The Senate

Legal and Constitutional Affairs Legislation Committee

Australian Citizenship Amendment (Intercountry Adoption) Bill 2014 [Provisions]

August 2014

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Recommendations

Recommendation 1

The committee recommends, subject to the two subsequent recommendations, that the Bill be passed.

Recommendation 2

The committee recommends that the child protection principles set out in the Hague Convention, particularly the overarching requirement that the best interests of the child be the paramount consideration in intercountry adoption processes, be explicitly articulated in Australia's bilateral arrangements and, where relevant, in the related legislation and regulations.

Recommendation 3

While not directly relevant to the committee's terms of reference, the committee strongly urges Commonwealth, state and territory governments to ensure that adequate resourcing and priority is provided for follow up monitoring and support to ensure that it fully addresses Australia's obligations to adoptees throughout the adoption cycle, regardless of whether adoptions take place under the Hague Convention or under bilateral arrangements.

CHAPTER 1

Introduction

1.1 On 29 May 2014, the Prime Minister, the Hon Tony Abbott MP, introduced the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014 (the Bill) into the House of Representatives.[1] On 17 June 2014, pursuant to a report of the Selection of Bills Committee, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 26 August 2014.[2]

Conduct of the inquiry

1.2 In accordance with usual practice the committee wrote to a number of individuals and organisations, inviting submissions by 18 July 2014. Details of the inquiry were also made available on the committee's website (www.aph.gov.au/senate_legalcon).

1.3 The committee received ten submissions, which are listed at Appendix 1. The committee thanks those individuals and organisations who made submissions to the inquiry. The committee held a public hearing on 28 July 2014, in Sydney. The witnesses who appeared at the hearing are listed at Appendix 2.

Background to the Bill

1.4 In December 2013 the Prime Minister announced that the government would reform Australia's processes for intercountry adoption, in cooperation with the states and territories. An interdepartmental committee was convened to undertake consultations and report to the government by March 2014, 'including on the immediate steps that could be taken to make inter-country adoption easier and faster for Australian couples'.[3]

1.5 The interdepartmental committee submitted its report to the government in April 2014. The report recommended, *inter alia*, that the government:

> introduce amendments to the *Australian Citizenship Act 2007*…to enable children from non-Hague [Convention] countries that issue final adoption orders, with which Australia has a bilateral arrangement, to obtain Australian citizenship in their country of origin where one or both of the adoptive parents is an Australian citizen.[4]

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1 House of Representatives, *Votes and Proceedings*, No.41, 29 May 2014, p. 513.

2 *Journals of the Senate*, No 31, 17 June 2014, pp 888-889.

3 The Hon Tony Abbott MP, Prime Minister, 'Making Overseas Adoption Easier for Australian Families', Media Release, 19 December 2013.

4 Department of the Prime Minister and Cabinet, *Report of the Interdepartmental Committee on Intercountry Adoption*, April 2014, Recommendation 2, p. viii.

1.6 On 5 May 2014, the Prime Minister announced that the Council of Australian Governments (COAG) had agreed to a new national system for intercountry adoption, to be put in place by early 2015. This would include amendments to the Australian Citizenship Act to allow adoptees to obtain Australian citizenship in their country of origin.[5]

Purpose of the Bill

1.7 The Bill seeks to amend the *Australian Citizenship Act 2007* (the Act) with respect to the acquisition of Australian citizenship by a person adopted outside Australia by an Australian citizen under a bilateral arrangement between Australia and another country.

1.8 According to the Explanatory Memorandum, the amendments would provide persons adopted in a country with which Australia has a bilateral adoption arrangement with the same citizenship entitlement as persons adopted in a country which is a party to the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (the Hague Convention).[6] The Hague Convention process, as implemented into Australian law, provides for the immediate grant of citizenship following the completion of the adoption in the foreign country.[7]

1.9 In his second reading speech on the Bill, the Prime Minister said that:

> At present, children adopted under bilateral arrangements require a passport from the home country and an adoption visa to travel to Australia. This imposes additional complexity and cost on the adopting families. Under the amendments to be made by this bill, children will be able to be granted citizenship as soon as the adoption is finalised. They will then be able to travel to Australia on an Australian passport, with their new families, as Australian citizens.
>
> This bill will place children adopted by Australian citizens under bilateral arrangements in the same position as children adopted by Australian citizens under Hague Convention arrangements. The overarching requirement from Australia's perspective is that a potential partner country, first, is willing to participate in an intercountry adoption arrangement with Australia, and, secondly, will meet the standards and safeguards equivalent to those required under the Hague convention.
>
> Where a non-convention country meets these standards, there is no reason why adoptions should not be recognised in the same way as adoptions in convention countries.[8]

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5 The Hon Tony Abbott MP, Prime Minister, 'Reform and Action on Intercountry Adoption', Media Release, 5 May 2014.

