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**Government of South Australia**

Department for Families and Communities

Submission by the
Government of South Australia

to the

House of Representatives Standing Committee on Family and Human Services

# Inquiry into adoption of children from overseas

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**Preamble**

Intercountry adoption is a controversial topic within Australia. There is a board spectrum of views found within the Australian community which ranges from that which contends that intercountry adoption should be abolished because it is seen as "baby trafficking" to the view that contends that intercountry adoption should be increased with adoptions fast tracked because it is seen as a way of providing families for the world's orphans.

While it is abundantly clear that many children have benefited from intercountry adoption, the different views in this controversy gain currency from time to time. Whatever the level of controversy, Australian adoption policy and practice is steeped in the principle of the best interests of the child subject of adoption. This principle is enshrined in all relevant Australian legislation and it is found in the national and international arrangements that this country adheres to in engaging in intercountry adoption, in particular the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

History as well as recent events underscores the need for rigorous adherence to these nationally and internationally established standards in intercountry adoption, which are built upon the United Nations Convention on the Rights of the Child.

Experiences such as those of the British Child Migrants sent to Commonwealth countries particularly in the immediate post World War II period, the Stolen Generations of Aboriginal Australians, the children of the Canadian Native Residential Schools, the children of the Disappeared in Argentina in the 1970s and 1980s, and some of the children of the Vietnamese Airlift demonstrate that standards of practice that have a minimal focus on the best interests of the child and that are conducted with questionable rigour can have profound and lasting negative outcomes on those children who were subject of such practices, as well as on their families and communities.

The recent closures of intercountry adoption programs with Kakinada in India, Cambodia and Guatemala, are examples of the outcomes of proven corruption in those programs in which children were shown to have been stolen from their families or removed under false pretences and then sold into the intercountry adoption market, even though it may have appeared that the processes were properly sanctioned. The recent suspension of the programs with Romania and Belarus demonstrate that even apparently properly established programs may be affected by allegations of corruption and mismanagement.

The current unprecedented world wide movement of peoples from developing countries due to natural calamity, armed conflict, deprivation and poverty has brought about conditions that are easily exploited by those who seek to take advantage of the vulnerability of the people subject to these conditions. The effects of trafficking in refugees have been felt in Australia as well as in various countries in Europe, and trafficking in women and children for prostitution, slave labour and organ transplants is a major concern of the United Nations[1].

The tragedy of the Indian Ocean tsunami in December 2004 led to the displacement of thousands of children in the countries affected. The vulnerability of these children to international exploitation led the governments of Sri Lanka and Indonesia to declare in the first days after the tsunami that these children would not be available for intercountry adoption and indeed Indonesia placed a ban on the movement of children offshore in the period immediately after the tsunami due to alleged incidents of paedophile activity concerning some of the displaced children.

Bearing these and other matters in mind, the policies and practices in place in Australia go towards the highest standards in protecting the interests of children and their families and addressing the needs and wishes of those seeking to adopt children born overseas. The arrangements in place brought about by Australia's ratification in 1998 of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption have ensured that every effort is made to secure the rights of those concerned in intercountry adoption and to develop coordinated programs that enable the smooth running of the Australian programs.

People seeking to adopt a child from overseas expect that the Australian State and Territory governments will have adequate safeguards in place to ensure that any child they adopt has not been subject of child trafficking, abduction or improper practices.

Adoption of overseas born children by Australians is the jurisdiction of each of the States and Territories. Each jurisdiction is responsible for administering the legislation that provides for persons to apply to adopt a child and for the adoption to be facilitated, provided all requirements of jurisdictional, national and international arrangements are properly met. Commonwealth legislation in the area of intercountry adoption falls into the category of enabling legislation.

