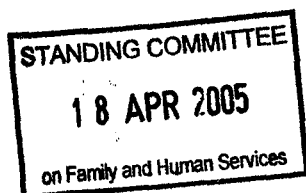




SUBMISSION NO. 80

AUTHORISED: 9-05-05 *[Signature]*



ATTORNEY-GENERAL
THE HON PHILIP RUDDOCK MP



05/3829:MC05/2562

- 8 APR 2005

The Hon Bronwyn Bishop MP
Chairman
Standing Committee on Family and Human Services
Parliament House
CANBERRA ACT 2600

Dear Madam Chairman

I refer to your letter dated 25 February 2005 seeking my Department's submission to the inquiry addressing the terms of reference.

In your letter, you indicate that the terms of reference are that:

'[t]he Committee shall inquire into and report on how the Australian Government can better assist Australians who are adopting or have adopted children from overseas countries (intercountry placement adoptions) with particular reference to:

- Any inconsistencies between state and territory approval processes for overseas adoptions; and
- Any inconsistencies between the benefits and entitlements provided to families with their own birth children and those provided to families who have adopted children from overseas.'

As you would be aware, the issue of adoption is largely, in practical terms, a matter for the States and Territories. The issue of family benefits and entitlements is, similarly, a matter that is outside the scope of my portfolio responsibilities. I understand that my Department has confirmed with the Committee's Secretariat that submissions have also been sought from other federal agencies with an interest in intercountry adoption including the issue of benefits, as well as the States and Territories.

I have provided below, for the Committee's assistance, an outline of my Department's role in relation to the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*.

Intercountry adoption in Australia

Australia ratified the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (the Convention) on 25 August 1998. The Convention entered into force for Australia on 1 December 1998.

The potential exists for Australians to be considered to adopt children from a range of Convention countries with which Australia has established an adoption program.

Australia also has a number of adoption programs established under bilateral arrangements with countries that are not yet party to the Convention, namely: China, Ethiopia, Fiji, Hong Kong, Korea and Taiwan.

Programs established under these bilateral arrangements are monitored to ensure that they meet the standards required under the Convention.

In 2003-04, 370 children were adopted into Australian families under the Convention and these bilateral arrangements.

The respective roles of the Commonwealth and the States and Territories in intercountry adoption

The Secretary of the Attorney-General's Department, as the Commonwealth Central Authority for the Convention, is primarily responsible for monitoring the performance of Australia's obligations under the Convention and ensuring that Australia, as a whole, complies with the requirements and standards of the Convention.

Rules relating to intercountry adoptions, in general terms, are set down in the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998* and the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Adoption Convention Regulations).

The Commonwealth Central Authority has the general functions, detailed in subsection 6(1) of the Adoption Convention Regulations, of doing, or coordinating the doing of, anything that is necessary:

- (a) to enable the performance of Australia's obligations under the Convention; or
- (b) to obtain for Australia any advantage or benefit under the Convention.

The Commonwealth Central authority also has the duties and powers detailed in subsection 6(5), namely it:

- (a) has all the duties of a Central Authority under the Convention; and
- (b) may exercise all of the powers of a Central Authority under the Convention.

Subsection 6(2) of the Adoption Convention Regulations also provides that the specific functions of the Commonwealth Central Authority include:

- (a) cooperating with Central Authorities outside Australia on matters relating to the administration and implementation of the Convention;
- (b) consulting State Central Authorities to get information for determining whether Australia is meeting its obligations under the Convention;
- (c) to the extent that the legislation and administrative practices of States do not ensure that Australia meets its obligations under the Convention — preparing legislation to ensure that Australia meets those obligations;
- (d) receiving advice from a State Central Authority that a provision of the Convention has not been respected in the State, and ensuring with the State Central Authority that appropriate measures are taken to ensure compliance with the provision;
- (e) receiving advice from a State Central Authority that there is a serious risk that a provision of the Convention may not be respected in the State, and ensuring with the State Central Authority that appropriate measures are taken to ensure compliance with the provision;
- (f) consulting State Central Authorities on matters relating to intercountry adoption.

In practical terms this role extends to assisting with liaison with overseas Central Authorities about intercountry adoption programs as well as assisting with establishing new programs. The Commonwealth Central Authority meets regularly with the State and Territory adoption authorities to discuss particular issues relating to intercountry adoption as they arise.

The State and Territory Central Authorities retain responsibility for all practical aspects of adoption, including the processing of intercountry adoption applications and therefore have their own legislation to regulate intercountry adoption.

The separation of responsibilities between the Commonwealth and the States and Territories is reflected in the *Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (the Commonwealth-State Agreement). Because all practical aspects of the adoption process are, under this agreement, a matter for the States and Territories, it is a matter for the responsible Ministers of each State and Territory to determine the appropriate fee structure, eligibility criteria and other practical issues relating to adoptions in a particular State or Territory.

This separation of responsibilities is confirmed by the Adoption Convention Regulations, as detailed above, and which specify, at subsection 6(3), that the Commonwealth Central Authority's functions do not include:

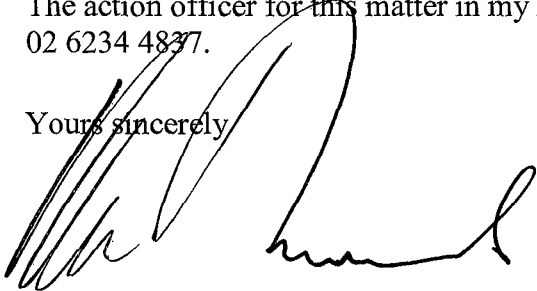
- (a) processing the day-to-day casework involved in a particular adoption;
- (b) approving an application for the adoption of a child;
- (c) giving consent to the adoption of a child;

- (d) a function reserved, under the Commonwealth-State agreement, for a State or State Central Authority;
- (e) accrediting a body for the Convention.

Thank you for the opportunity to make a submission to the inquiry. I hope you will find this information of assistance. My Department is, of course, available to attend any hearings held by the Committee if the Committee would find that of benefit.

The action officer for this matter in my Department is Amanda Bush who can be contacted on 02 6234 4837.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Philip Ruddock', written over the 'Yours sincerely' text.

Philip Ruddock