3

Inconsistencies between state and territory approval processes

Eligibility criteria for adoptive parents

Minimum legislated eligibility criteria

3.1 Assessing parents as being suitable to adopt children is an important part of the adoption process. If governments are willing to conduct adoptions, then they have a duty of care to the children to ensure that their new parents and families will provide a necessary level of love and support.

3.2 Adoptive parents are subject to two types of eligibility criteria. The first type is qualitative and involves social workers visiting the applicants' home and assessing such matters as their parenting skills or potential parenting skills, emotional maturity and stability, capacity to deal with stress and the quality of the couple's relationship.[1] These requirements are generally set down in adoption legislation and regulations. In the case of New South Wales, they are published under legislative authority in the government gazette.

3.3 The second type of eligibility criteria is quantitative. The various pieces of adoption legislation and regulations prescribe certain age ranges or family structures as necessary minimums. These vary between the states and territories and lack consistency.

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1 For example, see South Australian Department for Families and Communities, 'Eligibility and suitability criteria,' viewed on 16 October 2005 at http://www.adoptions.sa.gov.au/Section4/4_2_adopt_os_child.htm.

Table 3.1: Parents' legislated minimum eligibility, suitability or placement criteria

Criterion	New South Wales	Victoria	Queensland	South Australia
Minimum age	21 years and at least 18 years older than adoptee unless court orders otherwise	None	21. Also at least 18 years older than the adoptee (16 years for women), unless exceptional circumstances	None – until 2005 the minimum was 18
Maximum age	None	None	None – until 2004 the limits were 47 years for the older parent and 41 years for the younger	None – until 2005 the maximum was 55
Can singles apply?	In particular circumstances	In special circumstances	In exceptional circumstances, but barred under regulation.	In special circumstances
Can *de facto* couples apply?	Yes	Yes	No	Yes
Can same sex couples apply?	No	No	No	No
Minimum length of relationship	3 years continuously	2 years	2 years (*de facto* relationship not relevant)	3 years for allocation of child and 5 years for making of adoption order
Family restrictions	Other children at least 2 years older than adoptee and in family at least 1 year	None	Maximum of four other children.	None
Infertility treatment	Precludes assessment	No specific requirements	Infertility treatment and attitude to infertility relevant to assessment	Attitude to infertility relevant to assessment
Applicant pregnant	Precludes or suspends assessment and/or child not placed	No specific requirements	No specific requirements	Precludes allocation or placement unless special circumstances. Assessment can proceed.
Citizenship	At least one parent an Australian citizen or the same citizenship as the child	None	At least one parent an Australian citizen	At least one parent an Australian citizen

Source: Refer Appendix E.

Table 3.1: (continued)

Western Australia	Tasmania	Australian Capital Territory	Northern Territory
18	At least 18 years older than the adoptee	None	At least 25 years older than the adoptee, unless exceptional circumstances
45 years older than child for younger parent and 50 years older for other parent. Increases by 5 years for second child	Both parents 40 years older than the adoptee (45 years if they already have children)	None	Both parents 40 years older than the adoptee (45 years if they already have children), unless exceptional circumstances
Yes	In exceptional circumstances	Yes	In exceptional circumstances. Single applicants can apply to China
Yes	Yes	Yes	No
Yes	Yes	Yes	No
3 years	3 years	3 years	2 years (*de facto* relationship not relevant)
Other children at least 1 year older than adoptee and in family at least 2 years	None	None	None, although policy guidelines suggest 2 years between the placement of children.
Precludes placement, but not assessment	Precludes assessment	Application for adoption list must state the likelihood of children being born in future.	No specific requirements but relevant at the time of assessment.
Precludes placement, but not assessment	Precludes assessment	Application for adoption list must state the likelihood of children being born in future.	No specific requirements but guidelines state process placed on hold for a period of time negotiated between both parties.
Parents are Australian citizens or one parent an Australian citizen and the other's country gives adoptees rights equivalent or better to those in Australia	At least one parent an Australian citizen or the parents' countries give adoptees rights equivalent or better to those in Australia	None	None, but guidelines state one parent needs to be an Australian citizen at the time of application.

3.4 As discussed in chapter one, countries of origin have their own quantitative criteria as well. Adoptive parents must meet both sets of criteria in order to adopt.

