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Australian Institute of Health and Welfare

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AIHW submission to the Inquiry into Adoption of Children from Overseas

AIHW - structure and functions

The AIHW was established as a statutory authority in 1987 by the then *Australian Institute of Health Act 1987*. In 1992 the AIHW's role and functions were expanded to include welfare-related information and statistics. The Act is now entitled the *Australian Institute of Health and Welfare Act 1987* (AIHW Act). The AIHW is in the Health and Ageing portfolio.

The AIHW mission is:

Better health and wellbeing for Australians through better health and welfare statistics and information.

We inform community discussion and decision-making through national leadership and collaboration in developing and providing health and welfare statistics and information.

The main functions of the AIHW relate to the collection and production of health-related and welfare-related information and statistics, and are specified in s. 5 of the AIHW Act. In summary, the AIHW:

- Identifies and meets the information needs of governments and the community to enable them to make informed decisions to improve the health and welfare of Australians
- Provides authoritative, timely information and analysis to the Commonwealth, state and territory governments and to the community by collecting analyzing and disseminating national data on health, community services and housing assistance
- Develops, maintains and promotes, in conjunction with stakeholders, information standards for health, community services and housing assistance.

Introduction

The Australian Institute of Health and Welfare (AIHW) is funded by the community services department in each state and territory to collect and publish national data on adoptions. The AIHW has been responsible for collecting these data since 1993, and holds and compiles national data from 1990-91 onwards. The data are collected from each of the state and territory community services departments and collated and analysed by AIHW. Each state and territory in Australia has responsibility for all aspects of adoption within its jurisdiction and has its own legislation regarding adoption (see Appendix 1).

The data are extracted from the administrative systems of state and territory community services departments according to definitions and counting rules agreed to by those departments and the AIHW. Note that the data reflect the different legislation, policies and practices in each state and territory regarding adoption, as described in Appendix 1. These differences should be taken into account when comparing data across jurisdictions.

Information and statistics presented in this submission and the accompanying report – *Adoptions Australia 2003-04* – are compiled on the basis of material supplied by the states and territories. The report is reviewed by representatives from the adoptions section of each community services department prior to publication each year. Thus to the best of our knowledge the information on policies and practices in each jurisdiction presented in the report and in this submission is correct; however individual jurisdictions have substantially more expertise in the processes within their state or territory.

Intercountry adoption in Australia

As a formal process, Intercountry adoption is relatively new. It began across the world as a way to help the millions of children who were victims of war, famine and poverty. Families from the United States of America adopted children from countries devastated by the Second World War such as Germany, Estonia, Latvia, France, Italy and Greece. Shortly after families from countries such as Denmark, Holland and the United Kingdom followed suit (Harvey 1983).

In the 1960s, war was brought into the living rooms of Australian families via the media, which graphically showed the effects on children. This encouraged many to try and do something to help these children. Then in the early 1970s, the vision of millions of Vietnamese children orphaned by the war accelerated the interest in adopting children from other countries (Bowers 1983). In 1975, 292 Vietnamese children were airlifted to Australia and were adopted by couples across most states and territories.

The adoptions of children from Vietnam coincided with a decreasing number of children born in Australia available for adoption. For the financial year 1971-72, there were nearly 10,000 adoptions. By the middle of the decade this number had halved to just under 5,000 (Table 1).

Table 1: Number of children legally adopted, by state and territory, 1968-69 to 2003-04

Year	NSW ^(a)	Vic	Qld ^(b)	WA	SA	Tas	ACT ^(c)	NT	Total
1968-69	1,715	1,789	1,448	540	797	348	100	36	6,773
1969-70	2,346	2,031	1,500	703	834	243	102	61	7,820
1970-71	3,275	2,057	1,562	301	879	289	122	68	8,553
1971-72	4,539	1,768	1,774	457	776	303	127	54	9,798
1972-73	3,315	1,765	1,678	717	649	268	121	29	8,542
1973-74	1,936	1,557	1,458	783	558	268	120	25	6,705
1974-75	1,799	1,168	1,394	528	551	243	123	33	5,839
1975-76	1,449	1,032	1,112	531	549	211	87	19	4,990
1976-77	1,770	908	1,014	497	658	185	82	74	5,188
1977-78	1,068	951	660	417	506	164	55	46	3,867
1978-79	1,020	956	563	380	415	173	56	40	3,603
1979-80	853	914	450	387	475	148	85	25	3,337
1980-81	794	711	454	305	505	140	74	35	3,018
1981-82	855	753	467	261	396	119	81	39	2,971
1982-83	926	692	555	270	424	117	59	29	3,072
1983-84	698	686	517	250	438	87	51	43	2,770
1984-85	623	631	331	293	222	97	74	23	2,294
1985-86 ^(d)	n.a.	n.a.	359	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
1986-87 ^(d)	n.a.	n.a.	334	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
1987-88	280	114	309	191	416	120	36	28	1,494
1988-89	335	288	353	147	221	85	47	25	1,501
1989-90	360	212	278	128	174	71	50	21	1,294
1990-91	329	258	210	136	103	61	25	20	1,142
1991-92	310	185	232	120	112	58	23	12	1,052
1992-93	209	101	222	87	111	23	20	10	783
1993-94	188	112	206	85	106	37	21	9	764
1994-95	260	145	179	127	108	12	18	6	855
1995-96	204	131	170	75	48	17	19	4	668
1996-97	263	123	129	56	79	30	26	3	709
1997-98	200	114	111	69	48	19	15	1	577
1998-99	185	102	94	64	53	25	16	6	543
1999-00	154	122	105	79	59	19	24	4	566
2000-01	166	98	62	74	53	24	27	10	514
2001-02	207	110	49	79	62	20	23	11	561
2002-03	122	82	67	76	72	21	25	7	472
2003-04	115	120	65	59	79	26	33	5	502

(a) Data on adoptions by step-parents for New South Wales are not included from 1987-88 to 1993-94.

(b) Data for 1986-87 and 1987-88 differ from previous reports due to updated figures.

