)

Recommendation 6

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. (*para 4.14*)

Recommendation 7

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. (*para 4.20*)

Recommendation 8

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. (*para 4.28*)

Recommendation 9

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. (*para 4.37*)

Recommendation 10

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. (*para 4.44*)

Recommendation 11

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. (*para 4.64*)

Recommendation 12

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. (*para 4.69*)

Recommendation 13

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. (*para 4.74*)

Recommendation 14

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. (*para 4.79*)

Recommendation 15

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.
(*para 4.87*)

Recommendation 16

The Productivity Commission and the Australian Institute of Health and Welfare liaise to determine who will publish performance information on intercountry adoptions. This information must include data on timeliness, separations and efficiency indicators such as the cost of each file processed. (*para 5.15*)

Recommendation 17

The Attorney-General approach the respective state and territory ministers and request they amend their adoption legislation to include the provisions of the Hague Convention that require central authorities and competent authorities to expedite adoptions. (*para 5.20*)

Recommendation 18

The Attorney-General approach the relevant state and territory ministers to amend the Commonwealth-State Agreement to commit the states and territories to provide the necessary training, resources including adequate funding, and policy support to enable suitable non-government organisations of the required standard to be accredited in all jurisdictions. (*para 5.81*)

Recommendation 19

Responsibility for establishing and managing overseas adoption programs be transferred to the Attorney-General's Department in consultation with the Department of Foreign Affairs and Trade and the Department of Immigration and Multicultural and Indigenous Affairs. (*para 5.100*)

Recommendation 20

Future overseas programs be established on the criteria of the number of children needing families and the extent to which the country of origin has implemented the Hague Convention, given the resources available to it. (*para 5.105*)

Recommendation 21

To assist Australia develop intercountry adoption programs with non-Hague countries, the Department of Foreign Affairs and Trade authorise AusAID to develop capacity building and governance programs to assist those countries gain Hague Convention accreditation. *(para 5.109)*

Recommendation 22

The Attorney-General in re-negotiating the Commonwealth-State Agreement include provisions to harmonise legislation covering the right of parents to publicly discuss their adopted family. The Committee recommends the Western Australian provisions be the model to be followed. *(para 5.122)*

Recommendation 23

The Attorney-General's Department negotiate with the central authorities to coordinate the establishment of a file ID tracking system so that adoptive parents may easily track their files throughout their application. *(para 5.126)*

Recommendation 24

The Department of Foreign Affairs and Trade develop protocols with the Australian central authorities to govern the follow up of files in countries of origin by embassy officials when the files become significantly overdue. *(para 5.130)*

Recommendation 25

The Australian census include check boxes or a similar method for recording children in the family who are either birth, adopted, fostered or other out of home care children. *(para 5.136)*

Recommendation 26

The Department of Immigration and Multicultural and Indigenous Affairs (or the Attorney-General's Department if the immigration portfolio does not take on responsibility for overseas programs) facilitate arrangements for international adoptees in Australia to return to their country of origin if requested. Such facilitation should not include airfares or travelling expenses. *(para 5.141)*

Recommendation 27

The Attorney-General's Department establish a program to fund:

- a national peak overseas adoption support group; and
- that such national peak body be responsible for distributing small to medium grants to local adoption groups to carry out the identified essential support function. *(para 5.147)*

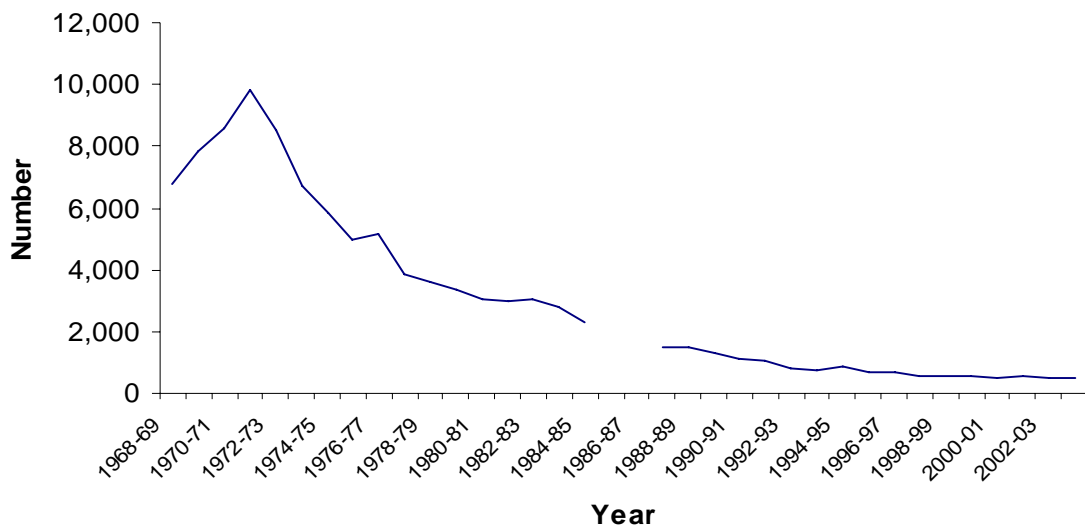
Introduction

- 1.1 This is a report about the policies and practices governing overseas adoption (hereafter referred to as intercountry adoption) in Australia. It quickly became apparent to the committee during its inquiry, however, that attitudes to domestic adoption have coloured state and territory approaches to intercountry adoption. Any assessment of intercountry adoptions, therefore, needs to take account of the attitudes to local adoptions.
- 1.2 Adoption in Australia, both intercountry and domestic, has undergone considerable change over the last 35 years. Firstly, the total number of adoptions per annum has declined to some five percent of the number in the early 1970s, as figure 1.1 overleaf demonstrates.
- 1.3 This decline can be attributed to shifts in public policy and social attitudes¹:
- general practitioners commenced prescribing the contraceptive pill to young unmarried women, whereas before it had been restricted to married women;
 - family planning centres and sex education classes helped young women avoid unwanted pregnancies;
 - the number of women in the workforce increased, as did the number of childcare places, which gave women more economic independence;
 - an anti-adoption culture developed resulting in thousands of children being placed in foster and other types of out-of-home care.

1 See Australian Bureau of Statistics *Australian Social Trends 1998* reproduced in Healey J (ed) *Adoption Issues in Society*, (1999) vol 110 The Spinney Press, pp 1-4.

- other long term legal orders, such as permanent care orders, now tend to be used instead of adoption. These orders transfer guardianship and custody but the biological parents continue to be the child's legal parents.
- various changes to legislation have reduced the scope for adoptions by relatives, including by step parents;
- the supporting mothers' benefit was introduced in 1973, increasing the likelihood that single mothers would have sufficient resources to raise their children themselves; and
- Victoria and New South Wales relaxed the conditions under which a pregnancy could be terminated in 1969 and 1972 respectively

Figure 1.1: Total adoptions in Australia, 1968-69 to 2003-04



Source: Australian Institute of Health and Welfare, sub 135, p 2. Data not collected for 1985-86 and 1986-87.

- The stigma associated with forced adoption practices in the past leading to 'the stolen generation' (for both indigenous and non indigenous mothers and children);
- The growth of, and improvement in, assisted reproductive technologies has permitted many couples to conceive a child naturally, hence reducing the 'demand' for adoption. These technologies commenced in Australia in 1979 and in 2002 they resulted in 6,816 live born babies;²

2 Bryant J, Sullivan E and Dean J, *Assisted reproductive technology in Australia and New Zealand 2002* (2004), Australian Institute of Health and Welfare, p 36.

- 1.4 Professional attitudes to parenting have changed. There is now an entrenched attitude within state and territory welfare departments that it is in the child's best interests to be reared by a biological parent. Potentially relinquishing mothers are likely to be counselled against giving up their child for adoption.³

Attitudes to Adoption in Australia

Past local adoption practices

- 1.5 The committee received a significant number of submissions from Australian women who had relinquished their own children for adoption between the 1950s and 1970s.⁴ These submissions reported that, during this time, single mothers were forced to give up their children for adoption against their will. These mothers found the process distressing and, by today's standards, many were treated inhumanely. As one submission recounted:

We were taken to St. Joseph's Foundling Home, in Broadmeadows. I remember entering a door clutching my baby to my breast, crying profusely. A nun came out of nowhere and ripped my son from my arms and turned and ran from the room. I was totally shattered. I started screaming for his return. I yelled that I did not want him to be adopted. I was bereft. Another nun pushed me into a chair at a desk and started pushing paper after paper under my nose telling me to sign here and here. I do not know what I signed for I could not see through my tears. I was hysterical and screaming. I believe that because I would not leave the premises I was told I could visit my son until the 30-day revocation period was up. I do not remember getting home or much of the next few days, but I did return to this evil place several times to see my son to hold and love him. No one spoke to me. All heads turned away.⁵

3 Boss P, *Adoption Australia – A Comparative Study of Australian Adoption Legislation and Policy* (1992) The National Children's Bureau of Australia Inc, p 11.

4 For example, Kinghorn L, sub 195, Origins Victoria Inc, sub 197, Association Representing Mothers Separated from their Children by Adoption (SA) Inc, sub 211.

5 Smith J, sub 185, p 3.

- 1.6 This past treatment of single mothers was confirmed by the New South Wales Parliament in its review into adoption practices in 2000. The review report summarises its findings as:

Many past adoption practices have entrenched a pattern of disadvantage and suffering for many parents, mostly mothers, who relinquished a child for adoption particularly in the 1950s, 1960s and 1970s...The report is an acknowledgment that many mothers who gave up their children to adoption were denied their rights, and did not uncaringly give away their children.⁶

- 1.7 The social attitudes that existed before the supporting mothers benefit, the wider use of the contraceptive pill did not accept single mothers:

The chances of a woman keeping her child ... were almost invariably dependent on the support of either the father of the baby, or her family. Such support flew in the face of strongly held social attitudes regarding ex-nuptial relationships.

A pregnancy and its outcome, a baby, were the external evidence of socially condemned behaviour. Many families were deeply ashamed. Their daughters were sent interstate, from country towns to the large, anonymous cities and even overseas to hide 'the shame'.⁷

- 1.8 One single mother, upon regaining consciousness after childbirth, was told by her doctor that, 'society will forgive one mistake,' whereupon the doctor left the room.⁸
- 1.9 The committee sincerely regrets the difficulties that these mothers had to endure, which, for many of them, has heavily impacted on their lives.

Prejudice against local adoption

- 1.10 The committee is concerned that, due to past practices, adoption generally has become the poor relation of child protection in Australia. In New South Wales and Queensland, adoption is either neglected or some departmental officers are openly hostile to it. The Australian Council for Adoption provided evidence to the Committee of the proceedings at a general adoption conference in Sydney in 1994:

6 NSW Standing Committee on Social Issues, *Releasing the Past – Adoption Practices 1950-1998 – Final Report* (2000) NSW Legislative Council, p xiv (exhibit 49).

7 McDonald M, Marshall A, 'How society made adoption the only choice for some,' *The Sydney Morning Herald*, 14 April 1998, p 19 reproduced in Healey J (ed) *Adoption*, p 18.

8 Edwards E, sub 196, p 3.

... anyone who spoke up in favour of adoption was hissed and booed. Adoptive parents were called criminals and kidnapers... . It was a disgrace. Anyone who was giving a workshop which was supportive of adoption was harassed throughout that workshop. Some people were reduced to tears. These people were being actively supported by officers of state departments at this conference.⁹

- 1.11 The Council also stated that pro-adoption groups do not receive public funding, whereas groups objecting to adoption do. Further, parents who may wish to adopt out a child are referred for counselling to groups whose stated aims are the abolition of adoption.¹⁰
- 1.12 The troubling aspect of this approach is that the past social attitudes and practices that brought it about are no more:
- birth mothers receive counselling before they are permitted to put up their child for adoption;
 - there is now a range of financial benefits to support single mothers;
 - being a single parent of itself is no longer stigmatised; and
 - adoption is no longer clouded in secrecy. Depending on the circumstances, a mother who gives up her child can continue to have contact or have contact in later years.
- 1.13 Further, independent research has demonstrated that adopting a child into a family with a high income and good education is likely to have large, positive effects on that child's tertiary education and its marital status. There will also be modest positive effects on its wages.¹¹ Given that most adoptive parents have a middle class, professional background,¹² adoption for a child at risk is likely to present many positive benefits.
- 1.14 As discussed later in this report, parents overseas who put up their children for intercountry adoption are required to undergo counselling.
- 1.15 Further, if children overseas are abandoned or put up for adoption for social reasons, some of which may reflect conditions in Australia one or two generations ago, it would not be in the interests of the child to refuse

9 Law D, transcript, 21 July 2005, p 25.

10 Law D, transcript, 21 July 2005, pp 25, 28.

11 Sacerdote B, 'The Nature and Nurture of Economic Outcomes,' National Bureau of Economic Research, Working Paper 7949, p 3, viewed on 6 November 2005 at <http://www.nber.org/papers/w7949>.

12 Boulton M and M, sub 60, p 3.

to provide them with a family environment in Australia if they cannot be adopted in their home country.

1.16 Similarly, it would not be in the interests of the child to not place children from overseas in families in Australia when no family is available to them in their country of origin for economic reasons.

1.17 Unfortunately for children, state and territory welfare departments have a history of swinging between extremes. Departmental preferences tend to:

... change often and swing between extreme positions (e.g. a policy of removing children at risk to one of family preservation). As well as being politically (and media) sensitive, these swings often follow the latest research leads or interests in an attempt to improve the theoretical basis for practice. This problem is associated with the recency of the field of protective services and thus the poor knowledge base, the size of the problems that protective services need to address, the external pressure placed on many departments through the media and public scrutiny and the deficiency in government resources...¹³

1.18 The history of adoption is an example of these swings. Between the 1950s and 1970s, adoption was used in many cases automatically. Nowadays, it is either not supported or actively discouraged.

1.19 The committee considers adoption to be a legitimate way of forming or adding to a family. The committee also considers adoption to be a valuable way of saving children at risk in their birth country.

Prejudice against intercountry adoption

1.20 A common theme in the evidence to the inquiry is that there is a general lack of support for adoption in government departments in Australia. This also extends to support for intercountry adoptions.¹⁴ This difference of opinion has existed since at least the early 1990s. Emeritus Professor Peter Boss of Monash University has reported:

...intercountry adoption has aroused strong feelings, both for and against, in the community. The protagonists are the many prospective adopters who wait patiently, or otherwise, for years

13 Tomison A, Stanley J, *Strategic Directions in Child Protection: Informing policy and practice* (2001) unpublished report for the South Australian Department of Human Services, p 129, viewed on 4 October 2005 at <http://www.aifs.gov.au/nch/pubs/keyreports.html>.

14 For example, see Rosenwald T, sub 189, p 5, Pirani C, D and A, sub 121 p 6, EurAdopt Australia, sub 137, p 6, and Blanter K, sub 38, p 3.

for placement of a child. The opponents are largely the professional groups involved in adoption, such as social workers and psychologists.¹⁵

1.21 The committee received evidence that this general approach exists in most state and territory welfare department in Australia. This attitude was typically expressed as a lack of positive action by governments, rather than outright opposition. Some of the comments were:

- an 'underlying reluctance' in New South Wales;¹⁶
- a lack of communication and understanding of adoptive parents in Victoria;¹⁷
- recurrence of the same problems for the last 20 years in Queensland;¹⁸ and
- no action to promote new programs with countries of origin.¹⁹

1.22 One of the reasons for this inaction is that state and territory welfare departments focus their resources on children with problems and dysfunctional families within Australia. When questioned about fee increases for intercountry adoptions, a previous Minister for Community Services in New South Wales replied:

The role of the Government is to balance all the priorities associated with services for vulnerable children and families in New South Wales, statutory child protection intervention services, support for families with a child who has a disability, and health services, housing and education.²⁰

1.23 In a similar vein, the New South Wales Department of Community Services told the committee:

We wish to return to a situation where the primary focus of our social work resources is on assessing and supporting the 105,000

15 Boss P, *Adoption Australia*, p 13.

16 *Australians Adopting European Children*, sub 16, p19.

17 Wilson J, *Intercountry Adoption Resource Network Australia Inc*, transcript, 3 August 2005, p 20 and Greenough F, p 32.

18 Finkel S, *Australian Korean Friendship Group Queensland Inc*, transcript, 21 July 2005, p 7.

19 Byerley S, *International Adoptive Families of Queensland*, transcript, 21 July 2005, p 82.

20 Hon Carmel Tebbutt MLC, 'Intercountry Adoption Fees' *NSW Legislative Council Hansard*, viewed on 1 September 2004 at <http://www.parliament.nsw.gov.au/prod/parliament/hansart.nsf/V3Key/LC20040603038>.

children who are the subject of 216,000 risk of harm reports every year in New South Wales. That is what we need to focus on....²¹

- 1.24 The committee also collected a few examples of outright opposition to intercountry adoption:
- a departmental representative told potential adoptive parents in Western Australia that they should donate money to overseas countries instead of adopting²²; and
 - a departmental representative told potential adoptive parents in New South Wales that they should be fostering instead.²³
- 1.25 The committee concludes, on the basis of evidence given, that there is a general attitude against intercountry adoption in most jurisdictions, which ranges from indifference or lack of support to hostility.
- 1.26 On a more positive note, the adoption community has perceived changes recently within the relevant government agencies in Tasmania and the Australian Capital Territory.
- 1.27 The President of Australian African Children's Aid and Support Inc, who resides in Tasmania, advised the committee that the Tasmanian Government's readiness to support adoptions has been due to the appointment of the current manager, Una Hobday. Previously, the Tasmanian authorities were less helpful.²⁴
- 1.28 At a public hearing in Canberra, Adoptive Families of the ACT Inc stated:
- My wife and I had a five-year pregnancy and we went through the system in the late 1990s. Even then, in the ACT, the system was rather negative. The workers in there treated us negatively. We almost got the feeling that what we were doing was wrong and that we should not be doing it. A lot of that attitude has changed now, and I think they are pro-adoption. They are keen to get the job done. They are more effective.²⁵
- 1.29 This evidence is consistent with adoption rates in Australia. Chapter five will demonstrate that the ACT, South Australia and Tasmania have the highest per capita rates of adoption in the country. These rates are also consistent with adoption rates in most other western countries. The

21 NSW Department of Community Services, transcript, 12 October 2005, p 4.

22 Fratel S, sub 64, p 1.

23 Ellem J, transcript, 23 September 2005, p 4.

24 Sherrin E, transcript, 16 September 2005, pp 30-31.

25 Cornhill R, transcript, 9 May 2005, pp27-28.

committee congratulates these three jurisdictions for taking the lead ahead of New South Wales, Victoria and Queensland. This emphasises the importance of leadership attitude and beliefs in adoption as a legitimate way to form or add to families. Clearly in the ACT and Tasmania, new leadership with changed attitude is making a difference. In South Australia these outcomes were achieved with the resources of a non-government organisation buttressing the Central Agency. The Committee will watch with interest how the Central Agency performs without the experience and resources of the non-government organisation.

Intimidation of the intercountry adoption community

- 1.30 The committee received a number of claims of a power imbalance between adoption applicants and the departments, which included verbal abuse and threats.²⁶ Lisa Wilson and John Turner explained how adoptive parents feel:

It is not necessarily the case in the ACT, but in other jurisdictions people have had bad experiences. It is also part and parcel of the intrusive process. You do feel to a certain extent that you are being judged and you want to put your best front forward. As I say, it is a real or perceived power differential.

You do not want to do anything that would result in a no answer. You want a family and you will do just about anything to get that family. The power rests with the authorities. You upset the authorities and you get a no answer. In some jurisdictions, as you have pointed out, there is no recourse to appeal that decision.²⁷

- 1.31 The committee received evidence of other disturbing instances, for example:

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

26 Lisa, Andy, community statements, transcript, 3 August 2005, pp 9-10, Telfer J, International Adoptive Families of Queensland, transcript, 21 July 2005, p 94, and Euradopt Australia, sub 137, p 2.

27 Wilson L and Turner J, transcript, 17 August 2005, p 27.

workers and applicants have reported to FCC that they were made to account for their statements.²⁸

- 1.32 One Victorian couple, after learning of their allocation, wished to travel to the orphanage to look after the child because of an outbreak of life-threatening disease there. Normally, parents do not travel at this stage but wait for the visa to be issued after the health checks. Given some couples from other states were travelling early due to these circumstances, this couple also wished to do so:

We made an appointment, out of courtesy to discuss our reasoning with the Acting Head of ICAS. When we told her of our plans she became enraged and threatened that if we continued ahead with our plans, she would immediately call an inquiry into people travelling early and effectively temporarily close the program.²⁹

- 1.33 The committee has had its own experience of this power imbalance. Several witnesses have withdrawn from public hearings due to fear that giving testimony may delay or jeopardise their application.
- 1.34 Another example of how seriously applicants view this power imbalance is that only two cases were reported to the committee of people taking their complaints to the Ombudsman.³⁰ This officer provides an established, free service to members of the public who believe they have been subject to poor administration.
- 1.35 The committee regards the misuse of this power imbalance as totally unacceptable and will examine ways of providing accountability.

Discussion

- 1.36 Both adoptive parents and departmental officials claim that they are acting in 'the best interests' of children. The term seems to be used as a mantra by bureaucracy to justify the dominant anti adoption culture.
- 1.37 Adoptive parents wish to give a family environment to the children overseas who have been abandoned or put up for adoption. In many cases, these children have a low life expectancy, remain institutionalised or live on the street. Some would die before reaching adulthood or live with significant hardships if it were not for intercountry adoption. The chances of a successful adoption are significantly increased by completing

28 Families with Children from China-Australia, sub 86, p 25.

29 Name suppressed, sub 109, p 2.

30 Leckenby K, sub 2, p 1, Cornhill R and N, sub 33, p 8.

the adoption early in a child's life. The committee heard evidence that many children overseas would like to be adopted by Australian families.³¹

- 1.38 State and territory welfare departments, however, have a gatekeeper role. They must ensure that the child is legitimately available for adoption and that the child has not been procured for financial gain (see Hague Convention requirements in chapter 2 below). They must also ensure that adoption within the child's country of origin has already been pursued and that the adoptive parents will properly care for the children entrusted to them.
- 1.39 The effective management of intercountry adoption involves balancing these two demands. The committee is of the view, however, that this balance is not being properly maintained in Australia. Although there generally appears to be high levels of probity, Australia's adoption rate is low and the weight of evidence of delays and hostility faced by the adoption community is too great to ignore.
- 1.40 The National Report for Australia, presented by an officer of the Commonwealth Attorney-General's Department to a comparative law conference in Paris in 2003, comes to the same conclusion:

The good practice features of the Australian system can and do give confidence to the adoption authorities of origin countries that their children will be cared for in Australia. Origin countries know that Australian adoptive parents have been carefully selected and well prepared for the adoption. Improper financial gain has not played a part in the process.

The good practice features also enable Australia to comply at a high level with the objects and obligations of the 1993 Hague Convention, in putting the interests of children first and preventing the abduction and sale of, or traffic in children, at least by Australian parents...

... **the highly centralised nature of the adoption process within government departments can sometimes limit its effectiveness** [emphasis added]. Intercountry adoption does not operate on a full cost-recovery basis, and it requires state and territory governments to subsidise its costs. But adoption authorities are not always given priority in the allocation of government resources. Parents in some regions complain of delays in processing their applications...

31 Bottrell C, T and E, sub 30, p 4.

This structure may explain in part why an expected increase in intercountry adoptions following Australia's ratification of the Hague Convention has not happened in the short term: Australian adoption authorities still do not have sufficient resources to develop adoption arrangements with new Hague Convention countries [emphasis added].³²

- 1.41 Although state and territory resources in the family and community service field may be stretched, it is not an adequate response given that Australia's international obligations require us to expedite these adoptions (see chapter two below).
- 1.42 State and territory departmental officials have sought to shift some of the blame for this state of affairs by claiming that adoption applicants have no right to complain. As one official from New South Wales is reported as saying:
- Parents have an agenda. They are desperate people and they believe it is their right to be able to do this, and it is not. No one has the right to adopt a child. You can have the altruistic view that we are a global society and we should be looking after all our children, and that is great. And we do it successfully, but we also make sure we do it damned right.³³
- 1.43 Statements such as these effectively mean that no-one can legitimately criticise state and territory departmental officials in this area. Potential adoptive parents cannot complain because they are 'desperate'. Further, they suffer a power imbalance with the officials and are even subject to intimidation. Potential adoptees cannot complain because they are generally less than five years old and overseas.
- 1.44 There appears to have been few occasions where state and territory government officials have been brought to account in the field of intercountry adoption. The committee is pleased to take on this task.

32 Degeling J, *International Adoption in Comparative Law, National Report for Australia*, Association Louis Chatin Pour la Defense des Droits de L'Enfant, Colloque sur L'Adoption Internationale, En Droit Compare, Paris, le 25-26 avril 2003, pp 30-32.

33 Moore C, quoted in Bagnall D, 'The Adoption Twist,' *The Bulletin*, 16 April 2002, p 24.

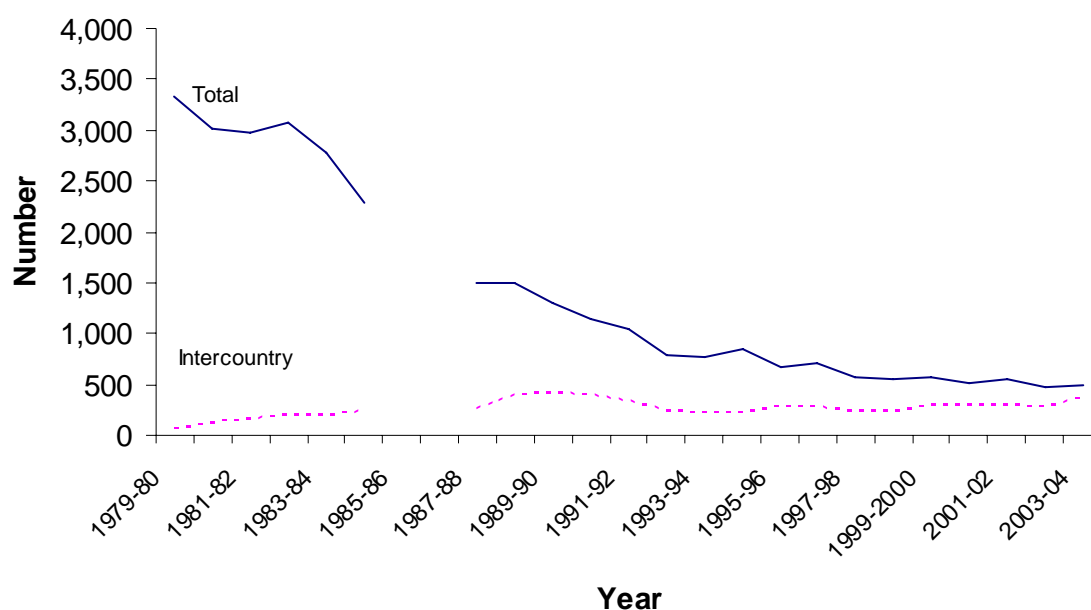
Intercountry Adoption – a snapshot

Intercountry adoption in Australia

- 1.45 Intercountry adoptions began in Australia at the close of the Vietnam War. During 1974, a number of groups and individuals commenced arranging adoptions into Australia of Vietnamese children due to fears of civil collapse. In 1975, the Vietnamese Government permitted a number of special purpose flights, carrying Vietnamese infants for overseas adoption, to leave that country. 292 children arrived in Australia as part of Operation Babylift.³⁴
- 1.46 Comprehensive statistics on intercountry adoption were first published for 1979-80. Figure 1.2 overleaf illustrates the gradual growth in intercountry adoption in Australia such that in 2003-04 it represented 74% of total adoptions. This growth has coincided with the decline in Australia of local children available for adoption.
- 1.47 The total number of intercountry adoptions has remained largely static for the last 15 years at around 300–400 adoptions per year. There was, however, an increase of 92 adoptions between 2002-03 and 2003-04. This is largely attributable to an increase in adoptions from China, which rose from 46 to 112 in this period.³⁵

34 Harvey I, 'Adoption of Vietnamese Children: An Australian Study' *Australian Journal of Social Issues* (1983) vol 18, p 57.

35 Australian Institute of Health and Welfare, sub 135, p 6.

Figure 1.2: Total and intercountry adoptions in Australia, 1979-80 to 2003-04³⁶

Intercountry adoption overseas

- 1.48 Outside Australia, intercountry adoption commenced in Europe, Japan and China after World War II. Unites States troops came into contact with orphaned children and families who decided they could not support their children in the post-war environment. Troops were also responsible for increased numbers of illegitimate children in those countries.
- 1.49 The US presence in the Korean War later led to a high number of adoptions out of that country as well. Between 1953 and 1981, over 38,000 Korean children were adopted by American families.³⁷
- 1.50 Table 1.1 on the next page shows current levels of international adoptions for Australia and 13 other western nations.

36 Australian Institute of Health and Welfare, sub 135, p 6 and Armstrong A, Slaytor P (eds) *The Colour of Difference – Journeys in transracial adoption* (2001) The Federation Press, p 189. Data not collected for 1985-86 and 1986-87.

37 Van Loon J, 'Report on Intercountry Adoption' Hague Conference on Private International Law, *Proceedings of the Seventeenth Session, 10 to 29 May 1993, Tome II, Adoption – cooperation*, pp 37-39.

Table 1.1: Per capita rates of intercountry adoptions in selected western countries for 2004

Country	Adoptions	Population	Population per Adoption
Norway	667	4,574,560	6,858
Sweden	1,109	8,878,085	8,005
Switzerland*	722	7,318,638	10,137
Spain*	3,947	40,217,413	10,189
Denmark	528	5,413,392	10,253
USA	22,884	293,027,571	12,805
France	4,079	60,424,213	14,813
Netherlands	1,072	16,318,199	15,222
Canada	1,955	32,507,874	16,628
Finland	310	5,214,512	16,821
Italy	3,400	58,057,477	17,076
Germany*	1,720	82,398,326	47,906
Australia*	370	20,008,700	54,078
UK	326	60,270,708	184,879

Source: See Appendix E. An asterisk denotes 2003 data. Australian data is for 2003-04.

1.51 The main conclusion from table 1.1 is that Australia has a much lower intercountry adoption rate than other comparable countries. Only Germany has a similar rate to Australia and only the United Kingdom has a lower rate. The implications of this table will be discussed throughout the report, in particular in the section in this chapter on attitudes to adoption.

Are intercountry adoptions successful?

1.52 The research has been summarised by Professor Barbara Tizard:

...whilst the evidence is patchy and incomplete, it does suggest that in 75-80% of intercountry adoptions the children and adolescents function well, with no more behavioural and educational problems at home and at school than other children, and that they have close and mutually satisfying relationships with their parents. Family and educational difficulties are most likely to occur when children are adopted at a relatively late age. There is reason to believe that when these difficulties arise, they do so as a result of their early experiences, or their situation as adopted children, rather than from the experience of intercountry

adoption. As in other settings, there is some evidence that boys are especially vulnerable.³⁸

- 1.53 Research also suggests that even where an adoption has not been entirely successful, the children involved see the experience as preferable to life in an institution.³⁹ In evidence, some members of the Intercountry Adoptee Support Network discussed the challenges they faced given they were amongst the earlier groups of intercountry adoptees. When asked whether they felt good about being adopted into a family, they replied:

Yes. We can only speak for ourselves, but I think we feel good about it. Our goal now is to make the journey a little easier for the future generations.⁴⁰

- 1.54 Measured by separations (where an adoption fails and the child must be placed in a new home), adoptions generally are successful. Separation rates are 10%-20% for older, special needs children and 1%-3% for early age adoptions.⁴¹ During the inquiry, adoptive parents reported similarly low rates of separations for intercountry adoptions.⁴²

- 1.55 In the case of intercountry adoptees, many of the institutions overseas can only provide a basic level of care. The President of Australian African Children's Aid and Support Inc advised the committee of circumstances in a particular Ethiopian orphanage:

There was a room about this size full of cots – babies just crying, some of them asleep. I went over to a particular one in a corner, and I started stroking her back and she stopped crying. One of the nuns there was able to speak English, and she said, 'She stopped just because of the touch. They are never touched; we do not have enough staff to touch them.' That sort of thing really gets to you.⁴³

- 1.56 This lack of resources means that orphaned and abandoned children in many countries are unlikely to lead productive lives. It also means that many children adopted into Australia suffer from developmental delays that their Australian parents work hard to overcome:

I can offer personal evidence of the best interests of the child in terms of my own daughter, who was adopted from China at

38 Tizard B, 'Intercountry Adoption: A Review of the Evidence,' *Journal of Child Psychology and Psychiatry and Allied Disciplines* (1991) vol 32, pp 754-755.

39 Rowe J, 'Perspectives on Adoption,' p 9.

40 Matthews A, transcript, 23 September 2005, p 20.

41 Bath H, 'Rights and realities in the permanency debate,' *Children Australia* (2000) vol 25, p 13.

42 Telfer J, transcript, 21 July 2005, p 86 and Ross L, sub 246, p 2.

43 Sherrin E, transcript, 16 September 2005, p 29.

20 months of age. Sometimes you do not find things out until years later, as we are now with our daughter, who is very healthy at 6½. We found out that it was because she was kept in a cot for the first 20 months of her life that she could only pull to stand when she first came into our lives. She learnt to crawl over three days in a hotel room and then it took another six months before she could walk unaided. That is way outside the average, normal, healthy development for a child. You do not see the implications of that until your child becomes much older and her teachers are wondering why the child has no sense of coordination in their gross motor skills or their fine motor skills.⁴⁴

1.57 In her personal submission, a mother enclosed photographs of her daughter from 2002 and 2004. The daughter was adopted with an injured hand that was deformed through constant contractions. The photographs demonstrate that the hand has largely recovered. The submission advises this occurred through splinting and normal use. Along the way, the child has also learnt how to run and jump, and to recognise the signals that her body sends her, such as when she is hungry. She has also learnt that she can ask for food and that her parents will meet these needs.⁴⁵

1.58 Sometimes the opportunity to be adopted can be the difference between life and death. A parent who adopted two boys from Ethiopia, stated in evidence:

Our eldest son is Tamru. Both our sons were pretty sick, with malnutrition and various things, when we got them into Australia and the doctors here said Tamru would not have lasted another six months. Yet these two are both now very lively, very productive Queenslanders. Tamru is in the district touch football match today. Ironically, as an Ethiopian, he is involved in Queensland cross-country running – this is a child who they said would not have survived another six months.⁴⁶

1.59 The committee understands that many abandoned and orphaned children overseas face very poor conditions. For example, the committee received evidence of what some children in Kenya must deal with:

Many of those that are abandoned are left in paddocks, in the bush, in rubbish dumps, down pit latrines, in gutters, or near wild animals. Many die of exposure, are eaten by mammals, rodents or

44 Janet, community statements, transcript, 3 August 2005, p 11.

45 Gribble K, sub 83, pp 7-8.

46 Leckenby K, transcript, 21 July 2004, p 71.

insects, or die from deliberate harm by human hand. Some are left in hospitals, or are left as orphans when their parents die of poverty, disease or the AIDS pandemic. Many survive and become street-children in the major towns and cities. It is estimated that Kenya now has over 2 million street children. Most street children survive by begging, stealing or through child prostitution. They are under-nourished, un-educated, and survive from day to day as best they can. Many are addicted to glue or petrol-sniffing.⁴⁷

1.60 Research, however, shows that children who suffer severe deprivation in poor quality institutions often show remarkable recovery following an intercountry adoption.⁴⁸

1.61 The committee received evidence that adoptees are aware of the benefits of their placements:

I am thankful to be here because when I went back a couple of years ago to Ethiopia I saw all the poverty over there. It opened my eyes. I am grateful to have an education, and that I am healthy and I can grow up, because over there the life expectancy for women is – only about 38... I know that here I can live a healthy and prosperous life, so I am grateful for that.⁴⁹

Success factors

1.62 The Australian Council for Adoption advised the committee that the earlier children are adopted, the greater the chance they will bond to their parents and the greater the chance of success.⁵⁰ Children are remarkably resilient and can rebound from significant disadvantage, but early placement is to their benefit.⁵¹

1.63 Associate Professor Victor Groza has listed a number of other factors important to making adoptions successful:

- families need strong informal support networks such as neighbours, friends and other adoptive families;
- families should be able to access ‘appropriate, easily accessible and affordable social services’;

47 Potter M and D, sub 27, pp 2-3.

48 Rutter M, ‘Children in Substitute Care: Some Conceptual Considerations and Research Implications,’ *Children and Youth Services Review* (2000) vol 22, p 693.

49 Amee, community statements, transcript, 16 September 2005, p 36.

50 Australian Council for Adoption, sub 56, p 3 and Law D, transcript, 21 July 2005, p 27.

51 Rowe J, ‘Perspectives on Adoption,’ p 10.

- parents need to be flexible in their expectations of the child and change their expectations according to the child's abilities; and
- parents need to be patient and let the child develop at their own pace.⁵²

Racism and ethnic identity

- 1.64 If, due to economic or social circumstances, an abandoned or orphaned child cannot be adopted within their country, an intercountry adoption is well described as being in the best interest of the child.
- 1.65 Most intercountry adoptees brought into Australia come from either Asia or Africa. They are different in appearance to the Europeans from whom most Australians are descended. This raises the question of the extent to which these adoptees are subject to racism, particularly in the 1970s and 1980s when the first significant numbers of international adoptees arrived in Australia.
- 1.66 Further, international adoptees need to develop their own ethnic identity to support themselves, blending their upbringing, appearance and country of origin.⁵³ As Groza noted:
- A strong sense of cultural identity helps children better navigate the majority American culture. A strong sense of identity affects self esteem; self esteem and attachment affect each other. When a child lives in a home where they are obviously different from those around them, we cannot negate this difference. The difference must be acknowledged and celebrated so that it does not negatively affect the child's sense of self. If there is no celebration and acknowledgement of the differences, [the] child may feel that they are unacceptable or interpret it as a sign of rejection.⁵⁴
- 1.67 The Australian Korean Friendship Group Queensland Inc told the committee of the story of a young man in the United States who had been adopted from Korea as a baby. When he travelled back to Korea to meet his birth mother, he was very frustrated that he had not been exposed to the Korean culture or language. He had many things to say, but no way of communicating.⁵⁵

52 Martin A, *Successful Adoptions*, viewed on 1 June 2005 at <http://www.comeunity.com/adoption/Groza.html>.

53 Tizard B, 'Intercountry Adoption: A Review of the Evidence,' p 755.

54 Martin A, *Successful Adoptions*.

55 Finkel S, transcript, 21 July 2005, p 14.

- 1.68 In 2001, the Federation Press published *The Colour of Difference*, a moving collection of interviews and stories from Australian intercountry adoptees. Olivia, who was adopted from Fiji, recounts:

I don't feel naturally Fijian and I don't feel at home there. I returned to Fiji for six months when I finished high school, in an effort to get to know my family. As soon as I stepped off the plane I was aware of how different I really was. I asked Mary [my birth mother] about this, her response was fairly definite, 'It is in the way you walk, the way you look, and the way you look at people...'. She went on to describe basically every external behavioural trait I had.⁵⁶

- 1.69 Olivia, however, describes how she is establishing an identity for herself:

Now I am happy to be considered or recognised as Fijian, knowing at the same time I am inherently Australian. I am proud of both these cultural elements – my Fijian appearance and my Australian identity. Australia has given me many opportunities as an individual, but Fiji is where I am from and where I was born – it is now a matter of finding a balance between the two.⁵⁷

- 1.70 The committee is aware that intercountry adoptees in Australia who are now adults have faced significant challenges. For example, those adopted in the 1970s and 1980s in particular and raised in regional Australia often faced racism.⁵⁸ They also found it more difficult to integrate their identity than intercountry adoptees who grew up in multi-cultural cities like Sydney.⁵⁹

- 1.71 Australian adoption groups and departments are much more conscious now of the need to help adoptees reconcile their different cultural backgrounds. For example, one state government adoption website states, 'it is important for a child to be raised in an environment that promotes the child's cultural identity'.⁶⁰ The Australian Korean Friendship Group Queensland Inc advised the committee about International Day in Brisbane:

56 Armstrong S, Slaytor P (eds), *The Colour of Difference – Journeys in Transracial Adoption* (2001) The Federation Press, p 165.

