SUBMISSION NO. 206
AUTHORISED: 21/07/05 JAZ

Commonwealth Parliamentary Inquiry into the adoption of children from Overseas

Victorian State Government
Melbourne, Victoria, May 2005

Contents

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1. INTRODUCTION

The Victorian Government has prepared this information for the House of Representatives Inquiry into the Adoption of Children from Overseas. This information addresses the terms of reference and provides additional information for the Committee in regard to the arrangements with overseas countries.

Intercountry adoption aims to provide adoptive families for children from overseas countries who have been abandoned, orphaned or relinquished and for whom there is no available family in their country of origin. This is a complex program, and shares with local adoption the need to consider the sensitive issues of relinquishment, infertility, family formation and the development of identity in the adopted child. In addition, there are further complexities of race and culture and the working relationships with overseas countries.

1.1 Legislation

In Victoria the adoption of children is governed by the *Adoption Act 1984*. The Act sets out the requirements for the adoption of children both locally and from overseas.

Under the Adoption Act 1984, the effect of an adoption order means that the adopted child shall be treated in law as a child of the adoptive parent/s and the adoptive parent/s shall be treated in law as the parent/s of the child as if that child had been born to them. Further the adoptive child will be treated in law as if the child were not a child of any person who was a parent/s (whether natural or adoptive) of the child before the making of the adoption order and any such person shall be treated in law as if the person were not a parent of the child.

1.2 History of intercountry adoption arrangements in Australia

Intercountry adoption first developed in the aftermath of the first and second world wars in Europe. Many children, separated from their families by the war, crossed international boundaries, thus raising issues of how to protect their interests and status. Intercountry adoption continued to increase in the 1950s, when families in the United States began to adopt significant numbers of Korean children during and after the Korean War.

In Australia, intercountry adoption is a relatively recent development. The first real and very public experience of intercountry occurred in April 1975 when the Vietnam airlift brought 292 children to Australia. 115 of these children were placed with Victorian families. At this time there were no agencies to approve applicants and supervise adoptive placements for children from overseas.

In the late 1970s it was recognised that there was a need to develop uniform Australian intercountry adoption procedures. An Intercountry Adoption Committee, responsible to the Council of Social Welfare Ministers met regularly from 1977 to 1981 to establish standards and guidelines, which were accepted by the Council of Social Welfare Ministers in 1983.

The Social Welfare Administrators' Conference sent delegations, representing all States and Territories, to visit Thailand, Hong Kong, Sri Lanka, India, Korea, Indonesia, the Philippines and certain Latin American countries in 1978, 1979 and 1980. The role of the delegates was to negotiate working arrangements designed to safeguard the interests of the children to be adopted. Where possible, either formal arrangements or agreements were reached on procedures to be followed in administering intercountry adoptions.

There was significant criticism of the management of the program during the early 1980s as well as increasing pressure to develop and adhere to uniform Australian standards, and to co-ordinate the activities of both Commonwealth and State Governments. At that stage, many families travelled overseas and arranged their own adoption without the approval of the State or Territory Welfare Departments.

In 1985, the State and Commonwealth Governments agreed to establish a Joint Committee on Intercountry Adoptions to "determine strategies for the efficient management of intercountry adoption services with a view to enhancing a coordinated Commonwealth, State and Territory approach to the service". As a result, a report was completed for the Council of Social Welfare Ministers and the then Minister for Immigration and Ethnic Affairs in September 1986. The Minister for Immigration made it clear that only adoptions that conformed to agreed guidelines would be supported, that adoption should be in the best interests of the child, that the couple needed to be assessed and approved and the rights and wishes of birth parents should be protected. The Council of Social Welfare Ministers and the Immigration Ministers recommendations were endorsed and they formed the basis for the National Guidelines 1986.

In 1991 the States and Territories and the Commonwealth Government agreed to *The Protocols and Procedures for the Development of Programs for Intercountry Adoption with New Countries.* The Ethiopian, Romanian and China programs were established under these arrangements.