(c) Data for 1998-99 differ from previous reports due to updated figures.

(d) National data were not collected in 1985-86 and 1986-87.

Source: AIHW 2003.

The airlift of Vietnamese children sparked huge interest and compassion and many couples applied to adopt these children. Couples who were on the register for local

adoption began to see adoption of children from other countries as a viable option (Bowers 1983). As there was no formal process at this stage for intercountry adoption, adoptions were sought through embassies, churches and overseas aid organisations or people travelled to other countries themselves (Bowen 1983). The state and territory governments did not have much involvement at this stage, beyond a letter of approval (Bowers 1983).

In the late 1970s, a delegation of government officials visited a number of countries in Asia, to investigate the possibility of setting up programs for intercountry adoption. A number of arrangements were developed, and some of these are still in existence today.

Currently programs with other countries are developed and managed by one jurisdiction on behalf of the others. It is mainly the larger jurisdictions that manage these programs due to the level of staffing required to do so. Since Australia became signatory to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, only those countries that are also signatory to the Convention will be approached to investigate the feasibility of developing an adoption program (see Appendix 2 for a list of countries party to the Convention). Not all countries view adoption as a viable way of dealing with the needs of their children, therefore not all countries are open to developing programs with receiving countries such as Australia.

Programs that were developed before the Convention still continue – these include China, South Korea, Ethiopia and Thailand. While the adoptions from these countries are not made under the Convention, strict protocols are still used to safeguard the rights of the children.

Trends in adoption

There was a substantial fall in the number of adoptions between the early 1970s and the early 1990s, from 9,798 in 1971–72 to 1,052 in 1991–92 (Figure 1).

Factors contributing to this overall fall in adoptions of children include:

- a decrease in the number of unplanned children;
- the provision of income support for single parents and changed community attitudes to single parenthood, resulting in an alternative to adoption;
- changes to legislation and practices in relation to adoptions by step-parents within states and territories whereby step-parents are encouraged to use arrangements other than adoption (see AIHW: Bentley & Broadbent 1997);
- the introduction of alternative legal orders which transfer permanent guardianship and custody of a child to a person other than the parent, for example, permanent care orders in Victoria.

