



Australians Adopting European Children (AAEC)'s

Part A

Submission

to

Inquiry into Adoption of Children from Overseas

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 on 16 February 2005 resolved to conduct an inquiry.

Terms of reference

The Committee shall inquire into and report on how the Australian Government can better assist

- Australians who are adopting or
- Australians who 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.

The Committee invites interested persons and organisations to make submissions addressing the terms of reference by 22 April 2005. In order to facilitate electronic publishing of submissions, the Committee would prefer them to be emailed or sent on disk to the Secretariat, if possible.

STANDING COMMITTEE

29 MAR 2005

on Family and Human Services

C.M. Phillips 23.3.05
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President

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Synopsis

The general population has little knowledge of adoption; only when faced with unexplained infertility, do they find out. Australia's total fertility rate is below self-replacement. In the last 16 years, domestic adoptions have decreased by more than 85%. The number of children available for local adoption are too few in number to accommodate waiting couples. Until the doctors can considerably improve IVF techniques, intercountry adoption remains the last means of becoming a family.

Australia needs immigrants - surely, intercountry adoption is the best form of immigration.

But intercountry adoption is a lengthy process – measured in years with high costs – measured in tens of thousands of dollars and with limited choices.

Australian Institute of Health and Welfare statistics indicate that some state departments are more user-friendly than others. NSW is a state with a population more than 20 times that of the ACT, yet NSW managed less than 3 times the ACT's intercountry placement adoptions.

The process is too time-consuming and too many anomalies exist between the states on issues such as like access to maternity leave for adoptive parents and eligibility criteria.

All Australian states should have the same fairly broad intercountry adoption criteria. There is no need for strict criteria when it is the overseas country's criteria that ultimately determines if the applicants are accepted.

Adoption and birth are comparable methods of family formation and since birth is highly subsidized by government, intercountry adoption should be similarly supported. Adoption should be about the needs of the children not the wealth of applicants. Adoption processing fees should be eliminated or at least reduced to be in line with domestic adoptions.

Immigration visa fees should be waived for intercountry adopted children and all restrictions on the Federal Maternity Payment be removed.

Applicants sense an **underlying reluctance** on the part of state adoption workers to be involved in intercountry adoption. The reason cited is that intercountry adoption is creating another type of "stolen generation". Children adopted from overseas have been relinquished by their birthparents and could not be found homes within their own country. These children were not forcibly taken from their parents. Hence the comparison to the Australian Aborigine stolen generation is groundless.

Currently, there are only 5 countries with effective adoption programs out of a total of 16. Not all applicants would be able to meet the country criteria, especially the applicants over the age of 45.

While the active programs are setting quotas, the volume of applications in NSW is increasing, almost doubling in the last 4 years.

Australians need an intercountry adoption a program that has many children in need of families.

AAEC strongly recommends that Federal Attorney-General initiate a bilateral agreement with Russia and seek accreditation with the Russian Ministry of Education so that Australian couples can apply to adopt from Russia.

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- A1 Summary of Overseas Adoption Program Criteria: 3/3/05 NSW DoCS

Abbreviations

- AACAA..... Australians Aiding Children Adoption Agency
- AAEC Australians Adopting European Children
- AFIS Adoption and Family Information Services (SA)
- AIHW Australian Institute of Health & Welfare
- BMI..... Body Mass Index
- DFAT..... Department of Foreign Affairs and Trade
- DIMIA..... Department of Immigration and Indigeneous Affairs
- DoCS NSW Department of Community Services: Adoption & Permanent Care
- Hague Convention #33: Protection of Children and Cooperation in Respect of Intercountry Adoptions
- HREOC..... Human Rights and Equal Opportunity Commission
- IASO..... Intercountry Adoption Support Organisation
- NGO Non Government Organisation

1. AAEC's Background

Australians Adopting European Children (AAEC) was formed late 2001 once it was realised that the Romanian moratorium was likely to become interminable.

Although it is a NSW-based group, AAEC has members from a number of states (Vic, ACT, Qld, SA, WA). AAEC continually lobbies for new intercountry adoption programmes, in particular from Europe for all Australians.

Even though each couple has a different story to tell, our members share a common bond in the yearning to create a family. Some couples have endured years of expensive, intrusive IVF treatment only to be told that their infertility is unexplained and so, their desire for a family remains unfulfilled. Many religious and social events revolve around children, and couples without them feel isolated.

Hence, couples who apply to adopt children from overseas countries have usually exhausted all other means. These couples are normally older and therefore do not satisfy local adoption criteria.

Intercountry adoption is the last means of becoming a family.

Approximately half of our NSW members have been in "the system" for sometime, minimum 5 years – some attempting their second adoption – all still waiting.

AAEC regularly meets with the Department of Community Services: Adoption and Permanent Care (DoCS) at their Intercountry Adoption Support Organisation (IASO) meetings some 3-4 times a year.

This and the fact that AAEC is in weekly contact with other Intercountry Adoption Support groups substantiates AAEC's claim that we are in a position, without doubt, to comment on the intercountry adoption situation.

2. Why are intercountry adoptions necessary?

The adoption authorities will tell you that there are other options to intercountry adoption.

2.1. Local adoptions & Permanent Care

In a nutshell, there are few children available for domestic adoption.

In 1987-8, there were 578 children adopted domestically in Australia compared to 73 in 2003-4 [ref. 1a: pg 9]. So in the last 16 years, domestic adoptions have decreased by more than 85%.

This decline in domestic adoption has been caused predominantly by:

- effective birth control leading to a decrease in the number of unplanned pregnancies,
- the reinterpretation of abortion law in 1971,
- the provision of income support for single parents and
- changed community attitudes to single parenthood

resulting in alternatives to adoption.

As the IASO meeting of 17/2/2005, DoCS revealed that it had 813 intercountry adoption applications in various stages of the adoption process. 24 children were locally adopted in NSW in the period 2003-4 [rf. 1a: pg 9].

 **The number of children available for local adoption are too few in number to accommodate waiting couples.**

Unlike adoption orders, permanent care orders do not change the legal status of the child and they expire when the child turns 18 or marries. However, permanent care orders can be revoked. Adoption applicants prefer the assurance of adoption. They balk at permanent care because of this legal risk of losing the child/children.

On May 23, 2004 a public meeting was held at the Gladesville RSL to discuss the NSW proposed fee increase. John Ryan (*Shadow Minister for Community Services*), Mary Griffin (*Director Community Services*) and Jenny Ames (*Manager Client Services*) attended and fielded questions from the attendees.

When the Director mentioned foster care, there was a definite outcry to which the response was along the lines that DoCS would never be critical of couples who choose adoption over foster care.