[1] Special Rapporteur on trafficking in persons , especially in women and children, Office of the United Nations Commissioner for Human Rights at http://www.ohchr.org/english/issues/trafficking/

Australians seeking to adopt children from overseas have significant needs that must be taken into account in developing intercountry adoption programs. Therefore, the legislation mentioned above, both federal and state, must be sound and well coordinated. In particular, the application processes should be thorough, transparent and efficient. In general, the various application processes across Australia, although subject to the requirements of local legislation and policies are similar in their content and milestones. The most contentious issue for applicants would appear to be the time required before a child may be placed with a family. The processes and time taken are often referred to as "red tape" by those impatient with the process, and sometimes comparisons are made with other countries, such as the United States of America, where it is perceived by some that intercountry adoption is easier and quicker (the USA is not a signatory to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and intercountry adoption is highly privatised). The average time in Australia for a child to be placed with an applicant once the application process is started is about 2 years. The time taken for this process various widely from country program to country program due to the different overseas requirements. It may also vary due to the local assessment process and specific personal issues that need to be addressed with particular applicants.

Further difficulties may be perceived in the various criteria provided for in each of the Australian jurisdictions. While this is an inevitable situation for a federation of States in any area of law, the Australian set of adoption legislation has more similarities than variations in this respect in comparison with those of some comparable overseas countries. The State and Territory Central Authorities are in constant communication in relation to the development of programs and statutes and changes are regularly made to the legislation in respect of criteria, with a trend towards conformity.

It is important to point out that while families formed through intercountry adoption have significantly different aspects and challenges to those families formed through the parents giving birth to their children, these families are true families with all the responsibilities and obligations of any other family in Australia. As such they may be seen as having the same needs and requirements of other families including access to services and benefits and acknowledgement of their specific needs and circumstances.

The members of families into which overseas children have been adopted, and in particular the adopted children themselves, have unique experiences that must be heard and taken into account when forming practice, policy and legislation. So too, it must be recognised that intercountry adoption is more than a relatively short process of applying for and being placed with an adoptive child. It is a life long journey for all those involved, including the most invisible of all, the birth parents and family members of the adopted children, which must be guided in the first instance by ethical and proper practices for which ultimately the State is responsible.

## The terms of reference of the Inquiry

The terms of reference of the inquiry are:

> *The Committee shall inquire into and report on how the Australian Government can better assist Australians who are adopting or have adopted children from overseas countries (intercountry placement adoptions) with particular reference to:*
>
> 1. *Any inconsistencies between state and territory approval processes for overseas adoptions; and*
> 2. *Any inconsistencies between the benefits and entitlements provided to families with their own birth children and those provided to families who have adopted children from overseas.*

This submission addresses the first term of reference in broad terms with specific references to the South Australian application process for the adoption of an overseas born child; this comprises the substantial part of the submission.

The second term of reference is dealt with at the end of the submission under the headings:

- Maternity Payment
- Other Commonwealth family benefits.

## Paramount principle

The principle that underpins all South Australian legislation, policy and practice in the intercountry adoption program is that of the best interests of the child to be adopted. The South Australian *Adoption Act, 1988* in section 7 states:

> *In all proceedings under this Act, the welfare of the child to whom the proceedings relate must be regarded as the paramount consideration.*

Further, this principle is found in other significant documents and arrangements to which the South Australian Government adheres. These are:

- the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption in Article 1 (a):

  > *to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;*

- The National Principles In Adoption, endorsed by all Australian Community and Disability Services Ministers in 1993 and 1997 – first principle:

  > *The interest of the child is the paramount consideration and the child's fundamental rights are to be safeguarded.*

Given the paramountcy of this underpinning principle throughout the Australian jurisdictions it is critical that the Inquiry has regard to the position of the child in the process. Usually, the voices of children for overseas adoption are silent, yet they are the most affected and least powerful in the process.