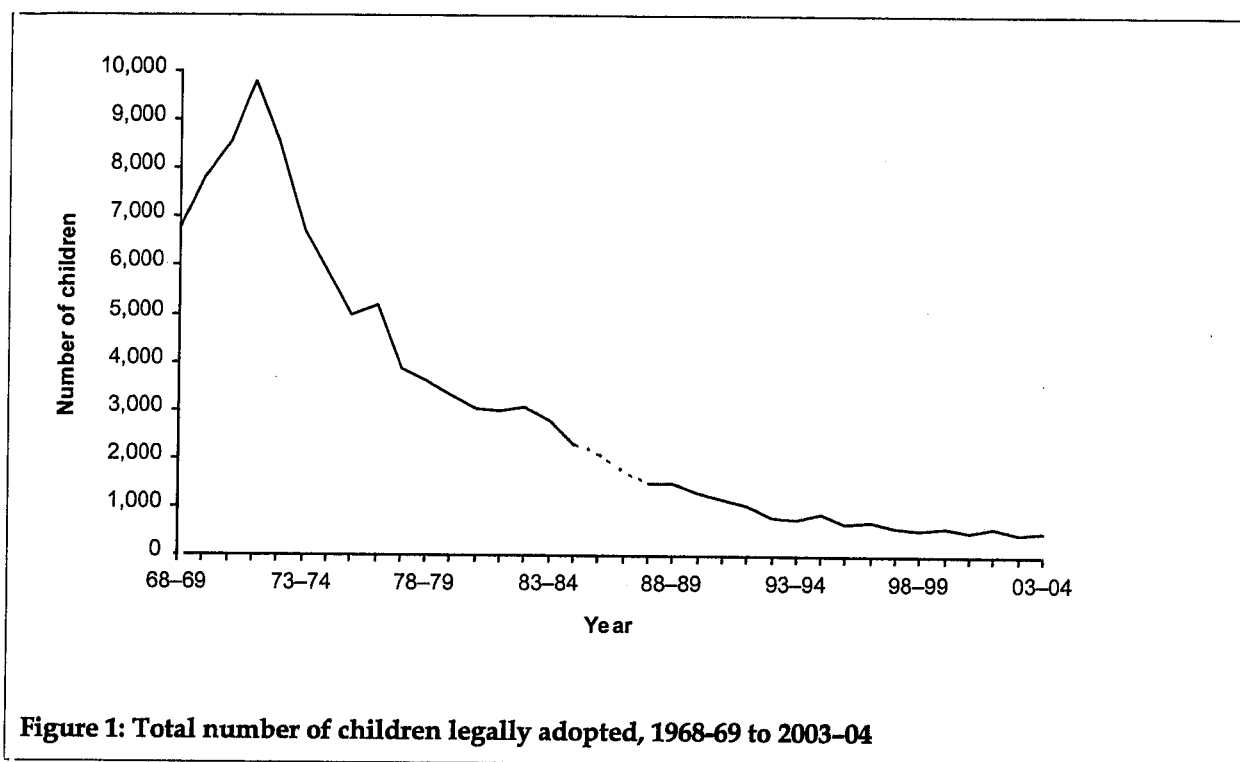


Figure 1: Total number of children legally adopted, 1968-69 to 2003-04

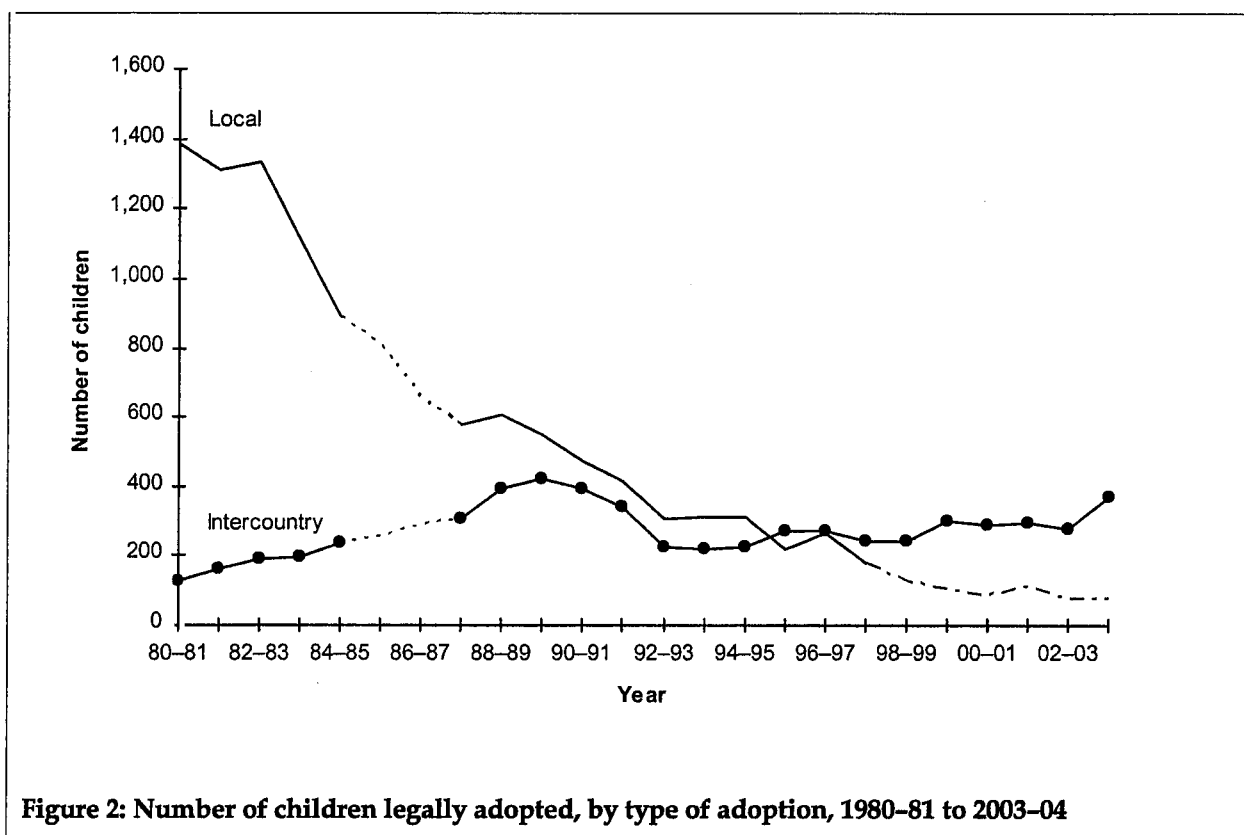
Although numbers of adoptions have fluctuated in the past decade, they have generally followed the downward trend that began in the early 1970s, falling from 1,052 in 1991-92 to 502 in 2003-04 (Table 1). These falls are due mainly to variations in the number of local placement and 'known' child adoptions. 'Known' child adoptions are those by step-parents, relatives and carers, and are not relevant to this inquiry.

The number of local children adopted by non-relatives decreased markedly since the 1980s, from 1,388 in 1980-81 to 127 in 1998-99 (Figure 2). In 1998-99, this category of adoption was changed to 'local adoptions' and adoptions by carers were excluded. The number of local adoptions has fluctuated since this time, but has fallen overall from 127 to 73 between 1998-99 and 2003-04 (Figure 2).

National data on the adoptions of Indigenous children were not available in this collection prior to 1991-92. Since then, there have been a total of 76 adoptions of Indigenous children – 15 in the past 5 years. The Aboriginal Child Placement Principle outlines a preference for the placement of Aboriginal and Torres Strait Islander children with Indigenous people when the children are placed outside their family (Lock 1997:50). Where placements with the child's extended family or community are not available or appropriate, Indigenous children may be adopted by other families.

The number of adoptions of intercountry children (called 'adoptions of overseas-born children by non-relatives' before 1998-99) increased from 127 in 1980-81 to 420 in 1989-90 then fell to 222 in 1993-94 (Figure 2). Between 1994-95 and 1998-99 the numbers fluctuated but there was a 23% increase from 1998-99 to 1999-00. The reason for much of this increase can be linked to the streamlining of processes for adoption of intercountry children as a result of the ratification by Australia of The

Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption in December 1998 and the bilateral agreement which was signed with China in 1999.



From 1999-00 to 2002-03, the numbers of intercountry adoptions had remained fairly stable. However, 2003-04 saw a 33% increase in the number of intercountry adoptions from the previous year and the largest recorded number of adoptions since 1990-91 (Table 2). This appears to be largely due to a significant increase in the number of children adopted from China (Table 2).

Country of origin

In the past decade, the majority of adoptions have been from South Korea, India, Ethiopia, Thailand, China, the Philippines and Colombia (Table 2). The numbers of adoptions from the various countries tend to fluctuate, and the number from countries such as Romania and Fiji has now all but ceased.

An important aspect of intercountry adoption is that it is mostly the country of origin and not necessarily the state or territory government determines the suitability of prospective parents. There are certain characteristics that some countries require before a person or couple is deemed suitable. These may include age cut-offs, religion, fertility status, ethnicity and marital status. Prospective parents are advised of these requirements by the state and territory governments, and this information is available from the various community services department websites.