57 Armstrong S, Slaytor P (eds), *The Colour of Difference – Journeys in Transracial Adoption*, p 167.

58 Warner C, Beveridge L, Matthews A, transcript, 23 September 2005, pp 10, 11, 13.

59 Warner C, transcript, 23 September 2005, p 14.

60 Queensland Department of Child Safety, 'Issues to Consider,' viewed on 30 September 2005 at <http://www.childsafety.qld.gov.au/adoption/overseas/issues.html>.

...we bring all the children together no matter what country they come from. We celebrate their heritage and they dress in their national costumes. We do it with the belief that it is a catalyst for other parents to participate and get their children involved in their culture. We have an opportunity on Sunday, when some older adoptees will be speaking about their experiences growing up in the last 30 years as intercountry adoptees, of learning the lessons that their parents unfortunately did not have the opportunity to know about – the importance of cultural identity to a person.⁶¹

- 1.72 The Chairman of this committee was honoured to open International Day this year on Sunday, 24 July 2005. The event was a great success and the children were obviously very proud to wear their traditional clothes in a parade. Not only does the event assist recent adoptees, but it also helps adoptees who are now adults.⁶²
- 1.73 The committee received evidence of similar cultural gatherings around the country. For example, Ethiopian adoptees in Tasmania regularly meet and also meet people from the Ethiopian community in that state to learn about their heritage.⁶³
- 1.74 The committee is satisfied that adoption practitioners and support groups have learnt the lessons from the past about the challenges intercountry adoptees face in establishing their cultural identity.
- 1.75 The committee sees the role of these support groups as an essential part of the adoption process and, in chapter five, recommends that they be eligible to receive modest funding to assist their activities.

Prevention of child trafficking

- 1.76 The prevention of child trafficking was one of the main drivers for establishing the Hague Convention on Intercountry Adoption in 1993. Australia ratified the convention in 1998. This report discusses the convention in chapter two.
- 1.77 The committee found no evidence of child trafficking in Australia during the inquiry. If anything, Australian authorities seem alert to the practice. In its response to the questionnaire on intercountry adoption distributed by The Hague, the Attorney-General's Department argued that donations

61 Finkel S, transcript, 21 July 2005, p 14.

62 Beveridge L, transcript, 23 September 2005, p 16.

63 Ameer, community statements, transcript, 16 September 2005, p 38.

to countries of origin should be transparent, paid after the child has been placed with the family, and cover the legitimate costs of the adoption.⁶⁴

Local Adoption and Child Protection

- 1.78 The committee heard evidence which showed that attitudes to adoption have not only coloured the official attitudes to intercountry adoption, but also to child protection, fostering and other forms of out-of-home care. Although local adoption, foster care and out-of-home care were not within the committee's terms of reference, these issues were raised with the committee and are discussed in Appendix A.

Overview of the inquiry

Conduct of the inquiry

- 1.79 House of Representatives Standing Order 215(c) permits the committee to, among other things, make any inquiry it wishes to make into the annual reports of certain specified government departments and authorities. The committee reviewed the 2003-2004 Annual Report of the Australian Institute of Health and Welfare and, on 16 February 2005, resolved to conduct the inquiry into intercountry adoptions.⁶⁵ Over the next two months the inquiry was advertised in various media with the formal closing date for submissions being 22 April 2005.
- 1.80 As word of the inquiry spread – principally through internet mailing list networks – the committee received more and more requests that it accept submissions beyond the closing date. The committee, acceded to the requests and by the mid November 2005 had received over 270 submissions (see Appendix B).
- 1.81 The committee received many submissions from parents and prospective parents of adopted children that contained personal stories and experiences. In a number of cases, the authors requested that their submission remain confidential, sometimes because they feared

64 Australia: Response to the 2005 questionnaire, viewed on 7 September 2005 at http://www.hcch.net/upload/adop2005_au.pdf.

65 The Australian Institute of Health and Welfare compiles data from the states and territories to produce the annual *Adoptions Australia* series. See *Adoptions Australia 2003-2004*.

victimisation by state adoption agencies. Members were sensitive to these concerns and resolved that personal contact details be automatically edited from public versions of all submissions. In addition, the committee agreed to specific requests by individuals or couples that their names as well as contact details or that their entire submission remain confidential.

- 1.82 The committee held public hearings in Canberra, Sydney, Brisbane, Melbourne, Hobart, Adelaide and Perth between May and October 2005 (see Appendix D). The Committee also took evidence via a telephone conference call with an adoption agency in Taiwan.⁶⁶ At the public hearings the committee reserved time for 'community statements' when members of the public could drop in and make short statements in a less structured format. Community statements proved a very successful way for the committee to hear the personal stories of people who had been reluctant or unable to participate in the inquiry's more formal processes.

Structure of the report

- 1.83 This report comprises five chapters. Chapter one has covered the history and statistics of intercountry adoption. One of the key findings from the chapter is that, following the adoption practices in the 1950s to 1970s, support for adoption in many government departments is generally low at best. These changes are despite the major overhaul to adoption processes which mean that they bear little resemblance to past practices.
- 1.84 Another key finding of this chapter is that intercountry adoptions can greatly improve outcomes for overseas children that cannot be raised in a family in their home country.
- 1.85 Chapter two outlines the legal framework for intercountry adoptions. The end product of the adoption process is the adoption order, which legally makes the child in question the son or daughter of the adoptive parent. Intercountry adoptions involve a large number of legal systems, including international treaties, legislation in the country of origin, state and territory adoption laws, visa requirements and more. The chapter explains the chain of legal events that culminate in an adoption order.
- 1.86 Chapter three covers the first of the committee's explicit terms of reference, namely the inconsistencies between the state and territory approval processes for intercountry adoptions. This chapter includes the eligibility criteria for parents, which was one of the more contentious issues in the inquiry.

66 Voigtmann P, Christian Salvation Service, transcript, 14 September 2005.

- 1.87 Chapter four discusses the second of the inquiry's explicit terms of reference, namely the inconsistencies between the benefits and entitlements provided to birth families and adoptive families. These differences not only relate to government payments, but also to citizenship rights and leave for adoptive parents.
- 1.88 Chapter five covers the remaining issues that come under the committee's general term of reference, which is to better assist Australians who are adopting children from overseas. This discussion includes the role of non-government organisations, the establishment of new programs overseas, media restrictions on adoption and a comparison of the performance of the different states and territories.

The legal framework for overseas adoptions

The Hague Convention on Intercountry Adoption

2.1 The Hague Convention on Intercountry Adoption is the cornerstone of intercountry adoption in Australia. It states the principles and conditions under which intercountry adoption will operate. In evidence, the Attorney-General's Department noted the importance it places on countries of origin complying with the Hague Convention:

The concern of government is to ensure that there are very transparent and obvious procedures, guidelines and protections relating to intercountry adoption. Governments have taken the view that they are best set down in the Hague Convention on Intercountry Adoption....

... One thing that we have done during our time is to ensure, to the extent that we can, that the bilateral arrangements that we have with these countries meet the standards that are set down in the Hague convention. We understand that a number of these countries are considering joining the convention and that is certainly, at the moment, Australia's preferred position.¹

2.2 The convention was developed under the auspices of the Hague Conference on Private International Law.

¹ Duggan K, transcript, 9 May 2005, p 43.

The Hague Conference on Private International Law

- 2.3 The conference is an international body that comprises 64 member states, the majority of which are from Europe. Other member states include China, Japan, South Africa, New Zealand and all the countries in North America. Australia became a member in 1973.
- 2.4 The aim of the conference is to progressively unify civil legal systems in member states where those systems operate internationally. The area that concerns this inquiry is intercountry adoption, but member states have also made agreements in relation to civil procedure, child maintenance, recognition of divorces, taking of evidence and child abduction. By working cooperatively, member states reduce the risk, uncertainty, cost and delays in international legal matters.
- 2.5 The first session of the conference was convened in 1893. A statute (the conference's constitution) making the conference a permanent intergovernmental organisation came into force on 15 July 1955. Nations become members of the conference by depositing a signed instrument of acceptance of the statute with the Netherlands Government.²
- 2.6 Since 1956, regular plenary sessions of the conference have been held every four years. The plenary sessions discuss and agree on draft conventions that have been drawn up earlier by government experts during special commissions.
- 2.7 Once a convention is made, the conference monitors and reviews its operation and supports its implementation, such as through good practice guides and practical handbooks. The conference's activities are supported by a secretariat called the Permanent Bureau based in The Hague. The bureau must comprise different nationalities.
- 2.8 Parties overseas may wish to enforce compliance by an individual or an Australian government with the provisions of a Hague convention. Such compliance would not be enforced on the basis of the convention itself, but on the basis of the legislation passed by our governments to implement that convention.
- 2.9 Australia's contribution to the conference for 2004-05 was approximately \$170,000.³ In evidence, the Attorney-General's Department stated that Australia received significant benefits from its contribution:

2 Personal communication, Fitch C, Attorney-General's Department, 10 November 2005.

3 Discussion drawn from Attorney-General's Department 'Hague Conference on Private International Law' exhibit 25, pp 1-3.

... there are a whole range of benefits that flow to Australia by being party to numerous Hague conventions, not just in family law but in civil law generally. This country has always been a very active participant in the Hague convention procedures, both in civil law and in other areas. Indeed, a member of my staff has been recently seconded to the Hague Convention...⁴

The Hague Convention

2.10 The preamble to the Hague Convention sets out its aims, and these aims neatly summarise much of what the committee has set out in chapter one of this report:

- children should grow up in a family environment;
- each member state should attempt to keep children in their families of origin;
- intercountry adoption can offer a permanent family to a child where a suitable family cannot be found in their state of origin;
- the abduction and trafficking of children should be prevented; and
- intercountry adoptions should be made in the best interests of the child.⁵

2.11 The convention is attached as Appendix F. The key features of the Hague Convention include:

- the competent authorities of the state of origin must have established that the child is adoptable and that a family for it cannot be found within its state of origin (article 4);
- an intercountry adoption must be in the best interests of the child (article 4);
- a mother must be counselled before giving consent to the adoption (article 4);
- the consent cannot have been induced by any payment or compensation (article 4);
- governments are to designate a central authority to manage intercountry adoptions (articles 6 and 7);

4 Duggan K, transcript, 9 May 2005, p 43.

5 Hague Conference on Private International Law, 'Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption,' exhibit 26, p 1.

- central authorities and competent authorities have a duty to expedite intercountry adoptions (articles 9 and 35);
- central authorities may delegate their functions to accredited bodies (articles 10 and 11);
- member countries are required to recognise each others' adoption orders (article 23); and
- no-one should derive improper financial gain from intercountry adoption; all fees should only relate to costs and expenses incurred (article 32).

Negotiations to implement the convention

- 2.12 The Hague Convention was concluded in May 1993 and entered into force in May 1995.⁶ The Australian community services ministers then commenced negotiations on how the convention could be implemented within Australia. These discussions culminated in the signing of the *Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption* between the ministers in early 1998. A copy of the this document is at Appendix F.
- 2.13 This Commonwealth-State memorandum of understanding (MOU) takes a minimalist approach to implementing the convention. It states that:
- Australia's existing standards are sufficient to meet the convention (paragraph C);
 - a signature by a state minister on the agreement is in effect a statement of compliance with the convention (article 11); and
 - there shall be a minimum of disruption to existing state and territory legislation and procedures (article 3).
- 2.14 The document provides that Australia can enter into new agreements with countries that are not party to the convention 'on the basis of compliance' with its requirements (article 18).
- 2.15 The Commonwealth-State MOU also fills in many of the gaps in relation to the requirements for an accredited body. Article 11 of the convention only provides broad requirements, namely that accredited bodies in Australia should be:

6 Hague Conference on Private International Law, 'Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption,' exhibit 26, p 1.

- non-profit organisations;
 - staffed by qualified personnel; and
 - supervised by competent authorities in relation to their composition, operation and finances.
- 2.16 The agreement makes more specific requirements in its Schedule:
- the body cannot undertake negotiations to establish adoption arrangements in an overseas country (articles 6 and 7);
 - it must have suitable accommodation, which cannot be adjacent to or form part of the accommodation used by an aid organisation or an adoption group (article 11);
 - it cannot be associated with an overseas aid program (article 14);
 - it must have suitable facilities for the confidential storage of records (article 15);
 - it must provide biannual reports to the state central authority (article 20); and
 - staff members must avoid conflicts of interest, including the acceptance of gifts or benefits that could be seen as causing them to deviate from a proper course of action (articles 26 and 27).
- 2.17 Article 19 of the Commonwealth-State MOU states that it does not give rise to any legally enforceable rights. The agreement, therefore, is equivalent to a memorandum of understanding - an 'agreement to agree' rather than a contract. Article 24 provides that the agreement can only be amended by a unanimous vote of the Community Service Ministers' Council.
- 2.18 Throughout this report, the committee makes recommendations to change state and territory practices and to enhance the role of the Commonwealth, consistent with its position as Australia's central authority under the Hague Convention. The MOU currently states that implementing the convention on intercountry adoption will only require minimal change to current state and territory practices and in the committee's view, this philosophy needs to be changed.
- 2.19 Many of the recommendations in this report will be based on initially changing the MOU, which should then flow through to legislation and practice. The committee believes that the Attorney-General should initiate these renegotiations in relation to the memorandum. Many of the committee's proposals will need to be actioned through this process.

Recommendation 1

- 2.20 **The committee recommends that the Attorney-General renegotiate the *Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption* (hereinafter referred to as the *Commonwealth-State Agreement*) with the states and territories.**

Intercountry adoption regulations

- 2.21 Section 111C(1) of the *Family Law Act 1975* permits the Commonwealth to make regulations to allow Australia to meet its obligations under the Hague Convention. Articles 5-10 of the Commonwealth-State MOU states that the Commonwealth is to make all such necessary regulations under the Family Law Act.
- 2.22 Section 111C(3) of the Family Law Act gives the Commonwealth the power to make regulations to give effect to a bilateral agreement on intercountry adoption. Such a bilateral agreement would typically be made with a country that has not signed the convention but is regarded as largely compliant. These agreements define the relationships between two countries and are specifically nation-to-nation documents.
- 2.23 The Attorney-General's Department advised the committee that one of the main intercountry adoption regulations is the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.⁷ The main functions of the regulations are to:
- make the Commonwealth Attorney-General's Department Australia's central authority for the convention (clause 5);
 - give the Commonwealth a consultation and co-ordination role with the states and territories and overseas governments (clause 6);
 - allow the states and territories to continue to conduct the day-to-day operations of intercountry adoption (clause 6);
 - allow for state and territory departments to be designated as central authorities under the convention (clauses 9 and 10);
 - create a framework to legally recognise the adoption of children from overseas (Part 4); and

7 Attorney-General's Department, sub 80, p 2.

- invest state and territory courts with jurisdiction to legally recognise the adoption of children from overseas (Part 5).
- 2.24 Broadly, the Commonwealth currently acts as a ‘post-box’, with all the other functions in intercountry adoption being handled by the states and territories. The Attorney-General’s Department allocates less than one full time staff member to the Commonwealth’s role as a central authority.⁸
- 2.25 In its submission, the Attorney-General’s Department confirmed this division of responsibilities:
- In practical terms, this role extends to assisting with liaison with overseas Central Authorities about intercountry adoption programs as well as assisting with establishing new programs. The Commonwealth Central Authority meets regularly with the State and Territory adoption authorities to discuss particular issues relating to intercountry adoption as they arise.
- The State and Territory Central Authorities retain responsibility for all practical aspects of adoption, including the processing of intercountry adoption applications and therefore have their own legislation to regulate intercountry adoption.⁹
- 2.26 Clause 34 of the regulations provides that if a state or territory passes legislation to the same effect as the regulations, then the Commonwealth regulations do not apply to that state or territory. In other words, if a state or territory wishes to make its own arrangements to implement the convention, then the Commonwealth is permitting that jurisdiction to legislate for itself. This arrangement is consistent with the Commonwealth’s non-interventionist policy in the Commonwealth-State MOU and in evidence provided above by the Attorney-General’s Department.
- 2.27 The other relevant regulations are the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998*. These provisions declare that, for children adopted from certain countries, their adoption is officially recognised in Australia when the adoption is legally finalised in the country of origin (see clause 5). The only country for which this arrangement applies is China.

8 Harding L and R, sub 46, p 2.

9 Attorney-General’s Department, sub 80, p 3.

- 2.28 These regulations were made because the Chinese authorities would not permit their children to be taken overseas without the assurance that the adoption was complete.¹⁰

The states and territories

State and territory adoption legislation

- 2.29 The Commonwealth-State MOU requires that intercountry adoption be implemented with as little change to state and territory arrangements as possible. Hence, all the administrative and legal procedures for intercountry adoptions are conducted under state and territory legislation.
- 2.30 Several governments made the point that their legislation is largely similar to the legislation of the other governments.¹¹ Taking the New South Wales *Adoption Act 2000* as an example, typical provisions include:
- principles to be applied in conducting adoptions, such as only acting in the best interests of the child (sections 6 to 9);
 - accrediting non-government organisations to provide adoption services for both local and intercountry adoptions (sections 10 to 21). No group in Australia is currently accredited to provide the full range of intercountry adoption services;
 - assessment of potential parents, including both quantitative requirements, such as age, and qualitative requirements, such as the standard of care they are likely to give the child (sections 26 to 30). There are significant differences between the states and territories, particularly in relation to the quantitative requirements;
 - counselling of relinquishing parents and requiring their formal consent to relinquish (sections 52 to 74);
 - the guardianship of a child by the Director-General of the relevant department pending the child's adoption (sections 75 to 79);
 - the legal aspects of adoption proceedings, including the effect of an adoption order (sections 80 to 101 and 118 to 129);

10 Victorian Government, sub 206, p 6.

11 Australian Capital Territory Government, sub 200, p 4 and South Australian Government, sub 245, p 4.

- control of adoption information, including reunion and information registers (sections 133 to 175);
- probity offences, such as making false statements or impersonating a party to an adoption (sections 176 to 179 and 181 to 188);
- recognising intercountry adoptions (sections 103 to 117);
- setting fees and charges for services provided (section 200); and
- publicity offences, which focus on identifying the parties to an adoption (section 180).

2.31 As an example of some of these provisions, section 180 of the *New South Wales Adoption Act 2000* states:

(1) A person must not publish in relation to an application under this Act or under a law of another State for the adoption of a child or in relation to the proceedings on such an application:

(a) the name of an applicant, the child, or the father or mother or a guardian of the child, or

(b) any matter reasonably likely to enable any of those persons to be identified.

Maximum penalty: 25 penalty units or imprisonment for 12 months, or both.

(2) This section does not apply in relation to the publication of any matter with the authority of the Court to which the application was made.

2.32 The various acts permit the making of regulations. Many important requirements can be found in subordinate legislation that are subject to reduced parliamentary scrutiny. Administrative matters such as setting fees, for instance, are commonly found in regulations.

2.33 In a small number of cases, provisions are too removed from parliamentary scrutiny. In New South Wales for example, the criteria for assessing potential adoptive parents are published in the *New South Wales Government Gazette* under the authority of clause 12 of the *Adoption Regulation 2003*.¹²

2.34 There are variations between the jurisdictions. For example, Western Australia uses an adoption applications committee to assess adoptive

12 Niland C, 'Criteria for Assessment of Adoption Applicants,' *New South Wales Government Gazette* No. 144, 24 December 1999, pp 12533-12534.

parents.¹³ In other jurisdictions, however, such decisions are made under the delegation of the department's chief executive officer or by the principal officer of an adoption agency.¹⁴

The Hague Convention

- 2.35 Not all jurisdictions fully address intercountry adoptions in their legislation. The jurisdictions that have taken advantage of the exemption in clause 34 of the Commonwealth regulations and implemented the Hague Convention in their adoption legislation are New South Wales, Victoria, Queensland and Western Australia.¹⁵ In the other jurisdictions, the Hague Convention on Intercountry Adoption operates through the Commonwealth regulations where necessary.
- 2.36 This arrangement permits the states and territories ownership of the intercountry adoption policy area. It also sends the signal that the Commonwealth does not wish to exercise leadership in developing intercountry adoption policy.
- 2.37 The Commonwealth-State MOU authorises states and territories to accredit non profit organisations to provide intercountry adoption services. New South Wales, Victoria and Western Australia have incorporated the authority to credit into their own regulations.¹⁶ The other states and territories rely on the authority of the Commonwealth-State MOU.¹⁷
- 2.38 No body is currently accredited to provide the full range of intercountry adoption services. There is a range of other licensing arrangements, however. For example, three agencies are licensed to provide local adoption services in New South Wales. Two agencies are licensed in Western Australia to provide some intercountry adoption services, rather than covering the whole process.¹⁸
- 2.39 Until earlier this year, South Australia accredited Australians Aiding Children Adoption Agency (AACAA) to provide intercountry adoption services. The government resumed these services on 1 April 2005.

13 *Adoption Act 1994 (WA)*, section 13.

14 For example, see the *New South Wales Adoption Regulation 2003*, clause 13.

15 Attorney-General's Department, sub 187, p 5.

16 Schedule 1, *New South Wales Adoption Regulation 2003*; clauses 10B and 10C, *Victorian Adoption Regulations 1998*; clause 23C, *Western Australian Adoption Regulations 1995*.

17 As of October 2005, New South Wales is in the process of establishing a process to accredit non-government bodies to provide intercountry adoption services.

18 *Australians Adopting European Children*, sub 16, p 14.

Interestingly, South Australia has no specific criteria for accreditation in its legislation. Instead, the *Adoption Act 1988 (SA)* allows services to be provided by 'a person or organisation approved by the Chief Executive'.¹⁹

Coordinating the states and territories

- 2.40 From the mid 1970s until 1982, state and territory adoption officers held regular meetings on intercountry adoptions. After that time, it appears that these meetings were either discontinued or infrequent, and inconsistencies developed between states and territories in how they managed intercountry adoptions.²⁰
- 2.41 In 1986, a Joint Committee on Intercountry Adoption met to review intercountry adoption practice in Australia. One of its recommendations was that a Standing Sub-Committee on Intercountry Adoption meet regularly and provide an annual report to the Council of Social Welfare Ministers.²¹
- 2.42 From 1999, this committee has met every six months in different locations around Australia. The meetings are chaired by the host jurisdictions.²²
- 2.43 Later in the report, the committee makes recommendations that the Commonwealth should take a greater role in intercountry adoption, especially in managing its international aspects. Further, the Commonwealth has a key coordinating role under the framework established to implement the Hague Convention. Therefore, the committee believes that the Commonwealth should continue to take an active role in coordinating these meetings.

Recommendation 2

- 2.44 **The Attorney-General's Department continue to be the permanent chair of the Intercountry Adoption Central Authorities Meetings to oversee the agenda which will drive the commonality of adoption policy, resources and quality frameworks.**

19 *Adoption Act 1988 (SA)*, section 29(2)(b).

20 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers and the Minister for Immigration and Ethnic Affairs of the Joint Committee on Intercountry Adoption Together with the Ministerial Response to the Report* (1986), p 82.

21 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers*, p 82.

22 Attorney-General's Department, sub 187, pp 9, 34-205.

Countries of origin

2.45 Countries of origin have their own processes and requirements to which they must adhere. In general, their administrations seek to ensure that the children are genuinely adoptable and cannot otherwise be placed within the country of origin.

2.46 Below are overviews of the six programs that resulted in the highest number of adoptions in 2003-04.

China

2.47 In 2003-04, 112 children were adopted from China. This represents 30% of total intercountry adoptions that year.

South Korea

2.48 As noted earlier in the report, adoptions out of South Korea commenced during the Korean War. The South Korean Government initially intended to cease all intercountry adoptions out of their country by 1980. The program closed in the late 1980s but was reopened.

2.49 The South Korean Government strongly prefers to place all children within South Korea, if possible. Therefore, there is no formal agreement with Australia for the program. The only countries that the South Korean Government permits to receive their children are Australia and the United States.

2.50 The Ministry of Health and Welfare has authorised specific agencies to handle particular types of adoptions. The Eastern Social Welfare Society (ESWS) is the only agency authorised to handle adoptions from South Korea to Australia. Children receive a high level of care. The Attorney-General's Department advised:

The program is largely compliant with the principles and standards of the Hague Convention and is a very effective and well organised program. ESWS is very responsive to any requests for any type of information...²³

2.51 A quota system applies. ESWS advises Australia of the number of files it can accept for that year, which is distributed on a per capita basis between the states and territories. Some delays have developed in the program, in particular lengthening periods to allocation and advice to travel. Further,

23 Attorney-General's Department, sub 249, p 3.

the South Korean Government sets a separate quota for exit visas for adopted children, which means some children have to wait for the next calendar year before they are able to travel.²⁴

- 2.52 In 2003-04, 98 children were adopted from South Korea. This represents 26% of total intercountry adoptions that year.

Ethiopia

- 2.53 This program originated in April 1992 when the Australian African Children's Aid Support Association submitted a proposal to develop a program with Ethiopia. The agreement was negotiated by the relevant Queensland department and was finalised in March 1994. The two parties to the agreement are the Ethiopian Ministry of Labour and Social Affairs and the Australian Council of Social Welfare Ministers. This arrangement is apparently unique as Ethiopia's programs with other countries operate through non-government organisations.

- 2.54 The Australian states and territories have appointed Ato Lakew Gebeyehu Likelew and his wife Misrak Getahun Zewde (Misrak) to represent them and Australian families in managing the adoption process in Ethiopia. A service agreement, signed in May 2004, manages this relationship.

- 2.55 The Attorney-General's Department advised:

Since the program commenced significant matters of concern have been addressed by Queensland and other States in regular telephone and written communication with Lakew and in meetings with him and the States in Australia in 1996, 1999, 2000, and 2004.

Visits to Ethiopia have been undertaken by the Queensland Director-General and Manager, Adoption Services in 1998. In 2003, a delegation of Departmental officers from Queensland, South Australia and Victorian intercountry adoption services visited Ethiopia to review the program with MOLSA [the Ministry] and witness the operation of program within the context of the environment in which it functions. A number of ongoing concerns relating to the integrity of the program were able to be more fully explored with key stakeholders in the country and enhancements made to its operation which were also incorporated into the Service Agreement referred to above.²⁵

24 Discussion drawn from Attorney-General's Department, sub 249, pp 1-6.

25 Attorney-General's Department, sub 251, pp 1-2.

- 2.56 Whilst awaiting adoption, many of the children have suffered malnutrition and illness from a young age. It is not unusual for special needs or hidden health problems to arise after they return to Australia.
- 2.57 The Attorney-General's Department advised that, 'The program is compliant with the principles and standards of the Hague Convention' (p 4).²⁶
- 2.58 In 2003-04, there were 45 adoptions from Ethiopia. This represents 12% of the total intercountry adoptions during that year.

Thailand

- 2.59 In 2003-04, 39 children were adopted from Thailand. This represents 11% of total intercountry adoptions that year.

India

- 2.60 In 2003-04, 29 children were adopted from India. This represents 8% of total intercountry adoptions that year.

Philippines

- 2.61 The Australian states and territories have had a long standing intercountry adoption program with the Philippines that predates the Hague Convention. The Convention came into force in the Philippines before it did in Australia (1996) and the arrangements between the two countries are now under the Convention.
- 2.62 As with other countries, the Philippines have set an upper limit on the number of international adoptions each year so that only 400 - 500 children per year are placed for overseas adoption, primarily to the United States, Norway and Australia.²⁷
- 2.63 The Intercountry Adoption Board (ICAB) is the central adoption authority in the Philippines and it strictly regulates the adoption process. Australian states and territories manage their applications directly with the ICAB, which draws children from a number of public and accredited private centres.
- 2.64 The ICAB has advised the Australian government that there are now fewer healthy children under two years old in the Philippines available for

26 Discussion drawn from Attorney-General's Department, sub 251, pp 1-6.

27 Attorney-General's Department, sub 259, p 1.

intercountry adoptions. Prospective parents will have to wait longer to be matched with such children or accept older children or those with medical conditions. The ICAB is, accordingly, looking for families who are more flexible in the children they will consider of adoption.²⁸

- 2.65 In 2004-05, 48 children were adopted from the Philippines. This represents 11% of total intercountry adoptions that year.

Origin countries' eligibility requirements for parents

- 2.66 Table 2.1 on the next page shows the eligibility requirements for potential adoptive parents that are imposed by overseas governments. The six countries of origin shown are those that resulted in the highest number of adoptions in 2003-04.

- 2.67 The first point the committee would like to make is that these requirements are not negotiable. We must accept the requirements imposed by the countries of origin and it would be improper for Australian adoptive parents or governments to attempt to put a case to overseas authorities to make changes to them.

- 2.68 The second observation is that many of these countries' requirements are more restrictive than those imposed by Australian states and territories (discussed in chapter three). Relaxing domestic minimum requirements will not assist applicants in Australia if the barrier is caused by overseas regulations. On the other hand, potential adoptive parents usually have a choice of jurisdictions, which means they can select the country of origin that best suits their circumstances.²⁹

Establishment and maintenance of programs

- 2.69 In 1991, the states, territories and Commonwealth agreed on the procedures for establishing programs with new countries in the document *Protocols and Procedures for the Development of New Programs for Intercountry Adoption with New Countries*. Broadly, the procedure outlined is:
- state or territory ministers initiate proposals, possibly following correspondence from the community. A minister who wishes to make a proposal prepares a scoping study;
 - the scoping study should take into account Commonwealth advice, any financial impact, the attitude to intercountry adoption of the country of

28 Attorney-General's Department, sub 259, p 2.

29 Byerley S, International Adoptive Families of Queensland, transcript, 21 July 2005, p 84.

origin, the risk of child trafficking and the commitment of Australia's governments to deal only with agencies overseas recognised by their respective governments;

- the welfare ministers should formally decide to investigate the proposal;
- a state or territory officer is to investigate the proposal in the country of origin. The investigation should include the matters listed above, including compliance with the convention;
- the welfare ministers decide whether to implement the new program;
- the state and territory ministers who wish to be a party to the agreement and a representative of the relinquishing country draw up and sign the agreement;
- the Department of Foreign Affairs and Trade arranges for the exchange of diplomatic notes to finalise the arrangement; and
- states and territories monitor all programs.

2.70 Once Australia ratified the convention, programs were classified as either Hague programs or bilateral programs. The 1998 agreement provided that, where Australia had an existing bilateral agreement with a country, the agreement should be renegotiated to ensure compliance with the convention if that country did not become a party to the convention within the next three years. In evidence, the committee asked the Attorney-General's Department whether Australia had conducted these renegotiations:

No. As I understand it, we have assessed the agreements as complying with the Hague convention procedures. As outlined in our submission, that was done last year.

It was a unilateral review by this country. So I suspect that the other countries would not regard that as a renegotiation.³⁰

2.71 The memorandum also stated that if a country was neither a member of the convention nor a party to a bilateral agreement with Australia, then any future bilateral agreement would be made on the basis of compliance with the convention and in line with the 1991 *Protocols and Procedures* document.

30 Duggan K, transcript, 9 May 2005, p 59.

Table 2.1: Selected minimum eligibility criteria for major countries of origin

	China	South Korea	Ethiopia	Thailand	India	Philippines
Minimum age	30	25	25	25	28	27
Maximum age	55 with some flexibility for the older applicant to be over 55. Single applicants need to be 50 years 0 months and under	44	Age gap of no more than 40 years, with flexibility up to 50	Applicants under 44 years are matched with children 0 – 4 years and applicants over 44 years are matched with older children	55 – agencies may set a limit as low as 40 for the placement of an infant	Preference for gap of no more than 45 years between the oldest parent and the child
Can singles apply?	Yes – quota applies	No	Women only	Women only, but only for a child with disabilities or a serious medical condition	Yes – single men can only adopt boys	Yes – but only for a child with disabilities or a serious medical condition
Can de facto couples apply?	No	No	Yes	No	No	No
Minimum length of relationship	Must be married and demonstrate stable relationship	3 years	1 year	None	5 years	3 years
Family restrictions	- maximum of 4 other children - adoptee at least 12 months younger than youngest child in the family	Maximum of 4 other children	Several families with biological children have subsequently adopted children	- priority given to childless couples - any child in the family over 12 must agree to the adoption	- priority given to childless couples - maximum of 3 other children for couples and 1 for singles	- priority given to childless couples - any child in the family over 10 must agree to the adoption
Fees	USD \$4,500 plus travel fees between USD \$1,100 – USD \$1,900 per person	USD \$8,000	USD \$3,600	AUD \$1,000	US \$1500 to US \$3000	USD \$2,000 approx.
Other	-	- no more than 30% overweight - minimum income of USD \$30,000	Must show sufficient income to parent the child	Preference given to families of Thai origin	Preference given to families of Indian origin	Preference given to families of Filipino origin. Applicants should be Christian

Source: See Appendix E.

- 2.72 One of the implications of this history is that programs are managed by state and territory governments, with one particular jurisdiction having ‘lead state’ status for overall responsibility for that program.³¹
- 2.73 Table 2.2 lists the status of programs and which state or territory has responsibility for them.
- 2.74 There are two main conclusions that can be drawn from the table. The first is that the two largest jurisdictions, New South Wales and Victoria, have responsibility for 70% of the programs. This may be due to their greater economies of scale. Secondly, only half the programs are active. The reason for this will be explored in chapter five.

Table 2.2: Allocation of programs between states and territories

State or Territory	Program and status			
	<i>Active</i>	<i>Heritage</i>	<i>Under negotiation</i>	<i>Inactive</i>
New South Wales	Chile, Colombia, South Korea, Taiwan		Bolivia, Costa Rica	
Victoria	China, Hong Kong, Lithuania, Mexico, Philippines, Thailand	Latvia, Mauritius, Sri Lanka		Estonia, Guatemala, Moldova, Romania
Queensland	Ethiopia, Fiji			
South Australia	India	Turkey		
Western Australia			Brazil	Burkina Faso
Tasmania			South Africa	
ACT	Poland			
Northern Territory				

Source: Attorney-General's Department, sub 187, pp 11-14. 'Heritage' programs are only open to applicants of that country's heritage.

- 2.75 Officials from state and territory departments occasionally visit countries of origin to monitor the programs, especially those for which they are the lead state. For example, in the last 10 years, Victorian officials visited China six times, South Korea twice, and Ethiopia once. New South Wales officials once visited China and South Korea. Queensland visited Ethiopia once during this period.³²

31 Australian Capital Territory Government, sub 200, p 4.

32 Attorney-General's Department, sub 187, pp 11-14.

- 2.76 Following Australia's ratification of the convention, it appears no further bilateral programs have been established except for with China in December 1999. In October 2004, the Community Services Ministers' Advisory Council (comprising relevant officials from government departments) agreed that new programs will only be established with countries that are a party to the convention.³³
- 2.77 The committee understands that programs with Hague countries are established and maintained under a similar process to that outlined in the 1991 *Protocols and Procedures* document, except that the Attorney-General's Department has a role in making the initial approach to the overseas central authority.
- 2.78 Although adoptions with Hague countries give a certain level assurance that processes will be of a certain standard, the focus on Hague countries has meant that Australia does not process adoptions with non-Hague countries. The committee is concerned that adoptions cannot be undertaken with democratic nations, such as the United States, which are either in the process of ratifying the Hague Convention or which have regulated internal adoption processes. This is an anomaly which should be rectified in order to satisfy the occasional request for an adoption with a non-Hague country that has good standards of governance.
- 2.79 The committee also has a number of wider concerns about how the states and territories have conducted these programs, which require Australia to manage its relationships with other countries. In principle, matters of external affairs are the Commonwealth's responsibility. The committee supports the Commonwealth taking a greater role in managing these programs and this will be discussed further in chapter five.

Cross border requirements

Immigration

- 2.80 The adoption of overseas children by Australian citizens in their countries of origin does not of itself change the nationality of those children. They remain citizens of their country of origin. Under section 14 of the *Migration Act 1958*, if these children were to enter Australia without a visa, they would be classified as unlawful non-citizens. Under section 189 of that Act, immigration officers are required to detain unlawful non-citizens.