3.5 The criteria for the states and territories are set out in table 3.1. The main conclusion from the table is that there is considerable variation between the jurisdictions in their minimum criteria.

Body mass index

3.6 A commonly raised requirement was the body mass index (BMI). This index cross references a person's height and weight to give a number. The more weight a person is carrying for a given height, the greater the BMI. An index under 18.5 indicates the person is underweight, an index over 25 indicates the person is overweight, and an index over 30 indicates the person is obese. For a person 1.8 metres in height, these index numbers correlate to approximately 60 kilograms, 81 kilograms, and 96 kilograms respectively. Age, sex or body fat are not taken into account in calculating a person's BMI.[2]

3.7 Western Australia and Queensland apply a BMI test to applicants, but no other state or territory does. [3]

3.8 The problem with the BMI requirement is that it is a very rough measure of a person's health, but it has been applied by these jurisdictions, in particular in Queensland, as an absolute test. The committee received evidence on the illogical implications of the BMI requirement:

> Our Sri Lankan born son would not be able to adopt in Queensland and yet he is healthy. He has been an Australian-level swimmer at different times in his life. He plays rugby. He plays basketball. But his BMI would be too high because he did not grow very tall. The reason he did not grow very tall was because of high malnutrition in his legs and his body mass index is too high. Insurance companies will insure him because they can look at his whole body structure, but intercountry adoption would not consider him.[4]

3.9 Professional athletes develop large amounts of muscle relative to their height. Muscle is denser than fat, which means that they can have high BMIs. In April 2005, three professional players from one National Rugby

2 Reductil BMI calculator, Abbott Metabolism.

3 Leckenby K, sub 2, p 1, Adoption Support for Families and Children, sub 141, p 8.

4 Harding L, transcript, 21 July 2005, p 47.

League team and eight from another one had BMIs over thirty and may be ineligible to adopt if they lived in Queensland or Western Australia.[5]

3.10 In Western Australia and Queensland, there is no legislative requirement for the BMI. It appears to have been implemented as a matter of administrative policy in determining the wider question of applicants' ability to make good adoptive parents.

Single parents

3.11 The situation of single parents demonstrates that, in adoption, similar legislative provisions are interpreted differently between states. As table 3.1 shows, both Victoria and South Australia permit single persons to adopt in 'special circumstances'. In practice, however, Victoria will send the files of single applicants overseas, whereas South Australia does not. One applicant, who later shifted to Victoria and adopted a child, recounted her initial experience in South Australia:

> I applied as a single applicant in 1998 when in SA and met with honest but stiff resistance. It was kindly pointed out to me that whilst there was no impediment to me applying the likelihood of an allocation was not high. I am a very determined person…I continued on…
>
> …I finally received my approval letter with the first paragraph saying that I was now approved as a 'prospective adoptive parent' and the next 2 pages telling me why I would never receive an allocation. The final straw came when I was called into the DOCS office and told that even though I would make a great mother I would never be allocated a child and why should I get one, when a child could be given into a family where it would have a father and a mother?[6]

3.12 The committee received evidence that the only jurisdictions not to allow adoptions by single parents are Queensland, South Australia and Tasmania.[7] On this basis, Tasmania interprets its legislation differently to the Northern Territory. The legislation in both jurisdictions allow adoptions in 'exceptional circumstances,' but in practice they only occur in the Territory.

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5 Simard D, sub 44, p 3.

6 Lomman S, sub 230, p 1.

7 Lomman S, sub 230, p 2.

3.13 Intercountry adoption by singles is theoretically possible in Queensland under the *Adoption of Children Act 1964*. Section 12(3)(c) provides that singles may adopt special needs children or in exceptional circumstances. Clause 7(2)(d) of the *Adoption of Children Regulation 1999,* however, overrules this provision. It requires applicants for intercountry adoptions to be married for at least two years.

3.14 Normally, there would be significant legal concerns about a regulation attempting to override an act of parliament. In this case, however, section 13AC was inserted into to *Adoption of Children Act 1964* in 2002. This provision expressly states that a person can be removed from the expression of interest register if they do not meet criteria specified under regulation.