Table 2: Intercountry adoptions, by country of origin, 1994-95 to 2003-04

	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	Total
Bolivia	—	3	3	5	3	5	6	3	1	—	29
Brazil	3	6	3	—	—	—	—	—	—	—	12
Burkina Faso	—	—	—	—	—	—	—	—	1	—	1
Cambodia	1	—	1	—	—	—	—	—	—	—	2
Chile	4	7	2	2	—	—	3	—	—	—	18
China	—	3	1	—	—	1	15	39	46	112	217
Colombia	16	40	23	14	11	17	15	9	7	7	159
England	—	—	—	—	—	—	—	—	1	—	1
Ethiopia	—	5	16	37	34	46	37	36	39	45	295
Fiji	6	13	5	18	12	5	3	5	—	1	68
Guatemala	11	6	7	7	6	2	3	6	4	—	52
Hong Kong	—	8	2	1	6	3	3	10	4	4	41
India	29	20	35	28	30	37	40	40	33	29	321
Italy	—	—	—	—	—	—	—	—	—	1	1
South Korea	71	94	84	69	70	77	75	93	101	98	832
Mauritius	—	—	—	—	—	29	—	—	—	—	29
Middle East	1	1	—	—	1	1	1	—	—	—	5
Oceania	1	—	—	—	1	—	—	—	—	—	2
Other Africa	2	1	—	—	—	—	—	—	—	—	3
Other Americas	3	—	—	2	—	1	1	—	—	—	7
Other Asia	1	1	—	—	—	—	—	—	—	—	2
Other Europe	—	—	5	—	1	1	2	—	—	—	9
Philippines	22	22	27	19	14	—	18	12	18	29	181
Poland	4	2	3	1	2	2	—	—	—	—	14
Romania	3	—	5	5	17	36	22	2	1	—	91
Sri Lanka	18	14	9	3	5	3	4	3	2	2	63
Taiwan	3	10	4	8	6	2	6	6	3	3	51
Thailand	25	18	34	26	25	33	35	28	17	39	280
Tonga	—	—	—	—	—	—	—	1	—	—	1
Uganda	—	—	—	—	—	—	—	1	—	—	1
Total	224	274	269	245	244	301	289	294	278	370	2,788

State and territory data

Adoption in Australia is strictly controlled by the state and territory governments and as such there are eight legislations, policies and practices which do impact on the data (see Appendix 3 for a simple overview of the process). The numbers of intercountry adoptions has fluctuated in each jurisdiction, with all jurisdictions except the Northern Territory having a large increase between 2002-03 and 2003-04.

Number of adoptions legally finalised

Comparing the number of children adopted from each jurisdiction is difficult because of the differences in the populations. To try to make sense of the differences in the numbers, the proportion of intercountry adoptions by each jurisdiction was compared to each jurisdiction's proportion of the total population. In 2003-04, the number of intercountry adoptions in each state and territory was proportional to its respective population in Victoria, Western Australia and Northern Territory. In New South Wales and Queensland there were less adoptions than would be expected while in South Australia, Tasmania and the Australian Capital Territory there were more than double the number of adoptions expected. This remains fairly consistent across the years.

Table 3: Proportion of intercountry adoptions by state and territory and the proportion of the total population by state and territory, 1999-00 to 2003-04

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total ^(a)
Number of intercountry adoptions									
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	370
Proportion of total intercountry adoptions									
1999-00	18.3	25.2	19.9	8.6	18.6	4.3	3.7	1.3	100
2000-01	29.4	20.8	13.8	6.9	15.2	4.8	6.2	2.8	100
2001-02	24.1	25.2	11.2	9.9	18.4	5.4	3.1	2.7	100
2002-03	21.9	21.2	10.4	8.6	24.5	5.4	5.4	2.5	100
2003-04	17.8	23.2	13.2	11.9	19.5	5.9	7.0	1.3	100
Population at 31 December ('000)									
1998	6,373.6	4,661.7	3,472.9	1,836.1	1,493.6	471.9	310.5	191.3	18,811.6
1999	6,448.0	4,713.2	3,530.8	1,861.8	1,502.4	471.6	313.5	194.3	19,035.7
2000	6,527.4	4,770.0	3,592.4	1,887.7	1,508.0	471.4	316.8	196.3	19,270.0
2001	6,608.8	4,836.2	3,664.3	1,913.9	1,515.7	472.1	320.3	197.6	19,528.9
2002	6,671.4	4,902.9	3,750.5	1,940.5	1,524.1	474.4	322.7	197.4	19,784.0
2003	6,716.3	4,948.0	3,840.1	1,969.0	1,531.4	480.0	322.6	198.7	20,008.7
Proportion of total population at 31 December									
1998	33.9	24.8	18.5	9.8	7.9	2.5	1.7	1.0	100
1999	33.9	24.8	18.5	9.8	7.9	2.5	1.6	1.0	100
2000	33.9	24.8	18.6	9.8	7.8	2.4	1.6	1.0	100
2001	33.8	24.8	18.8	9.8	7.8	2.4	1.6	1.0	100
2002	33.7	24.8	19.0	9.8	7.7	2.4	1.6	1.0	100
2003	33.6	24.7	19.2	9.8	7.7	2.4	1.6	1.0	100

The numbers of adoptions that are officially recorded refer to those adoptions that have been legally finalised – either in the country of origin or in a court in Australia. There can be a considerable lapse between the time a child begins to live with their adoptive parents and when the adoption order is finalised. Most adoptions made

under the Hague Convention are finalised in the country of origin, however for those that are not, the order is usually finalised after a period of supervision. While most parents do finalise as soon as possible, not all do, so the number of orders made during the year is not identical to the number of children who are placed with their adoptive parents during the year. The next section refers to the number of children placed.

Number of children placed

In 2000–01, data were collected for the first time on the number of children who were placed for adoption during the year regardless of the status of the adoption order. There were more children placed in the years 2001–02 to 2003–04 than orders finalised, with the difference increasing each year.

The number of children placed in each state and territory was proportional to its respective population in Victoria and Western Australia. In New South Wales and Queensland there were fewer adoptions than would be expected while in South Australia, Tasmania, the Australian Capital Territory and the Northern Territory there were more adoptions than expected.

