

Commonwealth Government Response

House of Representatives Standing Committee on Family and Human Services' Report *Overseas Adoption in Australia*

Introductory Comments

The Commonwealth Government ('the Commonwealth') would like to thank the House of Representatives Standing Committee on Family and Human Services ('the Committee') for the *Overseas Adoption in Australia* report ('the Report'). The Report is a timely review of the operational arrangements for overseas adoptions which have remained unchanged since 1998 when Australia ratified the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* ('the Hague Convention').

The Commonwealth commends the Committee on collating a range of important program information and for providing a useful forum for adoptive parents to share their views on how to improve overseas adoption programs. The large number of submissions received by the Committee and the enormous public interest generated by the inquiry indicates that the Committee has provided a valuable service in helping articulate the concerns of many Australians about how the current framework operates in relation to the adoption of children from overseas.

Taken as a whole, the recommendations create a blueprint for systemic change in the way the adoption of children from overseas are handled. The Commonwealth supports the call for reform. Significantly, the Commonwealth has accepted the recommendations made by the Committee for the Commonwealth to enter into negotiations so that it can undertake an enhanced role in overseas adoption. The Attorney-General's Department will have primary carriage of the implementation of the recommendations.

However, it should be acknowledged that there are significant lead times involved in the implementation of several of the recommendations, especially in renegotiating a new *Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption* ('the Commonwealth-State Agreement').

The Commonwealth acknowledges that the wide-ranging reforms proposed by the Committee can only be progressed in consultation with State and Territory Governments. Given their experience in overseas adoption, a collaborative approach will be particularly important in the consideration of the acceptability and feasibility of options for the establishment and management of existing and new overseas adoption programs.

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)*

The recommendation is accepted. Depending on the outcome of significant negotiations with the State and Territory Governments, implementation may require a long lead time and will have resource implications which will need to be closely examined.

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)*

The recommendation is accepted.

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)*

The recommendation is accepted. It is noted that, while doing its best to influence the State and Territory Governments to move to greater harmonisation, the Commonwealth cannot dictate outcomes as the operational aspects of overseas adoption will remain primarily a State and Territory Government responsibility. In renegotiating the Commonwealth-State Agreement, the Commonwealth would look to the Community and Disability Services Ministers' Advisory Council as a key source of advice and means of consultation, in particular through the establishment of an adoption sub-committee.

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)

The recommendation is accepted. It is noted that the New South Wales Government has advised that this issue will be canvassed in the current review of the *Adoption Act 2000*.

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)

The recommendation is accepted. However, it is noted that all State and Territory Governments already have consultative mechanisms. Hence, the Commonwealth would submit the proposed model to the State and Territory Governments for their consideration noting the existing mechanisms.

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 the enactment of section 94ZL 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)

The Commonwealth does not support recommendation 6 to remove the restriction on unpaid adoption leave for the adoption of children aged under 5 years.

Under the Australian Fair Pay and Conditions Standard ('the Standard'), adoptive parents of an 'eligible child' are guaranteed up to 52 weeks of unpaid adoption leave. Both parents are entitled to be on leave at the same time for up to three weeks from the day of placement.

The *Workplace Relations Act 1996* ('the WR Act') provides flexibility for parents to negotiate conditions of employment (including adoption leave) in a workplace agreement. Workplace agreements must provide for adoption leave entitlements which are equal to, or more favourable than, entitlements provided under the Standard.

The parental leave provisions of the WR Act reflect an award standard that has been in place for full-time and part-time employees for over 15 years and for eligible casual employees since 2001.

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*)

The Commonwealth does not support the recommendation to amend the *Maternity Leave (Commonwealth Employees) Act 1973* ('ML Act') to provide for adoption leave.

Adoptive parents are guaranteed up to 52 weeks of unpaid adoption leave under the Standard. As a protection for employees, workplace agreements must, at all times, provide for adoption leave entitlements which are equal to, or more favourable than, entitlements provided under the Standard.

The WR Act provides the flexibility for employers and employees to negotiate entitlements which are more generous than the Standard through agreement making.