Similarly, the guardian and or parent (whether known or unknown) in the overseas country is not in a position to submit to this Inquiry. These are their children. These people need to make extremely difficult decisions about their children, often from a position of considerable disadvantage and limited power. The affect of the loss of their children to intercountry adoption cannot be set aside, because without this loss there would be no intercountry adoption and because their loss is real and regrettable. Acknowledgement of the rights and interests of the children's birth families is found in the preamble to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, which states that

> *... each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin.*

**National and International arrangements**

As mentioned above, South Australia engages in intercountry adoption with countries that have ratified the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. These countries are:

- India
- Philippines
- Poland
- Sri Lanka
- Turkey
- Thailand

The South Australian Government will process applications to other countries that have ratified the Convention, provided the Central Authority in that country is prepared to accept an application and has proper legislation, policy and processes in place to engage in adoption according to the Convention.

A number of other programs exist that were in place before Australia ratified the Convention in 1998 and where the country in question has not ratified the Convention. These programs are conducted in terms of Bi-Lateral arrangements that are managed and coordinated by the Australian Central Authorities. The October 2004 Community and Disability Services Ministers Meeting affirmed that no further Bi-Lateral arrangements would be entered into by the Australian adoption authorities, but that the existing ones would persist provided they continued to meet the basic principles of the Convention. The country programs conducted by South Australia where Bi-Lateral arrangements are in place are:

- Korea
- Ethiopia
- Fiji
- Hong Kong
- Taiwan

The intercountry adoption arrangement between The People's Republic of China and Australia is a special case and was affirmed between the two governments in 1999. All Australian States and Territories send adoption applications to China and this is the fastest growing intercountry adoption program in Australia.

**Australian management of intercountry adoption**

Pursuant to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, the governments of the Australian States and Territories and the Commonwealth Government have established Central Authorities. The Central Authority is generally the Manager of the service unit of the relevant government department[2]. The role of the Central Authority in each State and Territory is to ensure proper adherence to the Convention in each jurisdiction and to regularly report to the Commonwealth Central Authority. The role of the latter Authority is to liaise with the Secretariat of the Convention located in The Hague.

The Australian Central Authorities have excellent working relationships, meeting every six months in the different capital cities on a rotating basis to address issues that affect the Australian intercountry adoption programs. They liaise on a regular and ongoing basis outside of these meetings. Each State and Territory Central Authority has responsibility for coordinating specific country programs and provides a report to the six monthly meetings on any matters concerning this. It is the role of the "coordinating Central Authority" to liaise with the adoption authorities and agents in the overseas country of the specific program he or she has been allocated and to report back to the other Australian Central Authorities.

The Australian Central Authorities may work together on projects or specific problems. A recent example is the management of procedural difficulties with the Ethiopia program arising from domestic difficulties in Addis Ababa that caused some disruption to the program. The Queensland Central Authority liaised directly with the Ethiopian agent involved, liaised with the Central Authority for Ethiopia and led a number of national meetings to address program and application problems. A sub-committee of the Central Authorities has met recently in New South Wales to complete a report on the Ethiopia program which makes recommendations about improvements and changes to the arrangements currently in place.

[2] The Central Authority in South Australia is the Manager, Adoption and Family Information Service which is a unit of Children Youth and family Services of the Department for Families and Communities.

South Australia is responsible for the coordinating of the India program and has worked extensively in cooperation with two other Central Authorities to promulgate the service agreement with the Australia-Ethiopia agent in Addis Ababa.

A regular task of the Central Authorities meeting is the management of the allocation of child placements to Australia from the various programs. For example, South Korea only releases a certain number of its children for adoption to Australia per year. This number is allocated to Australia as a whole and it is the responsibility of the Australian Central Authorities to fairly distribute this allocation across the States and Territories. It is the role of the Central Authorities to find placements as requested by the sending countries for children released for overseas adoption, rather than to seek children in those countries for families wishing to adopt them. [3]

**Outcomes for intercountry adoption**

The South Australian Government has a high level duty of care to maximise the potential for the best possible outcome for the children subject of the intercountry adoption program in this State.

The assessment of intending adoptive parents is a key process in the quality management of the program. It is the tool by which the Department for Families and Communities can maximise the outcomes for children being placed into families for adoption. Training, orientation, professional support and appropriate remuneration of assessing workers are essential to ensure quality assessments are undertaken. The purpose of the assessment needs to be clearly understood by both the assessing worker and the applicants.

