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WE ASK THAT OUR NAMES AND CONTACT DETAILS BE KEPT CONFIDENTIAL

Inquiry into Adoption of Children from Overseas

Submitted by:

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South Australia [redacted]
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Terms of Reference

1. **Discrepancies between state regulations on age, processing, costs and applicant eligibility.**

2. **Benefits and entitlements for adoptive parents**

We welcome the call for submissions for The Inquiry into Adoption of Children from Overseas.

Discrepancies between state regulations on age, processing, costs and applicant eligibility

We are adoptive parents to a five year old daughter adopted from China. South Australia has an age criteria regulation that doesn't allow more than 45yrs between older parent and child at time of placement. China will and has placed children from ten months of age where the older parent is in excess of fifty to sixty five years of age and with regard to the younger parent being under fifty years in other states of Australia consistently.

When our adoption file was sent to China in 2001 the older prospective parent was then forty five years old. The file of the child China matched and allocated to us arrived in Australia at the end of 2002 when the older parent was forty six years old. This child's allocation was refused by AFIS (Adoption Family Information Services) because the child was younger than the South Australian adoption regulation would allow a child to be placed with us. The rejecting of files has happened consistently In South Australia and relates

specifically to the age regulation. We were informed the regulation was in place because, "it was not in the child's best interests" to be placed within a family where the age criteria regulation wasn't met. We were also informed that had the child been a matter of days 'Too young' it would still have been refused. The child's file was sent back to China and the child affected would have to wait in an orphanage until they could complete paper requirements for approval for intercountry adoption again within each orphanage quota. As a result of South Australia's restriction on age not one but numerous children's files have been rejected by this state. This can result in these children spending much longer periods in institutionalized care. We argue that this is in fact not in the best interests of a child seeking a family. Our department and The Hon Jay Weatherill are keen to point out repeatedly and appropriately that the objective of intercountry adoption is to provide families for children and not families with children. Yet South Australia has rejected the very children in need of families that China and other countries have painstakingly provided a matching process for. South Australia insults the integrity of those countries by imposing an age criteria that is not imposed by the majority of other Australian states and that of certain relinquishing countries and confuses the international adoption process for Australia by doing this. When our own allocation was rejected we were told categorically that this was the fault of China for allocating a child so young to us. However couples prior to us in South Australia on numerous occasions had also had rejected allocations due to those children being too young to fit the age criteria. One can safely assume that South Australia was not in fact making it clear to China and other countries that the age restriction applies in this state. To consistently blame China for a problem that exists solely in this state is indicative of the confusion that having differing regulations across states can induce.

The China adoption programme worldwide places on average eight thousand orphans a year *(1) China is widely reported to have at least hundreds of thousands of orphans and foundlings languishing in Social Welfare Institutions *(2). Human Rights groups say there are as many as a million children in some kind of institutionalized care in China. * (2) Just over two hundred placements of Chinese orphans have taken place Australia-wide over a period of three years according to China support groups. Australia has a very small programme with China when compared with other countries of the world *(3,5).

The age criteria discrimininates against South Australian would be adoptive parents over the age of forty- five years. As a result many couples move their families and businesses interstate where less arbitrary regulations exist. In our own case had we lived in Victoria our neighbouring state we would have been able to adopt a younger sibling for our daughter fifteen months ago.

The ' Australian Institute of Health and Welfare' has age percentages for adoptive parents taken from those processed between 2003-04 that confirms the theory of adoptive parents being in a much higher age category than that of biological parents. Twenty five percent of Fathers adopting in 2003-4 were forty five years and over. *(6) The larger majority of adoptive families are

made up of 'older' applicants. It is also legitimate to realize that many more Australians are now choosing to leave it later in life to have families. The small number of couples wishing to adopt in South Australian would not compare with the now increasing number of couples starting families at a later age. South Australia also condones Assisted Reproductive Technology to women until they reach fifty one years of age * (4). There is no age limit imposed on men. It is not thought to be detrimental to the children born to these couples by our South Australian government.