Police checks

3.15 The committee accepts that police checks are an important part of assessing applicants' suitability. The committee understands, however, that New South Wales has more onerous requirements than other states. In New South Wales, applicants are required to have two fingerprint tests costing $187 each. In all other jurisdictions, applicants have an Australian Federal Police name check costing $36.[8]

3.16 The assessment criteria in state and territory legislation often refer to applicants' criminal records, in particular whether they have been convicted of an offence against a child.[9] The requirement in South Australia is to check the applicants' criminal record.[10] The requirement in New South Wales is to refer to, 'Departmental and police records'.[11]

3.17 In short, the New South Wales Department of Community Services has interpreted the same or a very similar legislative provision more onerously than other states and territories. At face value, the benefit in requiring applicants to submit to a fingerprinting test appears to be that if those applicants had committed an unsolved crime but left fingerprints at the scene, then they would be caught. There are so many other checks on applying parents, however, that fingerprinting does not appear to add any extra value to the process in addition to a standard federal police check.

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8 Australians Adopting European Children, sub 16, p 13.

9 For example, the Tasmanian *Adoption Regulations 1992*, clause 14(i).

10 Clause 9(3)(i) of the *Adoption Regulations 2004*.

11 Niland C, 'Assessment Criteria for Assessment of Adoption Applicants,' *New South Wales Government Gazette*, No. 144, 24 December 1999, p 12533.

3.18 The New South Wales police checks can be interpreted as a signal to deter intercountry adoptions.

Pregnancy of applicants

3.19 Table 3.1 shows that most jurisdictions in Australia place legal restrictions on people applying to adopt if the woman is pregnant. The legislation in Queensland and Victoria does not impose this restriction, but the departments in these two states impose the restriction administratively.[12] This means that it is a decision made internally by the departments, which may or may not have the approval of the minister.

3.20 Once the file of a couple is sent overseas from Queensland, the department expects the woman to take reasonable contraceptive precautions from that time until 18 months after the child is in the couple's care. Victoria makes the same requirement for 15 months after the parents receive the child.

Analysis

3.21 The committee received evidence that people have shifted interstate to be able to adopt where their home state has stricter requirements than other states, especially in relation to age and single status.[13]

3.22 There is a history of stakeholders attempting to secure uniform adoption procedures in Australia. In the 1960s, the attorneys-general in the states, territories and Commonwealth agreed on a model bill on adoption. By the end of that decade, all jurisdictions had largely implemented the model bill, with some minor variations. The remaining areas of variation were:

- differing treatment of applicants depending on the state or territory in which they applied;
- the seniority of the court dealing with adoptions;
- whether fathers were required to give consent; and
- whether children, where possible, were to be consulted on their adoption.

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12 Victorian Department of Human Services, 'Basic Victorian requirements for the adoption of overseas children,' *Information kit*, p 2 and Queensland Department of Child Safety, 'Adoption of children from overseas: Frequently Asked Questions,' viewed on 19 October 2005 at http://www.childsafety.qld.gov.au/adoption/overseas/faq.

13 Lomman S, sub 230, p 1, name suppressed, sub 81, p 6, Muller J and R, sub 41, p 2.

3.23 Following this time, various states and territories have conducted reviews of their adoption legislation. Only Queensland retains its 1960s legislation, although it has been under review since 2002.[14] By the mid 1990s, the large degree uniformity achieved by the late 1960s was still considered to be intact.[15]

3.24 Although there may be general uniformity in adoption processes, table 3.1 demonstrates that significant differences remain between the jurisdictions in how adoptive parents are assessed. The fact that the committee received a large number of submissions from adoptive parents suggests this lack of uniformity is keenly felt by one of the most important stakeholder groups in the process.

3.25 There have been recommendations made in the past that the eligibility criteria for applicants should be uniform throughout Australia. Departmental officers from the state and territory welfare agencies and the Department of Immigration and Ethnic Affairs prepared one of the earliest reports on intercountry adoption in 1986. This joint committee recommended:

> While respecting the rights of state and territory governments to autonomy in these matters, the joint committee strongly urges that these criteria, or whatever criteria are adopted, are uniform throughout Australia. [16]

3.26 The ministerial response was less supportive of uniformity. In acknowledging the requirements developed by the joint committee, the ministers stated:

> Ministers considered these eligibility requirements as minimum standards. They noted and accepted that any state or territory may impose additional criteria or requirements reflecting the position of the respective government.[17]

3.27 The prior Chief Justice of the Northern Territory supported uniform adoption laws. In commenting on the work of the authors of *Adoption Australia* in 1994, he stated:

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14 Queensland Government, sub 204, p 2.

