

**SUBMISSION NO. 200**

**AUTHORISED:** *Ms Gallagher 21-7-05*



**ACT GOVERNMENT SUBMISSION  
TO THE HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON FAMILY  
AND HUMAN SERVICES**

**INQUIRY INTO THE ADOPTION OF  
CHILDREN FROM OVERSEAS**

**April 2005**

**Authorised by**

**Ms Katy Gallagher MLA**

**Minister for Children, Youth and Family Support**

# CONTENTS

Terms of Reference	1
1. Introduction	1
2. Context	2
Intergovernmental arrangements	3
3. ACT Government's approval process for overseas adoption	4
Costs of the ACT Adoptions Program	6
ACT Statistics	7
4. Support Services for Families	7
Services from the Australian Government	7
Services from the ACT Government	8
5. Conclusion	10

## TERMS OF REFERENCE

*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:*

- 1. Any inconsistencies between state and territory approval processes for overseas adoptions; and*
- 2. 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.*

### 1. INTRODUCTION

The ACT Government welcomes the opportunity to provide a written submission to the Inquiry into the Adoption of Children from Overseas, being conducted by the House of Representatives Standing Committee on Family and Human Services.

The response of the Australian public to the recent South Asian Tsunami tragedy was immediate and overwhelmingly generous in nature. In addition to donations and other offers of humanitarian support, many Australians expressed an interest in adopting children and young people from Tsunami affected countries. The ACT Government received numerous inquiries regarding overseas adoption in the immediate aftermath of the Tsunami tragedy.

The South Asian Tsunami tragedy has highlighted the important role of intercountry adoption (ICA) and the related approval processes and associated costs. Notwithstanding this important context, the ACT is mindful that the debate about ICA needs to be conducted in a culturally respectful and child-focussed manner.

Adoption is a process that engages the needs of three parties:

- the adopted child,
- the birth parents, and
- the adoptive parents.

Care must be taken to balance the interests of all parties, but the child's best interest must be the paramount consideration. The ACT Adoption Act 1993 (section 6) also confirms in law this principle "For this Act, the welfare and interests of the child concerned shall be regarded as the paramount consideration." It is important that concerns about improving access to ICA is not expressed in a way that portrays ICA

solely as a service for families who want children. Any perception that ICA is about obtaining children for families lends itself to perceptions of cultural imperialism, with the possible consequence that participating countries may withdraw from the process.

The need for a comprehensive assessment of the suitability of prospective adoptive parents is a fundamental component of a successful adoption system. People considering intercountry adoption must be assessed as suitable by their resident Australian state or territory and they must also meet the criteria set by the country they are seeking to adopt from. The conditions set by the overseas country may be very different from those in Australia; for example, they may specify religious backgrounds, marital status, age, fertility status or cultural background.

The rigorous arrangements currently in place are ones that have been agreed upon as best practice both in Australia, as a receiving nation, and by the countries seeking to place their children in Australia. Any proposed changes to assessment processes must be based on the best interests of the child as the paramount consideration.

**Recommendation 1: The ACT Government recommends that the interests of all parties to Intercountry Adoption be taken into account but that the best interests of the child be the paramount consideration.**

## 2. CONTEXT

Intercountry Adoption (ICA) is a relatively recent development in Australia that effectively began in April 1975, when Australian families opened their homes to Vietnamese war orphans airlifted out of their homeland following the fall of Saigon.

ICA is a means of providing for the needs of children who would otherwise be deprived of a family. It also provides an opportunity for applicants to create a family other than biologically.

However, ICA is viewed by some as morally ambiguous, an arrangement that denies children full and rightful participation in their country and culture of origin, and one that has the potential to create confusion and conflict of identity for children adopted into a different society from their birth country.

Many overseas governments are guarded about releasing their children or authorising arrangements that could in any way be seen as resembling a “baby trade” involving the sale or theft of children for Western couples and individuals seeking to create or extend their family.

In addition, ICA can be seen as diverting scarce resources from already stretched local child welfare resources, and an ineffective method of assisting other countries to address the needs of their children needing alternate family care.