Adoption is a way of forming a family; foster care is a way of temporarily looking after children in crisis.

2.2. Infertility

Australia's total fertility rate (TFR), the average number of children a woman would bear during her reproductive life is currently below replacement level – down from the 1961 level of 3.6 children per woman to 1.755 children per woman in 2003 [ref. 2: pg 12].

As young women delay baby-making until their mid to late 30s, they are dramatically reducing their chances of ever being a mother. A woman's fertility drops dramatically after the age of 35.

Modern couples establish themselves - paying off the mortgage so they are in a better position to provide for the children.

For women seeking full-time paid employment, there are difficulties in gaining recognition and promotion while taking long periods off to give birth and look after young children.

Last year, Channel Nines' Sunday program "Missed conceptions" [ref. 3] described the anguish of couples confronted with infertility.

It is the IVF success stories that are broadcast in the media, not the number of failures, which is the majority.

It would indeed be strange to go through life and not come across a couple devastated by infertility. Think how you would feel if your daughter or son were told that they could not have children. Then, after several unsuccessful IVF attempts, learn that they are too old to adopt locally?

☞ **Until the doctors can considerably improve IVF techniques, intercountry adoption remains the last means of becoming a family.**

2.3. *Australia needs immigration*

In the forward of the Department of Immigration and Multicultural and Indigenous Affairs "Population Flows" [ref. 2: pg 12], the Minister for Immigration and Multicultural and Indigenous Affairs, Amanda Vanstone, states:

"Australians are living longer and having fewer children.... It is likely that, in the 2030s, for the first time more Australians are likely to die than are born. Without immigration, our population would start to shrink after that time."

☞ **Surely intercountry adoption is the best form of immigration.**

3. What do the figures tell us?

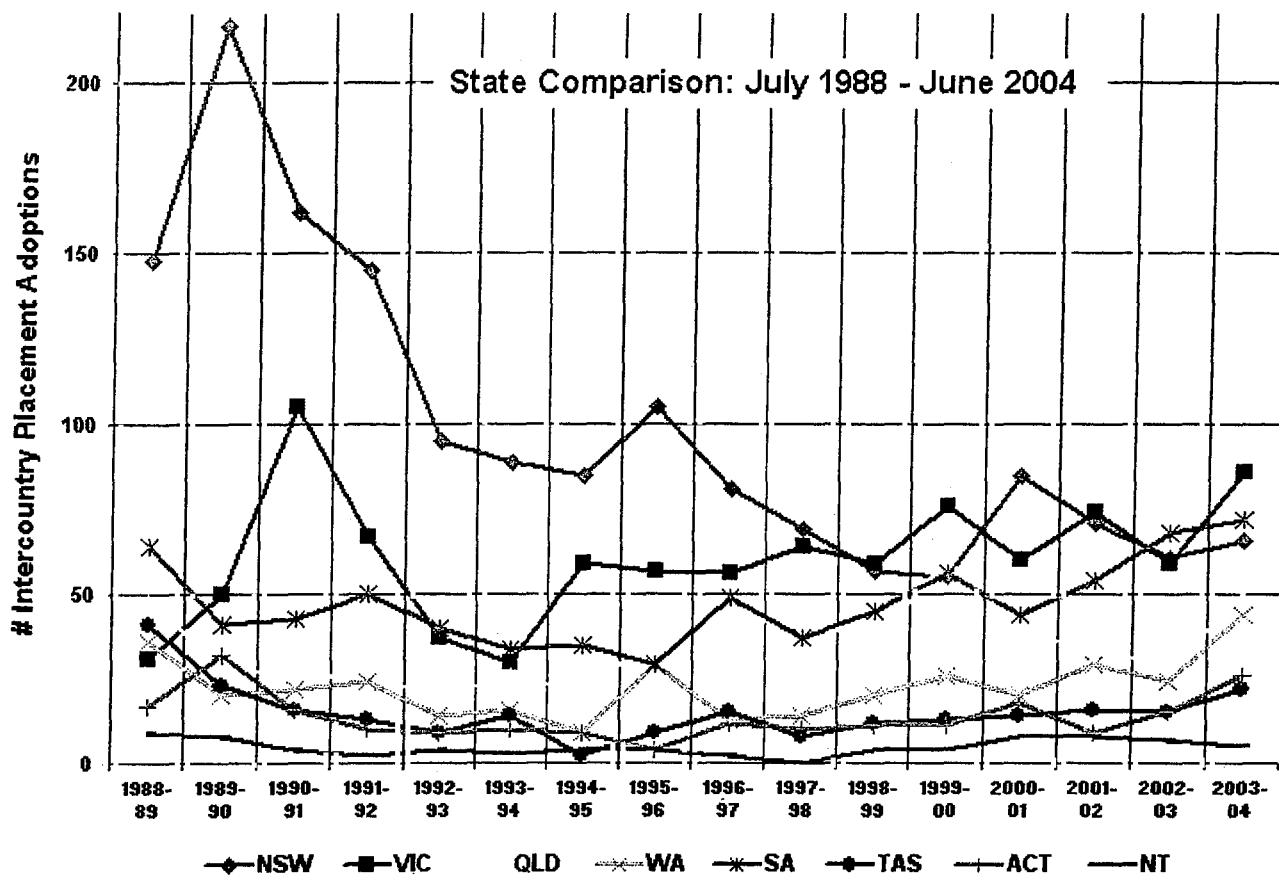
3.1. *Intercountry Adoption Placements*

Although numbers of intercountry adoptions may vary due to demographic factors, it is clear that it is far easier to adopt in some states than in others.

Table I uses state population statistics from Australian Bureau of Statistics [ref. 4] and intercountry adoption statistics from the Australian Institute of Health & Welfare (AIHW) Adoptions Australia 2003-04 [ref. 1a: pg 14].

Table I: Intercountry Placement Adoptions, by state & territory, 1988-9 to 2003-4

Year	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Total
1988-89	148	31	48	36	64	41	17	9	394
1989-90	216	50	30	20	41	23	32	8	420
1990-91	162	105	25	22	43	16	16	4	393
1991-92	145	67	27	24	50	13	10	2	338
1992-93	95	37	19	14	40	9	9	4	227
1993-94	89	30	26	16	34	14	10	3	222
1994-95	85	59	21	9	35	2	9	4	224
1995-96	105	57	37	29	29	9	4	4	274
1996-97	81	56	41	13	49	15	12	2	269
1997-98	69	64	43	14	37	8	10	-	245
1998-99	57	59	36	20	45	12	11	4	244
1999-00	55	76	60	26	56	13	11	4	301
2000-01	85	60	40	20	44	14	18	8	289
2001-02	71	74	33	29	54	16	9	8	294
2002-03	61	59	29	24	68	15	15	7	278
2003-04	66	86	49	44	72	22	26	5	369
Population at end Jun qtr 2004	6,731,300	4,972,800	3,882,000	1,982,200	1,534,300	482,100	324,000	199,900	
1 adoption in	101,989	57,823	79,224	45,050	21,310	21,914	12,462	39,980	



Population-wise, NSW the most populous Australian state has the least number of intercountry adoptions. NSW, with a population of more than 20 times that of the ACT, managed less than 3 times the ACT's intercountry placement adoptions. If NSW had adopted at the same rate per capita as the ACT, there would have been 540 adoptions by NSW alone. NSW's adoption statistics defy logic.