33 Australian Capital Territory Government, sub 200, p 4.

- 2.81 Schedule 2 of the *Migration Regulations 1994* creates the adoption visa (clause 102), which Australians resident in Australia must arrange for their adopted children. There are a large number of criteria that must be satisfied for a child to receive this visa, although few, such as the health checks, are likely to pose difficulty. The visa fee is \$1,305.³⁴
- 2.82 The first set of criteria revolves around the type of adoption (clause 102.211). The categories include:
- the child was adopted overseas by an Australian who has lived at least 12 months overseas, provided the parent was not attempting to circumvent adoption visa requirements (as noted later in the chapter, these children now need an adoption visa as a condition of applying for citizenship overseas);
 - the overseas and local authorities have approved the adoption and the adoption is either in accordance with the Hague convention or the adoption may be recognised by the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998*. The second case, in effect, means the adoption is from China; and
 - the child is adopted in a convention country in accordance with the convention.
- 2.83 There are a number of requirements that the child must meet that were not raised as problematic during the inquiry:
- the child must be sponsored (clause 102.212);
 - the laws of the country of origin must be complied with (clause 102.213);
 - the child must be outside Australia when the visa is granted (clause 102.4);
 - the child must become established in Australia without undue personal difficulty and without imposing any undue burden on the Australian community (clause 102.223).
- 2.84 The adopted children are also subject to requirements which, although they were not cause for concern to participants in the inquiry, seem to be of little application for adoptions. The children must:
- pass a character test;
 - not be a risk to Australian security;

34 Viewed on 15 October 2005 at http://www.immi.gov.au/allforms/990i/990i_booklet2.htm.

- not prejudice, through their presence, Australia's relationships with foreign countries;
 - not be associated with weapons of mass destruction;
 - not have outstanding debts to the Commonwealth; and
 - intend to live permanently in Australia (clause 102.223).
- 2.85 As noted earlier, to receive the visa, children must pass a health check (clause 102.223). Clause 4007 of Schedule 2 lists the requirements, which include:
- being free of tuberculosis;
 - being free of a disease or condition that would make the applicant a threat to Australia's public health or a danger to the Australian community – at a minimum, this includes HIV and Hepatitis B;³⁵ and
 - being free of a disease or condition that would require health or community services which, in turn, would either result in significant cost to the Australian community or prevent an Australian citizen using those services.
- 2.86 Under clause 4007, the health check can be waived. In 2003 and 2004 there were five children who did not meet the health requirements. In two cases, the parents did not proceed with the adoption and in the other three the requirements were waived.³⁶

Guardianship of children

- 2.87 The *Immigration (Guardianship of Children) Act 1946* was passed to help manage the adoption of children from the United Kingdom after the Second World War. Broadly, it makes the relevant Commonwealth minister the guardian of a child that enters Australia that is not a citizen and is not in the care of a parent or relative ('non-citizen child,' see sections 4AAA and 6). The minister currently responsible for this legislation is the Minister for Immigration and Multicultural and Indigenous Affairs.³⁷
- 2.88 The minister may delegate this responsibility to any official of the Commonwealth or state or territory. The committee understands that the

35 Department of Immigration and Multicultural and Indigenous Affairs, sub 90, p 1.

36 Department of Immigration and Multicultural and Indigenous Affairs, sub 205, p 2.

37 Administrative Arrangements Order, 21 July 2005, p 28, viewed on 25 October 2005 at <http://www.pmc.gov.au/parliamentary/index/cfm>.

minister has delegated this responsibility to the relevant agencies in all states and territories. For example, section 77 of the New South Wales *Adoption Act 2000* includes a note stating that the Commonwealth minister has delegated their authority to the Director-General of the state department.

- 2.89 Generally, children adopted from overseas and brought into the country without having previously obtained citizenship are subject to the legislation. The relevant community service department in that state or territory supervises the adoption until the final adoption order is made, whereupon the child is in the custody of its parents and no longer meets the definition of a non-citizen child.
- 2.90 If the child was awarded citizenship during this interim period, it would also be removed from these requirements. Any such application is unlikely, however, because the adoptive parents are not yet the child's legal parents and would probably have no standing to make an application for citizenship on the child's behalf.
- 2.91 This legislation does not apply to children adopted from China. Under clause 5 of the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998*, adoptions of Chinese children are recognised when the adoption is finalised in China. Therefore, these children are in the custody of their parents when they enter the country and are not non-citizen children.
- 2.92 Similarly, the act does not apply to children who are adopted overseas by expatriate Australians and then apply for and receive Australian citizenship. If these expatriates then return to Australia with their children, the legislation does not apply because they are citizens.

Citizenship

- 2.93 The main provision in the *Australian Citizenship Act 1948* is section 10A, which states that a child (which is not an Australian citizen) gains citizenship if they are legally adopted under Australian law and the adoption is finalised in Australia.
- 2.94 In 2003-04, 70% of intercountry adoptions that were legally finalised and included processing through state and territory governments would have gained citizenship through section 10A. These adoptions comprise adoptions from all countries except China.³⁸

38 Australian Institute of Health and Welfare, sub 135, p 6.

- 2.95 China adoptions make up the other 30%. Since these adoptions are legally finalised under Australian law in China, section 10A does not apply. The parents must instead apply for citizenship for the child under section 13(9)(a) of the *Australian Citizenship Act 1948*. This provision gives the minister a general discretion in deciding whether to grant citizenship to an applicant who is under 18. Applicants under this section do not have an automatic right to citizenship, such as that in section 10A. This issue is addressed in more detail in chapter four.
- 2.96 In a press release on 8 May 2005, the Acting Minister for Immigration and Multicultural and Indigenous Affairs stated that approximately 20% of adopted children were applying for citizenship overseas, rather than first obtaining the adoption visa.³⁹ Upon receiving citizenship, those children could legally enter Australia without a visa. One advantage for parents of this practice was that the citizenship fee is only \$120,⁴⁰ compared with \$1,305 for the visa.
- 2.97 The Acting Minister announced that obtaining an adoption visa or other permanent visa would become a requirement for the grant of citizenship for these children. The press release states:
- ... the checks required before a visa is granted provide assurance that the child is genuinely available for adoption.
- ‘To date, there is no evidence or suggestion that private overseas adoptions have not been genuine.
- ‘However it is essential to make sure there are checks in place to guard against the trafficking, abduction and sale of children,’
Minister McGauran said.⁴¹
- 2.98 In evidence, the Department of Immigration and Multicultural and Ethnic Affairs stated that another reason for the change was, ‘to ensure that all are treated in the same way’.⁴²
- 2.99 Also in evidence, the department said that the visa requirement would not be placed in legislation, but would be a matter of policy for when the

39 Hon P McGauran MP, ‘Extra Protection for Adopted Children,’ media release, 8 May 2005, viewed on 29 August 2005 at <http://www.minister.immi.gov.au/cam/media/media-releases/medrel05/05085.htm>.

40 Department of Immigration and Multicultural and Indigenous Affairs, ‘How to apply for Australian citizenship,’ viewed on 19 October 2005 at <http://www.citizenship.gov.au/how.htm#step3>.

41 Hon P McGauran MP, ‘Extra Protection for Adopted Children’.

42 Ellis M-A, transcript, 9 May 2005, p 65.

minister exercises their discretion in considering applications under the *Australian Citizenship Act 1948*.⁴³

Discussion

2.100 The main theme from this analysis of cross border requirements is that the different way adoptions from China are treated under the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998* means that many of the other legal systems that affect adoption work differently for China adoptions. It appears that these other pieces of legislation have not stayed up to date with the bilateral arrangements regulations. This will be discussed further in chapter four.

43 Ellis M-A, transcript, 9 May 2005, p 74.

Inconsistencies between state and territory approval processes

Eligibility criteria for adoptive parents

Minimum legislated eligibility criteria

- 3.1 Assessing parents as being suitable to adopt children is an important part of the adoption process. If governments are willing to conduct adoptions, then they have a duty of care to the children to ensure that their new parents and families will provide a necessary level of love and support.
- 3.2 Adoptive parents are subject to two types of eligibility criteria. The first type is qualitative and involves social workers visiting the applicants' home and assessing such matters as their parenting skills or potential parenting skills, emotional maturity and stability, capacity to deal with stress and the quality of the couple's relationship.¹ These requirements are generally set down in adoption legislation and regulations. In the case of New South Wales, they are published under legislative authority in the government gazette.
- 3.3 The second type of eligibility criteria is quantitative. The various pieces of adoption legislation and regulations prescribe certain age ranges or family structures as necessary minimums. These vary between the states and territories and lack consistency.

1 For example, see South Australian Department for Families and Communities, 'Eligibility and suitability criteria,' viewed on 16 October 2005 at http://www.adoptions.sa.gov.au/Section4/4_2_adopt_os_child.htm.

Table 3.1: Parents' legislated minimum eligibility, suitability or placement criteria

Criterion	New South Wales	Victoria	Queensland	South Australia
Minimum age	21 years and at least 18 years older than adoptee unless court orders otherwise	None	21. Also at least 18 years older than the adoptee (16 years for women), unless exceptional circumstances	None – until 2005 the minimum was 18
Maximum age	None	None	None – until 2004 the limits were 47 years for the older parent and 41 years for the younger	None – until 2005 the maximum was 55
Can singles apply?	In particular circumstances	In special circumstances	In exceptional circumstances, but barred under regulation.	In special circumstances
Can <i>de facto</i> couples apply?	Yes	Yes	No	Yes
Can same sex couples apply?	No	No	No	No
Minimum length of relationship	3 years continuously	2 years	2 years (<i>de facto</i> relationship not relevant)	3 years for allocation of child and 5 years for making of adoption order
Family restrictions	Other children at least 2 years older than adoptee and in family at least 1 year	None	Maximum of four other children.	None
Infertility treatment	Precludes assessment	No specific requirements	Infertility treatment and attitude to infertility relevant to assessment	Attitude to infertility relevant to assessment
Applicant pregnant	Precludes or suspends assessment and/or child not placed	No specific requirements	No specific requirements	Precludes allocation or placement unless special circumstances. Assessment can proceed.
Citizenship	At least one parent an Australian citizen or the same citizenship as the child	None	At least one parent an Australian citizen	At least one parent an Australian citizen

Source: Refer Appendix E.

Table 3.1: (continued)

Western Australia	Tasmania	Australian Capital Territory	Northern Territory
18	At least 18 years older than the adoptee	None	At least 25 years older than the adoptee, unless exceptional circumstances
45 years older than child for younger parent and 50 years older for other parent. Increases by 5 years for second child	Both parents 40 years older than the adoptee (45 years if they already have children)	None	Both parents 40 years older than the adoptee (45 years if they already have children), unless exceptional circumstances
Yes	In exceptional circumstances	Yes	In exceptional circumstances. Single applicants can apply to China
Yes	Yes	Yes	No
Yes	Yes	Yes	No
3 years	3 years	3 years	2 years (<i>de facto</i> relationship not relevant)
Other children at least 1 year older than adoptee and in family at least 2 years	None	None	None, although policy guidelines suggest 2 years between the placement of children.
Precludes placement, but not assessment	Precludes assessment	Application for adoption list must state the likelihood of children being born in future.	No specific requirements but relevant at the time of assessment.
Precludes placement, but not assessment	Precludes assessment	Application for adoption list must state the likelihood of children being born in future.	No specific requirements but guidelines state process placed on hold for a period of time negotiated between both parties.
Parents are Australian citizens or one parent an Australian citizen and the other's country gives adoptees rights equivalent or better to those in Australia	At least one parent an Australian citizen or the parents' countries give adoptees rights equivalent or better to those in Australia	None	None, but guidelines state one parent needs to be an Australian citizen at the time of application.

- 3.4 As discussed in chapter one, countries of origin have their own quantitative criteria as well. Adoptive parents must meet both sets of criteria in order to adopt.
- 3.5 The criteria for the states and territories are set out in table 3.1. The main conclusion from the table is that there is considerable variation between the jurisdictions in their minimum criteria.

Body mass index

- 3.6 A commonly raised requirement was the body mass index (BMI). This index cross references a person's height and weight to give a number. The more weight a person is carrying for a given height, the greater the BMI. An index under 18.5 indicates the person is underweight, an index over 25 indicates the person is overweight, and an index over 30 indicates the person is obese. For a person 1.8 metres in height, these index numbers correlate to approximately 60 kilograms, 81 kilograms, and 96 kilograms respectively. Age, sex or body fat are not taken into account in calculating a person's BMI.²
- 3.7 Western Australia and Queensland apply a BMI test to applicants, but no other state or territory does.³
- 3.8 The problem with the BMI requirement is that it is a very rough measure of a person's health, but it has been applied by these jurisdictions, in particular in Queensland, as an absolute test. The committee received evidence on the illogical implications of the BMI requirement:
- Our Sri Lankan born son would not be able to adopt in Queensland and yet he is healthy. He has been an Australian-level swimmer at different times in his life. He plays rugby. He plays basketball. But his BMI would be too high because he did not grow very tall. The reason he did not grow very tall was because of high malnutrition in his legs and his body mass index is too high. Insurance companies will insure him because they can look at his whole body structure, but intercountry adoption would not consider him.⁴
- 3.9 Professional athletes develop large amounts of muscle relative to their height. Muscle is denser than fat, which means that they can have high BMIs. In April 2005, three professional players from one National Rugby

2 Reductil BMI calculator, Abbott Metabolism.

3 Leckenby K, sub 2, p 1, Adoption Support for Families and Children, sub 141, p 8.

4 Harding L, transcript, 21 July 2005, p 47.

League team and eight from another one had BMIs over thirty and may be ineligible to adopt if they lived in Queensland or Western Australia.⁵

- 3.10 In Western Australia and Queensland, there is no legislative requirement for the BMI. It appears to have been implemented as a matter of administrative policy in determining the wider question of applicants' ability to make good adoptive parents.

Single parents

- 3.11 The situation of single parents demonstrates that, in adoption, similar legislative provisions are interpreted differently between states. As table 3.1 shows, both Victoria and South Australia permit single persons to adopt in 'special circumstances'. In practice, however, Victoria will send the files of single applicants overseas, whereas South Australia does not. One applicant, who later shifted to Victoria and adopted a child, recounted her initial experience in South Australia:

I applied as a single applicant in 1998 when in SA and met with honest but stiff resistance. It was kindly pointed out to me that whilst there was no impediment to me applying the likelihood of an allocation was not high. I am a very determined person...I continued on...

...I finally received my approval letter with the first paragraph saying that I was now approved as a 'prospective adoptive parent' and the next 2 pages telling me why I would never receive an allocation. The final straw came when I was called into the DOCS office and told that even though I would make a great mother I would never be allocated a child and why should I get one, when a child could be given into a family where it would have a father and a mother?⁶

- 3.12 The committee received evidence that the only jurisdictions not to allow adoptions by single parents are Queensland, South Australia and Tasmania.⁷ On this basis, Tasmania interprets its legislation differently to the Northern Territory. The legislation in both jurisdictions allow adoptions in 'exceptional circumstances,' but in practice they only occur in the Territory.

5 Simard D, sub 44, p 3.

6 Lomman S, sub 230, p 1.

7 Lomman S, sub 230, p 2.

- 3.13 Intercountry adoption by singles is theoretically possible in Queensland under the *Adoption of Children Act 1964*. Section 12(3)(c) provides that singles may adopt special needs children or in exceptional circumstances. Clause 7(2)(d) of the *Adoption of Children Regulation 1999*, however, overrules this provision. It requires applicants for intercountry adoptions to be married for at least two years.
- 3.14 Normally, there would be significant legal concerns about a regulation attempting to override an act of parliament. In this case, however, section 13AC was inserted into to *Adoption of Children Act 1964* in 2002. This provision expressly states that a person can be removed from the expression of interest register if they do not meet criteria specified under regulation.

Police checks

- 3.15 The committee accepts that police checks are an important part of assessing applicants' suitability. The committee understands, however, that New South Wales has more onerous requirements than other states. In New South Wales, applicants are required to have two fingerprint tests costing \$187 each. In all other jurisdictions, applicants have an Australian Federal Police name check costing \$36.⁸
- 3.16 The assessment criteria in state and territory legislation often refer to applicants' criminal records, in particular whether they have been convicted of an offence against a child.⁹ The requirement in South Australia is to check the applicants' criminal record.¹⁰ The requirement in New South Wales is to refer to, 'Departmental and police records'.¹¹
- 3.17 In short, the New South Wales Department of Community Services has interpreted the same or a very similar legislative provision more onerously than other states and territories. At face value, the benefit in requiring applicants to submit to a fingerprinting test appears to be that if those applicants had committed an unsolved crime but left fingerprints at the scene, then they would be caught. There are so many other checks on applying parents, however, that fingerprinting does not appear to add any extra value to the process in addition to a standard federal police check.

8 Australians Adopting European Children, sub 16, p 13.

9 For example, the Tasmanian *Adoption Regulations 1992*, clause 14(i).

10 Clause 9(3)(i) of the *Adoption Regulations 2004*.

11 Niland C, 'Assessment Criteria for Assessment of Adoption Applicants,' *New South Wales Government Gazette*, No. 144, 24 December 1999, p 12533.

- 3.18 The New South Wales police checks can be interpreted as a signal to deter intercountry adoptions.

Pregnancy of applicants

- 3.19 Table 3.1 shows that most jurisdictions in Australia place legal restrictions on people applying to adopt if the woman is pregnant. The legislation in Queensland and Victoria does not impose this restriction, but the departments in these two states impose the restriction administratively.¹² This means that it is a decision made internally by the departments, which may or may not have the approval of the minister.
- 3.20 Once the file of a couple is sent overseas from Queensland, the department expects the woman to take reasonable contraceptive precautions from that time until 18 months after the child is in the couple's care. Victoria makes the same requirement for 15 months after the parents receive the child.

Analysis

- 3.21 The committee received evidence that people have shifted interstate to be able to adopt where their home state has stricter requirements than other states, especially in relation to age and single status.¹³
- 3.22 There is a history of stakeholders attempting to secure uniform adoption procedures in Australia. In the 1960s, the attorneys-general in the states, territories and Commonwealth agreed on a model bill on adoption. By the end of that decade, all jurisdictions had largely implemented the model bill, with some minor variations. The remaining areas of variation were:
- differing treatment of applicants depending on the state or territory in which they applied;
 - the seniority of the court dealing with adoptions;
 - whether fathers were required to give consent; and
 - whether children, where possible, were to be consulted on their adoption.

12 Victorian Department of Human Services, 'Basic Victorian requirements for the adoption of overseas children,' *Information kit*, p 2 and Queensland Department of Child Safety, 'Adoption of children from overseas: Frequently Asked Questions,' viewed on 19 October 2005 at <http://www.childsafety.qld.gov.au/adoption/overseas/faq>.

13 Lomman S, sub 230, p 1, name suppressed, sub 81, p 6, Muller J and R, sub 41, p 2.

- 3.23 Following this time, various states and territories have conducted reviews of their adoption legislation. Only Queensland retains its 1960s legislation, although it has been under review since 2002.¹⁴ By the mid 1990s, the large degree of uniformity achieved by the late 1960s was still considered to be intact.¹⁵
- 3.24 Although there may be general uniformity in adoption processes, table 3.1 demonstrates that significant differences remain between the jurisdictions in how adoptive parents are assessed. The fact that the committee received a large number of submissions from adoptive parents suggests this lack of uniformity is keenly felt by one of the most important stakeholder groups in the process.
- 3.25 There have been recommendations made in the past that the eligibility criteria for applicants should be uniform throughout Australia. Departmental officers from the state and territory welfare agencies and the Department of Immigration and Ethnic Affairs prepared one of the earliest reports on intercountry adoption in 1986. This joint committee recommended:
- While respecting the rights of state and territory governments to autonomy in these matters, the joint committee strongly urges that these criteria, or whatever criteria are adopted, are uniform throughout Australia.¹⁶
- 3.26 The ministerial response was less supportive of uniformity. In acknowledging the requirements developed by the joint committee, the ministers stated:
- Ministers considered these eligibility requirements as minimum standards. They noted and accepted that any state or territory may impose additional criteria or requirements reflecting the position of the respective government.¹⁷
- 3.27 The prior Chief Justice of the Northern Territory supported uniform adoption laws. In commenting on the work of the authors of *Adoption Australia* in 1994, he stated:

14 Queensland Government, sub 204, p 2.

15 Discussion drawn from Boss P, *Adoption Australia – A Comparative Study of Australian Adoption Legislation and Policy* (1992) The National Children’s Bureau of Australia Inc, pp 5-8.

16 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers and the Minister for Immigration and Ethnic Affairs of the Joint Committee on Intercountry Adoption Together with the Ministerial Response to the Report* (1986), p 41.

17 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers*, p 113.

...they have surely underlined the obvious desirability – one might almost say necessity – of uniform laws in this area. It is fair to say that all states and territories have moved towards this end... but there seems little reason why the ultimate steps should not now be taken...If the states and territories can ultimately agree on common legislation for artificial persons – as they have recently done under the corporations legislation – it seems reasonable to suggest that they should find common legislation for natural persons.¹⁸

- 3.28 Adoptive parents generally supported uniform eligibility criteria.¹⁹ They suggested either that the Commonwealth pass legislation to ensure this outcome²⁰ or that Australia have no criteria of its own but follow the criteria imposed by each country of origin.²¹
- 3.29 As demonstrated in chapter one, the likely indicators of success in adoptions include:
- the age of the child at placement;
 - the parents' maturity, flexibility and expectations; and
 - the parents' social networks.
- 3.30 In intercountry adoptions, the parents' ability to integrate the child's racial background into its identity is another important indicator of success.
- 3.31 Criteria relating to marital status, number of children already in the family (either biological or adopted) and citizenship are relevant issues. The committee, however, does not support these criteria being made absolute requirements when it is more reasonable to treat them as matters to take into account.
- 3.32 As some submissions noted, the Prime Minister recently stated:
- ...I have never had a view that age is a disqualifying factor. Capacity is the thing that counts.²²
- 3.33 Jurisdictions such as Victoria and the Australian Capital Territory take a preferable approach, whereby factors such as age, marital status and family structure are taken into account, but are not absolute requirements.

18 Asche A, 'Introduction,' in Boss P, *Adoption Australia*, p vii.

19 Australians Adopting European Children, sub 16, p 16.

20 Pedersen C, sub 96, p 3, EurAdopt Australia, sub 137, pp 8-9.

21 Adoption Support for Families and Children, sub 141, p 16.

22 Stewart W and M, sub 79, p 1.

3.34 The committee is also concerned that different jurisdictions interpret the same or similar legislative provisions differently. The body mass index (BMI) and the treatment of single applicants were probably the clearest examples of this practice. The fact that Queensland, in particular, has been able to make the BMI a strict requirement is an indicator of the power that adoption authorities have over adoptive parents.

3.35 A further indicator of adoption authorities' power is that some require parents to take contraceptive measures for up to 18 months after they receive the child as an exercise of their discretion to control parents. In comparison, biological parents manage these natural aspects of life. For example, many do have children 12 months apart and they have twins or triplets. No-one suggests, however, that governments should regulate how biological parents manage these risks.

3.36 The blanket application of this policy, as suggested by the Victorian Department of Human Services in evidence,²³ does not appear to be in the best interests of children overseas. As one of the committee members noted in evidence:

I can think of one woman who said in her submission that it was lovely that she had received a photo of her adoptive four-year-old. She also sent a photo of herself over there, and when she went to pick up her child the photo was near his little bed. I am thinking: 'What would have happened is she had been pregnant and she could not have adopted?'²⁴

3.37 The committee is also concerned that this practice is based on anecdotal evidence, rather than rigorous research.²⁵ It has been easier for departments to use their position of power over adoptive parents and reduce their own risk rather than scientifically balancing the benefits and risks of giving a child a loving family even if it is expecting a newborn baby.

3.38 The committee, however, received evidence that parents greatly value having siblings for their children.²⁶ The committee also received evidence that mixing young biological and adoptive children in a family can work well:

My adoption journey began when, after our third child, Haylee, was born, I gave all our baby things to New Life Homes,... which

23 Brain H, transcript, 10 October 2005, p 28.

24 Irwin J, transcript, 10 October 2005, p 31.

25 Clements D, Victorian Department of Human Services, transcript, 10 October 2005, p 31.

26 Jeanette, community statements, transcript, 3 August 2005, p 5.

was established to provide a response to the increasing number of abandoned or HIV babies in the Nairobi region. It was there we met and fell in love with Daniel... Daniel stole my heart and became my son. He also captivated the hearts of my three children. Daniel spent a weekend with us when he was about four months old. After returning to New Life Homes on the Sunday evening, we tucked our children into bed and Ben, then four, asked, 'Is Daniel my brother or not?' There was no question in the hearts and minds of Leah, Ben or Haylee that this was anything other than a natural joining of another child to our family.²⁷

- 3.39 Assessing applicants for adoption is a 'hands on' exercise which makes it more suited to management by the states and territories. Further, the legislation in jurisdictions such as Victoria and the Australian Capital Territory have virtually achieved a purely qualitative approach. Other states are moving in that direction. For example, Queensland and South Australia recently removed their legislated age restrictions. The committee, therefore, does not believe that Commonwealth legislation to apply uniform criteria is warranted.
- 3.40 The committee is of the view, however, that there should be greater harmonisation of the eligibility criteria between the states and territories. Further, the committee would prefer to see more principle-based legislation and the assessment to be more focussed on the factors that are directly related to the likely success of an adoption, rather than factors such as the BMI that are indirectly related to it.
- 3.41 For instance, the 1986 report by the Joint Committee on Intercountry Adoption stated the following general principle:
- For adoption to be in the child's best interests, it will be necessary to establish that, by the time the child reaches 18 years of age -
- it is the adoptive parents who will have largely raised, maintained and educated the child; and
 - there will have been a significant period of dependence (not merely financial) by the child upon the adoptive parents.²⁸
- 3.42 The committee supports a general principle along these lines being adopted by the states and territories. A more principle-based approach would need to be supported by transparent, robust practices within an agreed framework.

27 Potter D, transcript, 17 October 2005, pp 2-3.

28 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers*, p 51.

Recommendation 3

3.43 **In renegotiating the Commonwealth-State Agreement, the Commonwealth shall ensure a greater harmonisation of laws, fees and assessment practices, including:**

- **more general, principle-based criteria in legislation;**
- **more robust, transparent and documented practices; and**
- **standardised assessments across the jurisdictions.**

These harmonisations should be developed in consultation with stakeholders such as adoption support groups, adopted children and adopted parents.

3.44 The committee is also concerned that most of the criteria for adoptive parents in New South Wales are placed in the *Government Gazette*, rather than in an act or regulation where they would be subject to increased parliamentary scrutiny. There was considerable concern expressed in the New South Wales Legislative Council about fee increases being made through the *Government Gazette*, rather than regulation.²⁹ The criteria should be placed in a more transparent document to allow proper public debate.

Recommendation 4

3.45 **The Attorney-General request the New South Wales Minister of Community Services to insert the eligibility criteria for adoptive parents in legislation and regulation, rather than the *Government Gazette*.**

State and territory government fees

3.46 Table 3.2 shows the fees for adoptions, both intercountry and local, in Australia. The main conclusions from the table are:

- there is a wide variation in fees for intercountry adoptions between the states and territories, ranging from approximately \$2,000 to \$10,000;

²⁹ 'Intercountry Adoption Fees' *NSW Legislative Council Hansard*, viewed on 1 September 2004 at <http://www.parliament.nsw.gov.au/prod/parliament/hansart.nsf/V3Key/LC20040603038>.

- the high fee states tend to charge less for a second intercountry adoption; and
- fees for local adoptions are much less, ranging from free to approximately \$3,000.
- The high fee states have hardship provisions for their fees. In New South Wales for example, applicants receive a 50% discount if their household income is less than \$39,100 and a 25% discount if their income is less than \$46,400.³⁰

3.47 Those states with high fees seem to be philosophically driven in that they regard intercountry adoption to be a distraction from their core business of caring for children at risk within their state. The committee regards this as being at odds with article 9(b) of the Hague Convention, which requires state and territory welfare departments, as central authorities, to ‘facilitate, follow and expedite proceedings with a view to obtaining the adoption.’

3.48 The high fees for an intercountry adoption, allegedly representing total or partial cost recovery whilst maintaining low costs for domestic adoptions, also send a price signal that these jurisdictions are opposed to intercountry adoption.

Table 3.2: State and territory government fees for adoptions (\$)

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
First adoption (intercountry)	9,700	6,250	2,053	8,377	2,246	2,280	4,154	6,100
Second adoption (intercountry)	6,900	4,950	2,053	7,450	2,246	2,280	4,145	6,100
First adoption (local)	2,782	Free	530	1,629	750	1,710	Free	Free
Second adoption (local)	2,782	Free	530	1,019	750	1,710	Free	Free

Source: *Families with Children from China-Australia*, sub 86, p 16. Queensland local adoptions are free for special needs children.

Governments' view of fees

3.49 Government departments have long taken a ‘fee for service’ view of intercountry adoption. In its 1986 report, the Joint Committee on Intercountry Adoption endorsed this approach, stating:

30 *Families with Children from China-Australia*, sub 86, p 13.

The introduction of fee for service is designed specifically to upgrade the quality, availability and timeliness of service provided to children and adoptive parents.³¹

- 3.50 The joint committee took this view partly as a response to criticisms that the service provided was inefficient, unprofessional and subject to delays.³² As this report shows, however, higher fees in states such as New South Wales and Victoria have not led to improvements in service.
- 3.51 Reviews of fees in New South Wales in 1984 and the Australian Capital Territory in 1987 also took the fee for service approach.³³
- 3.52 The states with the highest fees, New South Wales, Victoria and Queensland, have implemented a cost recovery model.³⁴ The New South Wales Government engaged an accounting firm to develop the cost formula.³⁵ As noted earlier in the report, a previous New South Wales minister has stated that her Government's primary goal is to care for children at risk in that state, rather than overseas. That state's Department of Community Services takes the same view:

... our priorities in the Department of Community Services are to build and apply our expertise to the care and protection of children at risk in New South Wales. We are happy to share our expertise with the Commonwealth to support its broader humanitarian and immigration goals, but that must not impact upon our ability to respond to the need for care and protection of the 10,337 children that I have just talked about. If our support cannot be recognised by funding and assistance from the Commonwealth, then fees need to be applied to this service. We believe our fees are a true reflection of the genuine costs to us of these services.³⁶

- 3.53 The committee received evidence from Tasmania and Victoria that their respective community service departments provide services to a wide

31 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers*, p 80.

32 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers*, p 80.

33 Boss P, *Adoption Australia*, pp 15-16.

34 Families with Children from China, sub 86, p 13.

35 Department of Community Services, 'Intercountry Adoptions: A Reform proposal for NSW,' p 9, viewed on 24 August 2005 at http://www.community.nsw.gov.au/documents/adotions_intercountry.pdf.

36 Dawson S, transcript, 12 October 2005, p 11.

range of clients but only request fees from parents who apply for intercountry adoption.³⁷

- 3.54 It appears that some states find it difficult to find the resources to support intercountry adoption. One of the reasons postulated for Queensland closing applications for two years was that it did not have the funds available to process them.³⁸ Resources are still a significant bottleneck in Queensland:

There is also a limiting factor to the number of possible overseas adoptions and this is the number of applications that State government adoption agencies are staffed to accept and process – it would appear that many jurisdiction are working to their maximum capacity (and in some cases – eg Queensland – demand already exceeds available agency resources).³⁹

- 3.55 The committee heard in evidence:

... there is a lot of rhetoric and a lot of, I guess, folklore about the incapacity of the Queensland system to do things. Whilst that may be able to be substantiated, if you are looking at numbers and figures, the big challenge is that over the last four years in particular we have gone through substantial change. So we have gone from a situation where the minister was allocating approximately \$50,000 a year for all assessments – general adoptions and intercountry – where you supposedly had a minister’s personal opinion that intercountry adoption is the next stolen generation.⁴⁰

Adoptive parents’ view of fees

- 3.56 Adoption groups were very concerned about the large difference in fees for intercountry and local adoptions. One of their key complaints was the official view that the high fees represented a fee for service. Firstly, providing a fee for service in the adoption context implies that the applicants will receive a child. Clearly, no such guarantee can be made.⁴¹
- 3.57 Secondly, few applicants outside Tasmania or the Australian Capital Territory were prepared to state that they received an adequate level of

37 Davis G and K, sub 76, p 1, Freedden C and A, sub 58, p 4.

38 Pirani C, D and A, sub 121, p 4.

39 Wilson L, Turner S, sub 70, p 14.

40 Pedersen C, transcript, 22 July 2005, p 3.

41 Intercountry Adoption Resource Network, sub 156, p 2.

service during the process. The comments, rather, were that service standards were very low.⁴²

3.58 Adoption groups also complained that departments were understaffed and had high staff turnover.⁴³ In 2004, New South Wales increased its fees by almost 300%, but did not add any extra staff.⁴⁴

3.59 In fact, adoptive parents recognise there are costs involved and are willing to pay a reasonable sum to receive a certain level of treatment. The Australian Korean Friendship Group stated:

I think that most people who adopt from overseas, once they get into the process, realise that there are expenses involved and do expect to pay some type of cost recovery or some portion of the fees. As taxpayers we use government services every day and we do not fully pay for what it costs the government to put those services into place. In the past the government has always subsidised services to the citizens of Australia.⁴⁵

3.60 When the Queensland Government negotiated fee increases with the adoption community, adoption groups requested a higher fee in return for a prompter service:

We faced that dilemma when we agreed with Minister Spence to increase the fee, because I think it went from about \$750 and they were proposing \$1,200 and we as the intercountry adoption community agreed to \$2,000. She and her senior people were very surprised when we made that offer, but it was a balance of being able to provide sufficient resources – and we were very clear about; it is not a full fee for service but the expectation was that we would expect to see the assessments proceed much more quickly, and they did.⁴⁶

3.61 As the quote above suggests, adoptive parents do not support full cost recovery. They made a number of arguments against full cost recovery, including:

- it adds to the perception that intercountry adoption is only for wealthy parents;⁴⁷

42 Fratel A, sub 64, p 2, Pirani C, D and A, sub 121, p 6.

43 Australians Adopting European Children, sub 16, p 13, Smith L, sub 19, p 1.

44 Gray T, sub 82, p 2.

45 Finkel S, transcript, 21 July 2005, p 4.

46 Pedersen S, transcript, 22 July 2005, pp 6-7.

47 Adoptions International of Western Australia Inc, sub 173, p 11.

- it may constitute racial discrimination;⁴⁸
 - funds spent on the adoption could be better spent on the child;⁴⁹ and
 - high fees reduce the number of adoptions, which is not necessarily in the best interests of the overseas children.⁵⁰
- 3.62 Emeritus Professor Peter Boss and the 1989 *Review of Intercountry Adoption* in Victoria (chaired by Justice Fogarty of the Victorian Family and Children's Services Council) have previously made the same arguments as adoptive parents did in this inquiry.⁵¹

Consultation

- 3.63 One method of reducing the power imbalance between the adoptive parents and government departments in relation to setting fees would be to improve consultations between them. As discussed in chapter one, the committee received evidence that communications in Tasmania and the Australian Capital Territory work reasonably well. Queensland has also implemented a ministerial forum, but with limited success to date.⁵² The committee is of the view that the consultative arrangements in the majority of jurisdictions need improvement.
- 3.64 The Productivity Commission, in its report *Cost Recovery by Government Agencies*, noted some of the pitfalls in managing stakeholder consultation. The first problem is that the consultation process may result in the views of one stakeholder overriding all other views. The department in question may be 'captured' by a stakeholder. In other words, they may excessively support that stakeholder's views. The department could support that stakeholder over its competitors or not properly uphold a regulatory function in relation to a stakeholder group.
- 3.65 The second problem is that the consultative committee may be ineffectual. It may not have a remit to examine anything meaningful, it may not have access to useful information, or the department may simply ignore the committee's advice.⁵³ In evidence, International Adoptive Families of

48 EurAdopt Australia, sub 137, p 9.

49 Freeden C and A, sub 130, p 2.

50 Adoptive Families Association of the ACT Inc, sub 133, p 4.

51 Boss P, *Adoption Australia*, pp 15-16. See also Justice Fogarty, 'Letter of transmittal,' Victorian Family and Children's Services Council, *The Intercountry Adoption Service in Victoria – A Follow Up Review* (1991).

52 Pedersen C, transcript, 22 July 2005, p 1.

53 Productivity Commission, *Cost Recovery by Government Agencies* (2001) Report no. 15, AusInfo, pp 185-189.

Queensland advised the committee that the Queensland consultations are making slow progress:

We consult with the department and with the latest minister, Mike Reynolds. We now have consultation. We have a quarterly meeting with the department. We have supposedly been sitting on the policy meetings since January to implement policy on how to work through the new system we have in Queensland. In seven months we have not even finalised one policy, which is the health policy. Some of the things that have been talked about regarding the BMI have been...

... We will see the final draft on Monday. If your BMI is over 30 and you have four other health checks and they are fine, you will move straight through. They cannot stop you any more, as happened to Kathie. But it has taken them seven months to do one policy. As I said, I would have thought that how to work through the expression of interest is probably the biggest need and that has still not been done. That is the sort of negotiation we are doing with them.⁵⁴

3.66 The commission generally supported consultation:

Despite the risks of agency capture, stakeholder consultation is necessary to help drive agency efficiency. Those expected (or required) to pay have a clear interest in the costs, efficiency, and quality standards of agency activities and should be consulted on these arrangements.⁵⁵

3.67 One of the participants at the commission's hearings stated:

... [industry associations] ... can be extremely thorough in their grilling of bodies to identify costs and efficiencies and make managers accountable.⁵⁶

3.68 It appears that some ministers and their departments involved in intercountry adoption have been unaccountable for too long. The committee heard evidence of oppressive bureaucratic requirements being placed on adoptive parents that appeared to be out of proportion to what is required. In Queensland:

- parents must read a 300 page book to fill out a 260 page workbook;⁵⁷

54 Byerley S, transcript, 21 July 2005, p 82.

55 Productivity Commission, *Cost Recovery by Government Agencies*, p 185.

56 Productivity Commission, *Cost Recovery by Government Agencies*, p 184.

57 Evans P, Queensland Taiwan Support Group, transcript, 21 July 2005, p 40.

- which includes 'family trees, eco-charts and time pie charts';⁵⁸ and
- which results in an assessment three times as long as that prepared by Tasmania being sent overseas.⁵⁹

3.69 International Adoptive Families of Queensland described to the committee the process which led to the doubling of the size of the workbook:

They got a little bit from Ireland, a little bit from New South Wales and a bit from New Zealand. I said, 'The same topic is being brought up over and over again,' and they said, 'Could you write down what you think has been asked a number of times,' which I have not had a chance to do; I do not think that is my job to do. They said, 'Yes, it was put together at the last minute.' It was closed for two years in Queensland and the workbook was put together at the last minute. They have 587 couples who are supposed to work with that workbook that was put together at the last minute.⁶⁰

3.70 The committee would like to adopt the Productivity Commission's recommendation on stakeholder consultation for intercountry adoption.⁶¹ By giving a consultative committee suitable representation and access to information, it should be able to make meaningful recommendations. Publishing the committee's recommendations and the government's response is a practical method of preventing both 'departmental capture' and departments not giving sufficient weight to the committees' work.

Discussion

- 3.71 The committee accepts that to charge adoptive parents a fee is appropriate. Agencies need to partially defray their costs, adoption groups recognise that some sort of cost recovery is reasonable, and charging a fee deters applicants who do not treat the process seriously.
- 3.72 In assessing what is a reasonable fee, however, it is necessary to take into account who is providing the service and the quality of that service. In chapter five, the committee will advocate that non-government organisations should have a greater role in managing intercountry adoptions. If a number of these bodies are accredited, however, it is likely

58 Byerley S, International Adoptive Families of Queensland, transcript, 21 July 2005, p 81.

59 Byerley S, International Adoptive Families of Queensland, transcript, 21 July 2005, p 76.

60 Byerley S, transcript, 21 July 2005, p 81.

61 Productivity Commission, *Cost Recovery by Government Agencies*, p 195.

that they would seek to recover a large proportion of their costs through fees and charges, given they do not hold substantial operating reserves.