Children placed for adoption from overseas (except from certain Hague Convention countries and from China) arrive in Australia under the guardianship of the Minister of Immigration delegated to the welfare authority in the State or Territory in which the child is to reside. As guardian of these children, the Department has a duty of care to support and monitor the placement of the child to ensure the child's safety and welfare, prior to supporting an application to the Adoptions Court for an adoption order to be granted, thus finalising the adoption process.

In the longer term, children adopted from overseas to South Australia, and their parents, will hold the Department accountable for the outcomes of their adoption. Standards must be in place to ensure the best possible outcomes for families and to reduce the potential burden on the State resulting from litigation where outcomes have been poor.

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[3] "Adoption is a service for children not for adults wishing to acquire the care of a child." Principle 3, National Principles in Adoption, Australia, 1997.

Measuring outcomes in intercountry adoption is a difficult and complex process. Numbers of children adopted in one State or Territory compared with those adopted in another has in the recent past in Australia been put forward as one measure of outcome, with the claim of more interpreted as better. One other measure put forward has been the time taken for an applicant to be placed with a child, with the claim of faster means better. The government of South Australia finds that these are simplistic elements that do not necessarily take into account the long term interests and outcomes for children who are adopted from overseas. The South Australian experience is that families that are thoroughly assessed and well prepared for adoption and who are well matched to a particular child generally offer the best outcome for that child. Such assessment and preparation may by necessity be long and indeed arduous for the applicants. Certainly a matching made overseas may take some considerable time; however, this is the purview of the overseas country authority and cannot be interfered with by representations in the interests of the applicants.

Longer term measurements of outcomes in intercountry adoption are found in international literature with some studies recently conducted in Australia. Of note is the significant publication *The Colour of Difference, Journeys in Transracial Adoption* by Sarah Armstrong and Petrina Slayor (Editors) of the Post Adoption Resource Centre in Sydney (Published by The Federation Press, 2001) which addresses the experiences of Australian children of various racial backgrounds who have been placed for adoption in families of a different race to them. These experiences cover a broad range and attest to the complexity of defining "outcome".

The South Australian Government in February this year announced a significant change in its management of the Intercountry Adoption program in this State. Prior to 1 April 2005, the government licensed a non-government adoption agency to conduct certain aspects of the program. The functions of the agency were to induct, assess, conduct education programs and provide support to applicants for intercountry adoptions. As well as this, the agency provided the administrative services for sending applications to the overseas countries once the applicant became an approved prospective adoptive parent.
During 2004 a review was conducted into the delivery of the intercountry adoption program in South Australia by the strategy and review section of the Department for Families and Communities with expert consultation from KPMG Consultants. The review entailed public consultations, consultations with key stakeholders and written and verbal submissions were received.

The review recommended introducing further layers of bureaucracy to resolve the problems identified. However, the government was not persuaded that further layers of bureaucracy were desirable or likely to be effective.

The government was concerned that the care of children under the guardianship of the Department is core government business pursuant to the Department's mandate. This was particularly in light of the significant number of adoptive placement breakdowns and child protection notifications for children placed from overseas and awaiting a South Australian adoption order, and a detailed analysis of a particular adoption process which broke down.

After consideration of the review outcome and other significant information available to the government within the context of government policies in relation to the care and protection of children, Cabinet decided that all intercountry adoption services should be provided from within government, thus taking direct responsibility for outcomes for children subject of intercountry adoption.

**South Australian application process for intercountry adoption**

The process for application to adopt a child born overseas is provided for in the *Adoption Regulations, 2004*. The application and placement criteria are clearly stated in these regulations and are made available to all who seek to apply. The assessment process is also legislated for in the *Adoption Regulations, 2004*.