6 The Hague, 29 May 1993. Entered into force for Australia 1 December 1998, [1998] ATS 21.

7 Explanatory Memorandum, p. 1.

8 The Hon Tony Abbott MP, Prime Minister, Second Reading Speech, *House of Representatives Hansard*, 29 May 2014, pp 1-2.

1.10 The bilateral arrangements to which the amendments would apply are specified in the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations* 1998. Presently there are three such arrangements, with Ethiopia, the Republic of Korea and Taiwan, although Australia's adoption programme with Ethiopia has been closed since 2012.[9]

Key provisions of the Bill

1.11 As discussed above, the Bill seeks to amend the *Australian Citizenship Act 2007* (the Act). The Bill consists of three items and a schedule, Schedule 1. Schedule 1 of the Bill sets out the amendments to the Act.

1.12 The substantive provisions of the Act covering citizenship for persons adopted overseas are found in its Subdivision AA. Items 2 to 7 of the schedule amend the subdivision to extend the procedures for Australian citizenship currently applied to persons adopted under the provisions of the Hague Convention, to also cover persons adopted overseas in accordance with bilateral arrangements.

1.13 Item 4 of the schedule amends paragraph 19C(2)(a) of the Act to apply the citizenship criteria for adoptions in accordance with the Hague Convention equally to adoptions from a 'prescribed overseas jurisdiction'. A prescribed overseas jurisdiction is the term used in the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998* (the regulations) to refer to countries which are parties to bilateral arrangements with Australia. This means that the eligibility for citizenship set out in section 19C will apply to persons adopted under current bilateral arrangements, and under any bilateral arrangements entered into by Australia in the future.[10]

1.14 Item 5 of the schedule inserts reference to the regulations into paragraph 19C(2)(c) of the Act. This means that an adoption 'recognised and effective for the laws of the Commonwealth and each state and territory' under the regulations will now be eligible immediately for citizenship under Section 19C of the Act.

1.15 Under section 5 of the regulations, an adoption is recognised and effective for Commonwealth, state and territory laws once it takes effect in the relevant overseas jurisdiction, provided that:

- the adoption is of a child habitually resident in that jurisdiction;
- the adoption is by a resident of a state or territory of Australia;
- the competent authority of that state or territory has agreed to the adoption;

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9 Attorney-General's Department, Information Sheet, *Closure of the Australia-Ethiopia Intercountry Adoption Program*, *http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/CountryPrograms/Documents/MICAB%20-%20Ethiopia%20-%20Information%20sheet%20for%20website%20on%20program%20clos.pdf*, accessed 14 July 2014.

10 Explanatory Memorandum, p. 4.

- an adoption compliance certificate has been issued by a competent authority of the overseas jurisdiction, and it states that the adoption was carried out in accordance with the laws of that jurisdiction; and
- the adoption effectively ends the legal relationship between the child and its previous parent/s.[11]

1.16 Item 9 of the schedule provides that a person adopted in accordance with a bilateral arrangement may apply for citizenship under section 19C of the Act as soon as the amendments commence, regardless of whether the adoption was finalised before or after the commencement of the amendments.

11 Explanatory Memorandum, pp 4-5.

CHAPTER 2

Key issues

2.1 This chapter discusses a number of issues raised about the Bill by the Parliamentary Joint Committee on Human Rights and submitters and witnesses to the inquiry.