15 Discussion drawn from Boss P, *Adoption Australia – A Comparative Study of Australian Adoption Legislation and Policy* (1992) The National Children's Bureau of Australia Inc, pp 5-8.

16 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers and the Minister for Immigration and Ethnic Affairs of the Joint Committee on Intercountry Adoption Together with the Ministerial Response to the Report* (1986), p 41.

17 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers,* p 113.

> …they have surely underlined the obvious desirability – one might almost say necessity – of uniform laws in this area. It is fair to say that all states and territories have moved towards this end… but there seems little reason why the ultimate steps should not now be taken…If the states and territories can ultimately agree on common legislation for artificial persons – as they have recently done under the corporations legislation – it seems reasonable to suggest that they should find common legislation for natural persons.[18]

3.28 Adoptive parents generally supported uniform eligibility criteria.[19] They suggested either that the Commonwealth pass legislation to ensure this outcome[20] or that Australia have no criteria of its own but follow the criteria imposed by each country of origin.[21]

3.29 As demonstrated in chapter one, the likely indicators of success in adoptions include:

- the age of the child at placement;
- the parents' maturity, flexibility and expectations; and
- the parents' social networks.

3.30 In intercountry adoptions, the parents' ability to integrate the child's racial background into its identity is another important indicator of success.

3.31 Criteria relating to marital status, number of children already in the family (either biological or adopted) and citizenship are relevant issues. The committee, however, does not support these criteria being made absolute requirements when it is more reasonable to treat them as matters to take into account.

3.32 As some submissions noted, the Prime Minister recently stated:

> …I have never had a view that age is a disqualifying factor. Capacity is the thing that counts.[22]

3.33 Jurisdictions such as Victoria and the Australian Capital Territory take a preferable approach, whereby factors such as age, marital status and family structure are taken into account, but are not absolute requirements.

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18 Asche A, 'Introduction,' in Boss P, *Adoption Australia*, p vii.

19 Australians Adopting European Children, sub 16, p 16.

20 Pedersen C, sub 96, p 3, EurAdopt Australia, sub 137, pp 8-9.

21 Adoption Support for Families and Children, sub 141, p 16.

22 Stewart W and M, sub 79, p 1.

3.34 The committee is also concerned that different jurisdictions interpret the same or similar legislative provisions differently. The body mass index (BMI) and the treatment of single applicants were probably the clearest examples of this practice. The fact that Queensland, in particular, has been able to make the BMI a strict requirement is an indicator of the power that adoption authorities have over adoptive parents.

3.35 A further indicator of adoption authorities' power is that some require parents to take contraceptive measures for up to 18 months after they receive the child as an exercise of their discretion to control parents. In comparison, biological parents manage these natural aspects of life. For example, many do have children 12 months apart and they have twins or triplets. No-one suggests, however, that governments should regulate how biological parents manage these risks.

3.36 The blanket application of this policy, as suggested by the Victorian Department of Human Services in evidence,[23] does not appear to be in the best interests of children overseas. As one of the committee members noted in evidence:

> I can think of one woman who said in her submission that it was lovely that she had received a photo of her adoptive four-year-old. She also sent a photo of herself over there, and when she went to pick up her child the photo was near his little bed. I am thinking: 'What would have happened is she had been pregnant and she could not have adopted?'[24]

3.37 The committee is also concerned that this practice is based on anecdotal evidence, rather than rigorous research.[25] It has been easier for departments to use their position of power over adoptive parents and reduce their own risk rather than scientifically balancing the benefits and risks of giving a child a loving family even if it is expecting a newborn baby.

3.38 The committee, however, received evidence that parents greatly value having siblings for their children.[26] The committee also received evidence that mixing young biological and adoptive children in a family can work well:

> My adoption journey began when, after our third child, Haylee, was born, I gave all our baby things to New Life Homes,… which

23 Brain H, transcript, 10 October 2005, p 28.

24 Irwin J, transcript, 10 October 2005, p 31.

25 Clements D, Victorian Department of Human Services, transcript, 10 October 2005, p 31.

26 Jeanette, community statements, transcript, 3 August 2005, p 5.

> was established to provide a response to the increasing number of abandoned or HIV babies in the Nairobi region. It was there we met and fell in love with Daniel… Daniel stole my heart and became my son. He also captivated the hearts of my three children. Daniel spent a weekend with us when he was about four months old. After returning to New Life Homes on the Sunday evening, we tucked our children into bed and Ben, then four, asked, 'Is Daniel my brother or not?' There was no question in the hearts and minds of Leah, Ben or Haylee that this was anything other than a natural joining of another child to our family.[27]