In Victoria in 1984, work commenced on adoption standards for both local and overseas adoptions that were agreed to in 1986.

On 1 December 1998, Australia ratified the *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.* This followed the agreements by the State and Territory Community Services Ministers to support ratification and recommend to the Commonwealth Attorney-General that Australia was in a position to comply with the Convention. In order to achieve this the Commonwealth amended the *Family Law Act 1975* to allow the making of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*. The Regulations established a Central Authority in each State and Territory and a Principal Central Authority in the Commonwealth Attorney-General's Department. The Commonwealth and States reached an agreement on the implementation of the Hague, which was signed by the Commonwealth and the Community Services Ministers in 1998. This established the roles and responsibilities of the Commonwealth, States and Territories for the implementation of the Convention.

Among other things, the ratification of the Convention by Australia expanded the number of countries from which Australians could adopt and for the first time adoption orders from Convention countries where a full order was made could be automatically recognised in Australia.

In Victoria, intercountry adoption operates within a well-defined framework of international and national conventions, Commonwealth and State legislation, guidelines and standards.

2. LEGISLATIVE AND POLICY FRAMEWORK FOR INTERCOUNTRY ADOPTION

International Conventions

2.1 United Nations Convention on the Rights of the Child

The United Nations (UN) Convention on the Rights of the Child was adopted by the UN on 29 November 1989 and came into force on 2 September 1990. Australia became a signatory to the Convention on 17 December 1990.

Articles 20 and 21 of the Convention allow consideration of intercountry adoption for a child permanently deprived of their biological family environment, but only if the child cannot be suitably cared for in their country of origin, and providing the child will enjoy safeguards and standards equivalent to those in the country of origin. The rights of the birth parents to give

informed consent must be protected in law and through access to counselling. Competent authorities must carry out adoption arrangements.

2.2 The Hague Convention on Intercountry Adoption

The *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption* was concluded in 1993. The Convention entered into force on 1 May 1995. The first three countries to ratify the Convention were Sri Lanka, Romania and Mexico. Australia commenced working under the Convention on 1 December 1998.

The Convention establishes the requirements and procedures for intercountry adoption, establishes central authorities, allows for the accreditation of bodies and provides for the recognition of adoption orders.

The States signatory to the Convention agree upon the provisions of the Convention:

- Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,
- Recalling 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,
- Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,
- Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,
- Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Article 1 of the Convention states that the objects of the convention are

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;

b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

National Agreements

2.3 National Guidelines on Intercountry Adoption 1986

The Council of Social Welfare Ministers adopted the National Guidelines on Intercountry Adoption in 1986. These guidelines were developed to ensure a co-ordinated Commonwealth, State and Territory approach to intercountry adoptions. The major elements of the National Guidelines 1986 include the following:

- That the rights, welfare and interests of the child are paramount.

- That adoption of an overseas child by an Australian citizen should only be countenanced where:

  (a) the couple (or individual) have been assessed and approved by the relevant government department or accredited agency as suitable;
  (b) the laws and regulations of the overseas country have been complied with and the child has been approved to leave that country;
  (c) the rights and wishes of the relinquishing parents are protected;
  (d) the couple (or individual) are the best parent/s for that particular child;
  (e) the placement is supported by the relevant State or Territory department; and
  (f) the child meets the health requirements for entry into Australia.

Commonwealth Legislation

2.4 Family Law Act 1975

The *Family Law Act 1975* was amended in 1998 to allow the making of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* to ensure Australia's compliance with the Hague convention. Victoria has now mirrored the Commonwealth Regulations in the Victorian *Adoption Act 1984.*

The *Family Law Act 1975* was amended in 1998 to allow for the making of the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998.* This amendment was made as part of establishing an intercountry adoption program with the People's Republic of China (PRC). The Chinese adoption authorities required the automatic recognition of their adoptions in the receiving country. The Regulations allow for recognition of adoptions from prescribed countries. The PRC is a prescribed country under the Regulations. These regulations are now mirrored in the Victorian *Adoption Act 1984.*