- 3.73 To adoptive parents, the value of non-government bodies operating is that they are likely to provide a prompt service and parents are likely to be prepared to pay for prompt, courteous service. To government departments, the value of non-government bodies operating is that there will be reduced demand on departmental resources.
- 3.74 If governments were to provide intercountry adoption services alongside non-government bodies, there may be competitive neutrality issues if governments were to significantly subsidise those services. Hence, the committee is reluctant to make any recommendations for significant reductions in state government fees beyond that earlier made in this report.
- 3.75 In the committee's view, one of the key aims to improving intercountry adoptions is to provide more resources to the organisations processing applications,⁶² and reducing government fees is unlikely to do this.

Recommendation 5

- 3.76 **In renegotiating the Commonwealth-State Agreement, the Attorney-General put the case to the relevant state and territory ministers for these jurisdictions to ensure that they establish consultative committees with adoption stakeholders, which include the following characteristics:**
- majority stakeholder representation;
 - a chairman independent of the department;
 - access to adequate information on agency processes and costs;
 - monitoring agency efficiency, among other roles; and
 - publishing the committee's recommendations and the government's response.

62 Wilson L, Turner S, sub 70, p 14.

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.¹
- 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.²
- 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.³

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.

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.⁴ The committee received evidence that some parents had sold their houses and moved to refinance their mortgage so they could afford these costs.⁵
- 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.

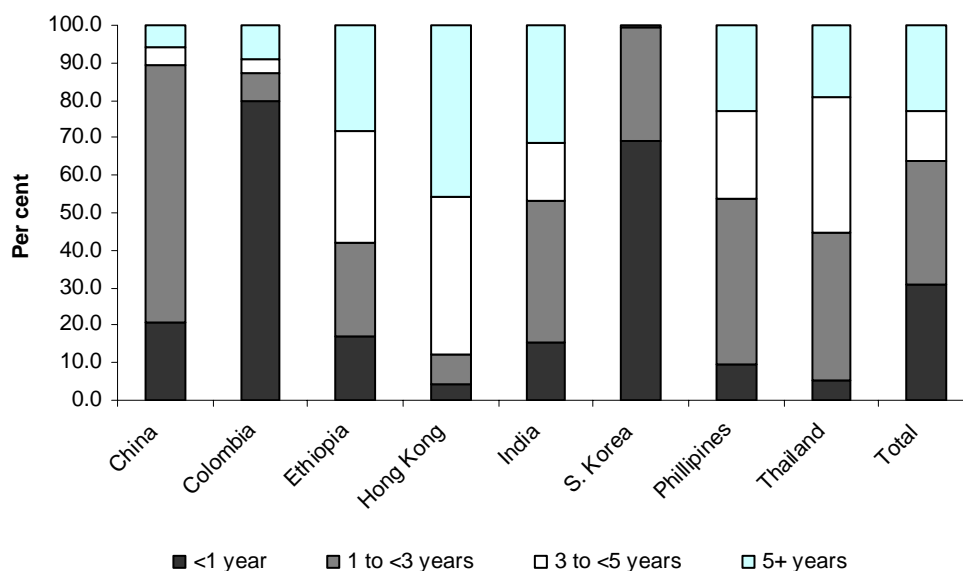
- 4.8 From 1999-2004, approximately 20% of children adopted from overseas were aged over five years, as the figure 4.1 on the next page demonstrates.
- 4.9 Most jurisdictions require at least one adoptive parent to stay home after receiving the child: Victoria, Queensland, Tasmania and the Australian 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.⁶

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.⁷ The NSW Government amended its legislation in October 2003.⁸

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:⁹

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.¹⁰

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'.¹¹
- 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.¹²

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.¹³ 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.¹⁴
- 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 2002-03.¹⁵
- 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.

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/Agreement makinginAustralia.htm](http://www.workplace.gov.au/workplace/Category/ResearchStats/Agreement/Agreement%20makinginAustralia.htm).

- leave was included in 8% of Australian workplace agreements in 2002-03.¹⁶
- 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.¹⁷
- 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.¹⁸
- 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.¹⁹
- 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.
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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.

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 2008.²⁰
- 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.²¹
- 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.²² 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.²³ 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.²⁴ 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.²⁵

- 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.²⁶
- 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 ...²⁷

- 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.²⁸
- 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.²⁹
- 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.³⁰ 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

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.

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.³¹

- 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.³²
- 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.³³ 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 Freedden 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.³⁴ 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.³⁵
- 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\$10,390³⁶
- 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.³⁷ Sweden provides a subsidy of SEK 40,000, which is approximately \$7,000.³⁸

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.³⁹

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.⁴⁰

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.⁴¹

- 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.⁴²

- 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'.⁴³

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.⁴⁴
- 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.⁴⁵

- 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 ...⁴⁶

- 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.⁴⁷

- 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.⁴⁸

- 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...⁴⁹

- 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.⁵⁰ 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.⁵¹ 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.⁵²

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.⁵³

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.⁵⁴

- 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.⁵⁵
- 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.

Other ways to better assist Australians adopting from overseas

Departmental performance

Published performance information

- 5.1 Publishing data on the performance on government agencies is now an accepted method of assessing how well government departments are serving the community. The Productivity Commission's review of government service provision, which compare the performance of the states and territories, is one example.¹
- 5.2 Chapter one of this report noted that state and territory departments tend to focus more on reducing the rate of adoption breakdown, which would be a drain on their resources at a later stage. They also focus on ensuring that no adoptions into Australia involve child trafficking as is required by the Commonwealth-State Memorandum of Understanding (MOU) delegating authority to state and territory Central Authorities.
- 5.3 Adoption groups, however, focus on different aspects of intercountry adoption:
 - the low per capita rates of intercountry adoption in some Australian jurisdictions compared with others, such as NSW and Queensland;² and

1 See <http://www.pc.gov.au/gsp/index.html>, viewed on 23 October 2005.

2 Families with Children from China-Australia, sub 86, p 20.

- the delays in processing in some jurisdictions, as for example, Queensland is seen to be failing in meeting its obligations.³

5.4 Adoption groups were concerned that these low levels of performance mean that children overseas must wait longer to be placed in a family. Since they will be older when they are placed, these children faced greater difficulties with health and, indeed, survival as well as increased rates of adoption breakdown.⁴ Similarly, the prevention of child trafficking and ensuring that children be placed into families where the adoption has the greatest chance of succeeding is also in children's best interests.

5.5 To the committee's knowledge, neither the Productivity Commission (the main publisher of government performance information) nor the Australian Institute of Health and Welfare (the main publisher of adoption information) release performance information on adoptions. Members of the adoption community, therefore, submitted some statistics.⁵ The result is provided in the table below.

Table 5.1: Selected effectiveness data for intercountry adoptions for 2003-04

Jurisdiction	Population	Adoptions finalised	Per capita adoption rate	Processing time
New South Wales	6,731,400	66	101,991	< 1 year
Victoria	4,972,800	86	57,823	< 1 year
Queensland	3,882,000	49	79,224	2-5 years
Western Australia	1,982,200	44	45,050	1-2 years
South Australia	1,534,300	72	21,310	< 1 year
Tasmania	482,100	22	21,914	Approx 1 year
Australian Capital Territory	324,000	26	12,462	< 1 year
Northern Territory	199,900	5	39,980	Approx 1 year

Source: *Families with Children from China-Australia*, sub 86, p 20, *Harding L and R*, sub 46, p 2.

5.6 A number of factors need to be taken into account before analysing this table.⁶ For example, some jurisdictions expend greater resources on establishing new programs than others. As chapter one shows, Victoria is the lead state for the largest number of programs. In evidence, representatives from the Australian Capital Territory's Department of Disability, Housing and Community Services stated that because other

3 Fratel A, sub 64, p 2.

4 Australian Council for Adoption, sub 56, p 3.

5 *Harding L and R*, sub 46, p 2.

6 Australian Institute of Health and Welfare, sub 218, p 1.

states established and managed programs, they could devote more resources to processing files.⁷

- 5.7 Further, the table does not measure the aspects of intercountry adoption that the state and territory governments presumably focussed on. Figures on adoption breakdowns could be collected relatively simply.
- 5.8 The statistics, however, confirm the bulk of the evidence that the committee received during the inquiry about the performance of the states and territories. In terms of per capita adoptions, the table suggests that South Australia, Tasmania and the Australian Capital Territory have been the best states in which to apply. These are states to which people had shifted, or to where people were suggested to shift, in order to apply for intercountry adoption.⁸
- 5.9 The statistics in chapter one give a per capita adoption rate for the great majority of western nations in the range of approximately 10,000 to 20,000 people per adoption. Only the Australian Capital Territory, Tasmania and South Australia achieved rates close to this in 2003-04. Other jurisdictions are well outside better international practice in relation to volume of files.
- 5.10 In the hearings, the committee asked the representatives from the New South Wales and Victorian departments why their per capita intercountry adoption rates were below those in jurisdictions such as Tasmania and the Australian Capital Territory. These officials did not answer in terms of comparing their operations with other jurisdictions. Instead, their response was that they process the applications that they receive.⁹ The committee does not regard this response as satisfactory on a number of grounds:
- it does not take into account factors such as the number of people who may be dissuaded from applying once they learn of the costs or delays involved, which can be created by poor departmental performance;
 - it does not take into account those who drop out if the staff making the presentation display a confronting or anti-adoption attitude; and
 - it displays a focus on process, rather than delivering results.
- 5.11 The table also confirms the evidence that Queensland has been the worst state in which to apply, due to the considerable delays caused by closing applications for over two years between 2002 and 2004. The committee

7 Mickelburgh S, transcript, 17 August 2005, p 4.

8 Leckenby K, sub 2, p 1, Wild C, sub 52, p 10.

9 Dawson S, transcript, 12 October 2005, p 10, Clements D, transcript, 10 October 2005, p 27.

received a number of submissions from people who had either left Queensland themselves or knew of people who had left Queensland.¹⁰

- 5.12 In fact, Queensland's performance has been so problematic that staff members in the Queensland department suggested that applicants move interstate.¹¹ When the Department of Child Safety reopened applications for two months in late 2004, it received 800, yet its goal recently has been to process 100 applications annually. Families with Children from China suggested to the committee that, unless the department takes significant action, it will be several years before applications are again accepted.¹² Clearly this is not complying with the Commonwealth-State MOU.
- 5.13 The committee was greatly concerned when it discussed this state of affairs with adoption groups in Brisbane. The fact that applicants feel they need to move interstate is an indictment of bureaucratic inefficiency. It is also a reflection of the low priority the Queensland government gives to intercountry adoption.
- 5.14 As a way of making adoption departments more accountable, the committee makes the following recommendation:

Recommendation 16

- 5.15 **The Productivity Commission and the Australian Institute of Health and Welfare liaise to determine who will publish performance information on intercountry adoptions. This information must include data on timeliness, separations and efficiency indicators such as the cost of each file processed.**

Obligations under the convention

- 5.16 Article 9(b) of the Hague Convention states that central authorities should '...expedite proceedings with a view to obtaining the adoption.'¹³ In the committee's view, Queensland has breached this provision by closing applications for intercountry adoptions for two years. The committee regards New South Wales performance of 100,000 people to an adoption as at best borderline.

10 Wild C, sub 52, p 1, Adoption NT, sub 144, p 1, Elvery D and D, sub 155, p 1.

11 Families with Children from China-Australia, sub 86, p 22.

12 Families with Children from China-Australia, sub 86, p 22.

13 Article 35 makes a similar requirement of competent authorities.

- 5.17 The New South Wales position may be explained by the Department of Community Services' desire to focus on their core business:

In New South Wales, we wish to return to a situation where the primary focus of our social work resources is on assessing and supporting the 105,000 children who are the subject of 216,000 risk of harm reports every year in New South Wales. That is what we need to focus on.... New South Wales does not consider it to be appropriate to deploy scarce casework resources to negotiate and administer a plethora of intercountry adoption agreements....¹⁴

- 5.18 As discussed in chapter one, the Hague Convention cannot be enforced through the document itself. To be enforceable, countries need to provide a proper domestic legislative framework. The only timeliness provision the committee is aware of in Australia is clause 10(1) of the South Australian *Adoption Regulations 2004*, which requires that a decision on application must be made within 18 months of its lodgement.

- 5.19 The committee believes that interested members of the community should be able to ensure that adoption departments comply with the requirement in the Hague Convention to act expeditiously. The states and territories should amend their legislation to reflect the provisions in the Hague Convention.

Recommendation 17

- 5.20 **The Attorney-General approach the respective state and territory ministers and request they amend their adoption legislation to include the provisions of the Hague Convention that require central authorities and competent authorities to expedite adoptions.**

Accredited bodies

- 5.21 As discussed in chapter two, articles 10 and 11 of the Hague Convention allow, but do not require, the creation of accredited bodies in member countries to manage intercountry adoptions. The Commonwealth-State MOU expands on the requirements on accredited bodies in the Hague Convention and some pieces of state legislation have provision for accrediting bodies.

14 NSW Department of Community Services, transcript, 12 October 2005, p 4.

- 5.22 Accredited bodies can have various roles, including information sessions, processing applications, assessing parents, supervising the adoption and providing post adoption services.¹⁵
- 5.23 Many of these roles are similar to what an adoption support service might provide, except for processing applications and assessing parents. If an accredited body takes on these roles, it must act independently of the parents. In one sense, the potential adoptive children overseas are the clients of this part of the process.
- 5.24 There are currently no formally accredited bodies in Australia, although one body was accredited in South Australia until 31 March 2005. This chapter first examines the history of accredited bodies and non-government organisations seeking accreditation in the three states where there has been the greatest interest for this outcome in the adoption community.

South Australia

- 5.25 Australians Aiding Children Adoption Agency had its origins in the 1980s in ASIAC, an adoption support service.¹⁶ Unlike some adoption groups, the agency was supportive of the Hague Convention in 1998 and the more robust approach it implied for non-government organisations.¹⁷
- 5.26 The agency appeared to have the support of its state government, including annual funding of \$43,100.¹⁸
- 5.27 In December 2003, the then South Australian Minister for Social Justice, the Hon Stephanie Key, commissioned a review of intercountry adoption, including the operations of the agency. The review team comprised representatives from the Department of Human Services and KPMG.¹⁹
- 5.28 The review report, completed in August 2004, noted that the agency did good work overall and had strong stakeholder support. It recommended that the current arrangements continue.²⁰ The areas for improvement included clarifying the relationship between the agency and the

15 *Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption*, Clause 18 of the Schedule.

16 Priest S, transcript, 17 October 2005, p 25.

17 Joint Standing Committee on Treaties, *Fifteenth Report*, (1998), p 12.

18 Department of Human Services, *Review of Intercountry Adoptions and Post Adoption Services* (2004) p 2.

19 Department of Human Services, *Review of Intercountry Adoptions*, p 12.

20 Department of Human Services, *Review of Intercountry Adoptions*, p 4.

government, improving the government's supervision of the agency and developing a policy on fees.²¹

5.29 During this review, a 'serious complaint' was made in relation to the agency's operations that reportedly amounted to a breach of its operating licence. In response, the Department for Families and Communities engaged KPMG to conduct a follow up review that included an examination of the immediate actions required to address the concerns in the complaint.²² The KPMG report did not specify the complaint, although the Department for Families and Communities advised the committee in evidence of two items that may have amounted to a breach of the licence:

- some adoptive parents had been offered children before they were formally approved for adoption;²³ and
- on six occasions in twelve months, risk assessment reports, which are attached to the home studies where a family may not be approved, were not forwarded to the Department for Families and Communities.²⁴

5.30 The KPMG report made some further recommendations and highlighted the priority recommendations from the first review. It also had a short list of recommendations that, it argued, should be implemented within the next three to six months as a condition of the agency keeping its licence.

5.31 This review, however, had a number of shortcomings. The first was that the majority of the recommendations that needed to be implemented for the agency to keep its licence were either the responsibility of the Department for Families and Communities or the joint responsibility of the agency and the department. These recommendations included:

- the department establishing an expert panel to review assessment reports and approve prospective adoptive parents;
- the department reviewing the large number of roles vested in the manager of the Adoptive Families Information Service in the department;
- the department taking over the role of liaising with overseas agencies and authorities; and
- the department establishing a strategic planning framework.²⁵

21 Department of Human Services, *Review of Intercountry Adoptions*, pp 4-9.

22 KPMG, *Intercountry Adoption Services* (2004), Department for Families and Communities, pp 1-2.

23 Beare C, transcript, 17 October 2005, p 60.

24 Beare C, transcript, 17 October 2005, p 59.

- 5.32 It does not appear logical that the agency's future depended on the department implementing certain recommendations.
- 5.33 The second problem with the KPMG report was is, by making comparisons with other states and territories, it implied that the South Australian system was arranging too many adoptions. It stated that the agency was the only one of its type in Australia and South Australia is disproportionate in the number of children adopted to it.²⁶
- 5.34 What this analysis overlooks is any international comparison, especially with Hague countries. An international comparison would add considerable value, given many countries are required to meet the Hague standard. The data in chapter one and later in this chapter demonstrate that South Australia's adoption rates are slightly lower than most western nations, which does not appear problematic. Given the Hague Conventions requests central authorities to expedite intercountry adoptions under certain conditions, a relatively high adoption rate could well be an indicator of success.
- 5.35 The third problem with the KPMG review was that it stated that South Australia is disproportionate in the number of children subject to child protection notifications and placement breakdowns. The report provided no data, either for South Australia or comparative jurisdictions.²⁷ The data presented to the committee tells a different story.
- 5.36 In relation to child protection notifications, the department stated in evidence that there were 8 notifications for approximately 70 placements, which gives a notification rate of 11.4%.²⁸ In 2003-04, South Australia had notification rates of 9.1% for children aged under 1 and 7.3% for children aged between 1 and 5. Assuming adopted children are equally spread across these age ranges, the weighted average for notifications in the South Australian community for the same age range as adopted children is 7.7%. This leaves a gap between the general community and the adopted children of 3.7% in extra notifications.
- 5.37 In the committee's view, the explanation for this remainder is that adoptive families are under much greater scrutiny than the general

25 KPMG, *Intercountry Adoption Services* (2004), Department for Families and Communities, pp 4-9.

26 KPMG, *Intercountry Adoption Services* (2004), Department for Families and Communities, p 6 of Attachment 2.

27 KPMG, *Intercountry Adoption Services* (2004), Department for Families and Communities, p 6 of Attachment 2.

28 Beare C, transcript, 17 October 2005, p 73.

community. Social workers can enter adoptive families' homes and are professionally required to report any concerns they may have. In other words, the harder one looks for trouble, the more one will find.

- 5.38 In relation to breakdowns, the department advised that there were four breakdowns over three years.²⁹ From 2001-02 to 2003-04, there were 194 adoptions in South Australia, which gives a breakdown rate of 2%. As discussed in chapter one, a breakdown rate of 2% in adoptions would be regarded as a successful outcome. Note that in the case of breakdown, there is a subsequent placement with other adoption approved parents.
- 5.39 Despite claims made in the KPMG report, it appears that Australians Aiding Children Adoption Agency was effective in both giving children from overseas a safe, family environment.
- 5.40 In February 2005, Minister Weatherill announced he would revoke the agency's licence so that from 1 April 2005, all adoptions would be handled by the department.³⁰ In evidence, the prior executive officer of the agency stated that this announcement came as a surprise to her.³¹
- 5.41 The minister gave three reasons for the change. The first was that it would make intercountry adoptions a smoother process and eliminate duplication.³² The committee's first comment is that the ultimate test of whether this reason is valid is whether the closure of the agency delivers any efficiency improvements. In evidence, the department stated that it was still bedding down the new system and was yet to produce any efficiencies, although they may occur later.³³
- 5.42 The committee's second comment about this reason is that, if the system had strong support from adoptive parents, a decision to change the system to make it more efficient should be accompanied by a communication strategy with stakeholders and the publication of statistics to test whether the new system delivers these efficiencies and indeed better outcomes. The committee is pleased to note that the department has been communicating with the community.³⁴ The committee has already recommended that more comprehensive performance information be published.

29 Lucas J, transcript, 17 October 2005, p 73.

30 The Hon Jay Weatherill MP 'South Australia's Adoption Rules to be Made Simpler' media release, 3 February 2005, viewed on 5 September 2005 at <http://www.ministers.sa.gov.au/minister.asp?mId=15&pId=6&sId=4046>.

31 Priest S, transcript, 17 October 2005, p 25.

32 The Hon Jay Weatherill MP 'South Australia's Adoption Rules to be Made Simpler'.

33 Squires R, transcript, 17 October 2005, p 65.

34 Squires R, transcript, 17 October 2005, p 65.

- 5.43 The committee's third comment is that no efficiency data was released in the minister's press release or either of the reviews, so no case was made that the process was inefficient. Given that South Australia, Tasmania and the Australian Capital Territory had high per capita adoption rates compared with most other jurisdictions, it seems unlikely (although still possible) that the processes were inefficient.
- 5.44 The minister's second reason for closing the agency was that it would give South Australia the same system as in other states and territories, ensuring consistency across the nation.³⁵ As the data in this chapter and chapter one show, South Australia processed a similar number of adoptions as most other western nations, well ahead of New South Wales, Victoria and Queensland, and had a breakdown rate of 2%. In the committee's view, South Australia's actions in terminating the agency's licence seemed premature and failed to recognise that South Australia was performing better than the more populous states based on international comparisons.
- 5.45 The minister's third reason was:
- This change reflects the government's commitment to accept greater responsibility for the quality of adoption assessments and for placement processes. This is consistent with the State Government's commitment to child protection outlined in the Keeping Them Safe policy.³⁶
- 5.46 In other words, the closure of the agency was a matter of government policy. The previous executive officer of the agency also believed that this was the reason.³⁷ The committee agrees that this was the key reason why the Australians Aiding Children Adoption Agency was closed. Although the agency had some process issues, it appeared to achieve results, both in maintaining a flow of files and in keeping a low level of breakdowns. In the committee's view, a reasonable approach would have been to work with the agency to improve its processes, rather than close it.

New South Wales

- 5.47 Australian Families for Children, previously known as Friends of Bolivia, has existed since 1981. In some respects, its history is the history of intercountry adoption in Australia.

35 The Hon Jay Weatherill MP 'South Australia's Adoption Rules to be Made Simpler'.

36 The Hon Jay Weatherill MP 'South Australia's Adoption Rules to be Made Simpler'.

37 Priest S, transcript, 17 October 2005, p 24.

- 5.48 In 1981, the New South Wales Department of Community Services informally authorised Australian Families for Children to establish and administer an adoption program with Bolivia. In 1988, the agency established programs with Colombia, Costa Rica, Chile, Peru and India. In 1989, the department signed a contract with the agency to provide intercountry adoption services.
- 5.49 With the ratification of the Hague Convention in 1998, the department advised the agency that it could apply for accreditation in November that year. The agency applied and the department advised that, in the absence of legislation to support the accreditation, the application must be suspended.
- 5.50 For several years thereafter, the department and the agency signed deeds of cooperation for the Colombia program. Most of the other programs were gradually discontinued after the countries of origin signed the Hague Convention. This event usually led to the need to renegotiate aspects of each program, which has not occurred. The Colombia deed expired in April 2004 and is yet to be resigned.
- 5.51 In December 2004, six years after the agency's request for accreditation, the department released the criteria. These criteria become law with the proclamation of the various sections of the *Adoption Act 2000* on 1 July 2005.³⁸
- 5.52 Clause 5C of the *Adoption Regulation 2003* states that the accreditation requirements are the NSW Adoption Standards. The standards were developed by the department in consultation with adoption service providers in New South Wales.³⁹
- 5.53 The assessments will be conducted by the Office of the Children's Guardian using benchmarks developed by that office and based on the standards.⁴⁰ The Children's Guardian is an independent statutory officer under section 178 of the *Children and Young Persons (Care and Protection) Act 1998*.
- 5.54 In evidence, the agency made a number of comments about these criteria. The first is that a body seeking accreditation must demonstrate

38 Discussion drawn from Australian Families for Children, 'Accreditation Application by AFC – Chronological Order of Events', exhibit 30, pp 1-2.

39 Department of Community Services, *Intercountry Adoptions: A Reform Proposal for NSW*, viewed on 24 August 2005 at http://www.community.nsw.gov.au/documents/adoptions_intercountry.pdf.

40 Office of the Children's Guardian, 'Adoption Standards', viewed on 28 October 2005 at http://www.kidsguardian.nsw.gov.au/adoption/adopt_stds.php.

competence in the whole range of adoption services, rather than any particular component. The agency was initially only seeking to be accredited for post-approval functions, such as post adoption support and then build up its skills. The current requirements include other functions such as assessing adoptive parents.⁴¹

- 5.55 These wider requirements mean that agencies will need more initial investment in people and processes before they can become accredited. The agency estimated these costs at \$500,000 over three years and noted that funding requests to federal and state agencies had been refused. The agency was concerned about this lack of funding, given that local adoption agencies receive significant financial support.⁴² For example, the Centacare Adoption Program received \$338,000 in funding from the department in 2003-04.⁴³
- 5.56 The committee's conclusion from this history is that the services provided by Australian Families for Children have been left to 'wither on the vine'. The formalising of intercountry adoptions under the Hague Convention appears to have led to additional costs for both central authorities, in this case the Department of Community Services, and non-government organisations.
- 5.57 On 12 October 2005, the department responded to a question by the Chairman as to whether it wanted an accredited non government service to undertake intercountry adoption processing in New South Wales by stating:
- Absolutely – or more than one. We do not think that there should be a single service provider. We believe that there should be a number of service providers.⁴⁴
- 5.58 Subsequently, on 2 November 2005, the department placed an advertisement in the national press calling for expressions of interest from eligible organisations to provide intercountry adoption services.⁴⁵
- 5.59 The committee awaits to see whether the delays and lack of cooperation and commitment to intercountry adoption demonstrated in this case study are about to change with the placement of this advertisement.
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41 Brisson R, transcript, 23 September 2005, p 26.

42 Brisson R, transcript, 23 September 2005, p 26.

43 Department of Community Services, *Annual Report 2003-04*, p 205, viewed on 28 October 2005 at http://www.community.nsw.gov.au/html/Annual_report04/index.htm.

44 NSW Department of Community Services, transcript, 12 October 2005, pp 17-18.

45 Department of Community Services, 'Provision of intercountry adoption services in NSW,' (advertisement) *The Australian*, 2 November 2005, p 6.

Western Australia

- 5.60 Three non-government agencies are active in intercountry adoption in Western Australia. They are:
- Adoption Research and Counselling Service (ARCS);
 - Adoption Support for Families and Children (ASFC); and
 - Adoptions International of Western Australia (AIWA).
- 5.61 ARCS has been operating for over 20 years and provides services to all parties involved in adoptions. It grew from research conducted by the University of Western Australia into the effects of adoption on relinquishing parents and adoptees. ARCS receives \$127,000 annually from the state government. Its services range from pre-adoption and pre-relinquishment counselling to working with people who are having reunions.⁴⁶
- 5.62 ASFC began as an aid and sponsorship group in 1973 to help displaced families and children during the Vietnam War. It then evolved into an adoption support group during Operation Babylift. ASFC has two aims. The first is to provide education and support to adoptive parents. The second is to organise aid and sponsorship for organisations that care for children. The agency receives \$60,000 per year in funding, as well as an additional grant to run education/information sessions for adoptive parents.⁴⁷ ASFC has run these sessions for the past 15 years.⁴⁸
- 5.63 Technically, neither of these groups is an accredited body as contemplated by the Hague Convention. Instead, they are licensed service providers under section 9 of the *Adoption Act 1994*. Clause 6 of the *Adoption Regulations 1995* lists a wide range of functions that may be performed under licence, which includes assessing parents. The Western Australian Government, however, appears to have limited their role to counselling and education, rather than the more independent function of assessments.
- 5.64 Although this counselling role gives these groups meaningful work, it does not appear likely to increase the volume of files processed overall. The main bottlenecks in intercountry adoption within Australia relate to parents being approved, which in Western Australia is still within the control of the government department.

46 Newbould J, transcript, 18 October 2005, pp 59, 63.

47 Personal communication, Keogh C, Department of Community Development, 26 October 2005.

48 Adoption Support for Families and Children, sub 141, p 4.

- 5.65 In evidence, AIWA stated that these two bodies are 'preferred service providers'.⁴⁹ Every three years, the state Department of Community Development approaches its preferred service providers and requests that they apply for another three years' funding. If they continue to meet the identified need, meet their contractual terms and operate effectively and efficiently, they will be invited by the department to apply for status as preferred service providers. An open tender will only be commenced if the department cannot procure the required services through this process.⁵⁰
- 5.66 The Western Australian Government's procurement policy for community services states that this review of preferred service providers should be transparent and there should be an avenue for any other organisation to challenge this decision.⁵¹
- 5.67 AIWA is a voluntary group that provides adoption information, counselling and resources. It does not receive government funding, but generates revenue through accepting donations and some fee for service work.⁵²
- 5.68 AIWA has been seeking to become an accredited body, rather than a licensed service provider. It originated with the Australia for Children Society that managed an aid and sponsorship program. When Australian governments decided that providing aid or sponsorship was inconsistent with the requirements of the Hague Convention, then AIWA was created as a separate, professional body with the purpose of becoming accredited.⁵³
- 5.69 This group has twice applied to become accredited. It lodged its first application in 1996 and received the formal refusal in March 1999. It recommenced the application procedure in 2001 and did not receive an application form for two years. Prior to 1 June 2003, AIWA submitted its second application, which is still under consideration. The group does not expect that the application will be approved.⁵⁴
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49 Rosenwald G, transcript, 18 October 2005, p 55.

50 Department of Community Development, 'Purchasing Quality Services,' viewed on 31 October 2005 at http://www.wa.gov.au/Resources/NotForProfitFundingAndGrants/Purchasing_Quality_Services.htm. See also Part 2 of the *Adoption Regulations 1995*.

51 Department of the Premier and Cabinet and the State Supply Commission, *Funding and Purchasing Community Services*, viewed on 31 October 2005 at http://community.wa.gov.au/Resources/NotForProfitFundingAndGrants/The_Funding_Process.htm.

52 Roberts M, transcript, 18 October 2005, p 50.

53 Rosenwald G, transcript, 18 October 2005, p 57.

54 AIWA, sub 173, p 13.

- 5.70 Clause 23B of the *Adoption Regulations 1995* states that, from 1 June 2003, any application for accreditation can only be made during a period specified by the department. In other words, AIWA will not be able to make any further applications for accreditation unless the department advertises that it wishes to receive them.
- 5.71 These limitations on accreditation, in combination with the 'grandfathering' provisions in the general community service procurement policy, mean that AIWA is unlikely to receive any state government funding for the foreseeable future. This may be the reason why the group has suggested it may be forced to close down.⁵⁵

International practice

- 5.72 Many, but not all, Hague countries have accredited bodies to conduct these functions. For example, Sweden has six accredited bodies,⁵⁶ Denmark has two,⁵⁷ Italy has 69⁵⁸, the United Kingdom has seven⁵⁹ and Ontario has 23.⁶⁰
- 5.73 International Social Service, an international non-government organisation funded by the United Nations and several western European governments,⁶¹ has produced a number of bulletins about accredited bodies under the Hague Convention. International Social Service's is of the view that accredited bodies work best when:
- they are subject to regular supervision;
 - there is a systematic review of the accreditations and authorisations;
 - they receive financial support; and

55 AIWA, sub 173, p 14.

56 Swedish Intercountry Adoptions Authority, 'Auktoriserade adoptionsorganisationer' viewed on 8 July 2005 at <http://www.nia.org.se/org/org.htm>.

57 Adoptions Naevnet, 'Adoptions in Denmark,' viewed on 8 July 2005 at http://www.adoptionsnaevnet.dk/info_english/adoptions.htm.

58 Presidenza del Consiglio dei Ministri Commissione per le Adozioni Internazionali, 'Deliberazione N. 163 Del 17 Dicembre 2003' viewed on 8 July 2005 at http://hcch.e-vision.nl/upload/accr_it.doc.

59 Hague Conference on Private International Law, 'Authorities - Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption,' viewed on 31 October 2005 at http://www.hcch.net/index_en.php?act=authorities.details&aid=231.

60 Ontario Ministry of Children and Youth Services, 'List of Adoption Agencies and Licensees Authorized to Handle Adoptions Involving Children Outside of Canada' viewed on 8 July 2005 at <http://www.children.gov.on.ca/CS/en/programs/Adoption/Publications/IAAList.htm..>

61 International Social Service, 'About ISS,' viewed on 27 October 2005 at http://www.iss-ssi.org/About_ISS/about_iss.html.

- the central authority gives general policy support to accredited bodies.⁶²

5.74 International Social Service has commented that, in many countries, there are too many accredited bodies and some bodies were established too quickly for them to have the necessary expertise in handling intercountry adoptions. In some receiving countries, however, there are too few accredited bodies to cope with intercountry adoptions.⁶³ One of the reasons that International Social Service supports creating accredited bodies is:

... the Central and Competent Authorities of the receiving countries and the countries of origin rarely have the material and human resources (trained and experienced, interdisciplinary staff on site in sufficient number) to fully discharge the functions of preparing and supporting children, parents of origin and/or future adoptive parents.

5.75 This comment is consistent with the committee's findings in chapter one, namely that many community service departments in Australia are more focussed on children at risk in their own states and do not give priority to intercountry adoptions.

Discussion

5.76 In their National Report on intercountry adoption in Australia in 2003, an official from the Attorney-General's Department stated:

There is at present a lack of mutually beneficial co-operative arrangements between government and non-government organisations. Only one agency has been accredited in Australia. The new laws provide for accreditation of bodies, and provided they meet the standards established by law and required by the Hague Convention, there is no reason why they cannot play a more active role in the adoption process.⁶⁴

62 International Social Service - International Reference Centre for the Rights of Children Deprived of their Family, Monthly Review no. 71, October 2004, pp 1-2, viewed on 19 July 2005 at http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.71.eng_000.pdf.

63 International Social Service - International Reference Centre for the Rights of Children Deprived of their Family, 'Obligation to use an accredited body for Intercountry Adoption?' p 5, viewed on 8 July 2005 at http://www.iss-ssi.org/Resource_Centre/Interdiction_adoptions_internationales_priveesANG.pdf.

64 Degeling J, *International Adoption in Comparative Law, National Report for Australia*, Association Louis Chatin Pour la Defense des Droits de L'Enfant, Colloque sur L'Adoption Internationale, En Droit Compare, Paris, le 25-26 avril 2003, pp 31-32.

- 5.77 The committee agrees with this conclusion. As the experience in South Australia demonstrated, one of the key means by which more children can be given a family is if an accredited body is established that manages the bulk of the process. Australia's track record, however, is:
- the South Australian agency has been closed;
 - the New South Wales Department of Community Services took seven years to develop accreditation criteria; and
 - the Western Australian Government limits its non-government organisations to counselling and education and has closed for the foreseeable future applications for full accreditation.
- 5.78 One of the advantages of establishing an accredited body is that state and territory departments face less of a dilemma in resourcing intercountry adoption. Provided they provide sufficient base funding and devote sufficient resources to ensuring the accredited body meets its quality standards, much of the remaining resources can be provided in fees by the adoptive parents. As discussed in chapter three, adoptive parents accept that by paying fees they are not entitled to an adoption, but they do not accept long delays in their assessment.
- 5.79 During its review of the New South Wales Adoption legislation, the New South Wales Law Reform Commission took a similar view:
- The Commission agrees that DOCS does not have the resources to run intercountry adoption itself. What was intended by the proposal was that, by controlling intercountry adoption, DOCS would receive all expressions of interest and be the final decision-making authority with respect to all assessments, allocations and placements. But as well, accredited agencies would be needed to take responsibility for a great deal of the administrative workload.... The opportunity to accredit private non-government bodies will meet the criticisms of DOCS which relate to issues of resourcing, namely staff levels, staff turnover and the ability to process adoptions expeditiously and provide sufficient supervision and support.
- DOCS itself supports this approach, as does the Federal Government and all other State and Territory Governments.⁶⁵
- 5.80 The committee believes state and territory governments could do more to establish accredited bodies.

65 New South Wales Law Reform Commission, *Review of the Adoption of Children Act 1965*, (1997) Report 81, pp 418-420.

Recommendation 18

- 5.81 **The Attorney-General approach the relevant state and territory ministers to amend the Commonwealth-State Agreement to commit the states and territories to provide the necessary training, resources including adequate funding, and policy support to enable suitable non-government organisations of the required standard to be accredited in all jurisdictions.**

Establishment and management of programs**The view of governments**

- 5.82 As discussed in chapter two, the states and territories establish and manage the overseas programs. The Commonwealth is involved largely at the end of the process through the Department of Foreign Affairs and Trade when arrangements are finalised.
- 5.83 Some state governments expressed concern that they were required to manage and establish programs. For example, New South Wales argued that:
- ... it would be more appropriate and efficient for the Commonwealth to assume responsibility for management of the intercountry adoption program.⁶⁶
- 5.84 That government's reasons were:
- the Commonwealth initially was meant to carry this task;
 - it represents cost-shifting because the states and territories are not funded for this work; and
 - bilateral agreements differ due to different governments negotiating them.
- 5.85 The first point appears to relate to the 1986 report on intercountry adoption by the Joint Committee on Intercountry Adoption, which comprised state and territory welfare ministers, the Department of Foreign Affairs and Trade and the Department of Immigration and Ethnic Affairs.

66 New South Wales Government, sub 175, p 2.

- There, the immigration officials agreed that their department should be responsible for managing and establishing programs overseas.⁶⁷
- 5.86 The New South Wales Government estimated the cost of establishing a new program to be \$35,000 to \$50,000.⁶⁸
- 5.87 In its submission, the Queensland Government indicated it they would be open to the Commonwealth having carriage of this aspect of intercountry adoptions.⁶⁹
- 5.88 In evidence, the Tasmanian Department of Health and Human Services stated that although they had been allocated responsibility for developing a program with South Africa, they did not have the resources for this task. This program is 'in abeyance'.⁷⁰
- 5.89 In 2004, the Commonwealth and state and territory governments agreed that all new programs would only be established with Hague countries. This will involve an amendment to the current Commonwealth-State MOU, which allows programs to be developed with non-Hague countries on the basis of compliance with the Hague Convention.⁷¹
- 5.90 One of the advantages for Australian governments in dealing with Hague countries is that they already have a high level of assurance that their program is properly managed and not subject to corruption and does not involve child trafficking. Note, on the other hand however, that nations with the greatest difficulties looking after children without families are usually too poor to comply with the requirements of Hague Convention ratification.

The view of adoption groups

- 5.91 Adoption groups were generally critical that not enough work was being done to establish new programs by Australian governments.⁷²
- 5.92 One example was the development of the China program. In 1991, a support group approached the Victorian Government with the proposal for a China program. The Commonwealth and other states and territories

67 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers and the Minister for Immigration and Ethnic Affairs of the Joint Committee on Intercountry Adoption Together with the Ministerial Response to the Report* (1986), p 84.