3.39 Assessing applicants for adoption is a 'hands on' exercise which makes it more suited to management by the states and territories. Further, the legislation in jurisdictions such as Victoria and the Australian Capital Territory have virtually achieved a purely qualitative approach. Other states are moving in that direction. For example, Queensland and South Australia recently removed their legislated age restrictions. The committee, therefore, does not believe that Commonwealth legislation to apply uniform criteria is warranted.

3.40 The committee is of the view, however, that there should be greater harmonisation of the eligibility criteria between the states and territories. Further, the committee would prefer to see more principle-based legislation and the assessment to be more focussed on the factors that are directly related to the likely success of an adoption, rather than factors such as the BMI that are indirectly related to it.

3.41 For instance, the 1986 report by the Joint Committee on Intercountry Adoption stated the following general principle:

> For adoption to be in the child's best interests, it will be necessary to establish that, by the time the child reaches 18 years of age –
>
> - it is the adoptive parents who will have largely raised, maintained and educated the child; and
> - there will have been a significant period of dependence (not merely financial) by the child upon the adoptive parents.[28]

3.42 The committee supports a general principle along these lines being adopted by the states and territories. A more principle-based approach would need to be supported by transparent, robust practices within an agreed framework.

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27 Potter D, transcript, 17 October 2005, pp 2-3.

28 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers,* p 51.

Recommendation 3

3.43 **In renegotiating the Commonwealth-State Agreement, the Commonwealth shall ensure a greater harmonisation of laws, fees and assessment practices, including:**

- **more general, principle-based criteria in legislation;**
- **more robust, transparent and documented practices; and**
- **standardised assessments across the jurisdictions.**

These harmonisations should be developed in consultation with stakeholders such as adoption support groups, adopted children and adopted parents.

3.44 The committee is also concerned that most of the criteria for adoptive parents in New South Wales are placed in the *Government Gazette*, rather than in an act or regulation where they would be subject to increased parliamentary scrutiny. There was considerable concern expressed in the New South Wales Legislative Council about fee increases being made through the Government Gazette, rather than regulation.[29] The criteria should be placed in a more transparent document to allow proper public debate.

Recommendation 4

3.45 **The Attorney-General request the New South Wales Minister of Community Services to insert the eligibility criteria for adoptive parents in legislation and regulation, rather than the *Government Gazette*.**

State and territory government fees

3.46 Table 3.2 shows the fees for adoptions, both intercountry and local, in Australia. The main conclusions from the table are:

- there is a wide variation in fees for intercountry adoptions between the states and territories, ranging from approximately $2,000 to $10,000;

29 'Intercountry Adoption Fees' *NSW Legislative Council Hansard*, viewed on 1 September 2004 at http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LC20040603038.

- the high fee states tend to charge less for a second intercountry adoption; and
- fees for local adoptions are much less, ranging from free to approximately $3,000.
- The high fee states have hardship provisions for their fees. In New South Wales for example, applicants receive a 50% discount if their household income is less than $39,100 and a 25% discount if their income is less than $46,400.[30]

3.47 Those states with high fees seem to be philosophically driven in that they regard intercountry adoption to be a distraction from their core business of caring for children at risk within their state. The committee regards this as being at odds with article 9(b) of the Hague Convention, which requires state and territory welfare departments, as central authorities, to 'facilitate, follow and expedite proceedings with a view to obtaining the adoption.'

3.48 The high fees for an intercountry adoption, allegedly representing total or partial cost recovery whilst maintaining low costs for domestic adoptions, also send a price signal that these jurisdictions are opposed to intercountry adoption.

Table 3.2: State and territory government fees for adoptions ($)

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
First adoption (intercountry)	9,700	6,250	2,053	8,377	2,246	2,280	4,154	6,100
Second adoption (intercountry)	6,900	4,950	2,053	7,450	2,246	2,280	4,145	6,100
First adoption (local)	2,782	Free	530	1,629	750	1,710	Free	Free
Second adoption (local)	2,782	Free	530	1,019	750	1,710	Free	Free

Source: Families with Children from China-Australia, sub 86, p 16. Queensland local adoptions are free for special needs children.