Adoptive parents are rigorously screened in all aspects of parenting a child. Couples pass health and police screening checks several times during the process. They also complete mandatory adoption workshops and are interviewed in regard to cultural awareness, financial viability and emotional soundness. The implementation of an age regulation has no bearing on ability to parent a child and is dismissive of the aforementioned overall assessment. Age consideration can be part of the assessment without being a regulation that discriminates against older couples outright. In other states of Australia where no age limit is imposed by state authorities, couples are assessed on the same fundamental guidelines of suitability, however age is not a factor except where the consideration is in conjunction with health, ability to parent and financial stability.

The age limit of forty five years on a second adoption restricts those families wishing to extend their family. Second to this is the advantage to an interracially adopted child to share that same ethnicity with a sibling both for the child already placed and the new child entering the family. These advantages are well documented in adoption resources and the current South Australian regulation prevents the adoption of a second child where the older parent is in excess of forty five years. By placing an age cap on adoptions of 45yrs this therefore prevents couples with one adopted child then adopting a younger sibling placement.

Relinquishing countries can become easily confused by differing state regulations for adoptions. We have seen this with China. At the time of our first allocation a group of infants of similar age and all from the same orphanage were allocated to N.S.W, Victoria, A.C.T, Tasmania and South Australia. Two of those infants allocated to South Australia were rejected by South Australia because they didn't meet the requirements of the age criteria. A significant number of these applicants in the other states were between forty five and fifty years of age. It is therefore reasonable to assume that China would find the state regulations confusing when allocating children. It would also be quite possible for China to be offended by the constant rejection of allocated infants to South Australian couples and therefore detrimental to the ongoing adoption process with China specifically in South Australia.

We are seeking a national directive on removing state regulations that prevent couples adopting based on criteria such as age restrictions where assessments cover more substantial facts to determine suitability of

applicants. We believe that the age of applicants should be left to the relinquishing country to decide.

Our Australian Prime Minister John Howard was quoted in national newspapers 21st April 2005 as saying, "But let me say, I have never held a view that age is a disqualifying factor. Capacity is the thing that counts. And capacity is found in different quantities in different people at different stages of their lives."

The age regulation is currently under review in South Australia.

There are extreme discrepancies between states on other issues including processing, costs and eligibility. Processing times vary considerably between states due to under resourced government run adoption departments.

In South Australia the government has just refused to extend the license of an adoption agency that they contracted the adoption processing to for the last thirteen years. Up to this point South Australia has had an enviable adoption process where over a thousand children have been successfully placed in those thirteen years. In the hands of a private agency applicants were processed efficiently, support networks implemented and cultural awareness paramount with strong relationships with relinquishing countries built. The adoption community has not been informed of the reasons for the move to in source the adoption process back to the government. We have no doubt having been through an adoption experience that to be processed by an agency that solely deals with adoption of overseas children with adequate staff numbers and vast experience that this should be a national incentive for Intercountry adoptions.

Individual states have separate adoption acts and differing regulations. In South Australia the most recent changes to the processing of intercountry adoptions and revoking of the AACAA ('Australians Aiding Children Adoption Agency') licence met with immense opposition from the adoptive community. Many stakeholders contacted the media in response to The Hon Jay Weatherill's Minister responsible for Children Youth and Family Services and therefore Adoption and Family Information Services (AFIS) announcement on February 3rd 2005 to close the agency and further in source intercoutry adoptions. All stakeholders were sent an information package from AFIS. Within this package a media fact sheet *(7) was enclosed which resulted in the adoptive community being unable to air their concerns through the media and notably on an ABC talkback radio programme for fear of prosecution. Sec 31 of the 1988 SA adoption act covers this *(8). South Australian applicants are also required to sign a 'Statement of Understanding' and clause 13. In that statement reads, 'We will seek approval of AFIS regarding any proposed publicity regarding an adopted child who may be in our care.'