2.5 Immigration (Guardianship of Children) Act 1946

Non-citizen children who enter Australia for the purpose of intercountry adoption may be subject to the provisions of the *Immigration (Guardianship of Children) Act 1946.* Under S7(2) of the Act, the powers and functions of Minister for Immigration and Multicultural and Indigenous Affairs are delegated to nominated officers of the Welfare Authority of the State/Territory where the child resides. In Victoria, the Secretary for the Department of Human Services and other nominated officers can be delegated guardianship until the adoption order is made, with the exception of the following:

- Children placed from countries, which have ratified or acceded to the Hague Convention, where a full adoption has been made and is automatically recognised.
- Children being placed from the People's Republic of China have their adoption automatically recognised.

2.6 Migration Regulations 1958

The Department of Immigration and Multicultural Affairs and Indigenous Affairs is responsible for issuing visas for children to enter Australia for the purpose of intercountry adoption. The Migration Regulations 1958 codify the requirements for the entry of children for adoption in Australia and children adopted by Australian citizens and residents. Children who enter Australia for the purpose of adoption are required to meet the health requirements for entry into Australia.

Victorian Legislation and Standards

2.7 Adoption Act 1984

The *Adoption Act 1984* is the Victorian legislation applicable to the adoption of children born in Victoria or non-citizen children placed with Victorian families.

2.8 Adoption Regulations 1998 and Adoption (Inter-country Fees) Regulations 2002

These regulations are made under the *Adoption Act 1984.*

2.9 Supreme Court (Adoption, Guardianship and Custody) Rules 1986

The Adoption Rules detail the procedures to be followed in making an adoption application to the County Court of Victoria. The schedules associated with these Rules provide the form in which applications and necessary documentation are to be prepared and presented to the Court.

2.10 Adoption Standards 1986

The Victorian Adoption Standards 1986 were developed as the result of an extensive consultation process with all stakeholders. The purpose was to establish standards applicable to local and intercountry adoption.

3. ARRANGEMENTS WITH OVERSEAS COUNTRIES

3.1 Establishment of programs

The delegation to a number of overseas countries in the late 1970s and early 1980s resulted in a number of programs being formally established with Australia, many of which continue to operate today. A number of countries where there were existing bilateral agreements or arrangements, such as the Philippines, India, Sri Lanka, and Thailand have now ratified or acceded to the Convention.

In 1991 the States and Territories and the Commonwealth Government agreed to *The Protocols and Procedures for the Development of Programs for Intercountry Adoption with New Countries.* The Ethiopian, Romanian and China programs were established under these arrangements.

The ratification of the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption by Australia in December 1998, provided an opportunity for Australia to establish programs with Convention countries as the Convention establishes the framework under which these programs would operate. As of 2 May 2004, sixty-four countries have ratified or acceded to the Convention.

Victoria strongly supports the establishment of new adoption programs under the Convention, as this provides a framework to ensure that intercountry adoptions take place in the best interests of the child and respects the child's fundamental rights as recognized in international law.

Since Australia ratified the Convention, Victoria has been instrumental in the investigation or the establishment of new programs on behalf of the Australian States and Territories. New programs have been established with Lithuania, Mexico and Mauritius (with South Australia and Queensland). In addition, programs with Moldova, Latvia and Estonia have been investigated and the decision made not proceed with these programs at this stage. Similarly New South Wales has undertaken the investigation of program with Chile, Bolivia, Costa Rica and Colombia

In 1980, Australia the Council of Social Welfare Ministers agreed to establish a system of contact states was established. This system was re-established by the Central Adoption Authorities as a lead State System. States and Territories take a lead role for the establishment of new programs or once a program is established for coordinating the policy and legal issues, but not the management of individual applications.

4. APPLYING TO ADOPT IN VICTORIA

The Department of Human Services continues to receive an increasing number of applications for overseas adoption each year. In 2002/03 the Department received 125 applications and 2003/04, this number increased to 144 applications.