Table 4: Proportion of intercountry children placed for adoption by state and territory and the proportion of the total population by state and territory, 2000–01 to 2003–04

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total ^(a)
Number of intercountry adoptions									
2000–01	61	62	32	24	33	15	21	5	253
2001–02	90	72	26	26	48	12	13	11	298
2002–03	72	94	41	30	65	26	18	6	352
2003–04	95	100	60	31	73	20	24	12	415
Proportion of total intercountry adoptions									
2000–01	24.1	24.5	12.6	9.5	13.0	5.9	8.3	2.0	100
2001–02	30.2	24.2	8.7	8.7	16.1	4.0	4.4	3.7	100
2002–03	20.5	26.7	11.6	8.5	18.5	7.4	5.1	1.7	100
2003–04	22.9	24.1	14.5	7.5	17.6	4.5	5.8	2.9	100
Population at 31 December ('000)									
2000	6,527.40	4,770.00	3,592.40	1,887.70	1,508.00	471.4	317	196	19,270.00
2001	6,608.80	4,836.20	3,664.30	1,913.90	1,515.70	472.1	320	198	19,528.90
2002	6,671.40	4,902.90	3,750.50	1,940.50	1,524.10	474.4	323	197	19,784.00
2003	6,716.30	4,948.00	3,840.10	1,969.00	1,531.40	480	323	199	20,008.70
Proportion of total population at 31 December									
2000	33.9	24.8	18.6	9.8	7.8	2.4	1.6	1	100
2001	33.8	24.8	18.8	9.8	7.8	2.4	1.6	1	100
2002	33.7	24.8	19.0	9.8	7.7	2.4	1.6	1	100
2003	33.6	24.7	19.2	9.8	7.7	2.4	1.6	1	100

Age of children in intercountry adoption

The ages of children adopted from other countries tend to be older than those adopted locally (AIHW 2004). This is partly because the process of intercountry

adoption is longer than for local placements, but it is also because of the age of children that are in need of a family in the various countries.

In some countries, there is a hierarchy of placement options available for the child, and these are somewhat similar to the Australian Aboriginal Child Placement Principle. For some children, the first option may be for the child to be placed within the family. If this is not possible, an effort will be made to place the child within the wider community, and adoption to an overseas country may be viewed as a final option.

The age of children adopted from the eight main countries from which Australian parents adopt children from is presented in Figure 3. Only 31% of children are aged less than one year old – further breakdown of this age group is not available. The ages of children differ depending on the country of origin, and this would be due to the practices in each individual country.

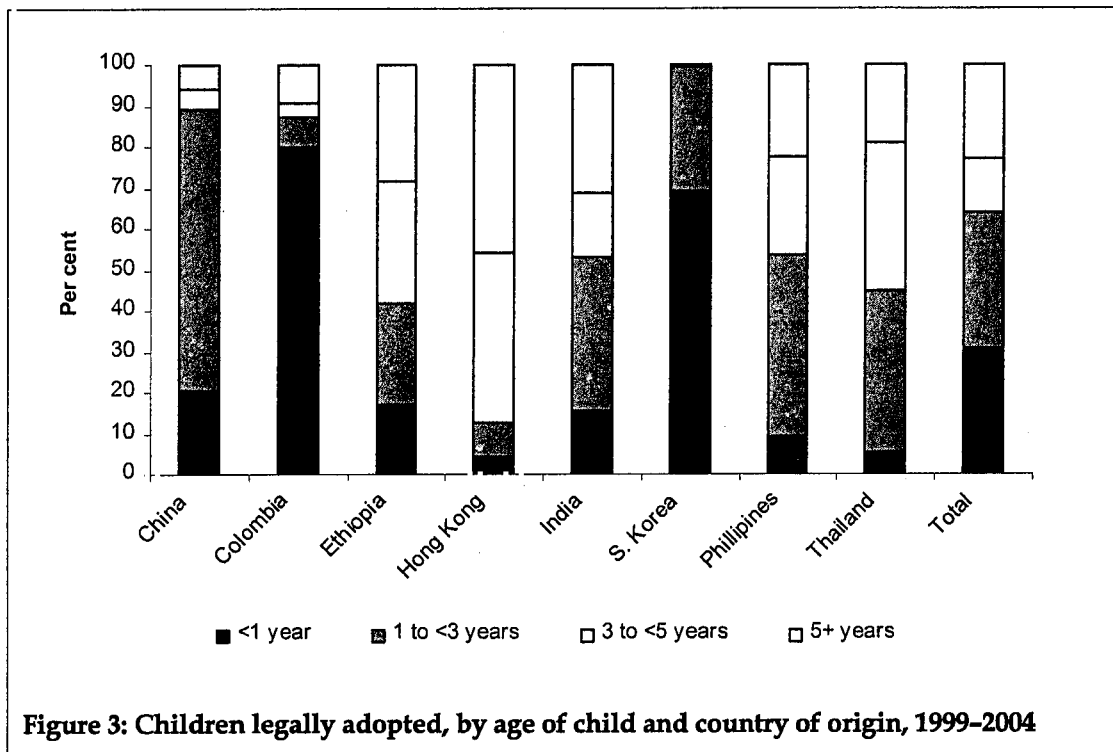


Figure 3: Children legally adopted, by age of child and country of origin, 1999-2004

Appendix 1: Summary of legislation

Commonwealth

Immigration (Guardianship of Children) Act 1946

Marriage Act 1961

Family Law Reform Act 1996

New South Wales

Adoption Act 2000

Adoption Regulation 2003

Level of court

Supreme Court of New South Wales

Step-parent adoptions

Applications may be made to the Supreme Court by a step-parent for formal adoption of a step-child. The child must be at least 5 years old. A social worker is appointed by the New South Wales Department of Community Services (DoCS) to provide a written assessment of the case which is submitted with the application to court.

Other-relative adoptions

There is provision for adoptions by relatives other than step-parents. The child must have an established relationship of at least 5 years with the applicant/s. These adoptions are made only in exceptional circumstances, that is, where a guardianship or custody order or other order made through the Family Court would not adequately provide for the interests and welfare of the child.

Carer adoptions

In some circumstances children may be adopted by their carers, if the parent consents or the Supreme Court dispenses with consent, and adoption is seen to be in the child's best interests and that, having considered all alternatives, adoption is preferable to any other order.