Issues raised by the Parliamentary Joint Committee on Human Rights

2.2 In its report on the Bill, tabled on 24 June 2014, the Parliamentary Joint Committee on Human Rights (PJCHR) noted that Article 21 of the Convention on the Rights of the Child[1] (CRC) provides specific protections for children in relation to intercountry adoption, to ensure the primacy of the best interests of the child. These include the requirement that adoptions are authorised only by competent authorities, are subject to equivalent safeguards and standards to those applied to national adoption, and do not result in improper financial gain for those involved. The obligations in Article 21 of the CRC are imposed upon both the country of the child's birth and the country of the adopting parents. The Hague Convention establishes a common regime, including minimum standards and appropriate safeguards, for ensuring that those obligations are met by its parties.[2]

2.3 Given Australia's obligations under Article 21 of the CRC, the PJCHR concluded that the government's assessment that the Bill does not raise any human rights issues for Australia was 'based on an unduly restricted view of both the scope of Australia's human rights obligations, and the circumstances in which they may apply'.[3]

2.4 The PJCHR expressed the view that the Bill may limit the rights of the child, and particularly the obligation to consider the best interests of the child in relation to intercountry adoptions, because neither the Bill nor the regulations specify standards or safeguards that will apply to intercountry adoptions under a bilateral agreement. The PJCHR therefore sought:

> the advice of the Minister for Immigration and Border Protection as to whether the Bill is compatible with the best interests of the child and the specific protections for inter-country adoption provided for in article 21 of the CRC and the Hague Convention.[4]

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1 New York, 20 November 1989. Entered into force for Australia 16 January 1991, [1991] ATS 4.

2 Parliamentary Joint Committee on Human Rights, *Eighth Report of the 44th Parliament*, June 2014, pp 9-10.

3 Parliamentary Joint Committee on Human Rights, *Eighth Report of the 44th Parliament*, June 2014, pp 9-10.

4 Parliamentary Joint Committee on Human Rights, *Eighth Report of the 44th Parliament*, June 2014, p. 10.

2.5 At the time of finalising this report, the PJCHR had not reported any response from the minister.

2.6 At the public hearing on 28 July, the Department of Immigration and Border Protection stated that the Bill was consistent with Article 21 of the CRC, because in practice the same safeguards were applied to adoptions from Hague and non-Hague countries. The department added that in its opinion the Bill enhanced the wellbeing of adopted children by creating a more streamlined and cost-effective process which allowed them to commence their lives in Australia more quickly.[5]

Issues raised during this inquiry

2.7 The issues raised in submissions focused on Australia's obligations to prioritise the best interests of the child in intercountry adoptions. All the submissions emphasised that streamlining adoption procedures through the Bill (and through the broader package of reforms of which it forms a part) must not weaken the protections for children built in to the current system.

Standards applied under bilateral arrangements

2.8 Responding to the committee's query as to the terms of Australia's existing bilateral arrangements, the Attorney-General's Department advised that 'the government does not have formal government-to-government agreements with South Korea or Taiwan' in relation to intercountry adoption.[6] Thus there does not appear to be a legally binding framework mandating standards and safeguards for child protection applicable to the parties to bilateral arrangements, equivalent to that established by the Hague Convention for its parties.

2.9 Many of the submissions expressed concerns that in the absence of such legal provisions, and with Australian authorities no longer having a role in determining the validity of an adoption, the streamlined citizenship process created by the Bill would make the process vulnerable to reduced standards for the protection of children, and greater risks of malpractice.

2.10 In their submission, three academics from Griffith University and RMIT commented that:

> Diminishing the checks and protections built into Australia's world class intercountry adoption system risks opening the doors to increased incidents of child trafficking, coercive practices and breaches of international and national laws. Non-Hague countries, even those with whom Australia has bilateral arrangements do not necessarily guarantee the same protections nor meet the same standards as those countries which have ratified...[7]

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5 Ms Frances Finney, Assistant Secretary Citizenship Branch, Department of Immigration and Border Protection, *Committee Hansard*, 28 July 2014, p. 15.

6 Attorney-General's Department, response to question on notice ('Additional Question') following the 28 July public hearing, received 12 August 2014.