4.1 Application to be approved as a fit and proper person for adoption

Section 13 of the Adoption Act 1984 requires a person who makes an application for adoption to be approved as a fit and proper person. The *Adoption Act 1984* requires adoptive parents to meet the prescribed requirements set out in Section 35 of the Adoption Regulations 1998 as follows:

(a) *the personality, age, emotional, physical and mental health, maturity, financial circumstances, general stability of character and the stability and quality of the relationship between the applicants and between the applicants and other family members, are such that he or she has the capacity to provide a secure and beneficial emotional and physical environment during a child's upbringing until the child reaches social and emotional independence:*

(b) *if an applicant has had the care of a child before applying for approval as suitable to adopt a child, he or she has shown an ability to provide such an environment for the child.*

In addition, an applicant must meet the legal and policy requirements of the country from where they are intending to adopt. These requirements can vary from Victoria.

4.2 Stages in the adoption application

The following outlines the stages of an adoption application

- Initial enquiry
- Attendance at an information session
- Registration of Interest
- Application/eligibility
- Education
- Assessment of applicants
- Allocation
- Placement of a child
- Applying for an Adoption order in Victoria Legalisation (where required)

4.3 Initial inquiry

The Department of Human Services receives a number of inquires each year from people interested in adopting a child. On inquiry, an information kit is sent or they alternatively the information kit can be downloaded from the Department's website. The information kit outlines the adoption process, requirements, costs and countries. People are invited to attend an information session where further information is provided.

4.4 Information session

All applicants must attend the information session prior to registering their interest in adopting a child from overseas. The purpose of the information session is to explain the processes and requirements for overseas adoption and to assist people to make an informed choice as to whether they should proceed with an application.

4.5 Registration of interest

Once people have attended an information night they register their interest in applying for this program. Once the Department receives the Registration of Interest form, an application is sent.

4.6 Application/Eligibility

An application is sent to people who have registered their interest in applying to adopt a child from overseas. It is valid for 12 months.

The application is used to determine if the applicants satisfy the Victorian criteria (set out below) for adoption and to identify any initial issues. At this stage, the Department obtains police checks, medical information, references and general information about the applicants including their financial situation. Any issues arising from the application are managed at this stage.

4.7 Basic Victorian Adoption Criteria

4.7.1 Marital status

Under the *Adoption Act 1984*, applicants seeking to adopt must be either married or in a genuine stable de facto relationship for a period of two years. For couples who have married, after a period of living together in a de facto relationship, the two years can include the time they have lived together, if this is continuous. Requirements regarding length of marriage vary from country to country.

4.7.2 Single applicants

S11 of the *Adoption Act 1984* allows the Court to make an order for a single applicant. The Court must be satisfied that special circumstances exist which makes it desirable for the Court to make an adoption in favour of one person. Very few countries accept an application from a single person.

4.7.3 Age

On 3 March 1998 the requirements regarding age were removed from the *Adoption Act 1984*. Applicants for intercountry adoption are still bound to comply with the legislation and requirements of the overseas countries and under the Adoption Regulations must show that they are of sufficient age and health to raise a chid until that child reached social and emotional independence.

4.7.4 Citizenship

One applicant must be an Australian citizen. This requirement ensures the child will not have any difficulties in obtaining Australian citizenship.

4.7.5 Health

The *Adoption Act 1984* requires that applicants be assessed with relation to their health. According to the **Adoption Standards** (Section 4.1.3 XIII) states that

> *Applicants need to be of such physical and emotional health that they are able to provide for the needs of the child at least until the child achieves social and emotional independence.*

4.7.6 Criminal record checks

All applicants must undergo a national criminal record check. International criminal record checks are sought where either of the applicants has resided overseas for an extended period of time in the last five years.

4.7.7 Personal references

Applicants are required to nominate two personal referees. Applicant couples must nominate also one member of their respective families to write a reference. A single applicant should nominate two referees from their family.