68 New South Wales Government, sub 175, p 3.

69 Queensland Government, sub 204, p 2.

70 Hobday U, transcript, 16 September 2005, p 75.

71 Australian Capital Territory Government, sub 200, p 4.

72 Wilson L, Turner S, sub 70, p 8, Byerley S, *International Adoptive Families of Queensland*, transcript, 21 July 2005, p 76.

agreed that Victoria should be the lead state and it commenced negotiations in 1992. One of the sticking points in the negotiations was that the Chinese authorities required that their adoption certificates be recognised under Australian law, whereas in all other cases the adoptions must be finalised by Australian courts.⁷³

5.93 Adoption groups viewed the resolution of this delay as follows:

After 6 years of negotiation and no results, a private citizen, who was trying to set up an accredited agency, identified the problem and discussed the solution with Senator Brian Harradine's office. Senator Harradine arranged passage of Australian legislation to enable compliance with Chinese legislation which basically solved the problem. We understand that it was the international law and treaty experience of the Commonwealth Departments of Foreign Affairs and Immigration that made the most difference in sorting out the legal requirements. This demonstrates that the States are out of their depth in negotiating international legal affairs.⁷⁴

5.94 Following the creation of the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998*, adoptions from China could proceed. The agreement with China was signed on 23 December 1999. It took seven years for the China program to be developed.

5.95 Another concern of adoption groups is that, by limiting new programs to Hague countries, Australia is automatically reducing the number of children being adopted. Countries that do not have the resources to comply with the Hague Convention are more likely to have children in need of a family.⁷⁵ To test this argument, the committee developed the table below.

Table 5.2: Comparison of Hague and bilateral programs, 2003-04

	Hague countries	Bilateral countries
Total active programs	11	7
Children adopted	67	302
Average adoptions per program	6.1	43.1

Source: Attorney-General's Department, sub 187, pp 11-14, Australian Institute of Health and Welfare, sub 135, p 6. This table excludes one adoption from Italy, which was a kinship adoption, rather than under a program.

73 Senator Hill, *Senate Hansard*, Wednesday, 11 December 1996, pp 7180-7181.

74 Cornhill R and N, sub 33, p 10.

75 Harding L and R, sub 46, pp 2-3.

Discussion

- 5.96 The committee is concerned about the management and development of programs in Australia. The establishment of new programs is a task where Australia is presenting itself to the world and managing its external affairs. This activity is intrinsically a Commonwealth endeavour.
- 5.97 As the development of the China program demonstrates, it appears that state and territory agencies do not have the expertise to establish and manage these programs effectively.
- 5.98 The committee views the history of overseas programs as a lost opportunity. The relevant administrations identified the immigration portfolio as the most suitable to take carriage of overseas programs in 1986, which was later overturned. The Department of Immigration and Multicultural and Indigenous Affairs, however, provided evidence to the committee as follows:
- it manages the visas required for all adoptees;
 - it has a specialist position in Bangkok to investigate child trafficking;⁷⁶ and
 - it has a network of officials in countries of origin that have knowledge of local conditions.⁷⁷
- 5.99 If this department were to manage overseas programs, then state and territory departments would have additional resources for managing their core activities, such as accrediting a body to manage intercountry adoptions within their jurisdiction. Accordingly, the committee makes the following recommendation:

Recommendation 19

- 5.100 **Responsibility for establishing and managing overseas adoption programs be transferred to the Attorney-General's Department in consultation with the Department of Foreign Affairs and Trade and the Department of Immigration and Multicultural and Indigenous Affairs.**

76 Mills G, transcript, 9 May 2005, p 73.

77 Mills G, transcript, 9 May 2005, p 62.

- 5.101 The committee is also concerned about the limited number of effective programs being established. Although the focus on Hague countries is convenient for departments in Australia, Hague programs do not give families to many children. The data comparing Hague and bilateral programs confirms the argument made by adoption groups that the countries least able to officially comply with the Hague Convention are those that have the most children in need.
- 5.102 The Special Commission held at the Hague on the convention in 2000 made the following recommendation:
- ... States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention.⁷⁸
- 5.103 In other words, the Special Commission did not suggest that Hague countries only deal with other Hague countries. Rather, it suggested that Hague countries could deal with non-Hague countries provided they were able to maintain proper standards as best they could. This approach would appear to also help educate countries of origin in what safeguards are required.
- 5.104 Further, the committee is surprised that Australian governments opted to only establish new programs in Hague countries when Australia attended this special commission and the recommendation was unanimously supported.⁷⁹

Recommendation 20

- 5.105 **Future overseas programs be established on the criteria of the number of children needing families and the extent to which the country of origin has implemented the Hague Convention, given the resources available to it.**

⁷⁸ Hague Conference on Private International Law, *Report and Conclusions of the Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, 28 November – 1 December 2000*, p 31, viewed on 22 August 2005 at <http://hcch.e-vision.nl/upload/scrpt33e2000.pdf>.

⁷⁹ Hague Conference on Private International Law, *Report and Conclusions of the Special, 28 November – 1 December 2000*, pp 6, 31.

- 5.106 During hearings, the Western Australian Department of Community Development suggested that AusAID, Australia's international aid agency, could provide assistance by giving technical aid to improve the capacities of the orphanages and welfare departments in the countries of origin.⁸⁰
- 5.107 The committee believes this idea has merit. One of the problems with intercountry adoptions in Romania was that its governance structures were not sufficiently robust to manage intercountry adoptions after decades of communism. The Attorney-General's Department advised in evidence that Guatemala commenced intercountry adoptions before there were adequate checks and balances.⁸¹
- 5.108 If Australia wishes to implement programs with countries that do not currently have the necessary resources to formally comply with the Hague Convention, then it would be appropriate to include, with the program, some governance and capacity building aid. This will help ensure that the children are legitimately adoptable and improve the standards of administration in the countries of origin as well.

Recommendation 21

- 5.109 **To assist Australia develop intercountry adoption programs with non-Hague countries, the Department of Foreign Affairs and Trade authorise AusAID to develop capacity building and governance programs to assist those countries gain Hague Convention accreditation.**

Offences for publishing adoption details

Current provisions

- 5.110 As noted in chapter two, all states and territories have offences for publishing the details of parties to an adoption. The adoption community accepts that confidentiality may be appropriate for some aspects of adoption, particularly until the adoption is complete.⁸²
- 5.111 The details of the offences are given in table 5.3.

80 Bonson L, transcript, 18 October 2005, p 4.

81 Duggan K, transcript, 10 October 2005, p 38.

82 Families with Children from China-Australia, sub 86, p 10.

- 5.112 The committee's first observation is the wide variation in penalties. The fines for individuals range from \$2,500 to \$20,000. South Australia and the Northern Territory do not have imprisonment as a possible penalty, whereas the other jurisdictions have maximum periods of imprisonment of up to two years. This wide range suggests there is no uniform rationale for the offences. Imprisonment seems entirely inappropriate.
- 5.113 There is also a wide range of consent provisions. In many jurisdictions, only a court can consent to publishing adoption details. In Western Australia, however, consenting parties also include the minister and the adoption agency (if relevant). If the adoptee is over 18, they may consent and if the adoptee is under 18, their guardian may consent.
- 5.114 The Victorian legislation also has a range of consent options. It creates a 'prohibited period' that lasts until the adoption is legally finalised. After the prohibited period, the parties themselves can consent to publication of these details. In the case of a child under 10, their parent or guardian may consent. For a child over 10, they must give their consent in addition to their parent or guardian.
- 5.115 During the prohibited period in Victoria, the court must approve publication of the details of a party to an adoption, as well as the individuals themselves.
- 5.116 Adoption groups in some states advised the committee that the restrictions affect how they operate, even in their most innocuous activities. For example, the Australian Korean Friendship Group advised the committee that media crews technically should not publish images of adoptive community functions such as International Day in Brisbane. Adoption groups have been advised to remove from their newsletters photographs of children who have been allocated and parents' stories about the adoption process.⁸³

South Australia

- 5.117 The committee is most concerned about how these secrecy provisions were used in South Australia earlier this year. When adoption groups attempted to publicly demonstrate against the closure of Australians Aiding Children Adoption Agency, the following occurred:

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.⁸⁴

- 5.118 Any provision in a piece of adoption legislation is meant to serve the best interests of children. In this case, it appears that the minister’s actions were designed to suppress public debate, rather than help children.

84 Families with Children from China-Australia, sub 86, p 11.

Table 5.3: Details of the offences for publishing adoption details

	New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania	Australian Capital Territory	Northern Territory
Maximum fine for an individual	\$2,750	\$10,481	\$3,000	\$20,000	\$10,000	\$2,500	\$20,000	\$5,000
Maximum imprisonment	12 months	2 years	6 months	None	12 months	6 months	2 years	None
Both penalties possible for an individual?	Yes	No	No	NA	Yes	No	Yes	NA
Maximum fine for a corporation	As above	\$104,810	As above	As above	As above	As above	\$100,000	As above
Court consent	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ministerial or official's consent	No	Secretary or the adoption agency.	No	Yes	Director-General or the adoption agency	No	No	Yes
Parent's or guardian's consent	No	After the adoption order	No	No	Guardian only	No	No	No
Adoptee's consent	No	Required after age 10	No	No	After they turn 18	No	No	No
Can offence occur after adoption order?	Unclear	Yes, but consent is possible	Unclear	Yes – under Minister's interpretation.	Yes, if consent required not given by adoptive parent and/or adoptee	Unclear	Unclear	Unclear

Source: Refer Appendix E.

Discussion

- 5.119 The current range of confidentiality provisions appear to be derived from the days when adoption was shrouded in secrecy. Families of mothers who adopted out their children were often motivated by avoiding any shame to those families.
- 5.120 This approach does not appear applicable to intercountry adoption. In over 90% of cases, adoptees bear little physical resemblance to their adoptive parents. To remove doubt that these children are their children, adoptive parents need to be able to legitimately state that they adopted their child or children.
- 5.121 As noted in chapter one, intercountry adoptees need to be able to celebrate their different cultural background. The current secrecy provisions hinder this process. Therefore, the committee believes that the current offences need to be clarified and wider consent provisions inserted. The Victorian legislation could be a useful model.

Recommendation 22

- 5.122 **The Attorney-General in re-negotiating the Commonwealth-State Agreement include provisions to harmonise legislation covering the right of parents to publicly discuss their adopted family. The Committee recommends the Western Australian provisions be the model to be followed.**

Smoothing the adoption process

Tracking files

- 5.123 The committee received evidence that adoptive parents are under considerable stress during the adoption process. This is partially due to the power that government departments have over them. Some government departments readily answered applicants' queries over the phone, such as in Tasmania.⁸⁵ Departments in other states, however,

85 Hobday U, Department of Health and Human Services, transcript, 16 September 2005, p 77-78.

discouraged adoptive parents from inquiring about progress with their files, which added to their anxiety.⁸⁶

- 5.124 The committee heard about how some agencies overseas use the internet to help adoptive parents track their applications:

If you were looking for a model of how best practice in an adoption agency would work then you would not need to look a lot further than the children's home society [of Minnesota]. Their communication with their clients is excellent... with the children's home society you can check on a web site. You have a confidential number to key in and you can find out where you are up to and what you have to do next and think, 'Good, I can start working on that.'⁸⁷

- 5.125 The committee believes a file tracking system should be introduced for Australian families. Giving parents information about their files will not only reduce their anxiety, but reduce the power imbalance that they experience with departments as well.

Recommendation 23

- 5.126 **The Attorney-General's Department negotiate with the central authorities to coordinate the establishment of a file ID tracking system so that adoptive parents may easily track their files throughout their application.**

The role of Australian embassies overseas

- 5.127 During evidence, the committee heard that Australian embassy staff often provide a high level of service. The Western Australian Department of Community Development stated:

They know about adoptions because they have been in other jurisdictions in other countries. They have seen the process come through. I did not have to tell them anything about it. They knew what we were talking about. That is a great help. They are knowledgeable, they are experienced and they are in a different situation. When you say something they reply, 'I know what you're talking about there.' It takes a long time to come up to

86 Sue-Belinda, community statements, transcript, 21 July 2005, p 62, Pirani C and D, sub 121, p 6.

87 Sue-Belinda, community statements, transcript, 21 July 2005, p 62.

speed on these matters but the people there were informed and did not need much information at all. It was good.⁸⁸

5.128 **Accepting Children Everywhere from Tasmania** stated:

My experience has been with the Philippines. My son and daughter are from there. Our daughter only came and joined us in February of this year. The embassy people and DIMIA and DFAT people that we are in contact with both here and overseas are exceptionally good. They are very efficient; there is never any problem with them. They are most helpful. In fact, they have been working very hard on behalf of a couple that we are aware of now who are actually in country in the Philippines because of a potential problem in the area where they were going to pick up their child. The embassy was working quite extensively on their behalf to ensure that everything was done to make it a smooth passage for them, and it has been so, we understand from other people.⁸⁹

5.129 The committee acknowledges the excellent work that our Australian embassies do to help adopting families. The committee, however, would prefer to see this process formalised, which would provide an additional level of comfort to adoptive parents. This would be in line with Commonwealth responsibility for dealing with other countries in accordance with recommendation 1.

Recommendation 24

5.130 **The Department of Foreign Affairs and Trade develop protocols with the Australian central authorities to govern the follow up of files in countries of origin by embassy officials when the files become significantly overdue.**

88 Keogh C, transcript, 18 October 2005, p 21.

89 Ford A, transcript, 16 September 2005, p 52.

Supporting the adoption community

The census

- 5.131 One of the issues apparent to the committee is that the data in relation to adoptive families could be improved and, as chapter one discussed, the data in relation to foster children and their families certainly needs to be improved. The disparity between the thousands of children in Australia in foster and other forms of out-of-home care and the low number of domestic adoptions – less than 100 is of grate disquiet to the committee.
- 5.132 The Australian census, held every five years, is a household based survey and appears well suited to gathering this kind of data. The household census form, however, is not clear on how to record whether a child is adopted or fostered or in another form of out of home care. A sample from the most recent census form, figure 5.1 on the next page, demonstrates this.
- 5.133 If a child is living with a family as a foster child or in another form of out of home care, then the final entry is required to be ticked and the word ‘foster’ inserted in the box. With such a form, however, the number of foster children is likely to be underestimated because:
- not all respondents will write ‘foster’ in the box;
 - foster children may be staying somewhere else for the night, and although this data is collected it is not released; and
 - the last item only refers to person 1. If the child is fostered to person 2, it is unclear how they would be recorded.⁹⁰

90 Siminski P, Chalmers J, McHugh M, *Foster Carers in New South Wales: Profile and Projections Based on ABS Census Data (2005)* Discussion Paper No. 139, Social Policy Research Centre, University of New South Wales, viewed on 3 November 2005 at <http://www.sprc.unsw.edu.au/dp/DP139.pdf>.

Figure 5.1: Household relationship answer box, 2001 Australian census household form

Child of both Person 1 and Person 2
 Child of Person 1 only
 Child of Person 2 only
 Brother or sister of Person 1
 Unrelated flatmate or co-tenant of Person 1
 Other relationship to Person 1 – please specify

Source: Australian Bureau of Statistics, '2001 Census Household Form', p 3, viewed on 3 November 2005 at <http://www.abs.gov.au/Websitedbs/D3110124.NSF/497f562f857fcc30ca256eb00001b48e/22f6a467477b2e46ca256b12007e8ee2!OpenDocument>.

- 5.134 The census is also unlikely to comprehensively record adopted children because parents would probably enter these children under one of the top three boxes without additional information.
- 5.135 Given that adoption is now a more open process and children are aware that they have birth parents, there is no pressing reason why a check box should not be inserted to differentiate between adopted and birth children. It appears that amending the census form to record data on adopted and fostered children in families would not be a major task and would provide important information.

Recommendation 25

- 5.136 **The Australian census include check boxes or a similar method for recording children in the family who are either birth, adopted, fostered or other out of home care children.**

Adoptees visiting their country of origin

- 5.137 In chapter one, the report discussed the need for intercountry adoptees to incorporate their racial background into their identity. An important part of this process is for them to return to their birth countries. In *The Colour of Difference*, the editors interviewed 18 intercountry adoptees, of whom

seven had already returned to their country of origin and five had an intention to do so.⁹¹

- 5.138 In that book, one intercountry adoptee gave the following description of the value of his trip to his birth country:

...I reflect on the whirlwind week spent in a country that under different circumstances could have been my place of residence... The search for my birthplace, orphanage and my natural relatives is as much a metaphor for a search for my physical heritage as my emotional sense of belonging. I can say... that returning to my birthplace, Vietnam, was an important part of realising, confirming and resolving such issues.⁹²

- 5.139 Representatives of the Inter-country Adoptee Support Network affirmed in evidence the importance of intercountry adoptees returning to their birth countries:

... he is from Korea, which has extensive post-adoption support services for adoptees returning to their birth country. There are many adoptees, a large majority of them in Australia, who do not have that opportunity. We need to look at providing some resources or something to help adoptees go back to their birth country to search for and find their birth parents. A majority of them want to do that. Because of the way adoption was run 30 years ago we have hardly any records and hardly any ability to go back to our birth countries and find out our histories. I do not know what can be done, given that it is an international issue; it is not just an Australian issue. But I guess there needs to be a focus and emphasis on, and perhaps a review of, how we are trying to facilitate this now.⁹³

- 5.140 The committee agrees that, as part of assisting adoption generally and managing Australia's overseas affairs, Commonwealth departments should assist with arrangements including liaising with the proposed overseas adoption peak body recommended in recommendation 30. This assistance would not include travel expenses. Given that significant numbers of people will wish to make trips to the same agencies in the countries of origin, it would be more efficient for a single body, such as a Commonwealth department, to organise them.

91 Armstrong S, Slaytor P (eds) *The Colour of Difference – Journeys in transracial adoption* (2001) The Federation Press, p 21.

92 Armstrong S, Slaytor P (eds) *The Colour of Difference*, p 21.

93 Beveridge L, transcript, 23 September 2005, p 15.

Recommendation 26

- 5.141 **The Department of Immigration and Multicultural and Indigenous Affairs (or the Attorney-General's Department if the immigration portfolio does not take on responsibility for overseas programs) facilitate arrangements for international adoptees in Australia to return to their country of origin if requested. Such facilitation should not include airfares or travelling expenses.**

Funding

- 5.142 It was apparent to the committee during the inquiry that intercountry adoption groups are generally not well resourced. As noted earlier in this chapter, only two groups in Western Australia appeared to receive significant funding.
- 5.143 Intercountry adoption groups were critical of this lack of funding. They also noted that post adoption support groups, such as those which developed to assist mothers who were forced to give up their children between the 1950s and 1970s, did receive financial support.⁹⁴
- 5.144 The committee learnt that intercountry adoption groups need to be self-reliant. Adoptions International of Western Australia depend on donations and fees for services rendered.⁹⁵ Australian Families for Children advised the committee how they support their activities despite not receiving funding:

We need massive funding injected into support services for adoptive families. There is no funding whatsoever. I went through the DOCS web site and read their annual report for the last year. Every second funding grant that they provided was for family support services.

There is nothing like that for any intercountry adoptive families. We run our own support networks; we have to fund our own support networks. We run our own functions, activities and network services. We put our own newsletter together. If it were not for corporate sponsorship and donations from the public, we would not exist.⁹⁶

94 Law D, Australian Council for Adoption, transcript, 21 July 2005, pp 25, 28.

95 Roberts M, transcript, 18 October 2005, p 50.

96 Brisson R, transcript, 23 September 2005, p 29.

- 5.145 Chapter four discussed how adoptive families have reduced access to benefits and entitlements, largely due to a lack of knowledge on the part of many departments. Intercountry adoption appears to have a low profile in policy development, which has contributed to benefits and entitlements not suiting the circumstances of adoptive families. The committee notes that there is no national peak body to represent their interests. If there had been such a body, the committee doubts that many of the problems discussed in chapter four would have occurred.
- 5.146 The committee believes that Commonwealth funding for a peak adoption group is necessary. The Attorney-General's Department should establish a funding program for this purpose. The department is Australia's central authority for the Hague Convention and the committee is of the view that it should take greater responsibility for intercountry adoptions, beyond attending meetings at The Hague and coordinating communications overseas. It will obviously require a properly staffed unit. Currently there is only one person specifically dealing with overseas adoptions. More will be needed and the Attorney-General's Department has estimated:

I would not have thought the resources would need to be enormous. I would think five or six people perhaps could operate it ...⁹⁷

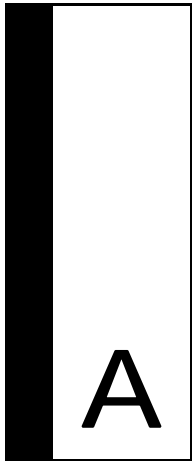
Recommendation 27

- 5.147 **The Attorney-General's Department establish a program to fund:**
- **a national peak overseas adoption support group; and**
 - **that such national peak body be responsible for distributing small to medium grants to local adoption groups to carry out the identified essential support function.**



Hon Bronwyn Bishop MP
Chairman

97 Attorney-General's Department, transcript, 3 November 2005, p 5.



Appendix A - Local adoption and child protection

Introduction

- 1.1 The committee's terms of reference did not include direct reference to local adoption, fostering or child protection.
- 1.2 However, submissions were received which covered these issues and the committee took evidence at public hearings from groups and individuals, including state and territory governments on these matters. The evidence gathered indicated that attitudes to adoption have not only coloured official attitudes to intercountry adoption, but also to child protection and other forms of out-of-home care generally. The evidence was too significant to ignore and is discussed below. While no recommendations are made, there is enough to indicate that the states and territories should review their local adoption laws.
- 1.3 The Committee believes there would be more people who would make submissions on these matters, should a specific inquiry be held into local adoptions, fostering and child protection. The committee believes such further inquiry would be justified.

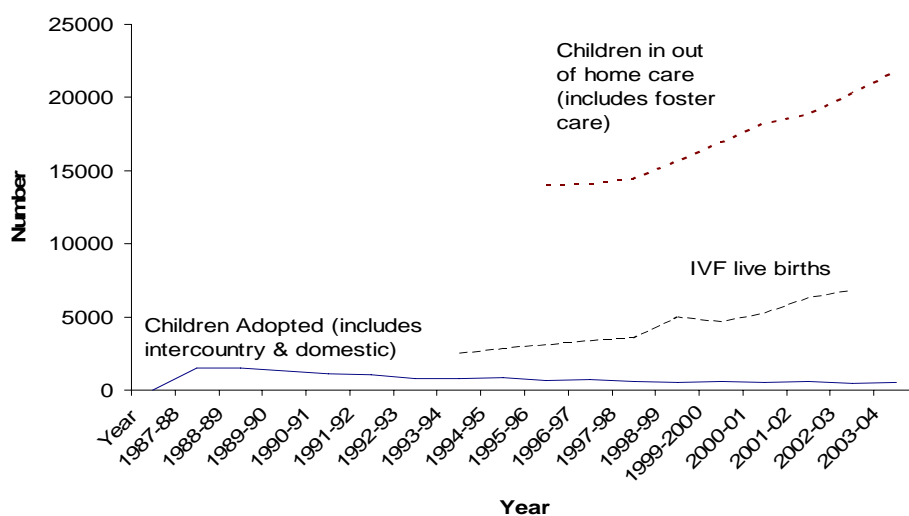
Fostering

- 1.4 Foster care is a category of out-of-home care, which also includes kinship care (with the child's extended family) and residential care (such as a purpose built facility). Between 1996 and 2004, the number of children in out-of-home care increased by 56%, from 13,979 to 21,795. In 2004, 53% of

these children were in foster care and 40% were in kinship care. The balance between foster and kinship care differs significantly between the states and territories.¹

- 1.5 If a child is placed in foster care because its parents are clearly unable or unwilling to look after it, that child becomes a potential candidate for adoption. It appears, however, that fewer and fewer children are being adopted out of care. Between 1998-99 and 2003-04, the number of carer adoptions (where a foster or other carer adopts a child) approximately halved, dropping from 48 to 25.² In fact, in New South Wales each year there are some 105,000 children who are subject to over 215,000 'risk of harm' reports to the Department of Community Services – often the first step to the placement of a child into out-of-home care.³ However, in that state, the number of children in state care that were adopted dropped from 32 in 1998-99 to less than a dozen in 2003-04.⁴

Figure A.1: Adoptions, Children in out-of-home care and IVF live births 1997-88 to 2003-2004



Source: AIHW, *Adoptions Australia, Child Welfare Series*; AIHW, *Child Protection Australia, Child Welfare Series (yearly reports)*. IVF figures: P. Lancaster, E. Shafir, & J. Huang, *Assisted Conception Australia and New Zealand 1992 and 1993*, AIHW, 1995, p.5 (1979-1992 data); and J. Bryant, E.A. Sullivan, & J. Dean, *Assisted reproductive technology in Australia and New Zealand 2002*, AIHW, 2004, p.36 (1993-2002 data).

- 1 Australian Institute of Health and Welfare, *Child Protection Australia 2003-04*, pp 45-46 viewed at <http://www.aihw.gov.au/publications/index.cfm/title/10095> on 4 October 2005.
- 2 Australian Institute of Health and Welfare, *Adoptions Australia 2003-04*, p 21 viewed on 27 September 2005 at <http://www.aihw.gov.au/publications/index.cfm/title/10073>.
- 3 Dawson S, transcript, 12 October 2005, p 4.
- 4 Horin A, 'Adoption of foster children hits low' *The Sydney Morning Herald* 16 February 2005 viewed on 29 August 2005 at <http://www.smh.com.au/news/National/Adoption-of-foster-children-hits-low/2005/02/15/1108230005187>.

- 1.6 Similar to intercountry adoption, Australia lags other countries in relation to adoptions of children in care. In 2000, the estimated rate of adoptions of children in care for Australia was 1%, compared with 4% in the United Kingdom and 6-7% in the United States.⁵

Is fostering being used inappropriately?

- 1.7 During the inquiry, some witnesses suggested that many children were placed in foster care when adoption may have been a more suitable outcome for them. Witnesses suggested this attitude was caused by the stigma attached to past adoption practices. Further, parents are reluctant to give up their children when the foster system relieves them of the responsibility of looking after them:

Unfortunately, what tends to happen is a lot of children get lost in the foster system. Unless the birth parents relinquish their rights to the child, many children end up in foster care, going from one foster home to another, because the parents do not want to sign on the dotted line to give up their rights but do not want the kid, either. These children would do amazingly in a permanent family but there is such a 'blood is thicker than water' mentality out there.... I do not know if it is blatantly anti adoption or just pro blood relation. I personally feel that some of this may be a swing back from the stolen generation pendulum. It was so extreme 40 or 50 years ago – I have a close friend who was one of the stolen generation – and, to me, it is like it has swung so far the other way. Now you put the kids back with their biological parents regardless of the child's safety.⁶

- 1.8 A number of social commentators have also raised the question of whether child protection agencies are achieving a proper balance between fostering, adoption and other care options. Bettina Arndt reported that some social workers have prided themselves on maintaining a high 'hit rate' in dissuading birth mothers from adoption. The risk, however, is that if a person who cannot properly look after a baby keeps it (such as a teenager) the child may be at risk and it may be placed in care later on.⁷

5 Cashmore J, 'What can we learn from the US experience on permanency planning?' *Australian Journal of Family Law* (2000) vol 15, p 225.

6 Leckenby K, transcript, 21 July 2005, p 73.

7 Arndt B, 'Giving up baby' *The Sydney Morning Herald* 9 May 1998, p 5 reproduced in Healey J (ed) *Adoption* pp 19-22. See also Albrechtsen J, 'Restoring Adoption' *Quadrant* (2002) vol 66 viewed on 29 August 2005 at http://www.quadrant.org.au/php/archive_details_list.php?article_id=626.

- 1.9 One agency, Wesley Dalmar, has reported that it took four years to finalise the adoption of a girl whose father was dead and whose mother was in long term psychiatric care. The delay was largely due to waiting for psychiatrists to confirm that the mother could not properly consent to the adoption.⁸
- 1.10 These practices are inconsistent with research findings that state that early, decisive intervention is usually in a child's best interests.⁹

Permanence and stability for children at risk

- 1.11 One of the key determinants of a child's outcomes in out-of-home care is stability of placement, or permanency. The New South Wales Committee on Adoption and Permanent Care Inc advised the committee how 'foster care drift' can adversely affect children at risk:

I have seen the disastrous effects of children being shuffled from short-term care back to their families. There is that whole shuffling effect, which activates the child's attachment system in ways that are damaging for their development, their attachments later in life and their capacity to form intimate relationships, just generally speaking, in adulthood. I do not support that at all, personally or professionally.¹⁰

- 1.12 Research shows that placement instability is an important indicator for a child's well-being. If a child cannot obtain a stable placement within 12 months, then its behaviour tends to deteriorate. If a child has two or more placement breakdowns due to behaviour within the previous two years, then that child is significantly more likely to deteriorate over time and experience placement breakdowns in future.¹¹ One academic went so far as to say:

I believe that permanent care options such as adoption or long-term parenting orders provide the majority of good news stories, successes if you will, that we experience in child welfare.¹²

- 1.13 Productivity Commission data demonstrates that stability rates are lowest in South Australia.¹³ In a longitudinal study of children in foster care in

8 Horin A, 'Adoption of foster children hits low'.

9 Rutter M, 'Children in Substitute Care: Some Conceptual Considerations and Research Implications,' *Children and Youth Services Review* (2000) vol 22, pp 691-692.

10 West J, transcript, 23 September 2005, p 76.

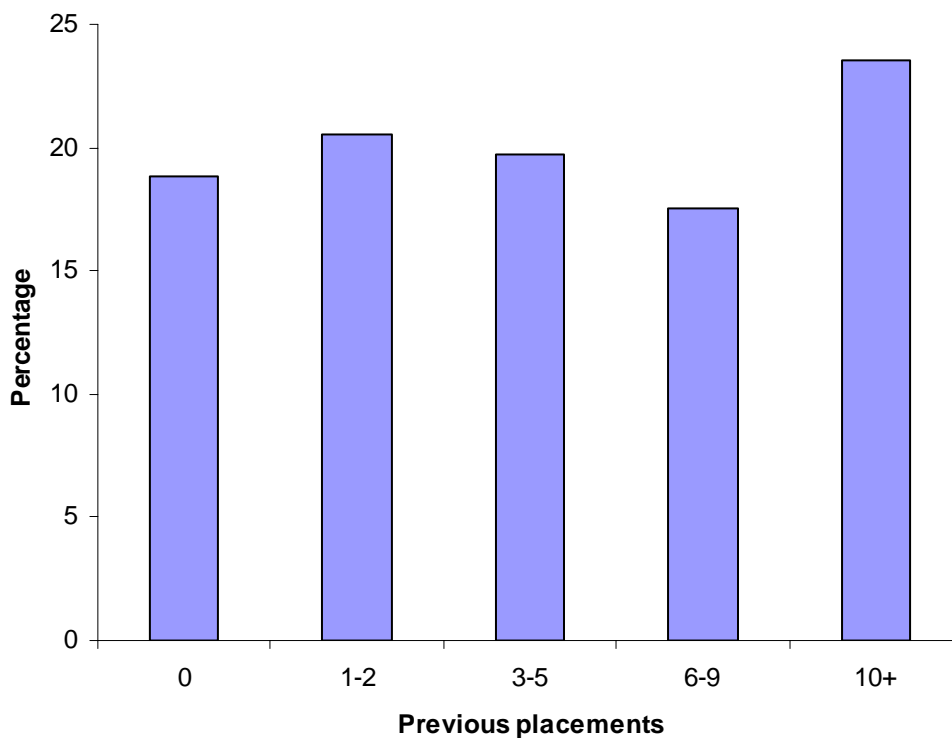
11 Delfabbro P, Barber J, *Placement disruption and psychological outcomes: Findings from the 3-year South Australian longitudinal study*, p 5, viewed on 29 August 2005 at <http://www.aifs.gov.au/institute/afrc8/delfabbro.pdf>.

12 Bath H, 'Rights and realities in the permanency debate,' *Children Australia* (2000) vol 25, p 13.

13 Productivity Commission, *Report on Government Services 2005* (2005) vol 2, p 15.20.

South Australia, commencing in 1998-99, found the children had a history of high levels of instability, as the figure below demonstrates. High levels of instability occurred during the first four months of the study, which reduced over time. At the end of two years, 40% of the children had gone home, 25% were stable in care, 21% were unstable in care and 13% had other outcomes.¹⁴

Figure A.2: Previous placements for children requiring a new foster placement, South Australian longitudinal study, 1998-99



Source: Delfabbro P, Barber J, 'Placement disruption and psychological outcomes: Findings from the 3-year South Australian longitudinal study,' p 4.

1.14 There has been a trend towards greater recognition of the value of stability for children in out-of-home care and the need for quicker action. In Victoria, legislation before Parliament will allow the Children's Court of Victoria to make a permanent care order if the child has not been in the care of a parent for at least six months.¹⁵ Despite this rhetoric, however,

14 Delfabbro P, Barber J, *Placement disruption and psychological outcomes: Findings from the 3-year South Australian longitudinal study* p 4 and Delfabbro P, *Placement disruption and its psychological consequences - Implications of the 3-year South Australian longitudinal study*, p 24, viewed on 8 October 2005 at <http://www.acwa.asn.au/cafwa/SymPapers/DelfabbroCAFWAA.ppt>.

15 Clause 319, Child, Youth and Families Bill 2005 (before the Victorian Parliament, November 2005) to replace the *Children and Young Persons Act 1989* (Vic). The *Children and Young Persons Act 1989*, section 112, allows the Children's Court of Victoria to make a permanent

some children still experience long delays and effective systems of permanency planning are still not implemented.¹⁶

- 1.15 For example, the New South Wales *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001* was designed to divert more children from care and place them, through adoption, with a family. A Bill for the legislation was tabled in June 2000 and attracted both support and criticisms. The latter included the suggestions that its goals could be met under current legislation or that it would lead to a 'white stolen generation'.¹⁷
- 1.16 The Bill was amended and became law in November 2001. Given the statistics presented earlier on adoptions out of care, however, it does not appear to have been effective. All but one of its provisions were repealed by section 4 of the *Statute Law (Miscellaneous Provisions) Act 2005*. The legislation's only remaining provision is the requirement that, where a child is placed in the care of a relative, the placement must be reviewed regularly in accordance with the regulations.
- 1.17 It appears that most placement changes in foster care are planned.¹⁸ A certain amount of decision making, however, is still made according to administrative demands, rather than the best interests of the child:

In practice, much placement decision making appears to be based on the availability of scarce resources... Formulation of a placement plan based on an assessment of a child's needs works on the premise that there are a range of placement options from which to choose. Given the closure of residential beds and the difficulty in finding foster placements, the ideal or preferred choice for a child is often not available. Indeed, the decision to move a child from, or to, a placement, is sometimes made due to administrative or organisational reasons...

This lack of resources, combined with the philosophy that a child should only be removed from a family as an option of absolutely final choice, has meant that placement decisions are often made in

care order if the child's parent has not had the care of the child for a period of at least 2 years or for periods that total at least 2 of the last 3 years.

- 16 Tomison A, Stanley J, *Strategic Directions in Child Protection: Informing Policy and Practice*, p 132 viewed on 28 September 2005 at <http://www.aifs.gov.au/nch/pubs/keyreports.html>.
- 17 Rath A, *Permanency Planning and Adoption*, Briefing Paper 2/2001, NSW Parliament, viewed on 28 September 2005 at <http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/V3ListRPSubject>.
- 18 Delfabbro P, *Placement disruption and its psychological consequences – Implications of the 3-year South Australian longitudinal study*, p 36.

the situation of a crisis... This impacts on placement decision making, where the time to plan carefully may not be available.¹⁹

- 1.18 The Community and Disability Services Ministers' Conference has sought to improve the quality of foster care by releasing the *National Plan for Foster Children, Young People and their Carers, 2004-2006*. Action areas are training, research, uniform data collection, and better support for foster carers and children in care. Research is particularly important given the many gaps in the literature and the fact that many of these deficiencies were identified 30 years ago.²⁰
- 1.19 The document refers to improving outcomes for children and young people and that they may move to permanent placement. It mentions neither adoption nor that permanent placement is generally in children's best interests.²¹

Causes of the low rate of local adoptions from care

- 1.20 Dr Judy Cashmore of the Social Policy Research Centre at the University of New South Wales sets out a number of reasons for this low rate of adoptions.²²
- 1.21 The first reason is that foster care is subsidised, whereas adoption is not. In 2000, subsidies for a 10-year-old child in foster care were as much as \$175 per week in New South Wales, down to \$75 per week in Tasmania. Foster carers can also receive other entitlements, such as not being means tested for Health Care Cards for children in their care.²³
- 1.22 This financial imbalance has been recently reduced with the introduction of the maternity payment. Foster carers do not normally receive the maternity payment, but adoptive parents do.²⁴ Foster carers, however, continue to receive a weekly subsidy for as long as they provide foster

19 Tomison A, Stanley J, *Strategic Directions in Child Protection: Informing Policy and Practice*, pp 129-130.

20 Rutter M, 'Children in Substitute Care: Some Conceptual Considerations and Research Implications,' p 697.

21 Viewed on 29 August 2005 at http://www.facs.gov.au/internet/facsinternet.nsf/family/parenting-national_plan_foster_children.htm.

22 Cashmore J, 'What can we learn from the US experience on permanency planning?' pp 226-227 and Cashmore J, 'What the research tells us - Permanency planning, adoption and foster care' *Children Australia* (2000) vol 25, p 21.

23 Richardson N, 'Foster Care,' National Child Protection Clearinghouse, Resource Sheet No. 8, p 4, viewed on 29 September 2005 at <http://www.aifs.gov.au/nch/sheets/rs8.html>.

24 Family Assistance Office, 'Maternity Payment - Guidelines for Apportioning and Instalments' viewed on 4 November 2005 at http://www.familyassist.gov.au/internet/fao/fao1.nsf/content/publications-factsheets-maternity_payment_guidelines.htm.

care. Depending on the age of the child and the year, the foster care subsidy is equivalent to 1-2 maternity payments every year per child.