7 Dr Patricia Fronek, Professor Denise Cuthbert and Professor Mary Keyes, *Submission 1*, p. 3.

2.11 International Social Service (ISS) Australia offered its view of the risks involved:

> The ISS network is aware that in countries whose child protection systems have limited capacity to monitor individual cases, individuals and criminal organisations may exploit loopholes in the adoption system, for financial gain or other unlawful or unethical purposes. Admittedly unlawful or unethical practices may also occur in Convention countries, however the probability is higher in non-Convention countries as they are not required to follow the rigorous processes required by the Convention.[8]

2.12 Witnesses at the public hearing discussed the types of malpractice that could occur in countries of origin, including failure to adequately explore domestic adoption options as a first priority for children, falsification of records, insufficient efforts to trace a child's family prior to authorising an adoption, and the absence of genuine free and informed consent from the child's parents, including pressure to release children for adoption.[9]

2.13 In its submission and at the hearing, UNICEF Australia stated its 'unequivocal' view that intercountry adoptions should only occur under the terms set out in the Hague Convention:

> In real terms, UNICEF's view is that our overarching recommendation is that we work only with Hague countries. If the government was absolutely committed to working under bilateral agreements then we would recommend that, where possible, they adopt most of the safeguarding that is already set out in the Hague Convention and then, as has just been mentioned, have those checks and balances in place through the life of the adoption process so that the adoptive family, the biological family and the child are all adequately protected.[10]

2.14 It was recognised that the problem may not necessarily be that lower standards were accepted by bilateral arrangement countries, rather that the capacity and ability of non-Hague countries to meet the standards tended to be poorer, and thus, there was a greater prevalence of serious problems with adoptions in non-Hague countries.[11] Moreover, non-Hague countries were not able to benefit from the systems of monitoring and technical assistance provided under the Convention framework.

2.15 At the public hearing, Mr Greg Manning from the Attorney-General's Department emphasised that

> …the approach of the department in relation to regulating or administering intercountry adoption programs is the same whether or not the country you

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8 International Social Service (ISS) Australia, *Submission* 3, p. 2.

9 See Dr Patricia Fronek and Miss Amy Lamoin, *Committee Hansard*, 28 July 2014, p. 7.

10 Miss Amy Lamoin, Head of Advocacy, UNICEF Australia, *Committee Hansard*, 28 July 2014, p. 9.

11 Dr Norman Gillespie, Chief Executive Officer, UNICEF Australia, *Committee Hansard*, 28 July 2014, p. 12.

> are dealing with is a Hague or a non-Hague country…our approach generally…is one of ensuring practical compliance with and implementation of Hague convention standards, rather than something more theoretical.
>
> …We would encourage and probably prefer all countries being party to an important multilateral convention such as the Hague convention. But the reality is that being a party is not enough in relation to satisfying ourselves about what occurs in a country in relation to intercountry adoption, so we undertake more practical measures to satisfy ourselves of that.[12]

2.16 The department advised that these practical measures included ongoing review of relevant legislation, guidelines and infrastructure in the countries in question, monitoring the practical operation of programs, regular dialogue with relevant in-country authorities through Australia's diplomatic missions and through visits to the country, and exchanging information with other countries and with NGOs working in the field.[13] Mr Manning mentioned that while bilateral arrangement countries were not eligible to receive technical assistance for compliance through the Hague Convention mechanisms, international NGOs often provided such assistance.[14]

Post-adoption monitoring and support

2.17 Several submissions raised concerns about the nature and level of post-adoption monitoring and support to be provided to adopted children and their families under adoptions completed overseas under bilateral arrangements. This included both follow up support to the child and family in Australia, and the sharing of post-adoption information and reporting with authorities in the sending country.

2.18 While post-adoption processes did not fall directly within the terms of the Bill, it was noted that the immediate grant of citizenship to children adopted overseas would remove the guardianship of the minister over the child that had previously prevailed while the adoption was being finalised in Australia, and may therefore remove the monitoring and reporting requirements which accompanied that status.[15] Witnesses also felt that post-adoption support was an indispensable part of the bigger picture in a reformed adoption system which must be taken into account when considering the Bill.

2.19 Speaking at the public hearing, Dr Patricia Fronek said that 'the biggest issue with post-adoption support is that we do not have enough', especially in light of the

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12 Mr Greg Manning, First Assistant Secretary Access to Justice Division, Attorney-General's Department, *Committee Hansard*, 28 July 2014, p. 16.

13 Attorney-General's Department, response to question on notice (Question 1) following the 28 July public hearing, received 12 August 2014, pp 2-3.

14 Mr Greg Manning, First Assistant Secretary Access to Justice Division, Attorney-General's Department, *Committee Hansard*, 28 July 2014, pp 18.