Many overseas countries that participate in ICA place strict quotas on the number of children to be placed dispelling the notion that there are thousands of children overseas who would benefit from a placement within Australia. It is clear that there are many overseas children in need, however, their need primarily is for improved aid and support within their country of origin not for an ICA placement. Further some ICA adoptees, more particularly those who are placed at an older age, report of their struggle to make the transition to a new family, culture and lifestyle.

The impact and some of the dimensions for individuals are described as:

*“They are keenly aware of how their lives might have been... They bear the burden of gratefulness, often to parents who would be appalled to think that their children feel such an emotion...to an action motivated by altruism”<sup>1</sup>:*

### **Intergovernmental arrangements**

The ACT also recognises that ICA involves joint undertakings between nations and that the concerns of nations releasing children for adoption require sensitive and collaborative responses.

ICA is governed by the *United Nations Convention on the Rights of the Child* and the *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*.

As part of the arrangements for the implementation of the Hague Convention in Australia, which Australia ratified the 1998, the Commonwealth, States and Territories entered into the *Commonwealth-State Agreement for the Implementation of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* to clarify their respective roles and responsibilities. A national approach to ICA is promoted through biannual Intercountry Adoption Meetings of Commonwealth, State and Territory Central Authorities (or Commonwealth/State/Territory accredited bodies).

ICA adoptions are facilitated only from countries that are signatories to the Hague Convention or countries with whom Australia has a bilateral agreement in relation to

---

<sup>1</sup> Sarah Armstrong & Petrina Slaytor, *The Colour of Difference – Journeys in Transracial Adoption*, Federation Press, Sydney, 2001

adoptions. Currently this involves 38 nations under the Hague Convention, and agreements with China, Ethiopia, Fiji, Hong Kong, Korea and Taiwan.

In October 2004 the Community Services Minister's Advisory Council (CSMAC) affirmed continuation of these arrangements, subject to review in 2009. There was also agreement at this meeting to a replacement clause in the current Commonwealth-State Agreement to state that *"New inter-country adoption programs will only be developed with countries which have become a party to the Hague Convention"*.

As part of the shared monitoring of ICA arrangements between the Australian, state and territory governments, the latter each take responsibility for the lead in maintaining the relationship with at least one country. The ACT shares responsibility with Tasmania for establishing arrangements with the Republic of South Africa.

The ACT is strongly committed to the system of cooperation and a national approach to ICA based on the Hague Convention. This provides established safeguards to ensure that each ICA takes place in the best interests of the child concerned and with respect to his or her fundamental rights, as enshrined in international law.

Recommendation 2: The ACT Government recommends that Intercountry Adoption practices be carried out in a culturally sensitive and collaborative manner with countries releasing children, and that consideration of issues specific to these countries be a standing item on the agenda of the Intercountry Adoption Meetings of the Commonwealth, State and Territory Central Authorities.

### **3. ACT GOVERNMENT'S APPROVAL PROCESS FOR OVERSEAS ADOPTION**

The ACT, along with the States and the Northern Territory, is a willing party to the implementation of a system designed to safeguard and protect the rights, welfare and interests of children being adopted, while providing applicants with a professional adoption service. The high degree of cooperation and nation-wide regulation of the processes supporting ICA is reflected in a range of common practices – with differences in approaches linked to local legislative requirements and the availability of resources to support each state or territory ICA program.

The ACT Department of Disability, Housing and Community Services through the Office for Children, Youth and Family Support (OCYFS) employs suitably qualified

staff supported by external consultants, both social workers and psychologists, to undertake assessments of the suitability of applicant(s). These assessments, known as Home Studies, are forwarded to the country of origin for allocation of a child.

In addition to the adoption information, training and support services, and the assessment and processing of ICA adoption applications the OCYFS also provides:

- an Adoption service for locally born children and their families.
- an Adoption Information Service, a program which provides information, mediation and counselling post adoption to affected parties
- step parent and enduring parental responsibility (formerly known as Ward adoption)
- a source of specialist skills in other permanency planning arrangements for local children unable to be restored to their parents' care.