- 1.23 The second reason is that government departments do not have the resources and skills necessary to process the adoption and conduct sensitive negotiations with birth parents about relinquishment. Family and child protection departments have difficulty in resourcing this activity when they must also meet their child protection obligations. Court professionals also need greater skills in managing adoptions.
- 1.24 The committee heard evidence from the New South Wales Committee on Adoption and Permanent Care Inc, on behalf of adoption agencies registered in New South Wales (Barnardos, Anglicare and Centacare) that they needed an extra five positions to be able to handle their caseload. They made submissions for extra funding to the Department of Community Services in 2002. The Department's response at the end of 2004 was to conduct a review, which is still running.²⁵
- 1.25 The third reason is that Australian legislation does not generally support relative adoption where this would distort natural relationships. For example, if a child was adopted by their grandparents, the child's mother would legally become the child's sister. The legislation tends to prefer guardianship and custody orders in these circumstances.
- 1.26 The fourth reason is an anti-adoption bias, probably derived from poor past adoption practices. If a parent refuses to consent to adoption, then staff in government departments must be prepared to fund court proceedings for a court order to dispense with consent. These proceedings would cost tens of thousands of dollars. The evidence presented to this committee suggests that such a commitment is unlikely to exist.
- 1.27 The committee also received evidence from the New South Wales Committee on Adoption and Permanent Care Inc of a legislative impediment in New South Wales to adopting children in care.²⁶ In particular, section 67(1)(c) of the *Adoption Act 2000* states that the court can dispense with the parent's consent if there is serious concern for the welfare of the child. The difficulty is that, when the court is examining a matter, the child is likely to be in care and technically not at risk. The provision needs to be amended to make clear that there would be serious concern for the welfare of the child if they were to remain in the custody of that parent.
-

25 West J, Candlin A, transcript, 23 September 2005, pp 78-79.

26 Candlin A, transcript, 23 September 2005, p 82.

Discussion

- 1.28 The committee accepts that permanence is not the only factor to take into account in determining the best plan for a child. For example, older children may identify strongly with their original families.²⁷ The committee also recognises that making absolute statements that one form of care, such as adoption, is to be preferred over all others would be repeating past mistakes.
- 1.29 However, as suggested by the comparative statistics in the United States and United Kingdom, the committee believes that adoption is currently being under-used in Australia and effort should be given to increasing the number of children who are adopted out of care. However, as suggested by the comparative statistics in the United States and United Kingdom, the committee believes that adoption is currently being under-used in Australia and effort should be given to increasing the number of children who are adopted out of care.
- 1.30 The Commonwealth Minister for Family and Community Services could initiate some policy reform in out-of-home care and local adoptions. For example, the minister could, through the Community and Disability Services Ministers' Conference, develop a policy framework which acknowledges that adoption is a legitimate way of forming or adding to a family and adoption is a desirable way of providing for a significant proportion of children at risk. A new policy framework such as this should result in:
- increased resources for departments and agencies to process adoptions, both overseas and domestic;
 - better training for departments, agencies and courts to achieve the best court orders for children; and
 - recognition that adoption processes have considerably evolved for the better from a generation ago.
- 1.31 Further, the Commonwealth Minister for Family and Community Services could seek amendments to the *National Plan for Foster Children, Young People and their Carers, 2004-2006* and all further foster care policy documents. The stated goal in these policies should be to provide a loving, permanent and stable family for children as soon as possible and not regard long term foster care as a substitute for adoption.
- 1.32 Foster care policies could also state that practices of moving children from one foster carer to another for administrative purposes, as opposed to the interests of the child, cease. Responsible departments could also collect

27 Bath H, 'Rights and realities in the permanency debate,' p 16.

and publish performance information on the extent to which the risk assessments made prior to returning children from foster care to their biological parents are borne out by actual outcomes.

- 1.33 Finally, the committee received evidence that there is significant interest in local adoption, but people do not pursue it and examine intercountry adoption instead because the chances of a positive outcome are so low.²⁸ For example, in the Australian Capital Territory in 2004, the department received 76 inquiries about intercountry adoption, but only 13 inquiries about local adoption.²⁹ An inquiry into local adoption practices could truly be 'in the best interests of the child'.

28 Finkel S, Australian Korean Friendship Group, transcript, 21 July 2005, pp 12-13, Kylie, community statements, transcript, 23 September 2005, p 45.

29 Australian Capital Territory Government, sub 200, p 7.



Appendix B – List of submissions

- 1 Ms Felicity Goldstein
- 2 Ms Kathryn Leckenby
- 3 Mr Mark Rodger-Snelson
- 4 Queensland Law Society
- 5 Dr Vanessa Mills
- 6 Ms Tammy King
- 7 Name suppressed
- 8 Name suppressed
- 9 Mr Robert & Mrs Julie Nestic
- 10 Australian Family Association - WA Branch
- 11 Mr Warren & Mrs Shirlene Harvey
- 12 Ms Rae Clark
- 13 Name suppressed
- 14 Mr Charles & Mrs Kate Qin
- 15 Ms Carolyn Bird
- 16 Australians Adopting European Children
- 17 Australian Families for Children Inc
- 18 Ms Dee Cridland & Mr AhTee Chia
- 19 Ms Lynette Smith
- 20 Mrs Leisa Low
- 21 Mr Steve & Mrs Louise Nielsen
- 22 Ms Debra Anstis
- 23 Confidential
- 24 Mr Mark & Mrs Lynda Olive

- 25 Name suppressed
- 26 Australian Families for Children Inc (supp to sub 17)
- 27 Mr Michael & Mrs Danielle Potter
- 28 Name suppressed
- 29 Mr Malcolm & Mrs Benita Smith
- 30 Mr Toby & Mrs Claire Bottrell
- 31 Name suppressed
- 32 Name suppressed
- 33 Mr Robert & Mrs Noline Cornhill
- 34 Dr Lucy Bowyer
- 35 Dr Kate Stewart
- 36 Dr Susan Fox
- 37 Ms Mandy Crocker
- 38 Ms Kathy Blanter
- 39 Mr Malcolm & Mrs Jan Carre-Riddell
- 40 Ms Karen Lloyd-Collins
- 41 Mr Jeff & Mrs Rianne Muller
- 42 Mr James Magel
- 43 Ms Danielle Vandenberg
- 44 Mrs Donna Simard
- 45 Ms Lisa Dibb
- 46 Mr Robert & Mrs Leith Harding
- 47 Mr Joseph Simard
- 48 Name suppressed
- 49 Australian Korean Friendship Group (Queensland) Inc.
- 50 Name suppressed
- 51 Ms Yvonne Wickham
- 52 Mr Chris Wild
- 53 Mr Scott Weeks
- 54 Mr Martin & Dr Karen Turner
- 55 Name suppressed
- 56 Australian Council for Adoption Inc.
- 57 Australian Christian Lobby
- 58 Mr Campbell & Mrs Andrea Freeden

59	Confidential
60	Mr Mark & Mrs Melanie Boulton
61	Ms Kerry Manley
62	Mr Mark Byrne
63	Mr Haydn & Mrs Lotty Neal
64	Ms Anita Fratel
65	Ms Sandy Johnson
66	Mrs Trudi Watts
67	Name suppressed
68	Name suppressed
69	Confidential
70	Ms Lisa Wilson & Mr Stewart Turner
71	Name suppressed
72	Mr Kerry & Mrs Ruth Emerson
73	Name suppressed
74	Name suppressed
75	Queensland Taiwan Support Group
76	Mr Geoff & Mrs Katie Davis
77	Mr Gerard & Mrs Margaret Walsh
78	Name suppressed
79	Mr Mark & Mrs Wendy Stewart
80	Attorney-General
81	Name suppressed
82	Ms Tiffany Gray
83	Confidential
84	Ms Cathrin Cassarchis
85	Name suppressed
86	Families with Children from China-Australia
87	Mr Michael & Mrs Barbara Weston
88	Mrs Clarissa Stuart
89	Name suppressed
90	Minister for Immigration & Multicultural & Indigenous Affairs
91	Ms Jeanne Read
92	Ms Deborah Hunt

- 93 Accepting Children Everywhere
- 94 Australian Society for Intercountry Aid for Children (NSW) Inc
- 95 Ms Lauren Chivell & Mr Stephen Hind
- 96 Mr Cec Pedersen
- 97 Ms Julia Rollings
- 98 Mr Mark & Mrs Christa De Hoog
- 99 Name suppressed
- 100 Australian African Children's Aid & Support Association Inc
- 101 Mr Ian & Mrs Elizabeth Nussey
- 102 Mr Roger Sawkins
- 103 Name suppressed
- 104 Mr Michael & Mrs Berenice Holmes
- 105 Name suppressed
- 106 Mr Janek & Mrs Rebecca Laguna
- 107 Mr Richard & Mrs Pauline Gehrmann
- 108 Mr Andrew & Mrs Johanna Rate
- 109 Mr Andy & Mrs Lisa Minogue
- 110 Mrs Ann Plohberger
- 111 Name suppressed
- 112 Name suppressed
- 113 Mr B & Mrs D Comerford
- 114 Inner City Legal Centre, NSW
- 115 Ms Kristina Foldesi
- 116 Ms Colleen O'Brien
- 117 Ms Lynette Ross
- 118 Mr Tim O'Reilly & Ms Kate Purcell
- 119 Name suppressed
- 120 Mr Jon & Mrs Kathy Kruger
- 121 Mr David & Mrs Cathi Pirani
- 122 Ms Rachael Emerson
- 123 Name suppressed
- 124 Mr John Hardisty
- 125 Name suppressed
- 126 Name suppressed

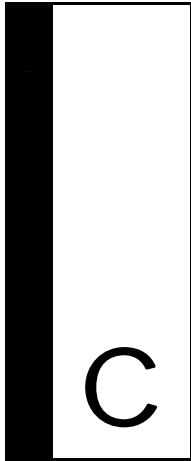
-
- 127 Mr Christopher Lockwood
128 Name suppressed
129 Dr Andrew Melville-Smith
130 Mr Campbell & Mrs Andrea Freeden
131 Ms MA Sanders
132 World Families Australia Inc
133 Adoptive Families Association of the ACT Inc
134 Donor Conception Support Group of Australia Inc.
135 Australian Institute of Health and Welfare
136 Mr Robert & Mrs Noline Cornhill (supp to sub 33)
137 EurAdopt Australia
138 Mr James & Mrs Rosey Martin
139 Mr Craig & Mrs Jill Busfield
140 Name suppressed
141 Adoption Support for Families & Children
142 Mr David & Mrs Kylie McAuliffe
143 Name suppressed
144 Adoption NT
145 Mrs Peta Pettigrew
146 Ms Belinda Cooley
147 NSW Committee on Adoption and Permanent Care Inc
148 Ms Tida Wong See
149 Mr Kerry & Mrs Cynthia Culleton
150 Festival of Light Australia
151 Ms Julie Pinkham
152 Mr Gavin & Mrs Tomoko Kelly
153 Ms Wendy Woodman
154 Mr Glen & Mrs Karen Lohman
155 Mr David & Mrs Deanna Elvery
156 Mrs Gladys Gayfer & Mrs Marilyn Nagesh
157 Mr Tim & Mrs Catherine Bennett
158 Ms Lyndell McKinley
159 Expectant Parents Group of Canberra and Regional NSW

-
- 160 Australian Society for Intercountry Adopted Children Victoria Inc & five other groups
- 161 Ms Rachel Griffiths & Mr Bevin Meads
- 162 Name suppressed
- 163 Mr Anthony Beasley
- 164 Mr Andrew & Mrs Petrina Tuppen
- 165 Mr Ian & Mrs Leah Chambers
- 166 Ms Heather Porter
- 167 Mr Byron & Mrs Rebecca Hera-Singh
- 168 Ms Jeanette O'Hagan
- 169 Ms Kim Kapeleris
- 170 Mr Phillip & Mrs Janelle Johnson
- 171 Name suppressed
- 172 Name suppressed
- 173 Adoptions International of Western Australia Inc
- 174 Name suppressed
- 175 NSW Government -Minister for Community Services & Minister for Youth
- 176 Ms Kerri Weeks
- 177 Mr Shane Dale
- 178 Ms Rebecca Culleton
- 179 Ms Florence Brown
- 180 Mr Bryan Emerson
- 181 Mr Joseph Conway
- 182 Adoptions International of Western Australia Inc (supp to sub 173)
- 183 WA Government – Department of Community Development
- 184 Name suppressed
- 185 Ms June Smith
- 186 Minister for Family & Community Services
- 187 Attorney-General (supp to sub 80)
- 188 Mr Robert & Mrs Noline Cornhill (supp to sub 33 & 136)
- 189 Mrs Trudy Rosenwald
- 190 Ms Alison Verghese
- 191 Mr Ken Fenwick

-
- 192 Name suppressed
- 193 Ms Alison Verghese (supp to sub 190)
- 194 Attorney-General (supp to sub 80 & 187)
- 195 Mrs Lyn Kinghorn
- 196 Ms Elizabeth Edwards
- 197 Origins Vic Inc
- 198 Mr Shane & Mrs Michelle Ryan
- 199 Mr Jeff & Mrs Rianne Muller (supp to sub 41)
- 200 ACT Government - Minister for Children, Youth & Family
- 201 Ms Lois Younger
- 202 Jo Prego
- 203 Confidential
- 204 Qld Government - Minister for Child Safety
- 205 Minister for Immigration & Multicultural & Indigenous Affairs (supp to sub 90)
- 206 Premier of Victoria
- 207 Name suppressed
- 208 Mrs Kim Boswall
- 209 Queensland Taiwan Support Group (supp to sub 75)
- 210 Tasmanian Government
- 211 Association Representing Mothers Separated from their Children by Adoption (SA) Inc
- 212 Confidential
- 213 Mr Stephen Lilley
- 214 Ms Jackie Kerr Daly
- 215 Mr David Johnston-Bell
- 216 Australian Coalition for Equality
- 217 Dr Lincoln Hayes
- 218 Confidential
- 219 Intercountry Adoption Resource Network (Aust) Inc.
- 220 Han-Ho Kids' Club Inc.
- 221 Name suppressed
- 222 Name suppressed
- 223 Name suppressed
- 224 Mr Denis Moriarty

-
- 225 Mr Graeme Moffatt
- 226 Mr Robert & Mrs Noline Cornhill (supp to sub 33, 136 & 188)
- 227 Ms Leanne Clark
- 228 Confidential
- 229 Mr Benjamin Faint
- 230 Ms Susan Lomman
- 231 Gay & Lesbian Rights Lobby (NSW) Inc
- 232 Confidential
- 233 Australian Families for Children Inc (supp to sub 17 & 26)
- 234 Inter-Country Adoptee Support Network
- 235 Name suppressed
- 236 Accepting Children Everywhere (supp to sub 93)
- 237 Confidential
- 238 Confidential
- 239 Confidential
- 240 Confidential
- 241 Australian Families for Children Inc (supp to sub 17, 26 & 233)
- 242 Name suppressed (supp to sub 235)
- 243 Australian Society for Intercountry Aid for Children (NSW) Inc (supp to sub 94)
- 244 Confidential
- 245 SA Government – Department of Families & Communities
- 246 Ms Lynette Ross (supp to sub 117)
- 247 Attorney-General (supp to sub 80, 187 & 194)
- 248 Confidential
- 249 Attorney-General (supp to sub 80, 187, 194 & 247)
- 250 Attorney-General (supp to sub 80, 187, 194, 247 & 249)
- 251 Attorney-General (supp to sub 80, 187, 194, 247, 249 & 250)
- 252 Professor Pascale Quester
- 253 Jigsaw Post-adoption Centre
- 254 Confidential
- 255 Miss Melanie Avion
- 256 Confidential

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- 257 Association Representing Mothers Separated from their Children by Adoption (SA) Inc (supp to sub 211)
- 258 World Families Australia Inc (supp to sub 132)
- 259 Attorney-General (supp to sub 80, 187, 194, 247, 249, 250 & 251)
- 260 Australian African Children's Aid & Support Association (supp to sub 100)
- 261 Origins Vic Inc (supp to sub 197)
- 262 Attorney-General (supp to sub 80, 187, 194, 247, 249, 250, 251 & 259)
- 263 Premier of Victoria (supp to sub 206)
- 264 Confidential
- 265 Confidential
- 266 Ms Jan Williamson
- 267 Confidential
- 268 Confidential
- 269 Ms Bernadette De Corte
- 270 Mr I-Hao & Mrs Leanne Cheng
- 271 Confidential
- 272 Confidential
- 273 Ms Cathy Linsley
- 274 Confidential



Appendix C – List of exhibits

- 1 *Commonwealth State Agreement for the Implementation of the Hague Convention on Protection of Children & Cooperation in Respect of Intercountry Adoption, (Related to Submission No. 80 and No.183)*
- 2 *Jesse's World: A story of adoption and the global family, (Related to Submission No. 17)*
- 3 *AFC Reform, website <http://www.australiansadopt.org/reform.htm> (Related to Submission No. 17)*
- 4 *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998, (Related to Submission No. 17)*
- 5 *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 No. 249, (Related to Submission No. 80)*
- 6 *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998: Statutory Rules 1998 as Amended, (Related to Submission No. 80)*
- 7 *Protocols & Procedures for the Development of Programs for Intercountry Adoption with New Countries, (Related to Submission No. 17)*
- 8 *Child Welfare: Adoptions Australia 2003-04, (Related to Submission No. 135)*
- 9 *Review of Intercountry Adoptions and Post Adoption Services, (Related to Submission No. 16)*
- 10 *Intercountry Adoption Services, (Related to Submission No. 16)*
- 11 *Emotions flare...Locals protest closure of SA adoption agency/ Adopt agency axing inquiry, (Related to Submission No. 16)*

- 12 *Some Examples of Information Publicly Available on Intercountry Adoption by Australian State/Territory*, (Related to Submission No. 16)
- 13 *National Minimum Standards in Adoption 1991*, (Related to Submission No. 183)
- 14 *National Minimum Principles in Adoption 1993*, (Related to Submission No. 183)
- 15 *National Principles in Adoption 1997*, (Related to Submission No. 183)
- 16 *Policy for the adoption of children 2003*, (Related to Submission No. 183)
- 17 *The Rights of the Child in Internal and Intercountry Adoption: Ethics and Principles: Guidelines for Practice*, (Related to Submission No. 183)
- 18 *Intercountry Adoption. A Comment on the Number of "Adoptable" Children and the Number of Persons Seeking to Adopt Internationally*, (Related to Submission No. 183)
- 19 *The National Australian Minimum Standards in Adoption*, (Related to Submission No. 183)
- 20 *Linking communities to information – Adoption*, website
<http://www.authoring/Resources/Adoption/>
(Related to Submission No. 183)
- 21 *Expression of Interest Process Information kit: Intercountry Adoption Program Queensland*, (Related to Submission No. 204)
- 22 *Good Practice for Placement Planning: A review of the literature*, (Related to Submission No. 200)
- 23 *The Theory of Brain Development and Attachment and the Implications for Adoption*, (Related to Submission No. 200)
- 24.1 *Summary of issues presented at the meeting between Hon Jay Weatherill MP and ARMS Inc*, (Related to Submission No. 211)
- 24.2 *Adoption Separation and Reunion: Information for those seeking to understand*, (Related to Submission No. 211)
- 24.3 *Adoption Separation and Reunion: Information for Adopted Adults*, (Related to Submission No. 211)
- 24.4 *Adoption Separation and Reunion: Information for Mothers*, (Related to Submission No. 211)

- 24.5 *Adoption Separation and Reunion: Experiences and feelings of mothers who have lost children through adoption- in their own words*, (Related to Submission No. 211)
- 25 *Hague Conference on Private International Law*, (Related to Submission No. 80)
- 26 *Convention on Protection of Children and Co-operation in Respect of InterCountry Adoption*, (Related to Submission No. 80)
- 27 *Responsibility of State and Territory Central Authorities for Adoption Programs*, (Related to Submission No. 80)
- 28.1 *Adoption Legislation Review: Consultation Paper*, (Related to Submission No. 204)
- 28.2 *Adoption Legislation Review: The Report: Public Consultation on the Review of the 'Adoption of Children Act 1964'*, (Related to Submission No. 204)
- 29 *The Colour of Difference: Journeys in Transracial Adoption*, (Related to Submission No. 234)
- 30 *Accreditation Application by AFC: Chronological Order of Events*, (Related to Submission No. 17)
- 31 *Australian InterCountry Adoption Network, Adoption Statistics*, (Related to Submission No. 17)
- 32 *Submission to the Department of Family & Human Services 10 May 2004*, (Related to Submission No. 56)
- 33 *Submission to the Joint Standing Committee on Treaties 12 December 1999*, (Related to Submission No. 56)
- 34 *New Zealand Adoption Council Newsletter, Issue no. 5, May/June 1994*, (Related to Submission No. 56)
- 35 *State Governments Fund Anti-Adoption Organisations*, (Related to Submission No. 56)
- 36 *Adopted Child, Photograph*, (Related to Submission No. 19)
- 37 *Adoptive Family, Photographs*, (Related to Submission No. 13)
- 38 *Adoptive Family, Photographs*, (Related to Submission No. 48)
- 39 *AdoptHelp: International Adoption, website*
<http://www.adopthelp.com/international/index.html>
(Related to Submission No. 77)

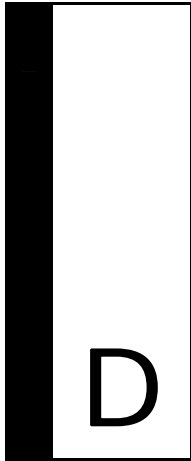
- 40 *Immigrant Visas Issued to Orphans Coming to the USA*, (Related to Submission No. 77)
- 41 *ACT Adoptions Unit Newsletter June 2005*, (Related to Submission No. 200)
- 42 *Application Requirements within the Australian Capital Territory for Intercountry Adoption*, (Related to Submission No. 200)
- 43 *National Principles in Adoption*, (Related to Submission No. 200)
- 44 *AACASA (Australian African Children's Aid Support Association) Vol 14-2*, (Related to Submission No. 100)
- 45 *Meet the Parents: A review of the Research on Lesbian and Gay Families*, (Provided by the Australian Coalition for Equity)
- 46 *2nd National Conference on the Mental Health Aspects of People Affected by Family Separation*, Compact Disc, (Related to Submission No. 197)
- 47 *Submission to Inter-country Adoption Inquiry as also presented to Senate Mental Health Inquiry*, Compact Disc, (Related to Submission No. 197)
- 48 *1st National Conference on the Mental Health Aspects of Persons Affected by Family Separation*, (Related to Submission No. 197)
- 49 *Releasing the Past, Adoption Practices 1950-1998, Final Report*, (Related to Submission No. 197)
- 50 *Winter: My three dads: Happy son has his hands full*, (Related to Submission No. 135)
- 51 *Quads Doc in Health furore*, (Related to Submission No. 135)
- 52 *Who's my Daddy?*, (Related to Submission No. 135)
- 53 *Intercountry Adoption Service Post Approval Evaluation Survey, Survey form*, (Related to Submission No. 206)
- 54 *Adoption Act 1993*, (Related to Submission No. 200)
- 55.1 *Children in Care (ACT) as at 30 June 2005*, (Related to Submission No. 200)
- 55.2 *ACT Ward Adoptions 2000 onwards*, (Related to Submission No. 200)
- 55.3 *Foster Care Subsidies*, (Related to Submission No. 200)
- 56 *Intercountry Adoption Service Information Kit*, (Related to Submission No. 206)
- 57 *Overseas Connections Volumes 42-45*, (Related to Submission No. 206)

- 58 *Sponsorship & Adoption Support*, (Related to Submission No. 132)
- 59 *World Families Australia Inc Sponsorship News, September 2005*, (Related to Submission No. 132)
- 60 *Adoption Australia: A Quarterly Journal of Adoption Issues, Spring 2005*, (Related to Submission No. 132)
- 61 *Adoptions International of Western Australia, Inc*, (Related to Submission No. 173)
- 62 *AdoptWest, Volume 5, No.2, 2005*, (Related to Submission No. 173)
- 63 *The United Nations Convention on the Rights of the Child, 20th November, 1989*, (Related to Submission No. 27)
- 64 *Comparison of Placement Conditions for International Adoption*, (Related to Submission No. 141)
- 65 *Re: Naming your adopted child*, (Related to Submission No. 141)
- 66 *International Adoptive Families of Queensland Inc. March 2005*, (Provided by International Adoptive Families of Queensland Inc.)
- 67 *Provision of intercountry adoption services in NSW*
- 68 *The Nature and Nurture of Economic Outcomes* by Bruce Sacerdote. Working Paper 7949, <http://www.nber.org/papers/w7949>, National Bureau of Economic Research, Cambridge, MA 02138, October 2000
- 69 *Review of Post Adoption Support Services in South Australia: Summary* Government of South Australia, Department for Families and Communities. Children, Youth and Family Services, July 2005. (Provided by SA Government)
- 70 Information providing an overview of the intercountry adoption program in NSW:
- *Adoption Act 2000* (NSW)
 - *Adoption Regulation 2003* (NSW)
 - *Children and Young Persons (Care and Protection) Act 1998* (NSW)
 - Staffing and structure of Adoptions and Permanent Care Services in NSW
 - Information kit for expressions of interest for people considering adoption (please note information booklet in rear sleeve)
 - Pricing of inter-country adoption services (KPMG)

- Fees and charges for local and inter-country adoption
- Hardship policy for inter-country adoptions
- Schedule of foster care allowances and adoption allowances
- Accreditation Guide for Adoption Service Providers
- Gazetted criteria for the assessment and selection of adoption applications
- Funding for Local and Intercountry Adoption Services

(Related to Submission No. 175, Provided by NSW Government)

- 71 *The Nature and Nurture of Economic Outcomes*, by Bruce Sacerdote, National Bureau of Economic Research, Working Paper 7949, 2000



Appendix D – Public hearings and other meetings

Public Hearings

Monday 9 May 2005, Canberra

Individuals

Miss Ionela Cornhill
Mr Robert Cornhill
Mrs Ann Plohberger
Miss Raluca Plohberger

Adoptive Families Association of the ACT

Mr Robert Cornhill, Vice-President
Mrs Ann Plohberger, President

Attorney-General's Department, Family Law Branch

Mr Kym Duggan, Assistant Secretary
Mr Scott Wilson, Senior Legal Officer, International Family Law Section

Australian Institute of Health and Welfare (AIHW)

Dr Diane Gibson, Head, Welfare Division
Ms Susan Kelly, Project Manager, Children, Youth and Families Unit
Ms Cynthia Kim, Unit Head, Children, Youth and Families Unit
Dr Richard Madden, Director

Department of Immigration and Multicultural and Indigenous Affairs

Ms Sue Cabbage, Assistant

Ms Mary-Anne Ellis, Citizenship & Language Services Branch

Mr Greg Mills, Secretary, Migration Branch

Mr Peter Vardos, First Assistant Secretary, Citizenship & Multicultural Affairs

Thursday 21 July 2005, Brisbane

Individuals

Mrs Leith Harding

Mrs Kathryn Leckenby

Mrs Louise Neilsen

Mr Steven Neilson

Australian Council for Adoption Inc

Mrs Rita Carroll, Coordinator & Past President

Mrs Doral Law, Secretary

Australian Korean Friendship Group Queensland Inc

Mr Stephen Finkel, President

International Adoptive Families of Queensland

Ms Sharon Byerley, President

Mr John Telfer, Vice President

Queensland Taiwan Support Group

Mrs Philippa (Pippa) Evans, Coordinator

8 Community Statement

Friday 22 July 2005, Brisbane

Individuals

Mr Cec Pederson

Mr Gerard Walsh

Mrs Margaret Walsh

Wednesday 3 August 2005, Melbourne

Individuals

Mr Tobias (Toby) Bottrell

Mrs Frances Greenough

Mrs Jenny Michaelson

Mrs Marilyn Nagesh

Australian Society for Intercountry Aid for Children

Mrs Glenys Chandler

Intercountry Adoption Resource Network Australia Inc

Mrs Marilyn Nagesh, India Program Coordinator

Ms Gail Scowcroft, Membership Coordinator & Immediate Past President

Ms Jacqui Wilson, Past President

Hanho Children's Association

Mrs Wendy Carlson

13 Community Statements

Wednesday 17 August 2005, Canberra

Individuals

Mr Stewart Turner

Ms Lisa Wilson

ACT Government, Office for Children, Youth and Family Support

Ms Susan Mickleburgh, Manager, Client Services

Ms Ann Ponsonby, Team Leader, Adoptions Unit

Mr Paul Wyles, Director, Client & Adolescent Services

Friday 16 September 2005, Hobart

Individuals

Dr Kathryn Campbell

Ms Debra Stainsby

Accepting Children Everywhere

Mr John Forde

Mr Geoff Powell

Mrs Maria White

Australian African Children's Aid and Support Association Inc.

Rev Ted Sherrin, President

Tasmanian Government, Department of Health & Human Services

Ms Lynette Crawford, Acting State Manager, Child and Family Services

Mrs Una Hobday, Manager of Adoption Services

4 Community Statements

Friday 23 September 2005, Sydney

Individual

Ms Joanne Ellen

Australian Families for Children

Mrs Ricky Brisson, Executive Officer

Australian Society for Intercountry Aid for Children (NSW)

Dr Lucinda Burns, Committee Member & Thailand Program Information Officer

Mrs Raewyn Clark, Newsletter & Member

Mr Tim O'Reilly, Committee Member

Dr Evelyne Schilz-Middleton, President

Families with Children from China

Mrs Karleen Gribble, Policy Officer

Intercountry Adoptees Support Network

Ms Lynelle Beverage, Founder & Director

Ms Analee Matthews, Editor & NSW Representative

Mr Chris Warner, Member

NSW Committee on Adoption and Permanent Care Inc

Ms Angharad Candlin, Vice Chair

Ms Jane West, Chairperson

9 Community Statements

Monday 10 October 2005, Canberra

Attorney-General's Department, Family Law Branch

Mr Kym Duggan, Assistant Secretary

Mr Matthew Osborne, Director, International Family Law Section

Victorian Government, Office for Children, Department of Human Services

Ms Helen Brain, Manager, Out of Home Care Services, Placement & Support, Child Protection & Family Services

Mr David Clements, Manager Placement & Support, Child Protection and Family Services

Wednesday 12 October 2005, Canberra

New South Wales Government, Department of Community Services

Ms Sue Dawson, Deputy Director-General

Ms Mary Griffin, Director, Adoption & Permanent Care Services

Monday 17 October 2005, Adelaide**Individuals**

Mrs Susan Priest

Mrs Danielle Potter

Mr Michael Potter

Association Representing Mothers Separated from their Children by Adoption (South Australia) Inc (ARMS)

Ms Maureen Craig, Deputy Chairperson

Ms Mary-Anne (Meg) Lewis, Chairperson

Ms Pamela Longley, Life Member

Mrs Deborah Whitelock, Administrative Assistant

South Australian Chinese Adoption Support

Mr Nigel Holden, Vice President

Mr Mark Stewart, President

South Australian Government, Department for Families & Communities

Ms Cynthia Beare, Manager, Adoption and Family Information Service

Ms Jeanette (Jeanie) Lucas, Senior Project Officer

Mr Rod Squires, Director, Adoption, Refugee and Volunteer Services

World Families Australia Inc

Mrs Sandra Petersen, Vice President

Ms Margaret Sanders, President

Ms Morgan Smith, Member, Management Committee

Mr Matthew Wright-Simon, Member

9 Community Statements**Tuesday 18 October 2005, Perth****Individuals**

Ms Anita Fratel

Adoption Research & Counselling Service Inc.

Ms Jennifer Newbould, Manager

Adoption Support for Families and Children

Ms Sally Flintoff, Committee Member

Mr Michael Harwood, General Member

Adoptions International of Western Australia

Mrs Maureen Roberts, Chairperson

Mrs Trudy Rosenwald, Assistant Principal Officer

Western Australian Government, Department of Community Development

Ms Leah Bonson, Director, East Directorate, Community Development & Statewide Services

Mr Colin Keogh, Manager, Adoption Service

5 Community Statements

Thursday 3 November 2005, Canberra

Attorney-General's Department, Family Law Branch

Mr Kym Duggan, Assistant Secretary

Mr Matthew Osborne, Director, International Family Law Section

Mr Scott Wilson, Assistant Director, Senior Legal Officer, International Family Law Section

Private Briefing

Wednesday 25 May 2005, Canberra

Attorney-General's Department, Family Law Branch

Mr Kym Duggan, Assistant Secretary

Mr Matthew Osborne, Director, International Family Law Section

Mr Paul Taylor, Principal Legal Officer, Administrative Law and Civil Procedure Branch

Telephone conference call

Wednesday 14 September 2005, between Canberra and Taiwan

Christian Salvation Centre, Taiwan

Ms Paula Voigtman, Executive Director

Site inspection

Monday 12 September 2005, Canberra

ACT Adoptions Unit, Office for Children, Youth and Family Support, ACT Government - Level 6, 11 Moore Street, Civic, Canberra ACT

Ms Marysia Caesar, Adoptions Social Worker

Ms Julie Logan, Senior Administration Officer

Ms Sue Mickleburgh, Manager

Ms Leena Pekki, Adoptions Social Worker

Ms Ann Ponsonby, Team Leader

Ms Amita Rangachari, Adoptions Social Worker

Mr Paul Wyles, Director

Meetings

Tuesday 26 April 2005, Hobart

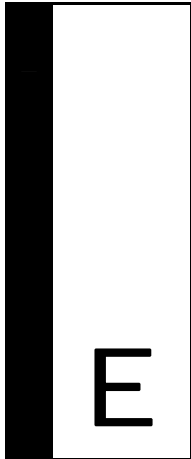
Intercountry Adoption Central Authorities Meeting - organised by Tasmanian Department of Health and Human Services, held at Family Planning Tasmania, 2 Midwood Street, NewTown TAS

Committee was represented by Mr David Fawcett MP, Member.

Thursday 10 November 2005, Canberra

Intercountry Adoption Central Authorities Meeting - organised by Attorney-General's Department, held at Canberra Club, 45 West Row, Canberra City ACT

Committee was represented by Hon Bronwyn Bishop MP, Chairman.



Appendix E – Sources for tables

Table 1.1 – Per capita rates of intercountry adoptions in selected western countries for 2004

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 - Statistik.adoption.dk, 'Modtagne born 2000-2004, fordelt pa lande,' viewed on 7 September 2005 at http://statistik.adoption.dk/udland/fordelt_paa_land_5aar.htm.
 - Swedish Intercountry Adoptions Authority, 'Survey of the number of foreign adoptive children placed into Swedish families over the years 2001-2004 by countries of origin,' viewed on 9 September 2005 at <http://www.nia.se/frameset.htm>.
 - Swiss Federal Statistics Office, *Portrait démographique de la Suisse*, (2004) Neuchâtel, p 82, viewed on 9 September 2005 at http://www.bfs.admin.ch/bfs/portal/fr/index/dienstleistungen/publikationen_statistik/cd_roms/uebersicht.Document.50779.html
 - Tilastokeskus, 'Adoptiot - Suomeen adoptoitu ulkomailta lapsia ennatysmaara vuonna 2004' viewed on 7 September 2005 at <http://www.stat.fi/til/adopt/index.html>.

Population data

- Australian Bureau of Statistics, 'Australian Demographic Statistics,' 3101.0, December Quarter 2003, p 1.
- Central Intelligence Agency, *The World Factbook 2003*, viewed on 9 September 2005 at <http://www.cia.gov/cia/download2003.htm>.

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Table 2.1 – Selected minimum eligibility criteria for major countries of origin

China

- Victorian Department of Human Services, 'Are you considering adoption from the People's Republic of China (PRC)?' viewed on 18 August 2005 at <http://hnb.dhs.vic.gov.au/commcare/ccdnav.nsf/LinkView/9A611AA9DF7CAF5F4A256879002567351518F0FCEFF9D0644A256D3C0037BB4B>.

South Korea

- Attorney-General's Department, submission 249.
- New South Wales Department of Community Services, 'Intercountry Adoption Program – Korea,' viewed on 18 August 2005 at <http://www.community.nsw.gov.au/documents/adoption/korea.pdf>.
- Children's Home Society and Family Services Adoption, 'Korea Program Adoption Requirements,' viewed on 18 August 2005 at http://www.childrenshomeadopt.org/Korea_Adoption_Requirements.html.

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- Children's Home Society and Family Services Adoption, 'Ethiopia Adoption Requirements,' viewed on 18 August 2005 at http://www.childrenshomeadopt.org/Ethiopia_Adoption_Requirements.html.
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Thailand

- New South Wales Department of Community Services, 'Current Adoption News,' viewed on 30 August 2005 at

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- Western Australia Department for Community Development, 'Thailand - Adoption Information Guide,' viewed on 30 August 2005 at <http://community.wa.gov.au/Resources/Adoption/>.

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Table 3.1 – Parents' legislated minimum eligibility criteria

New South Wales

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- *Adoption Regulation 2003*, clause 12.
- Niland C, 'Criteria for Assessment of Adoption Applicants,' *New South Wales Government Gazette*, No. 144, 24 December 1999, pp 12533-12534.

Victoria

- *Adoption Act 1984*, section 11.
- *Adoption Regulations 1998*, clause 35.

Queensland

- *Adoption of Children Act 1964*, sections 12-13, 13AC, 13C.
- *Adoption of Children Regulation 1999*, clauses 7, 11, 14.

South Australia

- *Adoption Act 1988*, sections 4, 12.
- *Adoption Regulations 2004*, clauses 8-9, 19.

Western Australia

- *Adoption Act 1994*, sections 39-40.
- *Adoption Regulations 1995*, clause 41.
- *Interpretation Act 1984*, section 13A.

Tasmania

- *Adoption Act 1988*, sections 20, 22.
- *Adoption Regulations 1992*, clauses 14, 29.
- *Relationships Act 2003*, sections 4, 11.

Australian Capital Territory

- *Adoption Act 1993*, sections 18-19.
- *Adoption Regulation 1993*, clause 4.
- *Legislation Act 2001*, section 169.

Northern Territory

- *Adoption of Children Act*, sections 13-14, 16.

Table 5.3 – Details of the offences for publishing adoption details

New South Wales

- *Adoption Act 2000*, section 180.
- *Crimes (Sentencing Procedure) Act 1999*, section 17.

Victoria

- *Adoption Act 1984*, section 121.
- *Monetary Units Act 2004*, section 5.
- Victorian Office of the Chief Parliamentary Counsel, 'FAQs,' viewed on 10 November 2005 at http://www.ocpc.vic.gov.au/domino/web_notes/ocpcweb.nsf/pages/FAQFrameSet. For 2005-06, the value of a penalty unit has been set to \$104.81.

Queensland

- *Adoption of Children Act 1964*, sections 45, 53.
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South Australia

- *Adoption Act 1988*, section 32.

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- *Penalty Units and Other Penalties Act 1987*, section 4.

Australian Capital Territory

- *Adoption Act 1993*, section 97.
- *Legislation Act 2001*, section 133.

Northern Territory

- *Adoption of Children Act*, section 71.



Appendix F - Hague Convention on Intercountry Adoption

33: Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption

Entry into force: 1-V-1995

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

(Concluded 29 May 1993) - (Entered into force 1 May 1995)

The States signatory to the present Convention,

Recognizing 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,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing 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,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions -

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are -

- a)* to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- b)* to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c)* to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

(1) The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph *c*, have not been given before the child attains the age of eighteen years.