The South Australian criteria for application to adopt a child, in particular the age criteria, have been subject of a recent public consultation. The outcome of this consultation was that the government recommended the abolition of the age criteria for applicants. Amendments were made to the *Adoption Regulations, 2004* and it is intended that these changes will come into effect in the near future. The changes mean that rather than an impediment, age will be just one of a number of criteria for determining suitability for adoption. As well as this, an amendment is intended to be made to the amount of time required before applicants may be placed with a subsequent child if they already have a child in their care. Previously this time gap was 2 years. The proposed amendment will change this time gap to 12 months. This means that when a family adopts a sibling for their child, the age gap between the children can be significantly reduced.

A step by step document, known as the "Five Stage Process' (attached) is provided to all applicants and is available on the relevant departmental website (http://www.adoptions.sa.gov.au/documents/5StageProcessAugust05.pdf).

In essence, intending applicants must first attend an information session to learn about the process. They may then express an interest in adopting a child. This is a formal process that enables the Department to establish whether or not the intending applicants fit the regulated criteria. Once applicants have established that they meet the criteria, they may be invited to apply. The application process entails attendance at an education program and a thorough assessment. Once all information in relation to assessment is provided, a decision is made as to whether the applicants are suitable to adopt a child from overseas. South Australia has recently introduced a process whereby this information is considered by a committee of experts that may or may not recommend that the applicant be registered as a prospective adoptive parent. Prior to this the decision to approve applicants for adoption was made by an officer delegated by the Chief Executive, in conjunction with relevant experts as required.

Once the applicant is registered, their file is provided to the overseas authority or agent in the country of their choice and/or suitability for the adoption of a child. The file, once accepted by the overseas country may take some time for the allocation of a child. This is entirely the responsibility of the overseas country.

It is certain that many applicants find this stage difficult and some require considerable support at this time. Even though a matching (allocation) may be made, depending on the country concerned processes relating to the guardianship, health and immigration status of the child may take a considerable time to process. The experience for applicants of actually knowing they have been allocated a child but having to wait for these processes to be completed is often frustrating. This part of the process may lead some applicants to attempt to put pressure on Australian authorities to "hurry up the process". However, this would be considered tantamount to duress and would be seen to fly in the face of the requirements set out in the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

Once the child is ready to leave his or her country, the applicants are required to go there to meet the child, attend to any local requirements and return with the child who has been issued a visa to enter Australia as a child to be adopted. On entry into this country, the child, with the exception of the children from the People's Republic of China, is under the guardianship of the Chief Executive of the relevant State or Territory Department.

In South Australia, the child remains under guardianship for approximately 12 months. The family is allocated a case worker who must supervise the placement and a contracted professional worker provides regular reports on the placement and the child's welfare. These reports are provided to the relevant agency and authority in the child's country of origin according to their specific requirements. After 12 months, should the placement be safe and secure and considered in the best interests of the child, the Department will lodge in the South Australian Adoptions Court, an application on behalf of the prospective adoptive parents for the child to be legally adopted. Once this is completed, the family is a legal family and the Department has no mandate to be involved in the family in relation to the adoption unless invited.

## Fees

The South Australian fees for application to adopt an overseas child are scheduled in the *Adoption Variation Regulations, 2005. The fees are:*

**Part 2—Fees in respect of adoption through overseas subregister**

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|---|---|
| Expression of interest under regulation 7(1)— | |
| (a) standard fee | $600 |
| (b) reduced fee | $450 |
| Application for registration as a prospective adoptive parent and preparation of an assessment report by the Chief Executive under regulation 9— | |
| (a) standard fee | $3 000 |
| (b) reduced fee | $2 500 |
| (The fee includes participation in certain workshops and seminars.) | |
| On preparation of file for lodging with relevant authority of overseas country | $2 000 |
| On selection of an applicant for an adoption order for a particular child under regulation 19— | |
| (a) for first child to be placed for adoption | $2 600 |
| (b) for second or subsequent child to be placed for adoption | $2 500 |

The payment of fees for the adoption of a child born overseas has been a point of controversy in Australia from time to time. There are variations in the fee schedules of the States and Territories and these have been subject of comparison.