Placement adoptions

Eligibility requirements:

Applicants for adoption must be resident in New South Wales, over 21 years of age, may be a single person, or a couple who have been living together continuously for 3 years and one applicant must be an Australian citizen. Gazetted selection criteria apply and are available on the DoCS website at <http://www.community.nsw.gov.au/adoptions/>.

The main consideration for any adoption order being made is that it is in the best interests of the child concerned in both childhood and later life.

Arrangements must be made by DoCS or an accredited adoption service provider such as Centacare Adoption Services, Anglicare Adoption Services and Barnardos Australia.

Adoption of Indigenous children

Aboriginal and Torres Strait Islander children must be placed in accordance with the Aboriginal and Torres Strait Islander Child Placement Principles outlined in the Act.

Victoria

Adoption Act 1984

Adoption Regulations 1998

Adoption (Amendment) Act 1991

Disability Services and other Acts (Amendment) Act 1997

Adoption (Amendment) Act 2000

Level of court

Supreme Court and County Court

Step-parent and other-relative adoptions

In all cases of placement with relatives, attempts will be made to place the child on a guardianship order, or another order made through the Family Court. An adoption order in favour of a relative or step-parent will be made only if exceptional circumstances exist, and an order from the Family Court would not make adequate provision for the welfare and interests of the child.

A solicitor may prepare an application for formal adoption by a step-parent or other relative. The application must be notified to the Victorian Department of Human Services (DHS) or an approved non-government adoption agency for the preparation of an assessment report on the prospective adoptive parents. The report is submitted with the application to the County or Supreme Court.

Adoptions are arranged by DHS or an approved non-government agency, including Uniting Care Connections, Anglicare Western, Anglicare Gippsland, Centacare Catholic Family Services, Loddon Mallee Permanent Care St Lukes Anglicare, and Child and Family Services Ballarat.

Placement adoptions

Eligibility requirements:

- a married/de facto couple of more than 2 years
- a single person in certain circumstances.

Adoptions are arranged by DHS or an approved non-government organisation (see step-parent and other-relative adoptions).

Adoption of Indigenous children

The Adoption Act recognises the principles of Aboriginal self-management and self-determination, and that adoption is not available in Aboriginal child care arrangements. Restrictive eligibility criteria are in place for the selection of adoptive parents for Indigenous children. The birth parent(s) of an Indigenous child can place the condition on adoption that the child go to Indigenous adoptive parents, or that a right of access be granted to the natural parents, other relatives and members of the Aboriginal community.

Queensland

Adoption of Children Act 1964

Adoption of Children Regulation 1999

Level of court

The Director-General of the Department of Child Safety (DChS) is solely responsible for the making of adoption orders in Queensland. The Children's Court or Supreme Court may be involved with the dispensation of consent. The Supreme Court also has the power to recognise adoption orders made under the law of a country outside the Commonwealth and the territories of the Commonwealth as well as the power to discharge an adoption order for the adoption of a child made under the *Adoption of Children Act 1964*.

Step-parent adoptions

Adoption by step-parents can be arranged only through the DChS.

Other-relative adoptions

There is provision under the Act for adoptions by relatives other than step-parents in exceptional circumstances, that is, when a guardianship or custody order will not adequately provide for the interests and welfare of the child. However, no order has been made in favour of a relative other than a step-parent in recent years.

Placement adoptions

Eligibility requirements:

- General adoption – one applicant must be an Australian citizen and applicants must reside or be domiciled in Queensland. Applicants must be infertile, married for at least 2 years and in good health. The applicants must not have custody of more than one child at the time of application.
- Intercountry adoption – one applicant must be an Australian citizen and applicants must reside or be domiciled in Queensland. Applicants can have no more than four children in their custody and must be married for 2 years and in good health.

- Special-needs adoption— applicants must be in good health, one applicant must be an Australian citizen, and applicants must reside or be domiciled in Queensland.

The DChS is the only agency legally authorised to arrange adoptions in Queensland.

Adoption of Indigenous children

The placement of an Indigenous child requiring an adoptive placement is undertaken in accordance with the requirements of the *Adoption of Children Act 1964* and the DChS Aboriginal and Torres Strait Islander Child Placement Principle. Prospective parents of the same, or a similar, Indigenous or cultural background as the child are selected after consultation with appropriate Indigenous services or community groups to facilitate decision making.

The Act makes provision for a child to be adopted by adoptive parents with a different racial and cultural background from the child where it is apparent that there are no prospective parents from the child's background or where it is in a child's best interests for the placement to occur. However, it is not the policy of the DChS to place children from an Indigenous background with non-Indigenous adoptive parents.

Review of *Adoption of Children Act 1964*

The Department of Child Safety is currently reviewing Queensland's adoption legislation and it is anticipated that a draft bill will be released for consultation in 2005.

Western Australia

Adoption Act 1994

Adoption Regulation 1995

Level of court

Family Court of Western Australia

Step-parent adoptions

Amendments effective from June 2003 require people considering step-parent adoption to obtain a determination from the Family Court of Western Australia that a step-parent order would be preferable to a consent (parenting) order. Once given that go ahead, the necessary Schedule 1 information and counselling will be provided by the Department.

The consent of the non-custodial birth parent, or an order from the Family Court of Western Australia to dispense with such consent, is required. An adoption plan needs to be negotiated between the non-custodial birth parent and the adoptive parent, or dispensed with by the Court, before the adoption can be finalised. Consents to the adoption become effective once the proposed adoption plan has been considered by the Department.

Step-parents wishing to adopt their step-child must give 60 days notice to the Department for Community Development (DCD) of their intention to apply for an order of adoption. It may be necessary to engage the services of a solicitor for this purpose, as well as to make the application to the Family Court of Western Australia for an adoption order.

The Department for Community Development is required to provide a complete assessment report to the Court.

Other-relative adoptions

Adoption by relatives is not permitted under the 2003 amendments made to *Adoption Act 1994*.

Adoption severs the legal link that child has with his or her birth parents.

It is considered that parenting orders or consent orders made by the Family Court of Western Australia can better address the needs of the child in situations where relatives wish to care for a related child. These orders can retain the legal link the child has with their birth family, whilst addressing the day-to-day care needs of the child.