## Procedures

The ACT's objective in relation to ICA is:

*"To provide children, identified within their birth countries as needing adoptive placement overseas, with suitably trained, assessed and supported adoptive parents who will ensure that the children have knowledge of their origins and an appreciation of their cultural heritage."*<sup>2</sup>

All adoption applicants are required to attend a half-day information session and a two day ICA Seminar, which are held twice a year, prior to lodging an application. Once approved to adopt applicants are required to attend a parenting group, which is held once per year.

Applications are processed as required in a timely manner. Dependent upon the country of origin, placement of a child generally occurs between six and twenty-four months after the application is received in the overseas country. Home Study reports are then undertaken.

The ACT keeps abreast of developments and requirements of each individual ICA program through regular liaison both with the overseas country and the other state and territories and by participation in the ICA Central Authorities meetings.

The ACT ensures at least four post-placement contacts are made with the adopted child and their family, over a minimum period of six months or until the child's adoption is finalised. Post placement reports are also required by the child's home country. This support service may be required for a longer period, or be reinstated, where there is a need to provide additional support to the child and family. It is

---

<sup>2</sup> ACT Adoptions Unit Procedures Manual, Office for Children Youth and Family Support, unpublished.

planned to strengthen this option in the second half of 2005 by establishing a Post Adoptive Support Service in the ACT that will be available to adopted children and their families over the duration of the child's journey to adulthood. It is envisaged that families will only require services sporadically and usually at key times in the child's development trajectory.

OCYFS also maintains close links with other government and non-government organisations in the ACT involved in providing services that meet the needs of children adopted from overseas and their parents. Information and referrals are provided to adoptive parents regarding relevant community services and ICA support groups. This is to ensure that adoptive parents receive sufficient support following the placement of a child, to enable them to ultimately establish secure attachments relationships for the child within the context of their adoptive family.

The ACT Government also supports and funds a range of networking opportunities for individuals and interested organisations on issues associated with ICA.

### **Costs of the ACT Adoptions Program**

The current costs to ICA applicants in the ACT fall within the range of \$20,000 - \$40,000, depending on the country of origin of the adoptive child. However, it is important to note that the majority of costs are associated with expenses incurred in the child's country of origin such as country program fees, donations within the country (usually to their child's orphanage) and travel and accommodation costs.

The fees charged by the ACT Government are as follows:

<b>Item</b>	<b>Cost</b>
ICA Information Sessions	free
ICA Seminar	\$ 126
ACT Administration Fee	\$1,191
Home Study Report	\$2,017
Post-placement Visits & Report	\$ 820
<b>Sub-total of ACT fees</b>	<b>\$4,154</b>

The fees meet approximately one-third of the total cost of administering the ICA program, and do include the funding for a range of general family support services accessed by participants in the ICA program. The cost impost on the ACT is a key consideration in any expansion of the ICA program.



## **ACT STATISTICS**

During the 2004 calendar year 118 couples or individuals made initial inquiries of OCYFS regarding adoption. Of these family units:

- 76 expressed interest in ICA
- 13 expressed interest in local adoption
- 29 expressed interest in both services

29 family units decided to proceed to lodge an application to adopt. Of these

- 22 applied for an ICA
- 7 applied to adopt locally

During 2004, 23 adoptive children were placed in the ACT as follows (by country of origin)<sup>3</sup>:

- 6 from Ethiopia
- 5 from Korea
- 4 from China
- 1 from Thailand
- 1 from Philippines
- 1 from Sri Lanka
- 5 from Australia

## **4. SUPPORT SERVICES FOR FAMILIES**

### **Services from the Australian Government**

The ACT Government is supportive of initiatives that would result in adoptive families having access to the same government benefits and entitlements available to families with birth children and receiving a consistent quality of service wherever they live in Australia.

The ACT supports the view that families adopting from overseas should receive the same financial benefits from the Australian Government as non adoptive families, and that in some cases their needs warrant additional consideration.

The ability to access financial benefits from the Australian Government, in addition to ongoing support from state and territory government agencies, will increase the likelihood that the adoptive child's needs are met and that the outcome of the process will be a positive one for both the child and their family.

Increased financial support is not proposed as a means for widening the net of families seeking to be take part in ICA or increasing the number of placements.