CHAPTER II - REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin -

- a)* have established that the child is adoptable;
- b)* have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c)* have ensured that
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- d)* have ensured, having regard to the age and degree of maturity of the child, that
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State –

- a)* have determined that the prospective adoptive parents are eligible and suited to adopt;
- b)* have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c)* have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III – CENTRAL AUTHORITIES AND ACCREDITED BODIES*Article 6*

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

(2) They shall take directly all appropriate measures to –

- a)* provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
- b)* keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –

- a)* collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- b)* facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- c)* promote the development of adoption counselling and post-adoption services in their States;
- d)* provide each other with general evaluation reports about experience with intercountry adoption;
- e)* reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall –

- a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV - PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION*Article 14*

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

(2) It shall transmit the report to the Central Authority of the State of origin.

Article 16

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall –

- a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- c) ensure that consents have been obtained in accordance with Article 4; and
- d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if –

- a)* the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b)* the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c)* the Central Authorities of both States have agreed that the adoption may proceed; and
- d)* it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

- (1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
- (2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
- (3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

- (1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular –
 - a)* to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
 - b)* in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
 - c)* as a last resort, to arrange the return of the child, if his or her interests so require.
- (2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

- (1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who –

- a)* meet the requirements of integrity, professional competence, experience and accountability of that State; and
- b)* are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V – RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph *c)*, were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

(1) The recognition of an adoption includes recognition of

- a)* the legal parent-child relationship between the child and his or her adoptive parents;
- b)* parental responsibility of the adoptive parents for the child;
- c)* the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

(2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

(3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

(1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect -

a) if the law of the receiving State so permits; and

b) if the consents referred to in Article 4, sub-paragraphs *c* and *d*, have been or are given for the purpose of such an adoption.

(2) Article 23 applies to the decision converting the adoption.

CHAPTER VI - GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a)* to *c)*, and Article 5, sub-paragraph *a)*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units –

- a)* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b)* any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c)* any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
- d)* any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

(1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII - FINAL CLAUSES

Article 43

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b*) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

(2) Thereafter the Convention shall enter into force -

a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

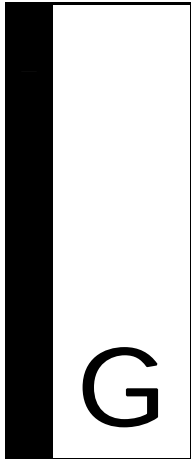
Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following -

- a)* the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b)* the accessions and objections raised to accessions referred to in Article 44;
- c)* the date on which the Convention enters into force in accordance with Article 46;
- d)* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e)* the agreements referred to in Article 39;
- f)* the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.



Appendix G – Commonwealth-State Agreement for the implementation of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption

This agreement (to be known as the “Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption”) is made between –

THE COMMONWEALTH OF AUSTRALIA; and

THE STATE OF VICTORIA; and

THE STATE OF QUEENSLAND; and

THE STATE OF WESTERN AUSTRALIA; and

THE STATE OF SOUTH AUSTRALIA; and

THE STATE OF TASMANIA; and

THE AUSTRALIAN CAPITAL TERRITORY; and

THE NORTHERN TERRITORY.

- (A) The Ministers of the respective governments in Australia who are responsible for intercountry adoption have agreed that it is in the interests of Australia to recommend to the Commonwealth Government that it ratify the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption [“the Hague Convention”].

- (B) The Minister have agreed that in order to enable the Commonwealth Government to ratify the Hague Convention, Australia as the Contracting State, must be able to demonstrate its ability to carry out the obligations of the Convention.
- (C) The Ministers have also agreed that the existing standards applicable to intercountry adoption, found in the legislation and administrative procedures of each of the State, are sufficient to comply with the standards and procedures of the Hague Convention.

PART I - INTERPRETATION

1. In this agreement, unless the contrary intention appears:
 - “**Hague Convention**” means the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption done at The Hague on 29 May 1993;
 - “**Minister**” means the Minister for Family Services of the Commonwealth, to a State Minister for the time being responsible for the administration of the laws of the State relating to adoption of children, and includes a Minister who is for the time being acting for or on behalf of that Minister;
 - “**reasonable time**” in clause 16(c) means such period of time, not exceeding twelve months, as is determined by the Community Services Ministers’ Council’
 - “**State**” includes the Australian Capital Territory and the Northern Territory.

PART II - OBJECTIVES OF AGREEMENT

2. An objective of this agreement is to produce a statement of compliance that guarantees that existing State legislation and administrative procedures relating to intercountry adoption are sufficient to ensure compliance with the obligations of the Hague Convention.
3. A further objective of this agreement is that, in conjunction with the relevant Commonwealth legislation and the relevant State legislation and practices, it shall provide a cooperative scheme for the implementation and administration of the Hague Convention in Australia, and that it shall do so with a minimum of disruption or alteration to existing State legislation and administrative procedures.
4. Another objective of this agreement is that questions of policy which affect the implementation, operation or administration of the Hague Convention in Australia shall be determined through consultation

between the Commonwealth and the States while the operation and administration of intercountry adoption casework and adoption policy shall remain the responsibility of the States unless the intervention of the Commonwealth is requested by a State or another Contracting State.

PART III - GENERAL PROVISIONS

5. The Commonwealth will as soon as practicable after the conclusion of this agreement submit to the Federal Executive Council for making by the Governor-General regulations under section 111C of the *Family Law Act 1975*.
6. The regulations shall provide for the establishment of the Commonwealth Central Authority and shall, subject to this agreement, include such other provisions as would enable the Commonwealth to do all things necessary to fulfil its obligations under the Hague Convention.
7. The regulations, and an intercountry adoption law mentioned in clause 20, shall provide for the appointment by the States of State Central Authorities and require the States to inform the Commonwealth of such appointment and of any changes in those appointments.
8. The functions that a State may give its State Central Authority include:
 - (a) processing the day-to-day casework involved in a particular adoption; and
 - (b) approving an application for the adoption of a child; and
 - (c) giving consent to the adoption of a child; and
 - (d) accrediting a body for the purposes of the Hague Convention; and
 - (e) revoking the accreditation of a body; and
 - (f) recommending to the Commonwealth Central Authority the preparation of legislation to ensure that Australia meets its obligations under the Hague Convention; and
 - (g) advising the Commonwealth Central Authority that:
 - (i) a provision of the Hague Convention has not been respected; or
 - (ii) there is a serious risk that a provision of the Convention may not be respected.
9. The functions that a State may give its State Central Authority do not include any functions of the Commonwealth Central Authority under the regulations.
10. If the regulations are made after the commencement of the *Legislative Instruments Act 1997*, the regulations will be registered in the Federal Register of Legislative Instruments. In accordance with section 11C of the *Family Law Act 1975*, the regulations will enter into force when the Hague Convention enters into force for Australia.

11. The signature of a State Minister to this agreement indicates that at the time when this agreement commences operation the legislation (other than an intercountry adoption law mentioned in clause 20) and administrative procedures of the State which that Minister represents comply with the requirements of the Hague Convention.
12. If a State determines that its State Central Authority should exercise its function to accredit bodies for the purposes of Article 9 of the Hague Convention, the State agrees to ensure that the Authority will only accredit a body that satisfies the criteria set out in Part II of the Accreditation Criteria agreed by the Community Service Ministers' Council, the terms of which are set out in the Schedule to this agreement.
13. If a State Central Authority proposes to revoke the accreditation of a body, the State of the Authority agrees to ensure that the Authority will only revoke the accreditation if the body does not comply with the criteria set out in Part IV of the Accreditation Criteria agreed by the Community Service Ministers' Council, the terms of which are set out in the Schedule to this agreement.
14. Each State agrees not to introduce amendments to its legislation or change its administrative procedures in relation to intercountry adoption in such a way as may adversely affect Australia's ability to comply with the Hague Convention.
15. If the legislation or administrative procedures of a State do not enable compliance with the Convention, then:
 - (a) the State may amend its legislation or administrative procedures to ensure compliance with the Hague Convention; or
 - (b) the State may request the Commonwealth to enact such legislation for the duration of time and to the extent necessary to ensure compliance.
16. If it subsequently comes to notice that there is a deficiency in the legislation or administrative procedures of a State such that the State does not comply with the requirements of the Hague Convention, then the State shall forthwith notify in writing the other parties to this agreement of the deficiency, and:
 - (a) the State may amend its legislation or administrative procedures to ensure compliance with the Hague Convention; or
 - (b) the State may request the Commonwealth to enact such legislation for the direction of time and to the extent necessary to ensure compliance; or
 - (c) if, within a reasonable time from the deficiency coming to notice, a State does not amend its legislation or administrative procedures in accordance with paragraph (a) or make a request of the kind referred to in paragraph (b), the Commonwealth

will, if necessary and in consultation with the State, enact such legislation as is required to ensure compliance with the Hague Convention.

17. Where a country which has an existing bilateral agreement with Australian States does not become a party to the Hague Convention within three years from the date of Australia's ratification of the Convention, that bilateral agreement is to be renegotiated by the Commonwealth (in conjunction with the States) to obtain conformity with the provisions of the Hague Convention.
18. For a country that is not a party to the Hague Convention, and where there is no existing bilateral arrangement or agreement between a State and the country, any proposals for a bilateral agreement between the State and the country shall be on the basis of compliance with the requirements of the Hague Convention and shall be negotiated in accordance with the *State Protocols and Procedures for Developing New Programs with New Countries 1991* with Commonwealth involvement because of Australia's ratification of the Hague Convention and entering into of this agreement.
19. This agreement does not give rise to any legally enforceable right, privilege, obligation or liability in respect of:
 - (a) anything done under the agreement; or
 - (b) anything omitted to be done under the agreement.

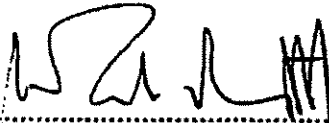
PART IV - STATE LAWS TO GIVE EFFECT TO THE HAGUE CONVENTION

20. If a State proposes to make an intercountry adoption law to give effect to the Hague Convention, the responsible State Minister will inform the responsible Commonwealth Minister of the proposal in sufficient time to allow the Commonwealth to make regulations that disapply to the State the Commonwealth regulations made for the purpose of section 111C of the *Family Law Act 1975*.
21. If the Commonwealth proposes to make regulations that will amend regulations made for section 111C of the *Family Law Act 1975*, the Commonwealth Central Authority will consult the State Central Authority of each State regarding the proposal.
22. If a State proposes to amend an intercountry adoption law to give effect to the Hague Convention, the State Central Authority of the State will consult the Commonwealth Central Authority and the State Central Authority of each other State regarding the proposal.

PART V - OPERATION OF THE AGREEMENT


23. This agreement shall commence operation and shall have effect on and from the date on which the agreement is signed by all the parties to the agreement.
 24. This agreement may be amended by the parties to it for the time being only in accordance with a resolution of the Community Service Ministers' Council passed by a unanimous vote of all the members of that Council with a right to vote in its proceedings.
 25. If a State no longer wishes to be a party to this agreement, it may give a notice to that effect to the Community Service Ministers' Council. The State will cease to be a party to the agreement 12 months after the State gives the notice unless the State withdraws the notice before the expiration of those 12 months.
 26. If a State ceases to be a party to this agreement under clause 25, and the State wishes to again be a party to the agreement, the State may give a notice to that effect to the Community Service Ministers' Council. If the Council is satisfied that at the time of giving the notice the State complied with the requirements of this agreement, the State will again become a party to the agreement 3 months after giving the notice.
-

Signed by the Honourable
Warwick Smith MP on the
day of 1998



.....
Minister for Family Services,
Commonwealth of Australia

Signed by the Honourable
Faye Lopo MP on the
day of 1998



.....
Minister for Youth and
Community Services,
New South Wales

Signed by the Honourable
Dr Denis Napthine MLA on the
day of 1998

.....
Minister for Youth and
Community Services, Victoria

Signed by the Honourable
Dean Brown MP on the
day of 1998

.....
Minister for Human Services,
South Australia

Signed by the Honourable
Kev Lingard MLA on the
day of 1998

.....
Minister for Families, Youth and
Community Care, Queensland

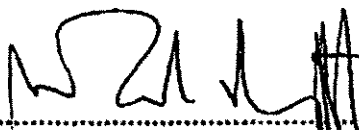
Signed by the Honourable
Peter McKay MLC on the
day of 1998

.....
Minister for Community and
Health Services, Tasmania

Signed by the Honourable
R K Parker MLA on the
day of 1998

.....
Minister for Family and
Children's Services, Western
Australia

Signed by the Honourable
Warwick Smith MP on the
day of 1998



Minister for Family Services,
Commonwealth of Australia

Signed by the Honourable
Faye Lopo MP on the
day of 1998

Minister for Youth and
Community Services,
New South Wales

Signed by the Honourable
Dr Denis Napthine MLA on the
19th day of February 1998



Minister for Youth and
Community Services, Victoria

Signed by the Honourable
Dean Brown MP on the
day of 1998

Minister for Human Services,
South Australia

Signed by the Honourable
Kev Lingard MLA on the
day of 1998

Minister for Families, Youth and
Community Care, Queensland

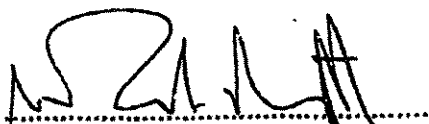
Signed by the Honourable
Peter McKay MLC on the
day of 1998

Minister for Community and
Health Services, Tasmania

Signed by the Honourable
R K Parker MLA on the
day of 1998

Minister for Family and
Children's Services, Western
Australia

Signed by the Honourable
Warwick Smith MP on the
day of 1998



Minister for Family Services,
Commonwealth of Australia

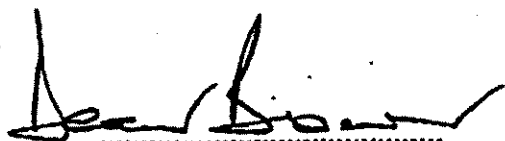
Signed by the Honourable
Faye Lopo MP on the
day of 1998

Minister for Youth and
Community Services,
New South Wales

Signed by the Honourable
Dr Denis Napthine MLA on the
day of 1998

Minister for Youth and
Community Services, Victoria

Signed by the Honourable
Dean Brown MP on the
25 day of February 1998



Minister for Human Services,
South Australia

Signed by the Honourable
Kev Lingard MLA on the
day of 1998

Minister for Families, Youth and
Community Care, Queensland

Signed by the Honourable
Peter McKay MLC on the
day of 1998

Minister for Community and
Health Services, Tasmania

Signed by the Honourable
R K Parker MLA on the
day of 1998

Minister for Family and
Children's Services, Western
Australia

Signed by the Honourable
Warwick Smith MP on the
day of 1998

.....
Minister for Family Services,
Commonwealth of Australia

Signed by the Honourable
Faye Lopo MP on the
day of 1998

.....
Minister for Youth and
Community Services,
New South Wales

Signed by the Honourable
Dr Denis Napthine MLA on the
day of 1998

.....
Minister for Youth and
Community Services, Victoria

Signed by the Honourable
Dean Brown MP on the
day of 1998

.....
Minister for Human Services
South Australia

Signed by the Honourable
Naomi Wilson MLA on the
11th day of March 1998

Naomi Wilson
.....
Minister for Families, Youth and
Community Care, Queensland

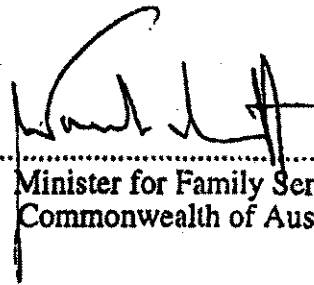
Signed by the Honourable
Peter McKay MLC on the
day of 1998

.....
Minister for Community and
Health Services, Tasmania

Signed by the Honourable
R K Parker MLA on the
day of 1998

.....
Minister for Family and
Children's Services, Western
Australia

Signed by the Honourable
Warwick Smith MP on the
day of 1998



Minister for Family Services,
Commonwealth of Australia

Signed by the Honourable
Faye Lopo MP on the
day of 1998

Minister for Youth and
Community Services,
New South Wales

Signed by the Honourable
Dr Denis Napthine MLA on the
day of 1998

Minister for Youth and
Community Services, Victoria

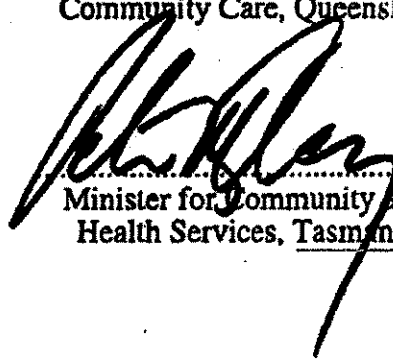
Signed by the Honourable
Dean Brown MP on the
day of 1998

Minister for Human Services,
South Australia

Signed by the Honourable
Kev Lingard MLA on the
day of 1998

Minister for Families, Youth and
Community Care, Queensland

Signed by the Honourable
Peter McKay MLC on the
day of 1998

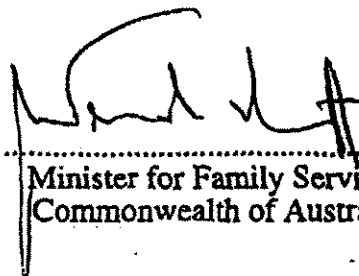


Minister for Community and
Health Services, Tasmania

Signed by the Honourable
R K Parker MLA on the
day of 1998

Minister for Family and
Children's Services, Western
Australia

Signed by the Honourable
Warwick Smith MP on the
day of 1998



Minister for Family Services,
Commonwealth of Australia

Signed by the Honourable
Faye Lopo MP on the
day of 1998

Minister for Youth and
Community Services,
New South Wales

Signed by the Honourable
Dr Denis Napthine MLA on the
day of 1998

Minister for Youth and
Community Services, Victoria

Signed by the Honourable
Dean Brown MP on the
day of 1998

Minister for Human Services,
South Australia

Signed by the Honourable
Kev Lingard MLA on the
day of 1998

Minister for Families, Youth and
Community Care, Queensland

Signed by the Honourable
Peter McKay MLC on the
day of 1998

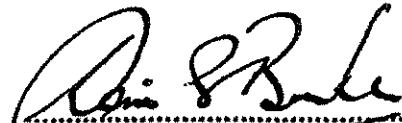
Minister for Community and
Health Services, Tasmania

Signed by the Honourable
R K Parker MLA on the
day of 1998



Minister for Family and
Children's Services, Western
Australia

Signed by the Honourable
Denis Burke MLA on the
24 day of *February* 1998


.....
Minister for Health Services,
Northern Territory

Signed by

day of

on the
1998

.....
Minister for Housing and Family
Services, Australian Capital
Territory

Signed by the Honourable
Denis Burke MLA on the

day of 1998

.....
Minister for Health Services,
Northern Territory

Signed by Bill Stefaniak MLA
on the

9th day of April 1998


.....
Minister for Education
Australian Capital Territory

SCHEDULE
CRITERIA IN RELATION TO THE ACCREDITATION OF BODIES
UNDER THE HAGUE CONVENTION ON THE PROTECTION OF
CHILDREN AND COOPERATION IN RESPECT OF INTERCOUNTRY
ADOPTION

PART I - BACKGROUND

1. States and internal Territories may enter into arrangements with a body for the accreditation of that body to provide State or Territory intercountry adoption services or across border services consistent with the terms of accreditation.
2. A body applying for accreditation is required to satisfy the criteria set out in Part II.
3. Accreditation of a body is subject to annual review and may be revoked at any time by the State Central Authority issuing accreditation if the body does not comply with the criteria set out in Part IV.
4. A State Central Authority that accredits a body or revokes the accreditation of a body is required to provide notice of that accreditation or revocation to the Commonwealth Central Authority who will advise the Permanent Bureau of the Hague Conference on Private International Law of the terms of accreditation.

PART II - ACCREDITATION CRITERIA

Eligibility

5. The body must be an incorporated non profit body.
6. The body must not be, and must not be likely to be, a party to negotiations or an agreement for the establishment of adoption arrangements with overseas countries.
7. The body must give an undertaking that during any period of accreditation the body will not enter negotiations for the establishment of an adoption agreement with an overseas country.

The Body

8. The body must employ a principal officer with social science qualifications and experience in adoption, substitute care or family services to supervise the adoption arrangements undertaken by the body.
9. The body must be financially viable.
10. The body must employ professional staff with appropriate qualifications to undertake training, assessment and placement tasks.

11. The body must have accommodation available for its use that:
- (a) is suitable for the conduct of assessment, interviews, training and support to adoption arrangements; and
 - (b) does not form part of, and is not adjacent to, accommodation that is used by an aid organisation or an organisation that represents adoptive parents.

Conduct of the Body

12. The body must comply with the practice that applies, in the State or Territory in which the body is seeking accreditation, relating to the approval or contracting of bodies to undertake arrangements with a view to the adoption of a child.

13. The body must comply with:
- (a) the laws of the Commonwealth and the State or Territory in which it is seeking accreditation; and
 - (b) the requirements of the Convention.

14. The body must not be associated with, and must not be likely to be associated with, the collection and disbursement of aid to an overseas country.

15. A body must have suitable facilities for the confidential storage of records, and must give an undertaking to maintain those records.

16. The body must give an undertaking that during any period of accreditation the body:

- (a) will only undertake the functions approved at the time of accreditation; and
- (b) will only offer adoption services in respect of the countries specified in its accreditation; and
- (c) will not destroy any records maintained by the body; and
- (d) will not issue publications promoting adoption, or offer preparation courses for adoption applicants, unless the content of the publication or the course had been approved by the State Central Authority to which the body has applied for accreditation.

17. The body must give an undertaking that on its winding up it will lodge any records, that it has maintained during any period of accreditation, with the State Central Authority to which it has applied for accreditation.

PART III - FUNCTIONS OF AN ACCREDITED BODY

18. A body may be accredited to undertake any of the following functions in relation to the adoption process:

- (a) Initial Enquiries - respond to initial enquiries for intercountry adoption;

- (b) Information Sessions - conduct regular information sessions to inform potential applicants;
- (c) Expressions of Interest - receive and process expressions of interest;
- (d) Applications - receive and process applications to adopt (Article 14);
- (e) Assessments - undertake assessments of suitability (including relevant medical, referee and police reports, and preparation of the Home Study);
- (f) Decision to approve or not approve - determine the suitability of applicants;
- (g) Forwarding of file - forward a report including all relevant information required to the country of origin (Article 15);
- (h) Allocation of children - receive allocation of children, confirm suitability of match (Article 17b) and advise applicants;
- (i) Supervision of placement - provide support and advice to applicants following a placement;
- (j) Placement Breakdown - in case of placement breakdown prior to adoption orders being made, consult with the State Central Authority regarding appropriate arrangements, but the body is not to make decisions on alternative arrangements;
- (k) Adoption Information - collect and preserve relevant information about the child and the applicants (Article 9a), and respond to requests for adoption information until the child attains the age of 18 years;
- (l) Evaluation Reports - prepare general evaluation report for the State Central Authority (Article 9d);
- (m) Post Adoptive Services - provide a referral and support service post granting of the adoption order;
- (n) Administrative arrangements - undertake approved administrative arrangements between already established programs.

PART IV - REVOCATION CRITERIA

Division 1 - Review and assessment of the body

19. A body must submit to the supervision of the State Central Authority that accredited the body, and must provide the State Central Authority with access to the records and reports of the body in accordance with the requirements of the State Central Authority.

20. The body must provide biannual reports to the State Central Authority as required in the accreditation of the body.
21. The accommodation at which the body performs its functions as an accredited body:
 - (a) must be suitable for the conduct of assessment, interviews, training and support to adoption arrangements; and
 - (b) must not form part of, or be adjacent to, accommodation that is used by an aid organisation or an organisation that represents adoptive parents.
22. Except in accordance with an arrangements between States and internal Territories, the functions approved in the accreditation must only be provided by the body within the State or internal Territory of the State Central Authority that accredited the body.
23. The body must comply with any undertakings given for the purpose of accreditation.
24. The body must continue to satisfy the criteria set out in Part II and any conditions set out in the instrument of accreditation.
25. A body must comply with, and must ensure that its staff members comply with, the code of conduct for bodies accredited to conduct adoption arrangements set out in Division 2.

Division 2 – Code of Conduct

[NOTE: This code exists to recognise and give effect to the right of the public to expect that accredited intercountry adoption bodies are of the highest integrity and competence and treat all clients fairly, reasonably and equitably and are accountable to the State Central Authority that accredited the body.]

Conflict of interest

26. A member of staff of an accredited body must not hold any financial or other interest, and must not give an undertaking, that could directly or indirectly compromise the performance of his or her functions. Conflict of interest must be assessed by taking into account, amongst other things, the likelihood that a member of staff possessing a particular interest could be influenced, or might appear to be influenced, in the performance of his or her responsibilities on a particular matter. A member of staff must notify the State Central Authority that accredited the body if a potential or actual conflict of interest arises.

Acceptance of gifts or benefits

27. An accredited body or member of staff must not accept a gift, donation or benefit if it could be seen by a client as intended or likely to cause the member to undertake his or her responsibilities in a particular way, or deviate from the proper course of action.

Personal and professional behaviour

28. A member of staff of an accredited body must perform any duties associated with his or her position diligently, impartially and conscientiously, to the best of his or her ability.

29. In the performance of duties, a member of staff of an accredited body:

- (a) must keep up to date with any changes in practice or procedure relating to intercountry adoption; and
- (b) must comply with the laws, and any relevant administrative requirements of the Commonwealth and the State or internal Territory of accreditation; and
- (c) must maintain and preserve record information systems in accordance with the requirements of the State Central Authority that accredited the body; and
- (d) must treat all clients with courtesy, sensitivity and in confidence; and
- (e) must not take any improper advantage of any information gained in the carrying out of his or her duties; and
- (f) must report to the State Central Authority that accredited the body any unethical behaviour or wrong doing by other members of staff of which he or she is aware.

Fairness and equity

30. The manner in which an accredited body deals with issues or clients must be consistent, prompt and fair. This includes:

- (a) dealing with matters in accordance with approved procedures; and
- (b) dealing with matters without discrimination on any grounds; and
- (c) providing appropriate review and appeal mechanisms.

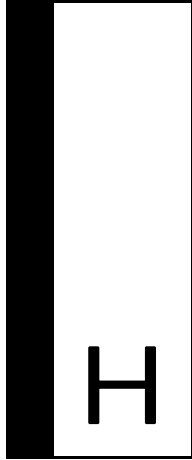
31. If an accredited body proposes to exercise a discretionary power in relation to a particular case, the body must ensure that all relevant considerations are taken into account in regard to the particular merits of the case.

Public comment and the use of information

32. While staff members of an accredited body have the right to make public comment and to enter into public debate on political and social issues, the accredited body must refrain from public comment where that comment is

sufficiently strong to undermine the accredited body, the State Central Authority that accredited the body or the Commonwealth Central Authority.

33. An accredited body must not disclose official information or documents acquired in the course of carrying out its functions as an accredited body unless the proper authority has been sought and given.



Appendix H – ‘The Nature and Nurture of Economic Outcomes’ by Bruce Sacerdote

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NATIONAL BUREAU OF ECONOMIC RESEARCH

1050 Massachusetts Avenue

Cambridge, MA 02138

October 2000

I thank the Henry A. Murray Research Center of the Radcliffe Institute for Advanced Study, researchers at the Colorado Adoption Project, and Peter Shepherd at the Centre for Longitudinal Studies at the University of London. Thank you to Nithya Rajan for her excellent research assistance. I am grateful to Dartmouth College and the National Science Foundation for supporting this work. The views expressed in this paper are those of the author and not necessarily those of the National Bureau of Economic Research.

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Bruce Sacerdote

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The Nature and Nurture of Economic Outcomes
Bruce Sacerdote
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ABSTRACT

This paper uses data on adopted children to examine the relative importance of biology and environment in determining educational and labor market outcomes. I employ three long-term panel data sets which contain information on adopted children, their adoptive parents, and their biological parents. In at least two of the three data sets, the mechanism for assigning children to adoptive parents is fairly random and does not match children to adoptive parents based on health, race, or ability. I find that adoptive parents' education and income have a modest impact on child test scores but a large impact on college attendance, marital status, and earnings. In contrast with existing work on IQ scores, I do not find that the influence of adoptive parents declines with child age.

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I. Introduction

The relative importance of biology and environment is one of the oldest and most prominent areas of scientific inquiry and has been examined by researchers as diverse as Hume [1748], Darwin [1859], and Freud [1930]. Social scientists are particularly interested in the degree to which family and neighborhood environmental factors influence a child's educational attainment and earnings.

The stakes in this debate are quite high and far-reaching. As Herrnstein and Murray [1994] point out, the effectiveness of anti-poverty and pro-education policies is largely dependent on the degree to which environment matters. Any claim of treatment effects from different family structures, different teachers, different peers or different neighborhoods needs as a pre-condition that some aspects of environment are important to long-term outcomes. Attempts to understand the root causes of income inequality often involve trying to sort out the effects of family background from the effects of genetic endowments (see for example Jencks [1972] or Grilliches and Mason [1972]).

One of the most effective instruments for separating out biology from "everything else" is to study children who were adopted at birth. With adoption, there is the potential for the clear separation of genetic endowments from environmental factors. The vast majority of research on adopted children has been done by psychologists including Scarr and Weinberg [1978, 1981], Loehlin, Horn, and Willerman [1985, 1987, 1994], and Plomin, Defries, and Fulker [1988, 1991, 1997]. This work examines IQ tests, other mental ability tests, and personality tests. Most of the research concludes that birth parents matter a great deal for child outcomes (e.g. IQ tests) and that adoptive parents have either zero influence or a small influence which declines as children grow.¹

The current paper extends this work to economic outcomes including children's years of education, college attendance, marital status, and labor market earnings. I use samples of adopted children from the Colorado Adoption Project (CAP), the National Child Development Survey

(NCDS), and the National Longitudinal Survey of Youth 1979 (NLSY79). I find that adoptive family income and education have large effects on children's college attendance and marital status and modest sized effects on labor market income. I also find evidence that the impact of adoptive family background on test scores does not diminish as children mature.

A natural concern is that my coefficients are biased upwards by the effect of high education parents selecting high ability babies for adoption. I present evidence showing that within two of my samples this is not the case. I do this by examining the correlation between birth mother's test scores, education, and socio-economic status and the same variables for the adoptive parents. I also have some knowledge of the adoption placement process in each data set and this information indicates that babies and families are not being matched on ability measures or race.

II. A Brief History of Thought in the Adoption Literature

Existing research on adoption has been conducted almost exclusively by psychologists and behavioral geneticists. In a seminal article, Scarr and Weinberg [1978] administered IQ tests and collected educational data for 194 adopted children, their adoptive parents, and their biological mother. The researchers also have a separate control group of (non-adopted) children who were living with both of their biological parents. Scarr and Weinberg find no statistically significant impact of the adoptive parents' income, education or IQ score on the children's IQ score. However, biological mother's education level strongly affects adopted child's score. This study and others like it have pushed psychologists towards the "nativist" view.

Loehlin, Horn, and Willerman [1989] study 258 adopted children in Texas and find that adoptive parents have a small influence on the IQ scores of children who are young (i.e. age 7) but that this influence declines over time. Similar conclusions are found in Capron and Duyme [1989] and Plomin, DeFries and Fulker [1988] in their on-going study of 245 adopted children in Colorado.

¹ The literature on this topic is extensive and I am reporting here only two well known themes.

Cardon, Fulker, DeFries [1992] and Loehlin, Horn and Willerman [1994] show that adopted children inherit not just "general intelligence" from their birth mothers, but also more specific skills including verbal, spatial, and numeric abilities.² The study closest in focus to the current paper is Maughan, Collishaw, and Pickles [1998] which finds that higher family socio-economic status raises adoptees' years of education.³

A chief obstacle to adoption studies has always been sample size. In 1990 in the U.S., 2.1% of children living with a married couple were living with an adoptive mother and father. The sample of adopted children (defined as living with two adoptive parents by age 1) in the NLSY79 is roughly 198 people from a sample of more than 12,000 children. My only solution to the sample size problem (in the current paper) is to examine three small data sets rather than one small data set. A second major issue with adoption data is that most data sets only follow the children up to age 11 or age 16 making it hard to study years of education or labor market outcomes. I avoid this problem by using the NLSY and NCDS which have already followed subjects through age 30.⁴

A separate methodology for controlling for genetic endowments is to examine pairs of identical twins as in Wilson and Matheny [1986], Ashenfelter and Krueger [1994] and Ashenfelter and Rouse [1998]. Studies of twins are often used to "hold genes and family environment constant" while examining the effects of differential schooling or other treatments. This is distinct from the adoption methodology which is used in this paper to examine the treatment effect of different family environments. Data on twins separated at birth could potentially combine the two strengths of twin and adoption studies, but the incidence of such separation is extremely rare [see Segal 1998].

² All of these authors have also done extensive studies of the heritability of various personality traits. For more detail see the collective volumes: DeFries, Plomin and Fulker [1994] and [1998].

³ My identification comes from using variation within the set of adoptive parents. Maughan, Collishaw and Pickles are comparing adopted children from low income birth mothers to a control group of non-adopted children from low income birth mothers.

III. Empirical Framework

My principal goal is to estimate the causal effects of family environment inputs on children's outcomes. For example, I am interested in the effect of adoptive mother's years of education (abbreviated *amed*) on child's years of education. As a result, I run the following regression:

$$(1) \quad \text{Child's years of education} = \alpha + \beta_1 * \text{amed} + \varepsilon_i$$

Adoption and random assignment play a critical role in allowing me to interpret β_1 as a treatment effect from family environment.⁵ There is substantial variation in adoptive mother's education that is uncorrelated or at most only weakly correlated with any unobserved, innate ability of the children. If I were using non-adopted children in the regression, β_1 would be determined by some unknown blend of genes and family environment.

Of course, having data on adopted children does not guarantee that we can separate out biology and environment. A natural concern is that high ability adoptive parents might be able to select children from high ability adoptive mothers. This could bias the coefficient β_1 upward and lead me to conclude that adoptive parents have a large treatment effect when in fact the coefficient is being driven by selection on unobservables.

However, in at least two of my three data sets, adopted children are assigned to adoptive parents in a random manner. Specifically, children are not assigned to adoptive parents on the basis of the birth mother's observed ability, health, education, race, or socio-economic status. As a result, the birth mother's observable and unobservable characteristics are uncorrelated with the adoptive parent's characteristics. This means that in equation (1), $E(\varepsilon_i, \text{amed}) = 0$ and the estimate β_1 is not biased upwards by selection.

⁴ Both the Colorado Adoption Project and the Texas Adoption Projects are currently in the process of conducting follow-up waves which will collect adult outcomes for the adoptees in those samples.

⁵ I use the phrase "family environment" very broadly to refer to any treatment effect that stems from the adoptive family. The effect could work indirectly through choice of peers, schools, or neighborhood to name a few possibilities.

In cases where I know the years of education for the birth mother (abbreviated bmed), I can also identify the treatment effect of biological mother's education on the child's outcomes. In these cases, I run the following regression:

$$(2) \quad \text{Child's years of education} = \alpha + \beta_0 * \text{bmed} + \beta_1 * \text{amed} + \varepsilon_i$$

Under the assumption of random assignment (of children to adoptive parents), the inclusion of birth mother's education should not alter $E(\beta_1)$, but should increase the precision of the estimate of β_1 . (I could also try to estimate the interaction effect, if any, between birth and adopted mother's education.)

I calculate the ratio $\beta_1/(\beta_0 + \beta_1)$ which as a measure of the environment effect as a percent of the "total effect" of genes plus environment. Interpreting the ratio in this way requires very strong assumptions about functional form; I am assuming that genes and environment enter linearly and separately.

I have data on adopted children in three separate data sets and I also have a group of "control" children in each data set. These are non-adopted children who were raised by both of their biological parents. I calculate the coefficient on mother's education for the control children and test whether this coefficient is statistically different for adopted and non-adopted children. To do this, I pool the adopted and control samples and run the following regression:

$$(3) \quad \text{Child's years of education} = \alpha + \beta_3 * \text{mother's education} + \beta_4 * \text{dummy for adoption} + \beta_5 * (\text{dummy for adoption} * \text{mother's education}) + \varepsilon_i$$

I use a t-test on β_5 to check whether or not the coefficients for adopted and non-adopted children are statistically different. I take the ratio $(\beta_3 + \beta_5) / \beta_3$ to create a measure of the importance of family environment relative to genetic influences. Again, under very strong functional form assumptions, I can interpret this ratio as the percent of the total effect that is due to family environment.

IV. Data Description

I use three separate samples of adopted children. The samples are drawn from the British National Child Development Survey (NCDS), the Colorado Adoption Project (CAP), and the National Longitudinal Survey of Youth (NLSY79). The three samples are small which reflects the relative rarity of children adopted at birth. The NCDS and the NLSY data follow the children well into adulthood, whereas the CAP data currently only follows the subjects up to age 7.

The NCDS study is a longitudinal panel which began as a perinatal mortality study in 1958. The initial sample included all children born during a single week in Britain in March 1958. There have been four subsequent waves of data collection with substantial attrition at each wave. The most recent wave that I use was collected in 1981 when the subjects were age 23. The data include a broad range of health measures, academic test scores, teacher assessments, and employment information.

Table I shows summary statistics for my NCDS sample. I have a base sample of 128 adopted children. Most of these are illegitimate children who were placed with an adoptive mother and father at birth or within 3 months of birth. The average age of the birth mother is 24.3 years and 20 percent of the birth mothers smoked during pregnancy. Sixty percent of the children are boys and 98 percent are white.

My first outcome variable is the Southgate reading test of word recognition and reading comprehension. This exam was administered to all of the children at age 8. The adopted children have a mean score of 24.9 and the control children have a mean score of 24.0. I also have reading and math test scores at age 11. For outcomes at age 23, the sample shrinks to 112 children. Within that sample, 40 percent obtained some form of post-secondary education. This includes university, nursing school, teaching school, or technical college. At age 23, 41 percent of the sample was married and the average family income (of the subject and spouse if any) was £110.8 per week.

For the adoptive parents, I have father's years of education and an index of socioeconomic status that is based on the father's occupation. This latter index ranges from 1 to 11 and has a mean of 6.8. A score of 11 is given to white collar managers in large firms; a 6 is for junior non-manual workers and a 1 is for unskilled manual workers.⁶

I have a large "control" sample of 7981 children in the NCDS who were raised by their birth parents. I limit the sample to children who were living with both parents from birth through age 11 or longer. The control children are quite similar to the adopted children on several dimensions. The mean reading scores at age 7 are similar and both samples are mostly white. The birth mothers are older in the control sample than in the adopted sample.⁷

My analysis consists of regressing the outcomes for the adopted children on characteristics of the adoptive parents. The key identifying assumption is that the adopted children are assigned randomly or quasi-randomly to adoptive parents. The data support this assumption. Appendix I shows three regressions of birth mother characteristics on adoptive family socioeconomic status (SES). In column (2), I regress birth mother's smoking status (0-1) on adoptive family SES, dummies for the child's region of birth, and dummies for child male and child white. The coefficient on adoptive mother's SES is small (-.007) and insignificant. This result is robust to the exclusion of the other right hand side variables. Columns (3) and (4) show that birth mother's age and socioeconomic status are also unrelated to the adoptive family's socioeconomic status. Column (1) shows the analogous result for child's birth weight. I obtain similar results when I substitute adoptive father's education for adoptive family's SES (not reported).