AIHW statistics indicate that some state departments are more user-friendly than others.

3.2. Intercountry Adoption Programs

Table II: Countries Listed on State Authority Website or Brochure

Program	NSW	QLD	WA	VIC	SA/NT	ACT	TAS
Chile	✓				Nothing on website.	Brochure mentions China, Ethiopia, Korea, India, Philippines	Nothing on website, but TAS applicants report that "Tasmania is prepared to work with any country that another State has a program with."
China	✓	✓	✓	✓			
Colombia	✓	✓					
Costa Rica	✓						
Ethiopia	✓	✓	✓	✓			
Fiji	✓	✓					
Hong Kong	✓	✓	✓	✓			
India	✓	✓		✓			
Lithuania	✓	✓		✓			
Mexico		✓					
Philippines	✓	✓	✓	✓			
South Korea	✓	✓	✓	✓			
Sri Lanka	✓	✓		✓			
Taiwan	✓	✓		✓			
Thailand	✓	✓	✓	✓			

The above table indicates that not all states embrace all available intercountry adoption programs.

3.3. Intercountry Adoption Demand

Table III lists the NSW DoCS Caseload: #applications in various stages.

These are figures taken from the routine NSW IASO meetings.

Note: the volume of applications is increasing, almost doubling in the last 4 years.

Table III DoCS Caseload	Total Cases
February 2005	813
June 2003	731
February 2002	620
February 2001	450

Table IV shows the total Australian Intercountry Placement Adoptions by Country of Birth for the period of July 1992 to June 2004 [ref. 1a: pg 14], with comments about each program ex DoCS 3/3/05 [ex Attachment A1].

Attachment A1 is a "Summary of Overseas Adoption Program Criteria" as prepared by DoCS and dated 3/3/05.

16 countries are listed. **But, just how many effective programs are there?**

If you take out the programs that:

- a) are closed (Guatemala, Romania)
- b) are not yet finalised (Bolivia),
- c) have ethnic preferences (Fiji, India, Sri Lanka)
- d) have not been active in recent years (Burkina Faso, Chile, Hong Kong)
- e) programs that have a waiting period of more than 2 years (Colombia, Lithuania)

= 16-2-1-3-3-2
→ 5

you end up with **5 countries with effective adoption programs out of a total of 16.**

And that's:

- BEFORE the applicants meet the country criteria and
- BEFORE taking into account quotas.

Table IV shows for the financial year 2003-4, Australia-wide:

- a total of 369 intercountry adoptions were placed; the 66 in NSW represents 18% (incommensurate with NSW's 33% of Australia's population)
- domestic adoptions Australia-wide totalled 73 and
- 79% of adoptions were from Asian countries; 0.5% from Europe.

Yet, NSW alone has some 813 applications in various stages of completion.

Even if the 369 placements were allocated to NSW, there would still be a 2+ year wait for the current applicants.

In other words, if 100 placements were allocated to NSW, only the annual growth in applications would covered, not the backlog.



This substantiates the need for new programs to be established.



These statistics could be interpreted as a distinct prejudice of the Australian authorities towards European children.

Table IV: Total Australian Intercountry Placement Adoptions by Country of Birth (ref: 1)

Country	1992-3	1993-4	1994-5	1995-6	1996-7	1997-8	1998-9	1999-0	2000-1	2001-2	2002-3	2003-4	Comments on Program as provided by DoCS, 3/3/05
AIHW cat. #	23	23	23	23	23	7	10	12	15	18	21	23	
Bolivia	*	*	*	*	*	5	3	5	6	0	1	0	Negotiations being finalised for program re-opening.
Burkina Faso	*	*	*	*	*	0	0	0	0	0	1	0	
Chile	*	*	*	*	*	2	0	0	3	0	0	0	1st file sent early Dec 04 since 2000. Waiting time unknown.
China †	*	*	*	3	1	0	0	1	15	39	46	112	Waiting time: 6-12 months.
Colombia	26	22	16	40	23	14	11	17	15	9	7	7	Currently only accepting limited numbers of applications - waiting time: 2 or more years
Ethiopia †	*	3	*	5	16	37	34	46	37	36	39	45	Waiting time: ~ 2 years Australian quota for under 4 = 40; NSW = 11
Fiji	*	*	*	13	*	18	12	5	3	5	0	1	Very small program, really only viable for Australian-Fijian families.
Guatemala	*	*	*	*	*	7	6	2	3	0	4	0	--- essentially closed ---
Hong Kong †	*	*	*	*	*	1	6	3	3	0	4	4	Waiting time: 1-2 years There have been no placements from this program in recent years.
India †	20	22	29	20	35	28	30	37	40	40	33	29	Really only viable for Australian-Indian families.
Lithuania													Waiting time: 2-4 years
Philippines	17	14	22	22	27	19	14	29	18	12	18	29	Waiting time: 12-24 months
Romania †	*	*	3	*	5	5	17	36	22	2	1	0	--- closed ---
South Korea †	50	64	71	94	84	69	70	77	75	93	101	98	Australian quota = 100; NSW = 27
Sri Lanka	38	33	18	14	*	3	5	3	4	2	2	2	Very small program, really only viable for Australian-Sri Lankan families.
Taiwan †	*	*	*	*	*	8	6	2	6	0	3	3	Waiting time for allocation: 12 months
Thailand	26	20	25	18	34	26	25	33	35	28	17	39	Waiting time: about 2 years.
	177	178	184	229	225	242	239	296	285	266	277	369	

* AIHW report out of print

† non-Hague country

3.4. Need for New Programs

In the years that AAEC has been attending IASO meetings with DoCS, AAEC has been repetitively told that all of the Australian states have agreed not to open new programs with non-Hague countries.

AAEC has repeatedly asked DoCS to initiate new programs with Hague countries: Albania, Azerbaijan, Belarus, Bulgaria, Georgia, and Latvia.