Recommendation 3: The ACT Government recommends that measures be taken to ensure that adoptive children and parents are able to access the same entitlements to family support and financial benefits that are available to other families in the Australian community. Where time frames are applied to determine eligibility in cases such as the baby bonus, it is recommended that these be waived, given that overseas born adoptive children will generally not meet these criteria but their families still incur significant establishment costs.

## Services from the ACT Government

The ACT does not discriminate against adoptive parents in program eligibility and has introduced the *Human Rights Act 2004* to strengthen respect for and the protection of human rights in the ACT. The *Human Rights Act 2004* protects the following rights and freedoms:

- right to equality before the law and equal protection of the law
- right to life
- right not to be tortured or treated in a cruel, inhuman or degrading way
- right to protection of the family and children
- right to privacy and reputation
- freedom of movement
- freedom of thought, conscience, religion and belief
- freedom of assembly and freedom of association
- freedom of expression
- right to take part in public life
- right to liberty and security of person
- right to humane treatment when deprived of liberty
- rights of children in the criminal process
- right to fair trial
- rights in criminal proceedings
- right to compensation for wrongful conviction
- right not to be punished more than once
- freedom from retrospective punishment
- freedom from forced work
- rights of minorities to their culture, religion and language

Notwithstanding these commitments, adoption is one component only of state and territory government responsibilities towards children and families and this government respects that each jurisdiction must make its own decision about the allocation of resources.

Recommendation 4: The ACT Government recommends that the decision about allocation of resources to Intercountry Adoption remain the domain of State and Territory governments and that this will be based on both their determination of child welfare issues within their jurisdiction and a cooperative national approach to ICA.

The adoptive placement of a child begins in his or her country of origin, and for the countries governed by the Hague Convention or with whom Australia has agreements, this is an involved process. This includes a search for care options within the country, and where these are not available making decisions about suitable matches of overseas adoptive families.

Similarly, because of the complex and highly personal nature of the adoption process, applicants or prospective adopters are entitled to a comprehensive and individualised service that extends beyond the placement of the child. In many cases supports need to be extended for the duration of childhood or are sourced at critical life stages.

Common needs are:

#### Differences between adoptive and birth parenthood

While birth parents usually have access to their child from birth, adoptive parents do not receive a baby until he or she is at least a number of weeks or months old and in the case of ICA children may be several years old. ICA Adoptive parents often have scant knowledge of their child's early developmental history and usually very limited or no genetic birth family history.

#### Older children who are adopted have life experiences that may have damaged them emotionally

Older children are often grieving for their family of origin and are likely to exhibit behaviour that is difficult for adoptive parents to understand and to manage appropriately. These factors can be complex and significantly affect the attachment relationship between adoptive parents and the child.

#### Adoptive parents also have to cope with the existence of another family, and in the case of ICA another culture.

In order to do this, adoptive parents need to have information about the child's family history if possible and their culture, and ideally access to a support group comprised of other children and adults from the country of origin. By the very nature of the demographics of the ACT – a multi-cultural community within a contained geographical area - adoptive children and families in the ACT are fortunate that there is abundant access to relevant cultural and support service networks.

Recommendation 5: The ACT Government recommends that Intercountry Adoption placements only be considered where the child and their adoptive parents have access to relevant support services and networks.

Given the diversity and complexity of issues relating to ICA, the Inquiry also provides an impetus for further research into this area and the opportunity to continue the development of purposeful and evidence based practices that result in positive outcomes for overseas born adoptive children and their parents.

Recommendation 6: The ACT recommends that the Central Authorities continue to research and develop Intercountry Adoption programs that focus on strengthening the screening, placement and ongoing support processes that are likely to result in positive outcomes for the children and their families

## 5. CONCLUSION

The ACT Government is committed to working with the other governments across the nation to make constructive improvements to adoption processes in Australia.

The ACT Government would however be most concerned about any pressure to expand ICA programs that could result in the weakening of screening, placement and ongoing support processes that could result in future hardship to children and their adoptive families and the diversion of extra human services resources, at considerable personal and economic cost.