4.7.8 Infertility

ICAS has no requirement regarding infertility and both fertile and infertile people are eligible to apply to adopt. However, some countries do require the applicants to be infertile. Applicants need to have ceased all infertility treatment prior to being included in the education stage.

4.8 Education groups

All applicants must attend education groups as part of their preparation for adoption. The education program is not part of the assessment process but provides applicants with sufficient information to ensure that the decision to adopt from overseas is made on the basis of a reasonable level of understanding of the needs of the children involved and to assist applicants to consider the potential impact of placement on their family and their own readiness for adoption.

Applicants need to understand the common issues, which arise for all parties in adoption and their lifelong nature. Parenting a non-biological child raises particular issues, which are explored during these groups. These issues include grief and loss, particularly the loss of a person's fertility and the understanding of the multiple losses and grief experienced by adopted children and their birth parents.

Issues of race, culture and ethnicity are an important aspect of these groups which aim to assist applicants to develop an understanding of the implications of inter-racial placement for identity development in the child, consider strategies to assist the child to positively integrate his/her racial background, culture and identity and to consider the implications of racial prejudice for the child and the family as a whole, and strategies for dealing with these.

Children adopted from overseas experience multiple losses that may affect their behaviour and development. The groups help prospective adoptive parents to consider ways to manage the effect of early deprivation and disruption to a child's life.

4.9 Assessment

The primary purpose of the assessment is to assess whether applicants meet the prescribed requirements to be approved as a fit and proper person for adoption. Once the assessment is completed a decision is made regarding the approval of an applicants.

Under the *Adoption Act 1984*, applicants have a right to seek a review a decision to the Victorian Civil and Administrative Tribunal

4.10 Preparation of files for overseas

The application documents for the overseas county are prepared in accordance with the overseas country requirements. While there are some common features there are some variations as follows:

- Some countries require the translation of all documents before the file is sent to that country;

- Some countries require notarisation, authentication and certification of documents by one or all of the following:
  - Notarisation by a notary public;
  - Authentication by the Department of Foreign Affairs and Trade;
  - Apostilles
  - Certification by an Embassy or Consulate.

4.11 Matching process

Once the application is received and approved by the overseas country, it is the responsibility of the country to consider the needs of children who require a family and to match a specific child to an approved applicant.

The overseas countries have differing approaches to the linking of children and families. Some countries undertake a process of matching the needs of a specific child with the available applicants and selecting the most appropriate family. Some countries link a child who needs a family to the next family on the waiting list. Other countries may give priority to families of compatible ethnicity, infertile couples, or families with compatible religious beliefs.

The period taken to allocate a child once the file is sent overseas varies from country to country. However, the matching process in the overseas country is rarely less than six months. Whilst it is the responsibility of the overseas country to match a child with an applicant, this must be consistent with the specific approval of the applicant/s.

The overseas programs forward all the information about a child to the Department of Human Services. The information about the child is discussed with the prospective adoptive parents and the Department advises the overseas country the applicant's decision.

4.12 Travel

In general it is 3 – 4 months before applicants can travel to meet their child as the adoption and immigration formalities must be completed in the overseas country.

4.13 Supervision and the provision of reports to overseas countries

The Department of Human Services has a responsibility to monitor and assess the child's adjustment to the family and to provide reports to the overseas country on how the placement is progressing. Where issues arise the Department will provide support to the family in meeting the needs of the child, assist in identifying relevant services and in facilitating the family's access to these services if required.

4.14 Arrangements for final adoption orders

There are now a number of arrangements under which children enter Australia as follows:

- Placement of children from Non-Hague Convention countries.
- Placement of children from Hague Convention countries where a full adoption order is made.
- Placement of children from Hague Convention countries where a full adoption order is not made.
- Placement of children from the People's Republic of China.
- Placements where recognition of a foreign adoption order is sought.