AAEC is told that:

- DoCS must seek the blessing of the other States at the next Central Authorities Meeting to go ahead.
- DoCS must liaise with the Federal Attorney-General to prepare letter of request.
- Federal Attorney-General must in turn liaise with DFAT for the letter to be included in a diplomatic post.

The European Hague countries listed above are small, have few children available for adoption and consequently a very long waiting period.

AAEC applicants, who request that they be processed for a Hague country that does not have an official program, are met with a great deal of resistance.

☞ **Applications for any Hague country should be accepted.**

☞ **Australian intercountry adoption applicants need a program that has many children in need of homes.**

While the state governments expend great energy trying to establish programs with countries such as Lithuania, from which 5 or 6 children may be adopted per year, countries such as Russia with 600,000 kids in orphanages are unavailable. There is a perfectly viable intercountry adoption program between New Zealand and Russia. There are well over 500 children from Russia in New Zealand. So why not here in Australia?

The Federal regulation, *Family Law: Bilateral Arrangements -- Intercountry Adoption 1998*, Schedule 1 Regulation 4 lists the prescribed overseas jurisdictions. Currently only 1 is listed, that is, the People's Republic of China. RUSSIA needs to be added to this schedule.

☞ **AAEC strongly recommends that Federal Attorney-General initiate a bilateral agreement with Russia and seek accreditation with the Russian Ministry of Education so that Australian couples can apply to adopt from Russia.**

4. Trends

4.1. *International*

In December 1998, Australia ratified the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoptions (Convention #33). More and more countries are ratifying or acceding Convention #33.

The Convention establishes uniform procedures to be followed by countries that are parties to the Convention. It also ensures that the child's best interests are safeguarded.

So, all intercountry adoptions in the future are likely to follow the same process and have similar criteria:

- preference for domestic adoptions.
- Children are not eligible for adoption by foreigners until they have been registered as orphans with the authority for at least 6 months, during which time local authorities will attempt to match them with domestic families seeking to adopt.
- Eligible children must be identified as an orphan by a court or local child protection authority.
- A Central Authority in each state or country is responsible for overseeing intercountry adoptions.
- All adoption services providers must be accredited/approved.
- Persons wishing to adopt an overseas child must apply to a designated authority in their own country.
- Foreign citizens are only permitted to adopt once the Authority authorises and a court approves each case.

AAEC wished to point out that the above practices are being adopted by countries that have not yet ratified or acceded the convention. e.g. As of January 10, 2005, a new law affecting international adoptions took effect in Russia. This new law requires that orphans must be on the federal data bank for six months before they can be available for release for international adoptions.



A worrying trend emerging is the setting of quotas e.g. Ethiopia, Korea and Thailand.

4.2. *NSW*

Positives

- NSW has fairly broad intercountry adoption criteria, and so it should be across Australia, after all it is the overseas country's criteria that ultimately determines if the applicants are accepted.
- NSW applicants are generally assessed on their merits and their ability to parent an adopted child rather than being restricted by arbitrary legislation as in other states.
- Singles, married and defacto couples can adopt (homosexuals are excluded).
- NSW considers age just one factor.
- NSW is also fortunate in having the Industrial Relations Act specify that the primary caregiver of an adopted child qualifies for 1 year unpaid adoption leave regardless of the age of the child at placement.
- To their credit, NSW has also been recently endeavoring to streamline their adoption process – but it is still taking 6+ months for applications to be approved after social worker assessments.

Concern

Some NSW applicants are concerned with the criteria that the age difference between adopted children is legislated at 2 years, the most recently adopted child being the youngest.

Adoption Fees

NSW Fee Increase in 2004

Last year, in NSW fees for intercountry adoption were increased to \$9700 for first applications and \$6900 for subsequent adoptions.

This increase came into place despite strong protest from adoptive families, the State opposition, small parties and independents.

The opposition and arguments put forward against this fee increase were in vain because of Section 200 in the Adoption Act 2000. Section 200 states that the Director-General may demand fees and must notify details of such in the Government Gazette. Because of the fees are gazetted, they are not disallowable or reviewable by the NSW Parliament. AAEC has been advised that had the fees been noted in the Regulation and not the Act, then the fees would have to be made by recusation. Here lies a lesson that the other States can learn from.

High adoption fees prevent willing, suitable families from adopting children in need of a family and could be construed as being obstructive and against the principles of the Hague convention.

Local Adoption

Local adoption fees were not increased but remained at \$2782. DoCS subsidises local adoptions via their own service and funding for private adoption agencies. However, DoCS are unwilling to similarly fund intercountry adoption services even though these adoptions are cheaper to process than local adoption.

The difference in adoption fees between local and intercountry adoption could be interpreted as racial discrimination under federal or state legislation, but no applicants to date have as yet been willing to make a challenge.

Fingerprinting

Reducing financial stress on adoptive families is not a priority for the NSW government. Another example of this is in their fingerprint processing. Every other state and territory allows applicants to have their criminal record check carried out via a Federal police name check costing \$36 per person. In NSW, DoCS insists that adoption applicants pay \$187 per person per test for NSW Police fingerprinting. Applicants are required to have fingerprinting at least twice per adoption, in order to keep their application up-to-date.



Adoption should be about the needs of the children not the wealth of applicants.

Adoption Process

Adoption processing is very slow. Currently, after recommendations are made by social workers, it is taking 6+ months for applications to be approved as suitable adoptive parents. Whereas in other states, applicants can be approved in just a few weeks. This sort of lag is experienced throughout the adoption process.

Applicants frequently speak of not knowing the status of their application.

Adoptive families need preparation for adoption and support post placement and NSW DoCS does not do this well as compared to other states (e.g. ACT). If DoCS are unable to provide preparation and support they should outsource this to an appropriately funded external body.

4.3. The Other Australian States

Current inconsistencies between States

All Australian state adoption services suffer from being understaffed and from a high staff turnover. Not appropriately resourcing adoption processing is another sign of the lack of support for adoptive families from the state authorities.

Table VI compares the intercountry adoption criteria for the Australian States.

Common criteria include:

- couples need to be residents of the State, one of them being an Australian citizen,
- both in good health and
- of good repute.