15 *Committee Hansard*, 28 July 2014, p. 18.

growing proportion of adoptees being older children and children with special needs.[16] This was also well expressed in the submission of Ms Sandi Petersen:

> Children adopted from overseas often have a history of trauma and loss which brings additional and complex emotional, developmental and social needs… these exceedingly vulnerable children deserve the highest standard of care and supervision that our country can provide, including provision of specialised support and supervision during their first year in family placement.[17]

2.20 Origins Vic Inc observed that 'the fast adoption process may increase the numbers of intercountry adoptions and government resources may need to increase to monitor the arrangements once the child is in Australia'.[18] Origins and other submitters also emphasised the importance of maintaining reporting systems which ensured that children could develop an understanding of their identity and family of origin, and be able to contact their biological family if they chose to do so in future.

2.21 The Attorney-General's Department advised that the Bill would not change post-adoption support arrangements, which were provided by state and territory governments in accordance with their respective laws. While the laws and processes may vary in some respects between states and territories, support services were provided to adopted children and their families on an identical basis whether the adoption took place under the Hague Convention or under bilateral arrangements. With respect to post-adoption reporting, the department advised that this was determined by the requirements imposed by the country of origin, and facilitated by state and territory governments accordingly.[19]

Dual nationality

2.22 In its submission UNICEF recommended that the Bill include provision that wherever legally possible, and wherever in the best interests of the child, children granted citizenship under the amended provisions of the Act would automatically retain dual nationality.[20] UNICEF explained during the hearing that this reflected 'a simple idea about a child's right to their own nationality', to embrace their identity and, if they wished, to reconnect with their country of origin later in life.[21]

2.23 The Australian Institute of Family Studies advised that its studies into past adoption practices in Australia had revealed the importance of supporting and

16 Dr Patricia Fronek, *Committee Hansard*, 28 July 2014, p. 6.

17 Ms Sandi Petersen, *Submission* 10, p. 1.

18 Origins Vic Inc, *Submission* 6, p. 3.

19 Attorney-General's Department, response to question on notice (Question 2) following the 28 July public hearing, received 12 August 2014.

20 UNICEF, *Submission 9*, p. 3.

21 Miss Amy Lamoin, Head of Advocacy, UNICEF, *Committee Hansard*, 28 July 2014, p. 11.

sustaining contact between adoptees and their biological families, while recognising the greater difficulty of this in the intercountry adoption context.[22]

Possible future bilateral agreements

2.24 A key concern expressed in almost all submissions, and by witnesses at the public hearing, was that the Bill reflected an intention on the part of the government to expand the number of countries with which Australia carried out intercountry adoptions under bilateral arrangements rather than under the Hague Convention. While the existing bilateral arrangements pre-dated the Hague Convention, submitters took the view that the Hague Convention should now be the preferred (or the only) framework under which Australia facilitated intercountry adoptions.

2.25 In its evidence to the committee, the Attorney-General's Department advised that there were only two countries with which intercountry adoptions were presently taking place under bilateral arrangements. One of these, the Republic of Korea, was in the 'final stages' of becoming party to the Hague Convention. The other, Taiwan, may be precluded by its international status from becoming party to the Convention.[23]

2.26 The department further advised that discussions were presently under way about opening new intercountry adoptions with seven countries, all of whom were parties to the Hague Convention[24], and that there were no current plans to consider new bilateral arrangements with non-Hague Convention countries.

2.27 At the same time, the department noted that Article 21(e) of the Convention on the Rights of the Child specifically envisaged that parties could undertake bilateral as well as multilateral adoption arrangements, and that nothing in the present Bill was directed toward making future bilateral arrangements more or less likely.[25] The department reiterated that 'Australia will only consider opening a new intercountry adoption programme where it can be demonstrated that there is practical compliance with the Hague Convention'.[26]

Committee view

2.28 The committee believes that the Bill offers benefits to all parties involved with intercountry adoptions under Australia's bilateral arrangements. The streamlined citizenship process effected by the Bill will make overseas adoption a little bit faster, easier and more cost-effective for adopting families, and will enable adopted children

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22 Australian Institute of Family Studies, *Submission* 5, pp 2-3.

23 Mr Greg Manning, First Assistant Secretary Access to Justice Division, Attorney-General's Department, *Committee Hansard*, 28 July 2014, p. 14.

24 The seven countries currently under investigation are Bulgaria, Cambodia, Kenya, Latvia, Poland, the USA, and Vietnam. Attorney-General's Department, response to question on notice (Question 1) following the 28 July public hearing, received 12 August 2014, p. 3.