The adoption process in Great Britain at this time greatly limited the ability of adoptive parents to select a child based on birth mother or child characteristics. (See Pringle [1966].) In the

⁶ NCDS actually coded this variable with 1 being the highest income category, but for consistency with US data, I reversed the coding so that 11 is the highest category and 1 is the lowest.

⁷ I should emphasize here that my primary objective in this paper is to use variation in family income and education within the adopted sample to identify the effect of environment on outcomes for the adopted children. I am not comparing adopted children to the control children to estimate treatment effects.

1950s in Great Britain, almost all children given up for adoption were born to young unwed mothers. Private agencies did much of the placement and often matched infants with qualified adoptive parents on a first-come, first-serve basis. The adoptive parents typically had no information on the birth mothers, which meant that selection based upon birth mother's education or socioeconomic status was not possible. Selection on the basis of child race was not an important factor because 98 percent of the children in the sample are white.

The Colorado Adoption Project

My second data set is a sample of 183 adopted children who were born in Colorado during the period 1977-1984. These children were placed for adoption at birth by the two largest adoption agencies in the state.⁸ Almost all of these children are white and were born to young, unwed mothers. As with the NCDS, there is also a sample of "control" children who were raised by both of their biological parents. Observations in the control sample are not matched pair-wise to the adopted sample. Instead, a general control pool was recruited such that the average education and income of the control parents is similar to the average education and income of the adoptive parents.

Table II contains descriptive statistics for the adopted and control samples. Columns (1)-(3) contain data for the birth parents of the adopted sample. Columns (4)-(6) are for the adoptive parents and the adopted children. Columns (7)-(9) are for the control parents and control children.

The birth mothers (of the adopted children) have an average of 12.1 years of education. The adoptive mothers have 14.8 years and the control mothers have 14.9. Birth, adoptive and control parents were all given a series of standardized tests during their first interview. Mean scores for the vocabulary tests are shown in Table II. The birth mothers had an average of 31.0 correct answers out of 50 questions. This compares to 40.8 correct for the adoptive mothers and 40.9 for the control

⁸ These data were collected by the Colorado Adoption Project. See Plomin, DeFries, and Fulker [1994] for more information. The book provides detail on how the adoptive and control families were recruited into the study.

mothers. On both measures (years of education and the vocabulary score), the control mothers are not statistically different than the adoptive mothers.

I also have an index of socioeconomic status for the birth mothers, adoptive parents, and control parents. This is a ranking based on income and occupation and ranges from 1 to 93. The index was developed by the National Opinion Research Center (NORC).

The outcome measures in the CAP data include a wide variety of test scores, personality scores, teacher ratings, and parent-reported likes and dislikes. I focus on outcomes that measure school achievement. These outcomes include the Wisconsin IQ test score, PIAT reading score, reading capability as assessed by the parents, and ability to do subtraction at age six. The mean test scores for the adopted children look remarkably similar to the mean scores for the control children. For example, the mean total score on the Wisconsin IQ test was 114.4 for the adopted children and 114.6 for the control children.

My outcome measures in the CAP data are all taken when the children are age 6 or age 7. Naturally it would be desirable to have some outcomes for these children when they were college age or older. Unfortunately at the time of this writing, those data were still being collected by researchers at the CAP.

There is fairly strong evidence that the adopted children in the CAP are not matched to the adoptive parents on the basis of child or birth mother characteristics. The most important fact is that throughout this period (1977-1984) in the U.S., there was excess demand for white infants available for adoption. As a result, the two adoption agencies maintained a queue of adoptive parents. When prospective parents reached the front of the queue, they were given whichever baby became available at that moment. In fact, as a matter of policy, the adoption agencies expressly

avoided any attempt to match children and parents using observables.⁹ (See Plomin, DeFries, and Fulker [1994].)

This quasi-random assignment is evident in Appendix II which shows three regressions of birth mother characteristics on adoptive parent characteristics. In column (1), birth mother's education is regressed on adoptive mother's education. The coefficient on adoptive mother's education is small and statistically insignificant. Similar results are shown in columns (2) and (3) for scores on the vocabulary test and for socioeconomic status.

The National Longitudinal Survey of Youth

My third sample is drawn from the NLSY79. I create a sample of 170 children who are living with an adoptive mother and adoptive father at age three or earlier. Two thirds of these children are adopted at birth. Unlike the situation with the CAP and NCDS data, I do not have any evidence that adopted children in the NLSY are assigned to adoptive parents in a random fashion. It is quite possible that some of the adoptions involve parents selecting children on the basis of race, child health, or geography.

Despite this potential for selection bias, the NLSY data are still useful. Because the children are adopted, there is still a separation (albeit imperfect) between the biological parents and the parents that raised the child. This allows me to calculate an estimate of the impact of environment (i.e. β_1 in equation (2)).

For comparison purposes, I also create a "control" sample of 5,614 non-adopted children. These are children who lived with both of their biological parents until at least age 17. Table III shows descriptive statistics for both the adopted and control samples. Mean years of education by age 30 is 13.4 years for the adopted children and 13.3 for the control children. The adopted children have a mean AFQT score of 49.3 versus 44.4 for the control children. The adopted sample is about

⁹ The reason for this policy is still unclear to me. There may have been a belief that somehow matching children to

52 percent male and 18 percent black. The adoptive mothers and fathers are much more likely to have attended college than the control mothers and fathers.

IV. Empirical Results

Results for the NCDS

Table IV contains the results for the NCDS data. The structure of the table is as follows: Each of the seven columns contains a separate outcome (dependent) variable. The first two rows show the mean and standard deviation of the dependent variable for the adopted and control samples. The next four rows show OLS coefficients and standard errors from four separate regressions of the dependent variable on adopted family's socioeconomic status (SES), adopted father's years of education, control family's SES, and control father's years of education respectively. The regressions also include controls for child's sex, child's race, and dummies for child's region of birth.

Column (1) examines the child's score on the Southgate reading test, which was administered at age 8. The mean score for the adopted children is 24.9 with a standard deviation of 5.9 points. The coefficient on adoptive family's SES is .31 and is significant at the 10 percent level. A one standard deviation increase in SES is associated with a .16 standard deviation increase in the reading score. For the control children, the coefficient on family SES is moderately larger at .42. In row (7), we see that the difference between the adopted and control coefficients is not statistically significant.¹⁰

The effect of adoptive family's SES on the child's reading score is not large. However, the comparable effect for the control children is not particularly large either. In row (9) I show that the coefficient for the adopted children is 75 percent as large as the coefficient for the control children.

parents on observables somehow created unrealistic expectations or increased the likelihood of a bad outcome.

If we believed that genetic and environmental influences were linear and additive, our point estimate would be that environmental influence is 75 percent of the total influence. Unfortunately there would be a large standard error on this point estimate; notice that the ratios differ greatly across different outcomes.

In row (4), I show the OLS coefficient of the child's reading test score regressed on adoptive father's years of education. The coefficient (.16) is small and insignificant. The comparable coefficient for the control group (.58) is larger and is significant.

The general pattern of coefficients observed in column (1) repeats in columns (2)-(4) which examine scores on standardized tests administered at ages 11 and 16. In column (4), for the math test at age 16, the coefficient on adopted family SES is .60 and is significant at the 5 percent level. The coefficient for the control children is similar at .61. A one standard deviation increase in adoptive family SES is associated with a .29 standard deviation increase in the math score -- i.e. about a 13 percent increase at the means of the data. Adoptive family SES appears to have a larger impact on math score at age 16 than it does on the reading score at age 8. As in column (1), father's years of education does not affect the score significantly in the adopted sample, but again has a large effect in the control sample.

The effects of adoptive family SES on test scores are moderate in size. And family SES appears to be nearly as important for the adopted children as for the control children. These results are somewhat at odds with those parts of the psychology literature that downplay the importance of environmental factors and stress the importance of genetic factors.

Columns (5)-(7) examine the importance of family environment to college attendance, income, and marital status. College attendance here is defined very broadly to include university, technical schools, and nursing and teaching schools.

¹⁰ I calculate the differences in coefficients and the standard error of the difference in the following way: I stacked the adopted and the control data and included interactions of a dummy for adoption status with all of the right hand side variables.

Column (5) is a probit and partial derivatives are shown. For the adopted children, the coefficient on family SES is .032. This means that a one standard deviation increase in family SES is associated with a 9.3 percent increase in the probability of attending college. This is a 23 percent increase in probability if measured at the means. The corresponding coefficient for the control group is similar in magnitude and not statistically different from the coefficient for the adopted sample. Again, the coefficient on adopted father's years of education is not significant.

In column (6), I show that adoptive family SES has no measurable effect on family income at age 23. This is the weekly income (in British pounds) of the subject and his or her spouse if any. It is difficult to reconcile the results that family environment affects college attendance but not income. Perhaps lifetime incomes are affected, but a snapshot at age 23 does not pick this up.

In column (7) we see that there is a large effect of adoptive family SES on marital status. Higher family SES makes a child less likely to be married at a young age. I find that the effect is similar for adopted men and women (results not shown here.). A one standard deviation increase in SES is associated with a 17 percent decrease in the probability of being married at age 23.

Appendix IV shows regressions of adopted child outcomes on both adoptive family SES and birth mother SES.¹¹ In this table we see the dual importance of both environment and biology. For three of the seven outcome variables, the coefficients on birth mother's SES and adoptive family SES are both statistically significant. For the reading test at age 16, birth mother's SES has a coefficient of .28 and adoptive family's SES has a coefficient of .41. If I exclude birth mother's SES, (as in Table IV), the coefficient on adoptive family's SES drops to .33. For the other outcomes, the coefficients on adoptive mother's SES are fairly similar whether I include or exclude birth mother's SES. The largest difference is for the reading score at age 8 where inclusion of birth mother's SES reduces the coefficient on adoptive family's SES by 37 percent.

Results for the NLSY

Table V presents results for the NLSY using the same format as Table IV. In Table V, I have three measures of inputs from the adoptive family including mother's years of education, father's years of education, and the log of family income in 1979. As in the previous table, each coefficient is from a separate regression. Controls for child age, sex, and race are included in each regression.

In column (1) we see that each additional year of adoptive mother's education is associated with a gain of .22 years for the child. The coefficient for the control children is .35 and the differences between control and adopted are statistically significant. A one standard deviation increase in adoptive mother's years of education corresponds to an increase of .49 years of education for the child.

When I regress child's years of education on adoptive father's education, the coefficient is smaller (at .16) but is also significant at the 5 percent level. The regression of years of education on log of adoptive family's income has a coefficient .56. This implies that a doubling of family income is associated with a .56 increase in child's years of education. The coefficient on control family's income is .46 and is not statistically different from the comparable coefficient for the adopted sample.

Column (2) shows results for six probits and switches the dependent variable to whether or not the child completed four years of college. The right hand side variables are a dummy for mother completed four years of college, a dummy for father completed four years of college, and log of family income.¹² Partial derivatives are shown. The coefficients on adoptive mother's or father's completion of college are quite large at .40 and .38 respectively. Both of these coefficients are statistically significant. This means that children adopted by a mother with a college degree

¹¹ Inclusion of birth mother's SES further limits the sample. This is the reason that I currently show these results in an appendix rather than in Table IV.

have a 40 percent higher chance of graduating from college themselves when compared to children adopted by a mother without a college degree. The coefficients for the control children are not statistically different from those for the adopted children.

The implications from this result are enormous; family environment has a massive influence on whether or not a child graduates from college. Admittedly, these coefficients may in part be driven by selection bias. However, it is hard to believe that the coefficient is entirely driven by selection bias. Recall that the comparable coefficients in Table IV from the British NCDS are also large.¹³

Column (3) shows that the AFQT score is also influenced by family environment. An extra year of adoptive mother's education raises AFQT by 1.9 points, or about .07 standard deviations. The effect for control mother's education is larger and the difference is statistically significant. In column (4), I show similar results for the ASVAB general science test administered in 1991. A one year increase in adoptive mother's education leads to an increase in general science score of roughly .07 standard deviations.

The dependent variable in the final column is the log of family income in 1994. (By that year, very few people in the adopted sample are living with their adoptive parents, and hence I use income in 1994 as an outcome variable rather than another measure of parental inputs.) A one year increase in adoptive mother's education is associated with a 7 percent increase in family income. The coefficient for the control sample is 6 percent and the difference is not statistically significant.

The results in Table V lead to several tentative conclusions. First, it is evident that child's years of education and probability of college graduation are highly influenced by family environment. Second, the effect of parental education on child's college graduation is remarkably larger than the effect of parental education on test scores. Perhaps family environment is able to

¹² For column (2) only, I switch the right hand side variables from "years of education" to a dummy for four years of college.

influence educational attainment more than test scores. This theory makes sense if one believes that test taking ability relies more heavily on genetic endowments whereas college attendance relies more heavily on parental expectations and income. The theory would also explain why many psychologists have concluded that family environment matters little; these researchers are focusing on IQ scores rather than attainment.

Results for the CAP

Table VI presents results for the Colorado Adoption Project. One advantage of the CAP data (relative to the NLSY data) is that I am able to include both birth and adoptive parent characteristics in the same regression. A major disadvantage of the CAP data is that I only have outcome variables through age 7.

Rows (3) and (4) show the coefficients from a regression of the six outcome variables on birth mother smoking status and adoptive father smoking status. In column (1), adoptive father smoking status enters negatively and significantly in the equation for the child's IQ score at age 7. Children with an adoptive father who smokes score 5.5 points (about 1/2 a standard deviation) lower on the IQ test. I do not of course interpret this negative coefficient to be caused directly by smoking.¹⁴ Rather, adoptive father's smoking status appears to be a marker for some negative characteristics about the child's environment.

Columns (2)-(5) show that an adopted child's verbal score, reading ability, and ability to do subtraction are all lower when the adoptive father smokes. This is not completely surprising given that all of these outcomes are correlated with the IQ score in column (1).

¹³ The NCDS coefficients are smaller. However, the NCDS data are from the UK where higher education is more heavily subsidized than in the US.

¹⁴ In fact the corresponding coefficient for the control is negative but much smaller in magnitude. If the smoking-low child IQ score connection were directly causal, the control coefficient would probably be large too.

The coefficients on birth mother smoking (for adopted children) are all insignificant in columns (1)-(5). In column (6), birth mother's smoking is marginally significant and lowers the index for "child's interest in books" by about 1/3 of a standard deviation.

The regressions using birth, adoptive, and control family's socioeconomic index as the measure of parental inputs show a different pattern. Here all of the coefficients on adoptive family's SES are small and insignificant. The effect of birth mother's SES on verbal IQ score is significant at the 10% level. The size of the effect is modest; a one standard increase in birth mother's SES raises verbal IQ by .16 standard deviations. This coefficient is similar in magnitude to the corresponding coefficient for the control group of .12. All of the other coefficients for birth mother's SES are small and insignificant. In the control child sample, family SES has a significant effect on all of the outcome variables. But the magnitude of the effect is modest.

I find a different pattern for birth, adoptive, and control mother's years of education. In these results, adoptive mother's education never matters but birth mother's education matters strongly for the first three of the six outcomes (IQ, verbal IQ, and PIAT reading score). Control mother's education always matters significantly and with a large magnitude.

In isolation, the results for mother's education would suggest that adoptive family environment does not matter and that the biological component of IQ and test scores matters a great deal. Results similar to these have lead many researchers to conclude that biology is the major determinant of outcomes and test scores in particular. However, this is not the whole story. In the CAP data, adoptive father's smoking status appears to be negatively correlated with child test scores. And in the NCDS and NLSY data, adoptive family inputs affect college going, marriage and income significantly.

V. Conclusion

Studies of adopted children provide one of the most effective ways to separate biological from environmental influences. In this paper I have used variation in education and socio-economic status across adoptive parents to identify the treatment effects of family environment. Two of my three data sets are particularly useful due to the quasi-random assignment of children to parents. In contrast to some of the existing literature, I find large treatment effects from family environment. Outcomes such as college attendance and marriage are particularly affected by characteristics of the parents. Test scores are somewhat responsive to adoptive family inputs depending on the outcome measure considered and the data set employed. The biggest obstacle to this work is sample size. Much more precise statements could be made if we had larger samples of adopted children. Continued data collection in this area will almost surely lead to a deeper understanding of human behavior.

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Table I
Summary Statistics
National Child Development Survey

	<i>Adopted</i>			<i>Control</i>		
	<i>Obs</i>	<i>Mean</i>	<i>sd</i>	<i>Obs</i>	<i>Mean</i>	<i>sd</i>
Parent's socioeconomic index	128	6.78	2.91	7981	5.47	2.98
Father's years of education	81	15.21	1.79	6482	14.97	1.73
Child is male (0-1)	128	0.60	0.49	7981	0.51	0.50
Child is white (0-1)	128	0.98	0.13	7981	0.98	0.13
Birth mother's age	124	24.27	6.52	7763	27.62	5.53
Birth weight in ounces	117	109.86	16.77	7522	118.19	18.28
Birth mother smoked during pregnancy	123	0.20	0.40	7695	0.13	0.34
Southgate reading score at age 7	128	24.85	5.87	7981	24.04	6.64
General ability score at age 11	128	46.09	15.55	7981	44.57	15.60
NFER reading score at age16	107	27.26	5.23	7981	25.88	6.70
NFER math score at age 16	107	13.04	5.99	7981	13.19	7.00
Child attended college by age 23 (see notes)	112	0.40	0.49	6249	0.38	0.49
Family income per week at age 23 (£)	112	110.75	55.68	6249	117.39	60.52
Child married at age 23	112	0.41	0.49	6249	0.46	0.50

Notes:

Adopted children are adopted at birth or by age 3 months.

Control children are those who are raised by both of their biological parents.

Parent's socioeconomic index is from NCDS and is based on father's occupation. Occupations are ranked 1-11 with 11 being the highest income. See text for more detail.

College attendance is defined broadly as any attendance of university, technical school, nursing, or teaching school. Family income includes income of subject plus spouse. NFER is the National Foundation for Educational Research.

Table II
Summary Statistics
Colorado Adoption Project

Input Variables	Birth			Adoptive			Control		
	Obs	Mean	Std. Dev.	Obs	Mean	Std. Dev.	Obs	Mean	Std. Dev.
mother's years of education	174	12.09	1.77	180	14.79	1.79	202	14.90	2.02
father's years of education	30	12.40	1.45	180	15.73	2.38	202	15.65	2.27
mother's college attendance (=1 if attended college)	174	0.23	0.42	180	0.46	0.50	202	0.50	0.50
mother's smoking status (=1 if smoker)	183	0.38	0.48	179	0.15	0.35	201	0.23	0.42
father's smoking status (=1 if smoker)	50	.46	.50	183	0.34	0.48	202	0.34	0.47
mother's Hollingshead Job Rating	134	4.48	1.97	183	2.63	3.28	203	3.29	3.35
father's Hollingshead Job Rating	41	6.56	1.84	183	6.71	1.77	203	6.57	1.73
family socioeconomic Index	117	34.82	19.38	183	45.50	15.58	203	45.94	16.80
child's total birthweight in pounds				139	6.44	1.32	139	6.76	1.14
mother's score on vocabulary test (number correct out of 50)	183	31.02	10.21	183	40.81	7.86	203	40.92	8.14
child's score on Wisconsin IQ test in year 7				183	111.57	10.82	203	114.41	11.23
child's verbal score on Wisconsin IQ test in year 7				183	108.38	11.45	203	112.10	12.34
child's Piat Reading Recognition Score in year 7				183	23.66	7.23	203	24.13	7.42
child's reading capabilities in year 6 (as reported by parents)				183	3.57	1.06	203	3.53	1.15
child capable of subtraction in year 6				183	0.66	0.48	203	0.69	0.46
child's level of interest in books in year 6				159	4.62	0.64	165	4.61	0.65
child's year 6 weight in pounds				141	45.32	6.60	146	45.23	6.23

Notes:

The socioeconomic index (SES) is based on occupation and was designed by the National Opinion Research Council (NORC). Family SES is the average for the two parents. Parents' smoking status is measured at time of interview. Interest in books is reported by parents.

Data collected by Plomin, Defries, and Fulker and the Colorado Adoption Project. Data provided by the Henry A. Murray Research Center of the Radcliffe Institute for Advanced Study.

Table III
Summary Statistics
NLSY 79

	<i>Adopted</i>			<i>Control</i>		
	<i>Obs</i>	<i>Mean</i>	<i>sd</i>	<i>Obs</i>	<i>Mean</i>	<i>sd</i>
years of child's education	170	13.412	2.228	5614	13.312	2.486
whether child attended college	170	0.200	0.401	5614	0.247	0.432
score on armed forces qualifying test (afqt)	170	49.324	27.048	5614	44.400	29.434
score on ASVAB general science test	170	16.424	4.530	5614	14.873	5.230
score on ASVAB math test	170	13.618	5.590	5614	12.932	6.445
log of family income in 1994	114	10.497	0.805	3671	10.485	0.831
adopted mother's years of education	170	11.806	3.091	5614	10.993	3.265
adopted mother attended college (0-1)	170	0.153	0.361	5614	0.088	0.283
adopted father's years of education	151	11.868	4.280	5321	11.054	4.071
adopted father attended college (0-1)	151	0.245	0.432	5321	0.164	0.370
log of family income in 1979	138	9.427	0.891	4531	9.522	0.880
child's age in 1979	170	17.465	2.192	5641	17.741	2.259
child is male (0-1)	170	0.524	0.501	5614	0.491	0.500
child is black (0-1)	170	0.176	0.382	5614	0.199	0.399
child is hispanic (0-1)	170	0.035	0.185	5614	0.143	0.350

Notes:

Educational attainment is measured in 1993 (or 1990 when 1993 was missing). The adopted and control distributions for years of education are shaped very differently. This explains how the mean of "years" can be similar but the mean of "college" different.

Means are unweighted and include the poverty oversample. ASVAB vocational test was administered in 1991. Armed forces qualification test (AFQT) was administered in 1980.

Table IV
National Child Development Survey
Adopted and Non-adopted Children
Regression of Child Outcomes on Parent Characteristics:

	Southgate reading score age 8	General ability score age 11	NFER reading test age 16	NFER math test age 16	College (0-1) age 23	family income age 23	married (0-1) age 23
Mean depend. var. (std. dev) <i>adopted</i>	24.852 (5.867)	46.086 (15.551)	27.262 (5.235)	13.047 (5.986)	0.402 (0.492)	110.753 (55.683)	0.411 (0.494)
Mean depend. variable (std. dev) <i>control</i>	24.040 (6.640)	44.573 (15.604)	25.882 (6.704)	13.187 (6.997)	0.381 (0.486)	117.388 (60.524)	0.462 (0.499)
Regressions (1)-(4). Each coefficient is from a separate regression.							
adopted family's socio-economic status (SES)	0.314* (0.194)	1.163** (0.333)	0.334** (0.081)	0.600** (0.132)	0.032** (0.015)	-0.982 (1.003)	-0.058** (0.012)
adopted father's years of education	0.159 (0.300)	1.473 (1.486)	0.110 (0.338)	0.084 (0.499)	0.048 (0.037)	0.393 (4.863)	-0.041 (0.038)
control family's socio-economic status (SES)	0.421** (0.055)	1.217** (0.176)	0.548** (0.087)	0.607** (0.088)	0.037** (0.007)	1.695** (0.377)	-0.018** (0.002)
control father's years of education	0.583** (0.049)	2.044** (0.160)	0.833** (0.057)	1.151** (0.093)	0.070** (0.010)	1.652** (0.330)	-0.035** 0.004
Test for Control Coefficient=Adoptive Coefficient							
Difference in coefficients on SES: Control-adoptive	0.107 (0.190)	0.054 (0.423)	0.214 (0.143)	0.007 (0.106)	0.005 (0.012)	2.677 (1.015)	0.040** (0.016)
Difference in coefficients on fathers' education: Control-adoptive	0.424 (0.452)	0.571 (1.474)	0.723 (0.431)	1.067 (0.361)	0.022 (0.033)	1.259 (3.425)	0.006 (0.035)
Ratios of Coefficients. These are intended as a measure of (nurture effect)/(nature effect+nurture effect)							
Adoptive coefficient/(Control coefficient) <i>Socio-economic status</i>	0.746	0.956	0.609	0.988	0.865	-0.579	3.222
Adoptive coefficient/(Control coefficient) <i>father's education</i>	0.273	0.721	0.132	0.073	0.686	0.234	1.171

Column 1: Reading test developed by Southgate in 1962. Column 2: General ability test developed by Douglas in 1964. Columns 3 and 4: reading comprehension and mathematics exams constructed by the National Foundation for Educational Research for use in the NCDS. Column 5: An indicator variable for "college" which codes as "1" any graduate of university, technical college, teaching college, or nursing college.

In the upper portion of the table, each coefficient β is from a separate regression. : Child's outcome = $\alpha + \beta(\text{parent characteristic}) + \gamma^*(\text{dummy for male}) + \delta^*(\text{dummy for white}) + \pi^*(\text{ten dummies for region})$

The lower portion of the table shows the differences between coefficients for control and adopted children. The differences and t-stats are from the interaction coefficients (β_5) in the following regressions: Child's outcome = $\alpha + \beta_1^*(\text{education of mother who raised child}) + \beta_5^*(\text{education of mother who raised child} * \text{dummy for child is control}) + \beta_6^* \text{dummy for child is control} + \gamma^*(\text{dummy for male}) + \delta^*(\text{dummy for white}) + \pi^*(\text{nine dummies for region})$.

Control children are defined as children who lived with both biological parents until at least age 18.

Sample sizes for control children: 7981 "control" children for SES regressions and 6482 for father's education regressions. Sample sizes for adopted children: 128, 128, 107, 107, 112, 112, 112 respectively for SES regressions. 81 for father's education regressions.

Standard errors shown in parentheses. ** indicates significance at the 5% level. * indicates significance at the 10% level

Table V

NLSY79: Regression of Child Outcomes on Parent Characteristics:

	years of education	completed 16+ years of education (0-1)*	AFQT score	ASVAB general science score	ASVAB math score	log family income 1994
Mean depend. var. (std. dev) <i>adopted</i>	13.41 2.23	0.2 .40	49.32 27.05	16.42 4.53	13.62 5.59	10.50 0.81
Mean depend. variable (std. dev) <i>control</i>	13.31 2.49	0.25 0.43	44.40 29.43	14.87 5.23	12.93 6.45	10.48 0.83
Regressions (1)-(6). Each coefficient is from a separate regression.						
adopted mother's years of education	0.223** (0.055)	0.400** (0.104)	1.893** (0.590)	0.335** (0.098)	0.310** (0.140)	0.066** (0.028)
adopted father's years of education	0.161** (0.042)	0.377** (0.092)	1.264** (0.455)	0.221** (0.074)	0.316** (0.108)	0.027 (0.023)
control mother's years of education	0.347** (0.010)	0.443** (0.023)	3.565** (0.109)	0.608** (0.020)	0.760** (0.026)	0.058** (0.005)
control father's years of education	0.284** (0.008)	0.442** (0.018)	2.822** (0.085)	0.461** (0.015)	0.604** (0.020)	0.047** (0.004)
log(family income 1979) adoptive families	0.561** (0.217)	0.078* (0.040)	7.475** (2.117)	0.963** (0.379)	1.778** (0.507)	0.158 (0.108)
log (family income 1979) control families	0.458** (0.042)	0.049** (0.007)	5.710** (0.436)	0.953 (0.078)	1.206** (0.103)	0.229** (0.018)
Test for Control Coefficient=Adoptive Coefficient						
Difference in coefficients on mothers' education: Control-adoptive	0.124** (0.055)	0.043 (0.083)	1.672** (0.575)	0.273** (0.104)	0.450** (0.138)	-0.008 (0.025)
Difference in coefficients on fathers' education: Control-adoptive	0.123** (0.044)	0.065 (0.087)	1.558** (0.467)	0.240** (0.084)	0.288** (0.112)	0.020 (0.020)
Difference in coefficients on family income: Control-adoptive	-0.103 (0.136)	-0.029 (0.026)	-1.765 (1.421)	-0.010 (0.255)	-0.572 (0.337)	0.071 (0.055)
Ratios of Coefficients. These are intended as a measure of (nurture effect)/(nature effect+nurture effect)						
Envir coefficient/(Biology + environment coefficients) <i>mother's education</i>	64.2%	90.3%	53.1%	55.1%	40.8%	113.8%
Biology coefficient/(Biology + environment coefficients) <i>father's education</i>	56.7%	85.3%	44.8%	47.9%	52.3%	57.4%

Notes: Control children are defined as children who lived with both biological parents until at least age 18. T-statistics shown in parentheses.

In the upper panel, each coefficient is from a separate regression. : Child's outcome = $\alpha + \beta_1(\text{parent characteristic}) + \gamma^*(\text{dummy for male}) + \delta^*(\text{dummy for white})$

The lower panel shows the differences between coefficients for control and adopted children. The differences and t-stats are from the interaction coefficients (β_5) in the following regressions: Child's outcome = $\alpha + \beta_1^*(\text{education of mother who raised child}) + \beta_5^*(\text{education of mother who raised child} * \text{dummy for child is control}) + \beta_3^* \text{dummy for child is control.} + \text{dummies and interactions for male and white.}$

* Column (2) is a probit of Child attend college on parent characteristics. Mother or father "attend college" is substituted for mother and father's years of education.

The differences in coefficients (control - adoptive) are the implied coefficients on biological influence under the restrictive assumption that Child's outcome = $\alpha + \beta_1^*(\text{biology}) + \beta_2^*(\text{environment})$. Rows (10) and (11) show the size of the implied biology effect as a percent of the total effect.

For column's (1)-(5): Sample sizes for adopted mother's education (170), adopted father's education (151), control mother's education (5614), control father's education (5321), log family income adopted (138), log family income control (5614)

For column (6), all rows: 114 adopted children. 3671 control children.

Table VI
Colorado Adoption Project
OLS of Child Outcomes on Parent Characteristics

	child's score- Wisconsin IQ test in year 7	child's verbal score- Wisconsin IQ test in year 7	child's Piat Reading Recognition Score in year 7	child's reading capabilities in year 6 (as reported by parents)	child capable of subtraction in year 6	child's level of interest in books in year 6
Mean depend. var. (std. dev) <i>adopted</i>	111.856 (10.626)	108.741 (11.555)	23.661 (7.267)	3.586 (1.032)	0.672 (0.471)	4.621 (0.639)
Mean depend. variable (std. dev) <i>control</i>	114.417 (11.237)	112.034 (12.273)	24.152 (7.419)	3.534 (1.151)	0.686 (0.465)	4.608 (0.649)
Coefficients from Regression (1)						
birth mother smokes (0-1)	-1.079 (1.589)	-0.901 (1.722)	0.323 (1.102)	0.124 (0.160)	-0.053 (0.071)	-0.194* (0.107)
adoptive father smokes (0-1)	-5.500** (1.625)	-4.797** (1.761)	-3.096** (1.127)	-0.412** (0.163)	-0.216** (0.073)	-0.018 (0.110)
Coefficients from Regression (2)						
control father smokes (0-1)	-0.708 (1.671)	-0.343 (1.841)	-0.548 (1.104)	0.349** (0.168)	-0.061 0.069	0.001 (0.108)
Coefficients from Regression (3)						
birth family's socioeconomic index	0.065 (0.047)	0.100* (0.053)	0.033 (0.036)	0.003 (0.005)	-8.22E-5 (0.002)	0.003 (0.004)
adoptive family's socioeconomic Index	-0.007 (0.060)	0.030 (0.068)	0.008 (0.046)	-0.001 (0.006)	-0.002 (0.003)	-0.002 (0.004)
Coefficients from Regression (4)						
control family's socioeconomic index	0.139** (0.047)	0.120** (0.052)	0.063** (0.031)	0.017** (0.005)	0.005** (0.002)	0.007** (0.003)
Coefficients from Regression (5)						
birth mother's years of education	0.985** (0.352)	0.847** (0.393)	0.534** (0.251)	0.004 (0.036)	0.020 (0.016)	0.013 (0.023)
adopted mother's years of education	-0.359 (0.395)	-0.127 (0.441)	-0.108 (0.281)	0.032 (0.040)	0.013 (0.018)	0.024 (0.027)
Coefficients from Regression (6)						
control mother's years of education	1.350** (0.381)	1.436** (0.417)	0.737** (0.254)	0.083** (0.039)	0.048** 0.016	0.044* (0.025)
Tests for equality of Coefficients						
F test: coeff adoptive=coeff control <i>parent's smoking</i>	F=3.02 p=0.083	F=2.60 p=0.108	F=10.50 p=0.001	F=0.83 p=0.363	F=2.40 p=0.122	F=0.02 p=0.902
F test: coeff birth =coeff adoptive <i>parent's smoking</i>	F=1.92 p=0.167	F=3.88 p=0.050	F=4.33 p=0.038	F=0.24 p=0.627	F=2.20 p=0.139	F=1.08 p=0.300
F test: coeff birth=coeff control <i>parent's smoking</i>	F=0.05 p=0.826	F=0.31 p=0.578	F=0.94 p=0.334	F=2.18 p=0.140	F=0.01 p=0.934	F=1.65 p=0.200

Rows (1) and (2) are OLS coefficients from the following equation:

Child's outcome = $\alpha + \beta_1$ *(birth mother smokes) + β_2 *(adoptive father smokes) + δ_1 *male

Row (3) is the OLS coefficient from Control child's outcome = $\alpha + \beta_3$ *(control father smokes) + δ_1 *male

Rows (4)-(6) are similar regressions but substitute socioeconomic index for smoking status.

Smoking status is measured at time of first interview rather than during pregnancy or at time of birth. Results for adoptive father smoking status are shown because they have larger and more significant effects than adoptive mother smoking status.

Standard errors shown in parentheses. F tests are calculated by stacking the data to include adopted and control samples and then using interaction terms to estimate the same $\beta_1, \beta_2, \beta_3$ as in rows (1)-(3).

Data collected by Plomin, Defries, and Fulker and the Colorado Adoption Project. Data provided by the Henry A. Murray Research Center of the Radcliffe Institute for Advanced Study.

Sample sizes for parent's smoking: 183 adopted children and 203 control children except column (6) which is 159 adopted and 165 control. Sample sizes for socio-economic index: 117 adopted children and 203 control children except column (6) which is 117 adopted and 165 control.

Appendix I

National Child Development Survey

Evidence of Independence between Birth and Adoptive Families

	Reg One Child's birth weight in ounces	Reg Two Birth mom's smoking status	Reg Three Birth Mom's age in 1958	Reg Four Birth Mom's Job and Socioeconomic Status
Adoptive Mother's social class rating	-0.482 (0.356)	-0.007 (0.012)	-0.403 (0.402)	0.159 (0.222)
Adopted child is male (0-1)	4.084* (2.317)	-0.119 (0.077)	0.505 (1.703)	-1.003 (0.668)
Dummy for child is white	-1.269 (1.841)	-0.113* (0.070)	-0.432 (1.319)	0.617 (0.490)
Region where birth child born: North Western	-11.826* (6.752)	0.036 (0.210)	2.914 (2.251)	1.285 (2.446)
Region where child born: Northern	3.497 (6.469)	0.392* (0.203)	0.960 (3.840)	-1.608 (2.664)
Region where child born: East and West Ridings	-12.028* (6.914)	-0.196* (0.114)	-1.831 (1.700)	-0.938 (3.998)
Region where mother born: North Midlands	-7.813 (6.901)	0.040 (0.181)	-2.187 (2.630)	0.777 (0.975)
Region where child born: Eastern	4.792 (9.163)	-0.104 (0.176)	0.575 (2.270)	-1.734 (1.953)
Region where child born: London and South East	-1.221 (5.954)	0.042 (0.145)	-0.278 (1.369)	0.922 (1.540)
Region where child born: Southern	-3.828 (9.941)	0.040 (0.206)	-1.767 (3.109)	1.861 (1.719)
Region where child born: South Western	-3.630 (11.895)	-0.220** (0.105)	-4.533* (2.621)	2.036 (2.281)
Region where child born: Wales	-6.370 (5.601)	-0.142 (0.122)	1.134 (2.176)	-1.631 (2.562)
Region where child born: Midlands	-8.166 (13.732)	-0.206** (0.101)	-1.727 (3.452)	2.877 (3.928)
Region where child born: Scotland	-10.341 (7.087)	-0.310** (0.113)	-2.979 (1.903)	1.445 (1.327)
N	116	116	116	114
R-Squared	0.1241	0.1844	0.1173	0.1086

Appendix II

Colorado Adoption Project

Evidence of Independence between Birth and Adoptive Mothers

	Adopted Mother's Education	Adopted Mother's Number Correct on Vocabulary Test	Adopted Mother's Smoking Status	Adopted Mother's Socioeconomic Status
Birth Mother's Education	-0.016 (0.068)			
Birth Mother's # Correct on Vocabulary Test		-0.031 (0.580)		
Birth Mother's Smoking Status			0.109** (0.054)	
Birth Mother's Socioeconomic Status				0.044 (0.073)
N	174	174	170	114
R-Squared	0.0003	0.0016	0.0237	0.0032

Appendix III
NLSY 79
Frequency Table of Adoptive Mother and Adopted Child
College Graduation

	Adopted Child is College Graduate		Total
	No	Yes	
Adoptive Mother is college graduate			
No	124	12	136
Yes	20	14	34
Total	144	26	170

Appendix IV
National Child Development Survey
Regressions with both Adoptive and Birth Parent Characteristics:

	Southgate reading score age 8	General ability score age 11	NFER reading test age 16	NFER math test age 16	College (0-1) age 23	family income age 23	married (0-1) age 23
Adoptive family's socio-economic status	0.198 (0.217)	1.359** (0.320)	0.409** (0.120)	0.396** (0.182)	0.046** (0.020)	-1.178 (2.030)	-0.058** (0.016)
Birth mother's socio-economic status	0.156** (0.068)	0.078 (0.241)	0.280** (0.110)	0.448** (0.150)	0.026** (0.010)	1.929** (0.882)	-0.005 (0.014)
controls for region and child male?	yes	yes	yes	yes	yes	yes	yes
R-squared	0.18	0.24	0.29	0.31	0.20	0.18	0.24
N	97	98	83	83	90	90	87

Standard errors shown in parentheses. F tests are calculated by stacking the data to include adopted and control samples and then using interaction terms to estimate the same β_1 , β_2 , β_3 as in rows (1)-(3).