Carer adoptions

Carer adoptions can occur when it is considered that the best interests of the child are served by the child being adopted by eligible and approved carers. The carers must have had the full-time care of the child for at least 3 consecutive years. The Department for Community Development must have arranged or approved the placement of the child with the carer and must be satisfied that the child will not return to live with the birth family or extended family. It is required that the birth parents give their consent to the adoption or that there is an order from the Family Court of Western Australia dispensing with consent. Unless dispensed with by the Family Court, an adoption plan is a legal requirement. The Family Court finalises the adoption by the granting of an adoption order.

Placement adoptions

All known birth parents must be asked to give consent. Birth parents are involved in the selection process of adoptive parents by choosing a family from non-identifying profiles.

All adoptions are arranged through the Department for Community Development. Applicants must meet specific eligibility criteria before being considered for assessment.

An adoption plan is required to be made between birth parents and adopting parents, or an application to the Family Court made to dispense with the adoption plan, before the adoption order is granted in the Family Court of Western Australia. The child's first given name is expected to be retained by the adoptive parents.

Adoption of Indigenous children

Amendments to the *Adoption Act 1994* have included the Aboriginal and Torres Strait Islander children – placement for adoption principle, the appointment of an approved Aboriginal and Torres Strait Islander agency for consultation and the requirement to consult with relevant Aboriginal and Torres Strait Islander staff about the placement or the potential adoption of an Aboriginal or Torres Strait Islander child. Aboriginal children are placed with Aboriginal adoptive parents unless the child's birth parents specifically request otherwise.

South Australia

Adoption Act 1988

Adoption (Miscellaneous) Amendment Act 1996

Level of court

Youth Court of South Australia

Step-parent adoptions

In all cases, 'Leave to proceed' granted in the Family Court is required before step-parents can apply to adopt a step-child.

Adoption by step-parents is granted only in exceptional circumstances, that is, when there is no other order which will adequately provide for the interests and welfare of the child. These adoptions can be arranged only through the South Australian Department for Families and Communities (DFC).

Other-relative adoptions

There is provision for adoptions by relatives other than step-parents in exceptional circumstances, that is, when there is no other order which will adequately provide for the interests and welfare of the child.

Adoption by relatives can be arranged only through the DFC.

Placement adoptions

Eligibility requirements:

- a married couple or a de facto couple of more than 5 years
- a single person in particular circumstances.

Adoptions can be arranged only through the DFC.

Adoption of Indigenous children

Restrictive eligibility criteria apply for adoptive parents in accordance with the Aboriginal Child Placement Principle.

Tasmania

Adoption Act 1988

Adoption Regulations 1992

Level of court

Magistrate sitting alone

Step-parent adoptions

Adoption by step-parents is possible in some circumstances. If the child's father has not legally established his paternity, and does not do so within 30 days of the mother signing the consent to adoption, an application may be made through the Department of Health and Human Services (DHHS). If the child's paternity has been legally established, adoption is possible only in special circumstances which justify adoption and when other available orders will not provide adequately for the welfare and interest of the child. All applications for an adoption order in favour of a step-parent adoption must be made through the DHHS.

Other-relative adoptions

The court's power to make an adoption order in favour of a relative is limited to special circumstances which justify adoption and when other available orders will not provide adequately for the welfare and interests of the child. All applications for an adoption order in favour of a relative must be made through the DHHS.

Placement adoptions

Eligibility requirements:

- a married couple of more than 3 years, with any period of time spent in de facto relationship before marriage included in time assessment
- a single person only in special circumstances relating to the welfare and interests of the child.

Adoptions by non-relatives can be arranged by DHHS or a non-government organisation approved by the Minister for Health and Human Services.

Adoption of Indigenous children

Not included in legislation although birth parents may express wishes about race of adoptive parents. The cultural differences of Indigenous people are recognised; placement within the Aboriginal community is the preferred option.

Australian Capital Territory

Adoption Act 1993

Level of court

Supreme Court

Step-parent adoptions

Adoption by step-parents can only be arranged only through the Office for Children, Youth and Family Support (OCYFS).

Other-relative adoptions

There is provision for adoptions by relatives other than step-parents in exceptional circumstances, that is, when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Adoption by relatives can be arranged only through the OCYFS.

Placement adoptions

Eligibility requirements:

- a married couple of more than 3 years
- a de facto couple of more than 3 years
- a single person in particular circumstances.

Adoptions by non-relatives must be arranged through the OCYFS.

Adoption of Indigenous children

Restrictive eligibility criteria apply for adoptive parents in accordance with the Aboriginal Child Placement Principle.

Northern Territory

Adoption of Children Act 1994

Level of court

Local Court

Step-parent adoptions

Other arrangements are sought before an adoption order is considered.

Other-relative adoptions

There is provision for adoptions by relatives other than step-parents in exceptional circumstances, that is, when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Placement adoptions

Eligibility requirements:

- a married couple
- a single person in exceptional circumstances.

All local adoptions must be arranged through the Department of Health and Community Services. Intercountry placement adoptions must be arranged through Australians Aiding Children Adoption Agency, which is accredited by the Northern

Territory Government under the Hague Convention on Intercountry Adoption for this purpose.

Adoption of Indigenous children

Adoptions of Indigenous children can occur only if alternative custody with the child's extended family cannot be arranged. If an order is made it must comply with the Aboriginal Child Placement Principle.