25 Mr Greg Manning, First Assistant Secretary Access to Justice Division, Attorney-General's Department, *Committee Hansard*, 28 July 2014, pp 14-15.

26 Attorney-General's Department, response to question on notice (Question 1) following the 28 July public hearing, received 12 August 2014, p. 3.

to settle more quickly and easily into their new lives, and access key support services immediately on arrival in Australia.

2.29 The committee notes the advice provided by the relevant departments that in doing so, the Bill will not in any way compromise the interests of the child, nor the standards and safeguards applied to intercountry adoption programs under bilateral arrangements, which will continue to mirror the principles of the Hague Convention.

Recommendation 1

2.30 The committee recommends, subject to the two subsequent recommendations, that the Bill be passed.

2.31 The committee acknowledges the view shared by both government and community stakeholders that the Hague Convention represents the best-practice international framework for intercountry adoptions today. The committee commends the unequivocal assurances given by the Attorney-General's Department that whether an overseas adoption is covered by the Hague Convention or a bilateral arrangement, the same standards, safeguards and monitoring procedures are and will be applied.

2.32 Unlike the Hague Convention regime, the principles governing Australia's bilateral arrangements are not set out in law, either in government-to-government agreements or in the Bill and the related regulations. This lacuna gives rise to understandable concerns within the community as to whether, and how, relevant standards are agreed and enforced in the context of bilateral arrangements. A similar concern was expressed by the PJCHR in its consideration of the Bill.

2.33 The committee does not question the good faith of Australia's authorities in their efforts to ensure that appropriate and consistent standards are upheld in all intercountry adoptions. The committee believes nonetheless that the principles of the Hague Convention, and most notably the requirement that the best interests of the child be the paramount consideration throughout the adoption cycle, need to be not just implicitly understood but explicitly and publicly stated in the context of Australia's bilateral arrangements.

Recommendation 2

2.34 The committee recommends that the child protection principles set out in the Hague Convention, particularly the overarching requirement that the best interests of the child be the paramount consideration in intercountry adoption processes, be explicitly articulated in Australia's bilateral arrangements and, where relevant, in the related legislation and regulations.

2.35 The committee recognises that that accords with the government's general position, and is comforted by the approach that the government currently goes 'behind' both the Convention and bilateral arrangements when considering intercountry adoptions, by undertaking practical measures such as those discussed at paragraph 2.16: ongoing review of relevant legislation, guidelines and infrastructure in the countries in question, monitoring the practical operation of programs, regular dialogue with relevant in-country authorities through Australia's diplomatic missions and through visits to the country, and exchanging information with other countries and with NGOs working in the field.

2.36 In the course of the inquiry it became clear that post-adoption monitoring and support was crucially important to protecting the welfare of adopted children, as well as the families involved. The committee noted the evidence of several submitters that post-adoption support may be under-resourced at present, and the strongly-held view that under a more streamlined adoption system the level of support provided, as well as monitoring and reporting to countries of origin, must not be compromised.

Recommendation 3

2.37 While not directly relevant to the committee's terms of reference, the committee strongly urges Commonwealth, state and territory governments to ensure that adequate resourcing and priority is provided for follow up monitoring and support to ensure that it fully addresses Australia's obligations to adoptees throughout the adoption cycle, regardless of whether adoptions take place under the Hague Convention or under bilateral arrangements.

2.38 The committee recognises the historical and legal reasons which gave rise to the bilateral arrangements currently in place, noting that only two remain in practical effect, and one of these will soon become obsolete.

2.39 At this point in time, with the Hague Convention attracting a robust and growing list of parties, and representing the benchmark for global best-practice in intercountry adoption, the committee is of the view that it would be preferable if further bilateral arrangements with non-Hague parties were not pursued unless there are compelling reasons for doing so.

Senator the Hon Ian Macdonald

Chair

Australian Greens' Dissenting Report

Australian Citizenship Amendment (Intercountry Adoption) Bill 2014

The Australian Greens are very concerned about fast tracking intercountry adoption processes. We have seen the trauma that can be caused by flawed adoption practices, to the child, the relinquishing family and the adoptive family. Australia must be vigilant to ensure the necessary safeguards are in place to protect parents from being coerced into relinquishing their child, ensure that intercountry adoption is a last resort and that there is appropriate post-adoption care, support and services for children and families.