It is undoubted that the services delivered in the process of applying to adopt a child are necessary. Such services attract costs. Of significance are the costs associated with the education and assessment of prospective adoptive parents with these services generally provided by skilled professional people in the human services field. Administrative costs are also significant and need to be met. The setting up and processing of an application file requires exacting work that must be accurate and thorough with some processes being labour intensive. These include certain checks against criteria, review and approval decisions which may entail consultation and research, and forwarding the file to the overseas country, which must meet strict overseas requirements and secure couriering.

In South Australia much of the application process is subsidised by government as the fees collected do not meet the costs of providing the services.
Further fees paid by families to the overseas country cover the costs required to care for the child once the child has been matched to a family and the match has been approved. These are costs such as medical fees, foster care fees and other associated fees and they are met by the applicants. These are set by the child's home country and vary significantly from country to country.

Fees payable to the Commonwealth Government in relation to immigration requirements are also substantial. The setting of these fees is entirely the responsibility of the Australian Federal Government.

Other costs in adopting a child are associated with travelling to the child's country, accommodation while in the country and attending to any particular formal requirements before the child is placed in the prospective adoptive parents care for travel to Australia.

It is important to note that intercountry adoption is not a form of foreign aid. This process is not about "saving the world's children". There are other institutions, such as the United Nations Children's Fund and other world wide government and non-government agencies and programs in place that address the effects on children of poverty and disadvantage. Such programs are funded on a wide scale with resources directed at the children where they live, so to concentrate the positive effect and enable the communities in which the children exist to be preserved and develop. The Australian Government provides humanitarian aid on an annual basis to overseas countries in recognition of its international responsibilities in this regard.

While intercountry adoption provides a child with an opportunity to grow up in a family where this cannot be offered in his or her own country, this is clearly a process that also provides benefits to people choosing to form a family in this way. If funding intercountry adoption was the role of government as a means of assisting disadvantaged overseas children, and the average amount of money needed to fund an individual intercountry adoption was, for example $20,000, this amount of money would be more wisely spent on foreign aid, because this would help many more children than just one. Thus even though governments in this country are in the position of subsidising some aspects of some of the intercountry adoption programs, the costs need to be largely met by those people seeking to adopt a child.

In addition to this, State and Territory governments must give consideration to the adequate funding of services for disadvantaged children already living in the State or Territory, and must balance the allocation of limited resources in relation to children's needs according to government policies.

**Miscellaneous**

For the purposes of highlighting the various issues of importance that affect those involved in intercountry adoption, an attachment is made to this submission called *Points of view in relation to intercountry adoption* that attempt to put the voice of the three significant parties involved. These are:

- Point of View of the Child
- Point of View of the Parents/Guardians of the Child in the Child's Country of Origin
- Point of View of Someone in South Australia Who Wants to Adopt a Child from Overseas

These are included to emphasise the needs behind the reasons for aiming at the highest possible standards in intercountry adoption.

**Maternity Payment**

It is clear that the current requirements for the provision of the Maternity Payment are often difficult for families adopting from overseas to meet. This is because the timeframe criteria dictated by the age of the child are often unable to be met due to the lengthy processes involved in the placement of the child, once the matching of the child is approved. Currently, adoptive families are unable to claim Maternity Payment if they are placed with a child over the age of two years.

Adoptive families have the same rights and obligations as any other Australian family, and an adopted child is in law, the same as a child born to parents once an adoption order has been granted. They have the right to be treated by the community and its government as equal and to not be disadvantaged by the means by which they have become a family.

**Other Commonwealth family benefits or support mechanisms**

The above principles would apply to any other payments, benefits and financial or other support to which Australian families are entitled. Where such payments, benefits and support are provided to Australian families on a universal basis, families formed by adoption should be seen as the same as any other Australian family.

**Recommendation**

That adoptive families have access to all payments, benefits and financial and other support currently universally available to families.