Appendix 2: Countries party to the Hague Convention

Country	Date Convention came into effect	Country	Date Convention came into effect
Albania	1 January 2001	Lithuania ^(a)	1 August 1998
Andorra ^(a)	1 May 1997	Luxembourg	1 November 2002
Australia	1 December 1998	Madagascar	1 September 2004
Austria	1 September 1999	Malta	1 February 2005
Azerbaijan ^(a)	1 October 2004	Mauritius ^(a)	1 January 1999
Belarus	1 November 2003	Mexico	1 May 1995
Bolivia	1 July 2002	Moldova, Republic of ^(a)	1 August 1998
Brazil	1 July 1999	Monaco ^(a)	1 October 1999
Bulgaria	1 September 2002	Mongolia ^(a)	1 August 2000
Burkina Faso	1 May 1996	Netherlands	1 October 1998
Burundi ^(a)	1 February 1999	New Zealand ^(a)	1 January 1999
Canada	1 April 1997	Norway	1 January 1998
Chile	1 November 1999	Panama	1 January 2000
Colombia	1 November 1998	Paraguay ^(a)	1 September 1998
Costa Rica	1 February 1996	Peru	1 January 1996
Cyprus	1 June 1995	Philippines	1 November 1996
Czech Republic	1 June 2000	Poland	1 October 1995
Denmark	1 November 1997	Portugal	1 July 2004
Ecuador	1 January 1996	Romania	1 May 1995
El Salvador	1 March 1999	San Marino	1 February 2005
Estonia ^(a)	1 June 2002	Slovak Republic	1 October 2001
Finland	1 July 1997	Slovenia	1 May 2002
France	1 October 1998	South Africa ^(a)	1 December 2003
Georgia ^(a)	1 August 1999	Spain	1 November 1995
Germany	1 March 2002	Sri Lanka	1 May 1995
Guatemala ^(a)	1 March 2003	Sweden	1 September 1997
Guinea ^(a)	1 February 2004	Switzerland	1 January 2003
Hungary	1 August 2005	Thailand	1 August 2004
Iceland ^(a)	1 May 2000	Turkey	1 September 2004
India	1 October 2003	United Kingdom	1 June 2003
Israel	1 June 1999	Uruguay	1 April 2004
Italy	1 May 2000	Venezuela	1 May 1997
Latvia	1 December 2002	<i>Total countries</i>	<i>65</i>

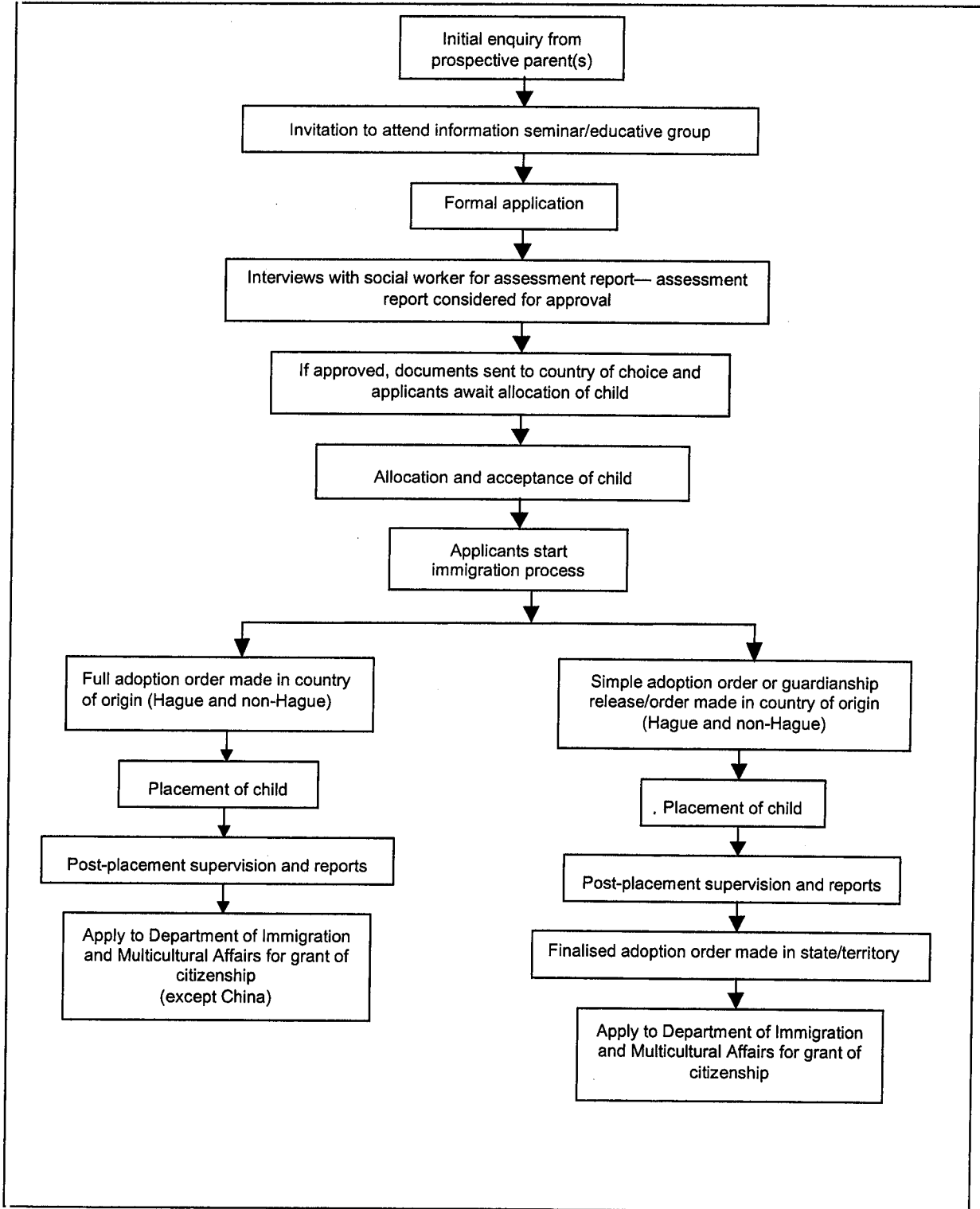
(a) These countries have acceded to the Convention.

Notes

1. This information is correct as at 5 May 2005.
2. The following countries have signed, but are yet to ratify, the Convention: Belgium, China, Ireland, Russian Federation, and United States of America.

Source: Hague Conference on Private International Law website URL <www.hcch.net/e/status/adoshite.html>.

Appendix 3: Process of placement adoption of intercountry children



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