The Greens are concerned about a number of aspects of the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014:

1. The allowing of intercountry adoptions through bilateral agreements outside of the safeguards, transparency and procedures of the Hague convention;

2. That the bill does not focus on the best interest of the child;

3. That the bill could facilitate an environment for forced or coerced adoption practices to take place;

4. That there is a lack of requirement for post adoption support services.

These concerns were clearly shared and articulated by many submissions and witnesses during the inquiry process.

Risks with bi-lateral agreements

There are many risks associated with adopting through bilateral agreements with non-Hague convention countries. The Hague Convention (1993) has set guidelines which consider the child's interests to be of paramount importance. Bilateral agreements don't necessarily meet the same standards. The stated reason for this bill is to cut waiting periods and allow for easier and more convenient adoptions. 'Benefits to adopting parents are grossly outweighed by the risks associated with adopting children in non-Hague countries'.[1]

> We know countries that have a very limited child protection system do not have the capacity to monitor individual cases. In these types of countries, individuals or criminal organisations can exploit the loopholes in

1 Damon Martin, Manager, International Social Service Australia, *Proof Committee Hansard*, 28 July 2014, p. 1.

> intercountry adoption. Whilst Australia has signed the convention, it is difficult for Australia to monitor the systems in countries that are adopting children that have not signed the convention. For this reason, I think promoting bilateral agreements with non-Hague countries and finalising adoptions in overseas countries have lots of risks associated. So I do not support the bill.[2]

The Australian Greens agree that the risks outweigh the convenience of speeding up adoption with countries who have not signed the Hague Convention.

The interests of the child are better protected by the safeguards and standards of the Hague Convention. We would prefer that Australia encourage non-Hague nations to become signatories.

Best interest of the child

The Australian Greens believe that all legislation that affects children must be in the best interest of the child. Evidence from Dr Gillespie and UNICEF emphasised the need to keep the interests of the child at the centre of intercountry adoption processes:

> We emphasise the best interests of the child test. We note that the CRC, the Convention on the Rights of the Child, talks about 'primary' interests of children whereas the Hague convention talks about consideration of children being 'paramount' in inter-country adoption. UNICEF would not support any dilution of those standards.[3]

In order to properly protect children and families the first thing we need to do is work with countries to enhance and improve their child protection systems, the interest of the child must stay at the centre of our decision making processes.

> In the very first instance, the Convention on the Rights of the Child says that a child should be with its own family. In all circumstances that is what we are striving for. If that is not possible—and that is also about why we do development, to try to bolster systems to ensure that children and families can be supported—then that child should stay in its own culture and with family members or extended family members in that country. Again, our job is to help build systems with those foreign governments to make sure those child protection systems are strengthened before we get into this...If all of that is exhausted—in a way, the convention says that intercountry adoption should be a last resort after those have been exhausted—then we look at how best we can minimise and protect.[4]

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2 Damon Martin, Manager, International Social Service Australia, *Proof Committee Hansard,* 28 July 2014, p. 1.

3 Dr Norman Gillespie, Chief Executive Officer, UNICEF Australia, *Proof Committee Hansard,* 28 July 2014, p. 2.

4 Dr Norman Gillespie, Chief Executive Officer, UNICEF Australia, *Proof Committee Hansard,* 28 July 2014, p. 8.

Forced and coerced adoption

The past forced adoption practices in Australia have caused ongoing trauma. As Professor Nahum Mushin, Chair of the Forced Adoptions Implementation Working Group noted, the consultation for the submission for this bill has a 're-traumatising effect on affected people'.[5] We have a responsibility to ensure that we do not create situations for such practices to re-occur. The Australians Greens are very concerned that this bill could assist in making coerced and forced adoption practices more likely.

It is important to remember that intercountry adoption can take an extended time because of the complex nature of the process.