Governments' view of fees

3.49 Government departments have long taken a 'fee for service' view of intercountry adoption. In its 1986 report, the Joint Committee on Inter-country Adoption endorsed this approach, stating:

30 Families with Children from China-Australia, sub 86, p 13.

> The introduction of fee for service is designed specifically to upgrade the quality, availability and timeliness of service provided to children and adoptive parents.[31]

3.50 The joint committee took this view partly as a response to criticisms that the service provided was inefficient, unprofessional and subject to delays.[32] As this report shows, however, higher fees in states such as New South Wales and Victoria have not led to improvements in service.

3.51 Reviews of fees in New South Wales in 1984 and the Australian Capital Territory in 1987 also took the fee for service approach.[33]

3.52 The states with the highest fees, New South Wales, Victoria and Queensland, have implemented a cost recovery model.[34] The New South Wales Government engaged an accounting firm to develop the cost formula.[35] As noted earlier in the report, a previous New South Wales minister has stated that her Government's primary goal is to care for children at risk in that state, rather than overseas. That state's Department of Community Services takes the same view:

> … our priorities in the Department of Community Services are to build and apply our expertise to the care and protection of children at risk in New South Wales. We are happy to share our expertise with the Commonwealth to support its broader humanitarian and immigration goals, but that must not impact upon our ability to respond to the need for care and protection of the 10,337 children that I have just talked about. If our support cannot be recognised by funding and assistance from the Commonwealth, then fees need to be applied to this service. We believe our fees are a true reflection of the genuine costs to us of these services. [36]

3.53 The committee received evidence from Tasmania and Victoria that their respective community service departments provide services to a wide

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31 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers,* p 80.

32 Joint Committee on Inter-country Adoption, *Report to the Council of Social Welfare Ministers,* p 80.

33 Boss P, *Adoption Australia*, pp 15-16.

34 Families with Children from China, sub 86, p 13.

35 Department of Community Services, 'Intercountry Adoptions: A Reform proposal for NSW,' p 9, viewed on 24 August 2005 at http://www.community.nsw.gov.au/documents/adotions_intercountry.pdf.

36 Dawson S, transcript, 12 October 2005, p 11.

range of clients but only request fees from parents who apply for intercountry adoption.[37]

3.54 It appears that some states find it difficult to find the resources to support intercountry adoption. One of the reasons postulated for Queensland closing applications for two years was that it did not have the funds available to process them.[38] Resources are still a significant bottleneck in Queensland:

> There is also a limiting factor to the number of possible overseas adoptions and this is the number of applications that State government adoption agencies are staffed to accept and process – it would appear that many jurisdiction are working to their maximum capacity (and in some cases – eg Queensland – demand already exceeds available agency resources).[39]

3.55 The committee heard in evidence:

> … there is a lot of rhetoric and a lot of, I guess, folklore about the incapacity of the Queensland system to do things. Whilst that may be able to be substantiated, if you are looking at numbers and figures, the big challenge is that over the last four years in particular we have gone through substantial change. So we have gone from a situation where the minister was allocating approximately $50,000 a year for all assessments—general adoptions and intercountry—where you supposedly had a minister's personal opinion that intercountry adoption is the next stolen generation.[40]

Adoptive parents' view of fees

3.56 Adoption groups were very concerned about the large difference in fees for intercountry and local adoptions. One of their key complaints was the official view that the high fees represented a fee for service. Firstly, providing a fee for service in the adoption context implies that the applicants will receive a child. Clearly, no such guarantee can be made.[41]

3.57 Secondly, few applicants outside Tasmania or the Australian Capital Territory were prepared to state that they received an adequate level of

37 Davis G and K, sub 76, p 1, Freeden C and A, sub 58, p 4.

38 Pirani C, D and A, sub 121, p 4.

39 Wilson L, Turner S, sub 70, p 14.

40 Pedersen C, transcript, 22 July 2005, p 3.

41 Intercountry Adoption Resource Network, sub 156, p 2.

service during the process. The comments, rather, were that service standards were very low.[42]

3.58 Adoption groups also complained that departments were understaffed and had high staff turnover.[43] In 2004, New South Wales increased its fees by almost 300%, but did not add any extra staff.[44]