The section of the SA adoption act relating to media publishing of adoptive families inhibits all adoptive families from seeking pro adoption media coverage to promote and educate intercountry adoption to the wider public'. It therefore prevents informing other would be adoptive families of the joy that

adoption can afford to Australians seeking to extend their families in this way. It also precludes children from being photographed for any accomplishments they might achieve worthy of media attention or any event cultural or otherwise that they may unwittingly be photographed taking part in alone or with their families. It does this purely because the clause is wide and sweeping with no clear definitions. These are events that normal family life would entail and those that biological children partake in without the need to ask a government authority. Where a child has legally been adopted by parents Families are still required under this section of the act to contact the Chief Executive of Adoption and Family Information Services on every occasion where they or their children may be exposed to any media coverage that could identify that they've been adopted. Once again adoptive parents are being treated in a completely different way to that of biological parents and not given due regard for the responsibility they feel towards their adoptive children. This is totally unreasonable. South Australia stands alone in being the only state that includes a media fact sheet of this kind in the adoption information package and reinforces a media ban on parents when an adoption order has already been granted and the parents are the legal guardians of that child. We are in need of clarity of section 31 in the 1988 South Australian adoption act in regard to adopted children where an adoption order has already been granted. We have had to ask for confidentiality within our submission because media attention from a public submission could put us in breach of this clause in the act.

Across the states there are great variances relating to adoption costs. Adoption is costly and for one state to impose costs that are significantly higher than another state for the same process is not justifiable. South Australians pay the second highest fees for adoption in Australia and the highest fees for a subsequent adoption. The Hon Minister Weatherill recent said in a media release that by bringing the processing of adoptions under his government department and not extending the license of the AACAA adoption agency that there would be less paperwork duplication. However costs remain the same. Adoption is a costly process our own adoption costs were in excess of thirty three thousand dollars. By setting state adoption processing fees at these extremely high levels without any government assistance the availability of extending families through adoption is limited to the select few that can manage to raise these funds. We completed five government assisted IVF cycles prior to adoption. We were grateful of that assistance in helping us achieve our Australian family and despite the fact that our IVF pregnancies failed prior to birth. However there are no incentives for the small number of Australians that would wish to adopt a child from overseas despite adoption positively resulting in increasing the Australian population in almost every single application. We did achieve our Australian family but without government support because we did it through overseas adoption.

In South Australia domestic adoption of infants is rare with applicants being on the waiting list for up to ten years. Domestic adoption fees are set at a fraction of intercountry adoption fees yet the process of evaluating applicants is the same.

Eligibility of applicants varies from one state to another, whilst South Australia and Tasmania have age restrictions. South Australia also prevents single applicants from adopting but not from making an application. We know of at least two applicants in South Australia that have paid the full and substantial adoption fees to reach approval and then be told their files can not be sent. Once again single applicants have been forced to move interstate to complete adoption. In other states singles applicants are offered the opportunity to adopt from countries that run single programmes.

We believe that a national directive should apply to processing times, costs and regulations affecting eligibility, notably age restrictions.

Benefits and Entitlements for adoptive parents

The maternity benefits accorded to parents of biological children do not apply to adoptive parents. When the government gave the three thousand dollar baby bonus to all babies born after July 1st 2004 they did not consider adoptive parents in this assistance. Adoptive parents rarely have a child placed at less than12 mths of age. Adoptive parents not only have all the costs associated with bringing a new baby into their family but also the high costs of the adoption itself with no government assistance.