> It takes time and due diligence to ensure that children are genuinely available to be adopted. We do not want to see any more cases where parents adopt into the Australian context only to discover that the child should never have been considered genuinely available for adoption. That is a really complex thing for parents to have to live with. What does that mean then for your parenting, what is meant for your family, what does it mean for the child, what does it mean for the biological family?[6]

Unfortunately, illegal and unethical adoptions are much more likely in non-Hague countries. Without due process and systems around child protection, children and families are at risk of exploitation. 'The more bilateral agreements we have with non-Hague countries, the more unethical and unlawful adoptions we are going to have'.[7]

> …it has been noted in other country contexts that sometimes there is not due process around free, prior and informed consent from parents and situations where parents are actually being pressured to surrender their children to adoption programs.[8]

Post-adoption support

We are concerned that a faster adoption process provided by the bill may mean that important supports and services don't occur. One issue that is not included in the bill is post-adoption support. As several of the witnesses stated, appropriate post-adoption support is very important. There is no provision in the bill to ensure that bilateral agreements will be required to have the same standards in post-adoption support and follow up as the Hague Convention. The Hague Convention currently requires post-adoption assessments that usually occur in the first 12 months post-adoption, there is also follow up with the relinquishing family from the country of origin.

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5 Forced Adoption Implementation Working Group, *Submission 5*, p. 1.

6 Amy Lamoin, Head of Advocacy, UNICEF Australia *Proof Committee Hansard*, 28 July 2014, p. 6.

7 Damon Martin, Manager, International Social Service Australia, *Proof Committee Hansard*, 28 July 2014, p. 11.

8 Amy Lamoin, Head of Advocacy, UNICEF Australia, *Proof Committee Hansard*, 28 July 2014, p. 7.

It is essential that there is contact and support for the relinquishing family, the child and the adoptive family. There are several issues with post-adoption support, including the need for 'long-term post-adoption support for both families and adoptees and also the support and assessment that is important to go back to the country of origin in that first year'.[9]

> Post-adoption support is very, very critical. It is not just the formal reports that Dr Fronek was talking about; it is the informal support that the family needs and may require throughout that child's upbringing. Also, we are funded by the New South Wales government support service for adult adoptees to search for their birth parents overseas. It is important to understand how much of a profound impact that can have on adoptees in later life when they become an adult to find out that their adoption was unethical and unlawful.[10]

Conclusion

The Australian Greens have serious concerns regarding the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014. While the Greens are not in complete opposition to intercountry adoption it must be done with extreme caution. Intercountry adoption should be through Hague signatory countries, and only when in the best interest of the child. All safeguards against coerced or forced adoption must be in place and there must be appropriate post adoption support services to the relinquishing family, the child and the adoptive family.

In its current form the Australian Greens cannot support the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014.

Recommendation 1

1.1 The Australian Greens recommend that the bill not be passed in its current form.

Senator Rachel Siewert
Senator for Western Australia

9 Dr Patricia Fronek, Private capacity, *Proof Committee Hansard,* 28 July 2014, p. 6.

10 Damon Martin, Manager, International Social Service Australia, *Proof Committee Hansard,* 28 July 2014, p. 7.

Appendix 1

Public submissions

1	Dr Patricia Fronek et al
2	Ms Evelyn Robinson
3	International Social Service Australia
4	NSW Committee on Adoption and Permanent Care Inc
5	Forced Adoptions Implementation Working Group
6	Australian Institute of Family Studies
7	Origins Victoria Inc
8	Vanish Inc
9	UNICEF Australia
10	Ms Sandi Petersen

Appendix 2

Public hearings and witnesses

Monday, 23 July 2014—Sydney

FINNEY, Ms Frances, Assistant Secretary, Citizenship Branch, Department of Immigration and Border Protection

FRONEK, Dr Patricia, Private capacity

GILLESPIE, Dr Norman, Chief Executive Officer, UNICEF Australia

JOHNSON, Dr Richard, Assistant Secretary, Visa Framework and Family Policy Branch, Department of Immigration and Border Protection

LAMOIN, Miss Amy, Head of Advocacy, UNICEF Australia

MANNING, Mr Gregory, First Assistant Secretary, Access to Justice Division, Attorney-General's Department

MARTIN, Mr Damon, Manager, New South Wales Office, International Social Service Australia

WILLIAMS, Ms Kelly, Assistant Secretary, Marriage and Intercountry Adoption Branch, Attorney-General's Department

WOOD, Ms Allison, Principal Legal Officer, Marriage and Intercountry Adoption Branch, Attorney-General's Department

Appendix 3

Tabled documents, answers to questions on notice and additional information

Answers to questions on notice

1 Attorney General's Department - answers to questions on notice received (12 August 2014)

2 Department of Immigration and Border Protection - answer to question on notice received (15 August 2014)