3.59 In fact, adoptive parents recognise there are costs involved and are willing to pay a reasonable sum to receive a certain level of treatment. The Australian Korean Friendship Group stated:

> I think that most people who adopt from overseas, once they get into the process, realise that there are expenses involved and do expect to pay some type of cost recovery or some portion of the fees. As taxpayers we use government services every day and we do not fully pay for what it costs the government to put those services into place. In the past the government has always subsidised services to the citizens of Australia.[45]

3.60 When the Queensland Government negotiated fee increases with the adoption community, adoption groups requested a higher fee in return for a prompter service:

> We faced that dilemma when we agreed with Minister Spence to increase the fee, because I think it went from about $750 and they were proposing $1,200 and we as the intercountry adoption community agreed to $2,000. She and her senior people were very surprised when we made that offer, but it was a balance of being able to provide sufficient resources—and we were very clear about; it is not a full fee for service but the expectation was that we would expect to see the assessments proceed much more quickly, and they did.[46]

3.61 As the quote above suggests, adoptive parents do not support full cost recovery. They made are a number of arguments against full cost recovery, including:

- it adds to the perception that intercountry adoption is only for wealthy parents;[47]

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42 Fratel A, sub 64, p 2, Pirani C, D and A, sub 121, p 6.

43 Australians Adopting European Children, sub 16, p 13, Smith L, sub 19, p 1.

44 Gray T, sub 82, p 2.

45 Finkel S, transcript, 21 July 2005, p 4.

46 Pedersen S, transcript, 22 July 2005, pp 6-7.

47 Adoptions International of Western Australia Inc, sub 173, p 11.

- it may constitute racial discrimination;[48]
- funds spent on the adoption could be better spent on the child;[49] and
- high fees reduce the number of adoptions, which is not necessarily in the best interests of the overseas children.[50]

3.62 Emeritus Professor Peter Boss and the 1989 *Review of Intercountry Adoption* in Victoria (chaired by Justice Fogarty of the Victorian Family and Children's Services Council) have previously made the same arguments as adoptive parents did in this inquiry.[51]

Consultation

3.63 One method of reducing the power imbalance between the adoptive parents and government departments in relation to setting fees would be to improve consultations between them. As discussed in chapter one, the committee received evidence that communications in Tasmania and the Australian Capital Territory work reasonably well. Queensland has also implemented a ministerial forum, but with limited success to date.[52] The committee is of the view that the consultative arrangements in the majority of jurisdictions need improvement.

3.64 The Productivity Commission, in its report *Cost Recovery by Government Agencies*, noted some of the pitfalls in managing stakeholder consultation. The first problem is that the consultation process may result in the views of one stakeholder overriding all other views. The department in question may be 'captured' by a stakeholder. In other words, they may excessively support that stakeholder's views. The department could support that stakeholder over its competitors or not properly uphold a regulatory function in relation to a stakeholder group.

3.65 The second problem is that the consultative committee may be ineffectual. It may not have a remit to examine anything meaningful, it may not have access to useful information, or the department may simply ignore the committee's advice.[53] In evidence, International Adoptive Families of

48 EurAdopt Australia, sub 137, p 9.

49 Freeden C and A, sub 130, p 2.

50 Adoptive Families Association of the ACT Inc, sub 133, p 4.

51 Boss P, *Adoption Australia*, pp 15-16. See also Justice Fogarty, 'Letter of transmittal,' Victorian Family and Children's Services Council, *The Intercountry Adoption Service in Victoria – A Follow Up Review* (1991).

52 Pedersen C, transcript, 22 July 2005, p 1.

53 Productivity Commission, *Cost Recovery by Government Agencies* (2001) Report no. 15, AusInfo, pp 185-189.

Queensland advised the committee that the Queensland consultations are making slow progress:

> We consult with the department and with the latest minister, Mike Reynolds. We now have consultation. We have a quarterly meeting with the department. We have supposedly been sitting on the policy meetings since January to implement policy on how to work through the new system we have in Queensland. In seven months we have not even finalised one policy, which is the health policy. Some of the things that have been talked about regarding the BMI have been…
>
> … We will see the final draft on Monday. If your BMI is over 30 and you have four other health checks and they are fine, you will move straight through. They cannot stop you any more, as happened to Kathie. But it has taken them seven months to do one policy. As I said, I would have thought that how to work through the expression of interest is probably the biggest need and that has still not been done. That is the sort of negotiation we are doing with them.[54]