Since 1996 it has been Commonwealth policy that terms and conditions of employment for Commonwealth employees be negotiated at the workplace level utilising the flexibilities available under the WR Act. Following on from this, a number of APS agencies have introduced paid adoption leave in workplace agreements equivalent to, or above, the paid maternity leave conditions provided through legislation.

Given the Standard is in place, and agencies are already using the flexibilities available under the WR Act to build upon minimum adoption leave entitlements, the Commonwealth does not consider that amendments to the ML Act are warranted.

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*)

The Commonwealth supports recommendation 8, in principle, that the advisory material issued by the Department of Employment and Workplace Relations (in particular the Office of the Employment Advocate) makes reference to adoption leave.

The provision in a workplace agreement of conditions that are more favourable than those required by the WR Act remains a matter for agreement between the employer and employee, or group of employees.

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*)

The Commonwealth does not accept this recommendation and will retain the current age limit for Maternity Payment.

The Commonwealth recently extended the age limit for eligibility for Maternity Payment in relation to adopted children, as part of the 2005-06 Budget.

From 1 July 2005, the age limit for an adopted child was extended from 26 weeks to under two years of age. Specifically, families who adopt a child born in Australia under two years of age are eligible and families who adopt a child from overseas under the age of two are eligible if the child enters Australia before turning two years of age.

The extension recognises that most adoptions, both local and overseas, take time to complete and that families who adopt children under the age of two face similar costs to families with newborn babies. The age limit ensures that Maternity Payment remains a payment to support families at the time of the birth or adoption of a young child.

Setting the age limit for adopted children at under two years strikes a reasonable balance between the policy intent, which is to assist families with the costs that arise around the birth of a child, and the practical realities of adopting a child from overseas.

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 that the eligibility period is two years after the child's entry to Australia. (*para 4.44*)

The Commonwealth accepts this recommendation. The Commonwealth will pursue amendments to legislation to extend the eligibility criteria for the Maternity Immunisation Allowance to cover children adopted from overseas who arrive in Australia before the age of 16 years and who are immunised to an appropriate level within two years of their arrival.

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*)

The recommendation is accepted as an enabling recommendation. That is, the Attorney-General would request amended legislation that enabled births of overseas adopted children to be registered at the request of the parents or, in future years, at the request of the adopted child. The request would seek amended legislation that provided for registration of births for future adoptions arriving in Australia and not seek retrospective legislation to provide for the registration of all overseas adopted children currently in Australia.

The Commonwealth notes that while certain overseas jurisdictions issue identity documents and adoption certificates which are recognised by Australian law, adoptive parents and their children would benefit from receiving a local birth certificate that would put them on the same footing as other Australian parents and their children. However, care must be taken to ensure that the integrity of birth statistics, which underpin the production of both official fertility estimates, and official population estimates used in determining the number of seats for each state and territory in the House of Representatives, to assist in drawing electoral boundaries, and in financial allocations to the states and territories, are not adversely affected by this change. Therefore, the Attorney-General will request that the State and Territory Governments amend their legislation in consultation with the Australian Statistician.

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*)

The recommendation is accepted in part. The Commonwealth will sponsor an amendment to the *Australian Citizenship Bill 2005*, to provide for children whose adoption has been finalised under full and permanent Hague Convention arrangements to be registered as Australian citizens.

Recommendation 13:

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

This recommendation is accepted in part. The Commonwealth agrees that the procedures to enrol in schools for intercountry adopted children, who are either Australian citizens or hold the permanent resident visa subclass 102, should be the same as those for children born in Australia. On the basis of information provided by the states and territories, the Commonwealth considers that the enrolment procedures provide for this, so further action is not necessary.

Recommendation 14:

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

This recommendation is accepted. Instructions to passport-issuing staff will be reviewed and amended, if required, to ensure staff awareness of issues relating to intercountry adoptions.

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)*

This recommendation is accepted. The Commonwealth will introduce a number of initiatives to address the concerns of the Committee. In particular, training modules and enhanced induction and refresher training will be developed and an information package for adoptive parents on eligibility for Medicare will be made available.