Table VI: Criteria for Placement Adoptions

State	NSW	VIC	QLD	WA	SA	TAS	ACT	NT
Legislation	Adoption Act 2000 Adoption Regulation 2003	Adoption Act 1984 Adoption Regulations 1998 Adoption (Amendment Act) 1991 Adoption (Amendment Act) 2000	Adoption of Children Act 1964 Adoption of Children Regulation 1999	Adoption Act 1994 Adoption Regulation 1995 Amendments in 2003	Adoption Act 1988 Adoption (Miscellaneous) Amendment Act 1996	Adoption Act 1988 Adoption Regulations 1992	Adoption Act 1993	Adoption Act 1994
Department	Department of Community Services (DoCS) http://www.community.nsw.gov.au/html/adoption/adoption.htm adoption@community.nsw.gov.au	Department of Human Services (DHS) http://hnb.dhs.vic.gov.au/commcare/ccdnnav.nsf/childdocs-1DC8483734FBB3D4CA256E180064E9E6-7B47F88DEDD04146DCA256EB70017E005?open Susette.Guttmann@dhs.vic.gov.au	Department of Child Safety (DChS) http://www.childsafety.qld.gov.au/adoption/overseas/index.html intercountryadopt@childsafety.qld.gov.au	Department for Community Development (DCD) http://community.wa.gov.au/Resources/Adoption/AdoptingChild/adoptions@dcd.wa.gov.au	Department for Families & Communities (DFC) http://www.adoptions.sa.gov.au/adoptions@dfc.sa.gov.au	Department of Health & Human Services (DHHS) http://www.dhhs.tas.gov.au/adoption/index.html adoption.services@dchs.tas.gov.au	Office for Children, Youth & Family Support (OCYFS) http://www.det.act.gov.au/services/OCYFS_adoptions.htm adoptions@act.gov.au	Department of Health & Community Services (DHCS) http://www.nt.gov.au/health/comm_services/facs/adoption.shtml adoptions.ths@nt.gov.au
Court Level	Supreme Court of NSW	Supreme Court & County Court	Children's Court or Supreme Court	Family Court	Youth Court	Magistrate sitting alone	Supreme Court	Local Court
Fees \$	1st = \$9,700 2nd = \$6,900	1st = \$6,250 2nd = \$4,950	\$2,053	\$2,246	1st = \$8,200 2nd = \$7,450	\$2,280	\$4,154	\$6,100
Age	over 21 years of age	No age stipulated in legislation	over 21 years of age BMI <31	18. 1st youngest 45, oldest 50. 2nd etc. 50 youngest, oldest 55.	between 25 and 50 years		No age stipulated in legislation	25 years or more
Singles	can apply	can apply in certain circumstances	cannot adopt - officially could apply	Yes and same sex couples.	can apply in particular circumstances		Yes, and same sex couples	can apply in exceptional circumstances
Children	that the age difference between adopted children is legislated at 2 years, the most recently adopted child being the youngest	Minimum gap of 2 years between placements. Victoria does not place children over the age of 9 unless there are special circumstances, such as placing siblings together.	no more than 4 children in their custody	No limit in legislation.			No limit in legislation.	
Relationship / Period	couples need to have been living together continuously for minimum of 3 years	married/de facto couple of more than 2 years	married for 2 or more years	Defacto or married 3 years.	married or de facto couple of no less than three years	married or de facto couple for more than 3 years	married or de facto couple for more than 3 years	a married couple
Full-time at home period	6 months	12 months	12 months	12 months	12 months	12 months	12 months	6 months
Local Adoption Agencies	Centacare Adoption Services Anglicare Adoption Services Barnardos Australia	Uniting Care Connections Anglicare Western Anglicare Gippsland Centacare Catholic Family Services Loddon Mallee Permanent Care St St Lukes Anglicare Child & Family Services Ballarat	All adoptions in QLD handled by DFYCC	All adoptions in WA handled by Department for Community Development	All adoptions in SA handled by AFIS	Centacare Family Services	All adoptions in ACT handled by DHHS	All adoptions handled by NT Health Services

§ department processing costs include charges for expression of interest, education, application, assessment, preparation of docs, allocation and Post Placement Reports, but does not include charges for medical, couriering, immigration

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New South Wales slugs people with the biggest cost at \$9,700; South Australia, \$8,200; Victoria, \$6,250; the Northern Territory, \$6,053; the Australian Capital Territory, \$4,154; Western Australia, \$2,236; Queensland, \$2,053 and Tasmania \$2,052. When you add to this the expense of travel and accommodation in the child's country of origin, you can see that overseas adoption is very expensive.

Other inconsistencies between the states adoption practices include age criteria, marital status, body mass index, number of children currently in the family.

These differences complicate the situation for families moving interstate.

Intercountry adoption applicants are discriminated against in Queensland by the outlandish practice of having a fixed application period. This application period is not offered annually, but every 2 or more years.

In 2004, Queensland's Department of Child Safety opened an application window for 8 weeks from September 12 until November 8 – a total of 819 expressions of interest were received.

Accreditation

Currently with respect to intercountry adoption, there exists a monopoly by State welfare departments. Up until March 31 this year, there was 1 non-government agency authorised to process intercountry adoptions.

The recent closure of Australians Aiding Children Adoption Agency (AACAA) is a real backward step for intercountry adoptions. AACAA worked in conjunction with South Australia's Adoption and Family Information Services (AFIS).

Reasons given by the SA Minister for Families and Communities, Jay Weatherill	Comments from the South Australian adoption community
Keeping them safe policy The Minister said: "intercountry adoption are among the most vulnerable children in the world".	Australia's intercountry adopted children are amongst the safest children in the world. The system is highly regulated and the children are adopted by government approved parents.
Adoption reports in 2004 highlighted major problems with AACAA	The report doesn't say that at all. It points out a few areas where communications could be improved between AACAA and the department, mostly on the department's side.
Improved process The Minister said "This should make adoptions quicker and simpler"	Since when has a government department out performed a service run by a private enterprise? There are grave concerns of increased bureaucracy and that waiting times will blow out.
Improved service The South Australian government provided a subsidy to AACAA of \$44,000 per year to run the service. The Minister has just given the department an extra \$500,000 to do the job.	\$500,000 is equivalent to 13 years worth of money that AACAA would have got. South Australian applicants are still going to be charged \$10,000 for AFIS' service.

Take a look at the chart on page 8. For the last 2 reporting periods, South Australia, a state with less than a quarter of NSW's population has had more intercountry adoptions than NSW.

The private adoption agency model has been embarrassingly successful compared to the other state government departments.

AACAA's closure presents a real concern for non-government organisations (NGO) in NSW and WA who are seeking accreditation. These NGOs report very little encouragement is forthcoming from the state and experience frequent delays with their application.



AAEC recommends that:

- intercountry adoption process and legislation be standardised across all States. It would also help for departments/sub-departments to have the same titles across Australia.
- Federal Attorney General lead the standardisation of State intercountry adoption legislation so that all Australian applicants are treated in the same way.
- State governments support NGOs seeking accreditation and expedite their accreditation.

5. The Federal Attorney General

With respect to the Hague Convention, the Federal Attorney-General is Central Authority. The Central Authority has delegated authority to the states but they remain the body ultimately responsible for intercountry adoptions.