4.15 Placements of non-citizen children from non-Hague Convention countries

Children who enter Australia for the purpose of intercountry adoption are subject to the *Immigration (Guardianship of Children) Act 1946* and are defined as non-citizen children according to that Act. Under the provisions of that Act, the Commonwealth Immigration Minister becomes the guardian of the child on entry to Australia, and the powers and functions of this

guardianship are delegated to the Secretary and nominated officers of the State Welfare Authority where the child resides. In these cases an adoption order is sought in the County Court of Victoria

4.16 Placements of children under the Hague Convention where a full adoption order is made in the overseas country

Where a full adoption order is made overseas, the orders is automatically recognised under the *Adoption Act 1984*. The Department of Human Services has no guardianship responsibilities for these children and the adoptive parent/s are the legal parent/s of the child from the date that the order is made in the overseas country. No further adoption order can be made in Australia.

However, the Convention countries have post placement reporting requirements and it is the responsibility of DHS to undertake these visits and provide the reports on the placement to the overseas country.

4.17 Placements of children under the Hague Convention where a full adoption order is not made in the overseas country

In some Hague Convention countries, such as the Philippines, a full adoption order is not made prior to the child entering Australia. These placements are dealt with in the same way as the placement of children from non-Hague countries in that the child comes under the guardianship of the Minister for Immigration and Multicultural and Indigenous Affairs on entry to Australia.

Where an adoption order from a Hague country is finalised in Australia, the State Central Authority must issue a compliance certificate stating that the adoption has been made in accordance with the Convention.

4.18 Placements of children from the People's Republic of China (PRC)

The bilateral arrangement between the PRC and Australia allows for the automatic recognition of children adopted by people by Australians. The China Centre for Adoption Affairs requires that the child's placement is supervised for a period of 12 months and reports provided. A further adoption order cannot be sought in Victoria.

5. PLACEMENT BREAKDOWNS

Placement breakdown or disruption refers to a placement where the child is no longer able to remain with the adoptive or prospective adoptive parents. In general a placement breakdown usually results from the adoptive parents' decision that they can no longer care for a child and a request for the child to be placed elsewhere.

A small number of disrupted placements are inevitable with all child placement programs and placements of older children from complex backgrounds are particularly vulnerable. A disrupted placement is extremely stressful for all concerned.

The pre-placement assessment and education process for applicants aims to reduce the likelihood of disruption occurring. During the supervision period, there is a particular emphasis on linking families with other adoptive parents and community based services that can provide support and assistance as required. However, in a small number of situations, even a high level of support will not be adequate to prevent disruption.

If a placement breaks down and the child requires an alternate permanent placement, it may be necessary for the Child Protection to become involved to investigate the situation and arrange another placement.

6. FEES

The fees for overseas adoption are set under the *Adoption ((Inter-country Fees) Regulations 2002.* The fee for a first adoption in Victoria is $6,250 and $4,950 for a subsequent application. The fees are paid in five stages. The fees in part cover the costs of engaging privately contract social workers to undertake specific tasks associated with an application such as education groups, assessment of applicants and post placement supervision and reports.

In addition to the above fees, applicants in Victoria pay the costs for preparing and sending their application to the overseas country, overseas program fees and the costs associated with immigration and travel.

The Victorian Government announced a policy of indexation of fees and fines payable to the public account in the 2003-04 Budget. The *Monetary Units Act 2004* was assented to in May 2004 and provides for the automatic indexation from 1 July 2004 of all regulatory fees and fines administered by the Department of Human Services payable to the Consolidated Fund and Government Trust funds.

In accordance with this Act, the intercountry adoption fees will be converted into 'units' and indexed. The Department received an exemption from indexation in 2004/05. However, the *Adoption (Inter-country Fees) Regulations 2002* will be amended to convert the current dollar amounts into monetary units and indexation will apply from the date that the new regulations come into force.

7. COMMONWEALTH BENEFITS AND ENTITLEMENTS

Any relevant entitlements that become available to families adoption children from overseas should be extended to local adoption and permanent care families.