3.66 The commission generally supported consultation:

> Despite the risks of agency capture, stakeholder consultation is necessary to help drive agency efficiency. Those expected (or required) to pay have a clear interest in the costs, efficiency, and quality standards of agency activities and should be consulted on these arrangements.[55]

3.67 One of the participants at the commission's hearings stated:

> … [industry associations] … can be extremely thorough in their grilling of bodies to identify costs and efficiencies and make managers accountable.[56]

3.68 It appears that some ministers and their departments involved in intercountry adoption have been unaccountable for too long. The committee heard evidence of oppressive bureaucratic requirements being placed on adoptive parents that appeared to be out of proportion to what is required. In Queensland:

- parents must read a 300 page book to fill out a 260 page workbook;[57]

54 Byerley S, transcript, 21 July 2005, p 82.

55 Productivity Commission, *Cost Recovery by Government Agencies,* p 185.

56 Productivity Commission, *Cost Recovery by Government Agencies*, p 184.

57 Evans P, Queensland Taiwan Support Group, transcript, 21 July 2005, p 40.

- which includes 'family trees, eco-charts and time pie charts';[58] and
- which results in an assessment three times as long as that prepared by Tasmania being sent overseas.[59]

3.69 International Adoptive Families of Queensland described to the committee the process which led to the doubling of the size of the workbook:

> They got a little bit from Ireland, a little bit from New South Wales and a bit from New Zealand. I said, 'The same topic is being brought up over and over again,' and they said, 'Could you write down what you think has been asked a number of times,' which I have not had a chance to do; I do not think that is my job to do. They said, 'Yes, it was put together at the last minute.' It was closed for two years in Queensland and the workbook was put together at the last minute. They have 587 couples who are supposed to work with that workbook that was put together at the last minute.[60]

3.70 The committee would like to adopt the Productivity Commission's recommendation on stakeholder consultation for intercountry adoption.[61] By giving a consultative committee suitable representation and access to information, it should be able to make meaningful recommendations. Publishing the committee's recommendations and the government's response is a practical method of preventing both 'departmental capture' and departments not giving sufficient weight to the committees' work.

Discussion

3.71 The committee accepts that to charge adoptive parents a fee is appropriate. Agencies need to partially defray their costs, adoption groups recognise that some sort of cost recovery is reasonable, and charging a fee deters applicants who do not treat the process seriously.

3.72 In assessing what is a reasonable fee, however, it is necessary to take into account who is providing the service and the quality of that service. In chapter five, the committee will advocate that non-government organisations should have a greater role in managing intercountry adoptions. If a number of these bodies are accredited, however, it is likely

58 Byerley S, International Adoptive Families of Queensland, transcript, 21 July 2005, p 81.

59 Byerley S, International Adoptive Families of Queensland, transcript, 21 July 2005, p 76.

60 Byerley S, transcript, 21 July 2005, p 81.

61 Productivity Commission, *Cost Recovery by Government Agencies*, p 195.

that they would seek to recover a large proportion of their costs through fees and charges, given they do not hold substantial operating reserves.

3.73 To adoptive parents, the value of non-government bodies operating is that they are likely to provide a prompt service and parents are likely to be prepared to pay for prompt, courteous service. To government departments, the value of non-government bodies operating is that there will be reduced demand on departmental resources.

3.74 If governments were to provide intercountry adoption services alongside non-government bodies, there may be competitive neutrality issues if governments were to significantly subsidise those services. Hence, the committee is reluctant to make any recommendations for significant reductions in state government fees beyond that earlier made in this report.

3.75 In the committee's view, one of the key aims to improving intercountry adoptions is to provide more resources to the organisations processing applications,[62] and reducing government fees is unlikely to do this.

Recommendation 5

3.76 **In renegotiating the Commonwealth-State Agreement, the Attorney-General put the case to the relevant state and territory ministers for these jurisdictions to ensure that they establish consultative committees with adoption stakeholders, which include the following characteristics:**

- **majority stakeholder representation;**
- **a chairman independent of the department;**
- **access to adequate information on agency processes and costs;**
- **monitoring agency efficiency, among other roles; and**
- **publishing the committee's recommendations and the government's response.**

62 Wilson L, Turner S, sub 70, p 14.