Once Australia had ratified the Hague Convention in 1998, the States set up a verbal agreement that no new intercountry adoption program will be opened with non convention countries. This agreement is either in the minutes of the Central Authorities meeting which is not available to the public or it does not exist. As explained in section 3.4, this decision limits intercountry adoption options.

Currently, there is no legislated process for establishing new intercountry adoption programs - no protocol, no time frames, no documentation.

The Attorney-General's department has no official adoption website or any staff member who works full time on adoption matters.

There is a distinct lack of commitment at the national level. The Federal Attorney-General does attend the "State Central Authorities Meeting", which is held twice yearly to discuss adoption issues. However, it is perceived that the Attorney-General is merely a figurehead and allows the States to "run the show".



AAEC recommends that:

- **there be an inquiry into the Attorney General's role in administering intercountry adoption in Australia and it's effectiveness,**
- **the Federal Attorney-General take a more active role in standardising an Australia-wide intercountry adoption set of criteria and**
- **the Federal Attorney-General be the entity to developing intercountry adoption programs.**

6. Discrimination Against Intercountry Adoption Applicants

Intercountry adoption applicants are discriminated against in a number of ways.

6.1. Fees

State Processing

NSW intercountry adoption fees were increased in July 2004 while local fees remain unchanged, despite the fact that local adoption service providers are heavily subsidised by DoCS.

Local adoptions actually use more government services than intercountry adoption applicants.

There needs to be some consistency between local and intercountry adoptions.

In NSW, the cost is \$9,700 for the first adoption. The actual cost is more because of the lengthy waiting periods and the need for applications to be updated every 18 months.

Both the federal and state governments highly subsidise biological parenting in the form of Medicare in its support for antenatal, obstetric and post natal care and it need not cost a family anything to give birth to a child, adoptive parents pay state and federal government departments significant amounts of money for processing their adoption application. There are also costs associated with travel overseas and legal costs. Because of these costs adoptive families are just as in need of government support as biological families.

In addition to fees, there is the income forgone. All state government departments have an expectation that one parent will remain home with the child for an extended period post placement: NSW and NT require a period of 6 months; 12 months for other states.

Immigration

Federally, intercountry adoptive families pay \$1245 in visa application fees for each child they adopt. Since the federal and state governments so highly subsidise birth, adoption should be similarly subsidised by government.



Visa fees for intercountry adopted children should be waived.

Tax Credit

Intercountry adoption is a costly process when considering the costs associated with travel overseas, legal fees etc. Since federal and state governments so highly subsidise birth via Medicare and the private health insurance subsidy, it is reasonable that they should also support adoption financially. Other overseas governments have done so - for instance, in the USA, families adopting a child receive a \$10,000 tax credit to assist with adoption costs. Our government could consider similar support.

6.2. Adoption Leave

Currently, the Federal Workplace Relations Act 1996 provides 12 months unpaid adoption leave for families adopting a child. However, this leave applies only if the child is under 5 years at the time of placement. Thus, if a family adopts a child who is 5 or older, there is no legislated protection to take any leave from work. It's akin to how maternity leave was legislated and employees could be sacked/demoted etc. for taking maternity leave.

WORKPLACE RELATIONS REGULATIONS 1996 [ref. 5]

REG 30F	REG 30U
(1) <i>Under this Division, if a child under the age of 5 years is placed with an employee for adoption, the employee and the employee's spouse are entitled between them to unpaid adoption leave totaling 52 weeks to care for the child.</i>	<i>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.</i>

- All adoptive families need to take leave from work at the time of adoption.
- Intercountry adopted children need intensive parental involvement post placement.
- This legislation needs to be changed - Human Rights and Equal Opportunity Commission (HREOC) has recommended that the age restriction for qualification for unpaid adoption leave be removed.

Paid leave entitlements

In addition to unpaid adoption leave not being available to people adopting older children, there is nothing that protects adoptive parents from being discriminated against in comparison to biological parents with respect to paid leave. Thus, many awards and workplace agreements that have paid maternity leave do not have paid adoption leave or have adoption entitlements that are much less than maternity entitlements. According to the Work and the Family Unit of the Department of Employment and Workplace Relations 29% of workplace agreements have paid maternity leave but only 1% have paid adoption leave. Figures are not available on the proportions of awards that have paid maternity leave and paid adoption leave but according to the ACTU the ratios are likely to be similar. It is often very difficult for employers to have this situation changed since they are often the only person in their workplace who has adopted a child and since employers and union representatives often have no knowledge of adoption.

Flexible return to work

Some awards and workplace agreements contain flexible work return for primary caregivers up until their child is a certain age. It would be appropriate for them to have a similar flexibility for adoptive families with the length of time from placement rather than the age of the child being the determinant. Again, this is something that is difficult to change and adoptive families as a small, but growing, group require legislative protection.

6.3. Maternity Payments

Both the maternity payment and maternity immunisation allowance are available, on compassionate grounds, to families whose baby is stillborn or who has died. This practice contradicts the original reason for the payments, yet the same courtesy is not extended to adoptive parents.

Baby Bonus

Couples adopting children from overseas do not qualify for the \$3000 federal baby bonus scheme unless the child is younger than six months old.

Table V has taken figures from Australian Institute of Health & Welfare (AIHW) Adoptions Australia [ref. 1].

Age (years)	2001-2002		2002-2003		2003-2004	
	Male	Female	Male	Female	Male	Female
Under 1	46	43	34	43	85	67
1-4	74	76	71	92	56	138
5-9	21	25	13	16	10	14
10-14	5	3	-	9	-	-
Total	146	147	118	160	151	219
Overall	293		278		370 *	

* 370 instead of 369, difference of 1 = an adoption from a different country to those listed in Table IV.

The above figures show, and logic suggests, that the majority of overseas adoptions involve children older than six months. So currently, adoptive parents cannot claim the payment, despite the fact that intercountry adoption is not cheap.

HROEC [ref. 6] concluded that there should be no age restriction for adopted children for receiving the maternity payment (http://www.hreoc.gov.au/sex_discrimination/pml2/index.html).

Means testing the maternity payment, that is increasing the limit, is not an acceptable option. All

restrictions need to be removed. Adoptive families need post-placement support and therefore have significant costs.

The 369 intercountry adoptions [ref. 1a] that were placed in 2003-4 equates to a baby bonus bill of a mere \$1.1m - a sum that the Federal government would hardly notice.

Maternity Immunisation

The majority of adoptive parents also miss out on the maternity immunisation allowance. Application for this allowance must happen before the child is 2 years old. This maternity immunisation allowance is another example of discrimination against adoptive parents.