The Commonwealth is pleased to report that Medicare has already implemented much of this recommendation, within existing resources.

Recommendation 16:

The Productivity Commission and the Australian Institute of Health and Welfare (AIHW) 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)*

The Commonwealth endorses the importance of producing relevant and timely performance information on intercountry adoptions. The AIHW currently publishes detailed demographic and time series information on local and intercountry adoptions in the annual publication *Adoption, Australia*.

The Commonwealth therefore considers that the AIHW would be in a better position to advise on producing the type of data recommended. The Commonwealth understands that several pre-conditions would need to be satisfied before such data could be produced. First, agreement and support is required from all jurisdictions. Second, state and territory databases would need to be enhanced, and common definitions, counting rules and collection methods developed. Third, if these data were available, the AIHW would consider, in conjunction with the relevant stakeholders, the capacity to broaden the scope of the annual publication. Finally, resources for this work would need to be allocated for each phase, as they are not available in the current AIHW budget.

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)*

The Commonwealth endorses the importance of moving as quickly as possible to expedite applications whilst complying with the Hague standards. The Commonwealth will strongly encourage State and Territory Governments to minimise delays and share best practice models. In particular, it will seek to have the principle that Central Authorities should use their best endeavours to expedite applications explicitly incorporated in the renegotiated Commonwealth-State Agreement. However, it is not seen as appropriate or necessary to do more legislatively than has already been done to properly and fully implement the Hague Convention in legislation.

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)*

This recommendation is accepted in principle. However, before approaching relevant state and territory ministers the Commonwealth sees a need to assess the costs and

benefits of accreditation, whether it be on a state or territory basis or a national scheme, taking account of relevant Australian and overseas experience.

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)*

The recommendation is accepted. It is noted that the Commonwealth will aim to develop cooperative models in partnership with State and Territory Governments to manage adoption programs. Implementation will require a staged approach and will have resource implications which will need to be closely examined.

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)*

This recommendation relates to the Protocol for Initiating Adoption Programs which is annexed to the Commonwealth-State Agreement. As the Commonwealth Response to recommendation 1 accepts the need for the Commonwealth-State Agreement to be renegotiated, the Protocol will be examined as part of that process.

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)*

The recommendation can be accepted within the current aid program framework that guides AusAID's capacity building and governance programs. Namely, that capacity building and governance activities supported through Australia's aid program reflect the priorities determined jointly by Australia and aid recipient countries and that those priorities are considered against the relevant criteria to maximise the benefits of available resources.

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*)

The recommendation is accepted but it is noted that the reference in the recommendation should be to Victorian legislation.

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*)

The recommendation is accepted but it is acknowledged that there are resource implications involved in developing and updating such a file tracking system.

Recommendation 24:

The Department of Foreign Affairs and Trade (DFAT) 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*)

This recommendation is accepted. DFAT will continue to provide assistance where requested in the circumstances outlined by the Committee.

Recommendation 25:

The Australian census should 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*)

The Commonwealth accepts the importance of information about children who are either birth, adopted, fostered or other out of home care children. The 2003 National Family Characteristics Survey (FCS), conducted by the Australian Bureau of Statistics (ABS), identified that of all children aged 0-17 years in Australia: 19,000 were adopted; 6,000 were foster children; and 46,000 were in household care arrangements other than with natural parents, of which 31,000 were living with their grandparents. The three yearly FCS will provide a time series of information collected about such children in Australia. The interview based survey approach allows this sensitive topic to be explored confidentially with the relevant adults. The five yearly Census, and the format for reporting on a form retained in the household for a period of time, is not considered an appropriate approach for such sensitive information to be collected. The ABS will, as part of a review of its household survey program, consider options for improving the information about the living arrangements of Australia's children.

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*)

The Commonwealth supports the recommendation. The Attorney-General's Department will facilitate return visits, where it continues to have relevant links with overseas adoption agencies, by assisting in establishing contacts between agencies and international adoptees.

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*)

The recommendation is accepted in part, as it relates to facilitating the establishment of a national peak overseas adoption support group to represent the interests of the adoptive community.