We believe that all maternity benefits afforded to biological parents should be made available to adoptive parents within guidelines more applicable to the nature of adoption. Therefore taking into account those children placed at an older age. We also believe that maternity benefits for adoptive leave should mirror that of biological maternity leave irrespective of age of child given that time adjustments for adopted children are essential. They should be structured for when the child enters the family and not concluded from birth of child. In some states government run adoption departments require that one parent take twelve months leave and this should be taken into account. The need for adoptive parents to take time off work to be with a newly placed child is of the utmost importance in the overall need for attachment and bonding to take place. An adoptive child's needs are paramount in the transition period of placement with a new family and culture. Adoptive parents should be afforded a supportive system that takes into account the special needs of adoption parenting. All entitlements afforded to biological children should be afforded to adopted children without age restrictions. As our daughter was nearly three years old at placement many of the maternity allowances and benefits would not be applicable to us. The adoptive community is very small with only 278 children adopted into Australia for the 2002-3 period *(5) surely the government can see the unfairness is excluding this meager number in our population from such benefits.

We would like to see a future where Families that add to the Australian population through adoption are treated with the same consideration as those families that have biological children. That these families can partake in all maternity benefits, workplace awards and maternity leave with special exceptions to age of child through adoption placement. Further to this that the government consider thoughtfully the small number in our adoption community and the financial hardship to those wishing to adopt at these high costs. Many countries with larger adoption programmes assist adoptive families through tax deductions for adoption costs. We can only hope that through this inquiry the government learns these facts and that this has been merely an oversight where adoptive families are concerned and not a deliberate exclusion of non-biological addition to the Australian population.

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References:

1. C.C.A.A. (China Centre of Adoption Affairs) visited Adelaide in October 2001 and were asked how many applications they received annually from International countries collectively, they answered that they allocated on average 8,000 children annually.

2. Statistics on numbers of orphans and foundlings in Chinese Social Welfare Institutes. 'The Lost Daughters of China' by Karin Evans according to Human rights groups. Also 'Wanting A Daughter Needing A Son' by Kay Ann Johnson, Beijing review 1991, China today Sept 1994.

3. The USA completed 5,053 adoptions in 2002 US consular figures, Kay Johnson 'Wanting a daughter Needing a son'.

4. Sourced from REPROMED Adelaide guidelines under the Reproductive Technology Act.

5. AIHW(Australian Institute of Health and Welfare) statistics for intercountry adopted children in 2002-2003 state 278 children were adopted and 17% were from China.

6. AIHW statistics for adoptive parents age's that were processed for 2003-04 state that 79% Mothers were 35yrs and over. That 50% of Mothers were 40yrs and over. 60% of Adoptive Fathers were 40yrs and over and 25% were 45yrs and over.

7. If you or the media want to generate or publish a story about your involvement in adoption, it is important to consider the law about this. The South Australian Adoption Act, 1988 in section 31 deals with the issue of publishing in the media details of people affected by adoption. 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. An exception to this is that the Court or the Chief Executive may authorise a

publication. The law is in place to protect the privacy of people, particularly children, who are involved in adoption. Adopted children may be too young to know about the role and affect of the media and not old enough to give informed consent for stories about them to be published. There have been occasions where considerable distress has been caused through an adoption story being published in the media. Adoption involves a number of parties, some of whom wish to maintain their privacy. This applies to adoptions where the child was born in Australia, as well as where the child was born overseas and adopted by a South Australian family. Publication of stories about children who are still under the guardianship of the Department for Families and Communities requires the permission of the guardian. The law still applies where the adoption order has already been granted.

8. ADOPTION ACT 1988 - SECT 31

Publication of names, etc., of persons involved in proceedings

31. (1) A person who publishes or causes to be published in the news media--

(a) the name of a child, or material tending to identify a child, in relation to whom proceedings have been taken under this Act or any other Australian law that substantially corresponds to this Act;

(b) the name of a parent or guardian, or material tending to identify a parent or guardian, of a child in relation to whom proceedings have been taken under this Act or any other Australian law that substantially corresponds to this Act;

(c) the name of a party, or material tending to identify a party, to proceedings under this Act or any other Australian law that substantially corresponds to this Act,

is guilty of an offence.

Maximum penalty: $20 000.

9. (2) This section does not prevent a publication made in pursuance of an authorisation granted by the Court or the Chief Executive.