In the eyes of the law, an adopted child is regarded as if he or she had been born to the adoptive parents. There is no difference in rights or status. The adopted child even receives a new birth certificate. So it is clearly reasonable that the maternity payment and maternity immunisation allowance should be paid in the same way.

7. Perceptions

AAEC is quite active in the intercountry adoption community.

Intercountry adoption is a serious business and remains the **last way of creating a family**. This is reinforced at the DoCS adoption seminars applicants attend and the support groups that they join.

7.1. Inertia

Numerous applicants have mentioned sensing an **underlying reluctance** on the part of state adoption workers to be involved in intercountry adoption. The reason cited is that intercountry adoption is creating another type of "stolen generation". These adopted children have been relinquished by their birthparents and could not be found homes within their own country. These children were not forcibly taken from their parents. Hence the comparison to the Australian Aborigine stolen generation is groundless.

7.2. Treatment

No one disputes the need for the utmost scrutiny of adoption applicants.

Speak to any adoptive parent and they will tell you "it was all worth it".

Nevertheless, the adoption process is described as difficult, slow, bureaucratic and intrusive.

Very rarely are DoCS praised for their service.

The adoption authorities are dealing with well-educated clients. Their perception is that adoption authorities are unprofessional and treat applicants with little dignity, compassion or respect.

Applicants feel they:

- have little control over the process and are too scared to lobby for changes, lest their application suffer, and
- are not being adequately informed of the progress of their application.

8. Recommendations

AAEC makes the following recommendations.

Federal Legislation

- ☉ Federal Government should make adoption fees tax deductible.
- ☉ Visa fees for intercountry adopted children should be waived.
- ☉ Schedule 1 Regulation 4 of the *Family Law: Bilateral Arrangements -- Intercountry Adoption 1998* be amended to include Russia as a prescribed overseas jurisdiction.

Federal Attorney General

- ☉ Federal Attorney General lead the standardisation of State intercountry adoption legislation so that all Australian applicants are treated in the same way.
- ☉ Federal Attorney General be the entity that develops new intercountry adoption programs.
- ☉ an inquiry into the AGs role in administering intercountry adoption in Australia and it's effectiveness

State Level

- ☉ abolition or reduction of the costs involved for people trying to adopt from overseas.
- ☉ Applications for any Hague country should be accepted.
- ☉ Accreditation of NGOs to deliver adoption services / and funding of such.
- ☉ consistency and fairness between local and intercountry adoptions.
- ☉ department should be more professional as they are dealing with well-educated clients.

9. Conclusion

The general population has little knowledge of adoption. Only when faced with unexplained infertility do they find out. Consequently, this ignorance of the needs of adopted children and their parents results in a lack of support for adoptive families. The maternity payment and adoption leave issues are examples of this.

The adoption community needs to be consulted when formulating legislation and policy. Some process should be instituted to ensure that this growing group is included in the future policy formulations.

AAEC shares the commitment of the welfare authorities to strive for best practices in child adoption and thoroughly understands the promotion of national adoption. However, there are plenty of Australian families who are willing to provide a safe, caring and loving family home to children languishing in orphanages overseas.

AAEC echoes UNICEF's position on Intercountry Adoption:

"For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care, which should be used only as a last resort and as a temporary measure. Intercountry adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution. In each case, the best interests of the individual child must be the guiding principle in making a decision regarding adoption."

http://www.unicef.org/media/media_15011.html

**The Australian government can better assist
Australians adopting children from overseas by
establishing a bilateral agreement with Russia.**

Lastly, AAEC wishes to thank the House of Representatives Standing Committee on Family and Human Services for the opportunity to comment on the condition of intercountry adoption in Australia.

10. Sources of Information

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 - a) 2003-04, Child Welfare Series Number 35, Canberra, AIHW cat no. CWS 23, <http://www.aihw.gov.au/publications/cws/aa03-04/aa03-04.pdf>
 - b) 2002-03, Child Welfare Series Number 33, Canberra, AIHW cat no. CWS 21.
 - c) 2001-02, Child Welfare Series Number 30, Canberra, AIHW cat no. CWS 18.
 - d) 2000-01, Child Welfare Series Number 28, Canberra, AIHW cat no. CWS 15.
 - e) 1999-00, Child Welfare Series Number 26, Canberra, AIHW cat no. CWS 12.
 - f) 1998-99, Child Welfare Series Number 24, Canberra, AIHW cat no. CWS 10.
 - g) 1997-98, Child Welfare Series Number 22, Canberra, AIHW cat no. CWS 7.
- 2 Department of Immigration and Multicultural and Indigenous Affairs January 2005. "Population Flows: 2003-4 Edition. http://www.immi.gov.au/statistics/publications/popflows2003_4/ch1_pt3.pdf
- 3 Channel Nine: Sunday. "Missed conceptions", May 2, 2004 Reporter: Helen Dalley
- 4 Australian Bureau of Statistics, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6949409DC8B8FB92CA256BC60001B3D1>
- 5 Workplace Relations Regulations 1996 http://www.austlii.edu.au/au/legis/cth/consol_reg/wrr1996329/
- 6 Human Rights and Equal Opportunity Commission (HREOC) 2002. "A Time to Value, Proposal for a National Paid Maternity Leave Scheme".
http://www.hreoc.gov.au/sex_discrimination/pml2/index.html
http://www.hreoc.gov.au/sex_discrimination/pml2/Atimetovalue.pdf

11. Attachment

- A1 **Summary of Overseas Adoption Program Criteria: 3/3/05**

SUMMARY OF OVERSEAS ADOPTION PROGRAM CRITERIA – (Applicants to meet both NSW and Overseas Program criteria)

UPDATED ON 3/3/05

COUNTRY	Age & other personal attributes	Marriage and Marital status	Singles	Infertility	Other children	Age & description of children needing families	Approx waiting time*
Bolivia	Negotiations being finalised for program re-opening.						
Chile	Chilean government will only accept applications for married couples under 50 for children aged 4-6. There must be at least a 20 year age difference between the adopters and the child.	Applicants must be married for at least 2 years.	Single applicants are considered if they are nationals living permanently in Chile.	Not specified	Not known	Older children, aged 4 years and over and sibling groups.	Not known
China	Over 30 years Under 45 for 0 –2 year old. Over 45 for 2+ Maximum age for couples is 55 and 50 for singles.	Marriage is required. Couples in a defacto, gay or lesbian relationship are not eligible. Applicants who have had 3 or more divorces must have been married for at least 2 years.	Single applicants can apply. No gay or lesbian applicants will be accepted. China has a set limit on the number of single applications that can be forwarded for consideration, which therefore increases waiting time for singles.	Not specified	Preference is given by China to childless couples or families with 1-2 children. However applications will be considered from families with a maximum of 5 dependent children.	Usually female children aged 8 – 21 months. Also older children.	6 – 12 months
Colombia Currently only accepting limited numbers of applications	Most agencies max 40 yr age difference between parent & child.	Marriage is required – 5 years or defacto 2 years + 3 years marriage.	Usually women only and then only for children aged over 5 years.	Not specified	Some agencies prefer childless or only 1 other child.	Vary between agencies – 3 months and older, including siblings. Usually no choice re gender, except for older child.	May take more than 2 years
Ethiopia	The maximum age gap between the oldest applicant and child is 40 years. Exceptions in age criteria may be considered for families applying to adopt siblings or older children.	Marriage is required – 2 years Defacto couples accepted	Women only	Not specified	Will not support placement of Ethiopian children in families with children exceeding the "average family size" in Australia.	3 months – 7 years. Single children and siblings.	Approximately 2 years. Ethiopia will only accept a limited number of applications at any one time for children under 4.
Fiji	Over 25 and at least 21 years older than the child for whom the application is made.	Marriage is required – minimum 3 years	Only in special circumstances	No requirement.	Having existing children in the family is acceptable.	Children are of Fijian/Indian descent. Some children under 2 years are allocated. Older children with special needs are more likely to be needing families.	At least 2 years. Very few children have been placed in recent years. Waiting times are lengthy unless you are a former national of Fiji.
Hong Kong	25-45 years Applicants aged 45 – 50 years with child care experience may be considered if they are willing to accept a child aged over 5 years, with special needs, or a complex social background. Childless couples must be under 45 years. Minimum age gap between applicants and child is 25 years. Childless couples over 40 are not considered for children under 3.	Marriage is required – 3 yrs minimum (5 yrs if previously divorced).	Not preferred unless equipped with special parental skills and sufficient support.	Not specified	No more than 3	The children are aged 3 or above with no complications in health or background, or are younger children with some kind of special needs in their health, development or family background. Most of them are between 1 to 5 years old. The majority are males.	1-2 years There have been no placements from this program in recent years.

SUMMARY OF OVERSEAS ADOPTION PROGRAM CRITERIA – (Applicants to meet both NSW and Overseas Program criteria)

UPDATED ON 3/3/05

COUNTRY	Age & other personal attributes	Marriage and Marital status	Singles	Infertility	Other children	Age & description of children needing families	Approx waiting time*
India	Infants up to 12 months can be placed with adoptive parents whose composite age is not more than 85 and where neither parent is older than 45 years. For applicants over 45, a 45 year age difference between adoptive parent and child applies. In no case should the age of the adoptive parent be over 55 years. Indian families receive preference.	Couples should be married, preferably for at least 5 years.	Subject to negotiations with Indian agency. Single applicants should be 30 – 35 years of age.	Requirements vary from agency to agency.	Requirements vary from agency to agency.	Children aged 3 months to 9 years. Gender may be nominated for older children.	Usually within 2 years with some variation.
Korea	Under 44 years when papers accepted by Korean agency.	Marriage is required – Minimum 3 years.	No	Not specified	Applicant's family size should not exceed 5 dependent children, including the proposed adopted child.	0 – 12 months. No choice of gender. Many children are male.	Korea asks for a certain number of files each year for children needing families. These families are usually allocated within that year.
Lithuania	Under 47 years when papers accepted by Lithuanian authority. Up to a 45 year age difference between the eldest parent and child is acceptable.	Marriage is required – no min time	Not generally accepted, only very rarely for children with special needs.	No requirement.	No limit. Applicants would need to demonstrate a financial capacity to care for another child.	Older children and sibling groups usually aged over 3 years.	Applicants wishing to adopt children aged under 5 may wait 2-3 years. Applicants for a child over 5 will have a shorter waiting time.
Philippines	Applicants should be over 27 years of age and at least 15 years older than the child to be adopted. The maximum age gap between the adopted parents and adopted child is 47 years. Preference to couples with Filipino heritage or who have adopted previously from the country	Marriage is required Min 3 years. If 2nd marriage then minimum 3 years.	Not generally accepted, only very rarely for children with special needs.	Not required	No limitation. Children over 10 years must provide formal consent to the addition of a further child.	Children 0 – 6 years, sibling groups and children with special needs.	Average wait 12-24 months. Allocation occurs when the applicants are chosen (from all approved files in the Philippines) as the family best able to meet a child's needs.
Sri Lanka	Must be over 25 years and there should be a 21 year age difference between applicants and child. There is a preference for applicants to be no more than 45, however applications from couples older than 45 will be considered. Priority is given to former Sri Lankan nationals.	Marriage is required Min 3 years	No	Infertility is a requirement. Substantiating medical reports are necessary.	Applicants with up to 2 children may apply but preference is given to Sri Lankan couples with no children.	Most children are under 12 months of age. There is concern that older children will not adjust well and so are not being placed with families living abroad. Applicants may express a preference of gender but families in Sri Lanka prefer females, so there is no guarantee that females will be placed overseas.	For applicants who have both retained Sri Lankan citizenship – a 2 year wait. Longer for other couples.
Taiwan	25 – 45 years May be older for special needs children. Practising Christians only	Marriage is required Min 5 years. If 2nd marriage then min 10 years. No defacto applicants.	No	Couples should be infertile. No secondary infertility accepted unless special needs application.	Preference is given to childless couples. No biological children unless adopting a special needs child. May have one adopted child.	Usually 0 – 1 year old, very occasionally aged 1-2 years. Gender of child may be nominated.	Approx 12 months for allocation. 6-8 months after allocation for Taiwan legal process.
Thailand	Minimum acceptable age is 25 years. Applicants to be no	Marriage is required	May consider single	Infertility is not a	Priority given to childless	Generally 18 months to	About 2 years. Waiting

SUMMARY OF OVERSEAS ADOPTION PROGRAM CRITERIA – (Applicants to meet both NSW and Overseas Program criteria)

UPDATED ON 3/3/05

COUNTRY	Age & other personal attributes	Marriage and Marital status	Singles	Infertility	Other children	Age & description of children needing families	Approx waiting time*
	older than 43 years for a child younger than 18 months. Maximum age gap of 47 years between the applicants and the child.		female applications for significant special needs children.	requirement. If infertility exists substantiating reports are required.	couples. Applications with 2+ adopted/biological children not usually accepted. Allocation of a second child to a family is usually slower.	7 years. While applicants can nominate a gender, more boys than girls over age 5 are available.	time for a female or a very young child is longer.

SUBMISSION NO. 16
(PART B only)

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