



Department for Community Development
Government of Western Australia

SUBMISSION NO. 183

AUTHORISED: 15-06-05 *And K. H. H.*

Hon Bronwyn Bishop MP
Chair
House of Representatives
Standing Committee on Family and Human Services
Parliament House
CANBERRA ACT 2600

STANDING COMMITTEE

24 MAY 2005

on Family and Human Services

Dear Ms Bishop

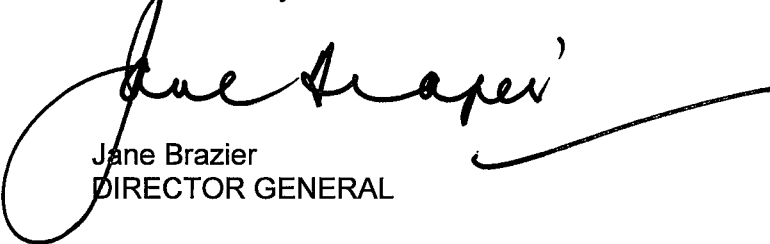
Please find attached a response from the Western Australian Department for Community Development to the House of Representatives Standing Committee on the Family and Human Services Inquiry into the adoption of children from overseas.

Overseas adoption is a sensitive matter which generates considerable interest. It is a highly emotive issue and open to much speculation. The work of your Standing Committee will prove valuable if it achieves an increased level of awareness about the issues and the complexities involved.

I note that the Commonwealth Government has already announced in the Budget an extension to the maternity allowance for more adoptive parents.

I wish you and the Standing Committee success with the deliberations.

Yours sincerely



Jane Brazier
DIRECTOR GENERAL

19 May 2005

Adoption of Children from Overseas

Terms of Reference.

"The House of Representatives Standing Committee on Family and Human Services has reviewed the 2003-2004 Annual Report of the Australian Institute of Health and Welfare and resolved to conduct an inquiry.

The Committee shall inquire into and report on how the Australian Government can better assist Australians who are adopting or have adopted children from overseas countries (intercountry placement adoptions) with particular reference to:

- 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."*

This submission sets out general introductory remarks about the principles that guide adoptions in Western Australia and then addresses each term of reference.

Difference in starting points.

The *Adoption Act 1994* regulates adoptions in Western Australia. This State was the first in Australia to enact legislation regarding adoptions in 1896. There have been many changes over the years with a completely new Act in 1994 following almost a decade of reviews by Parliament and Committees.

The 1994 Adoption Act was then reviewed after three years of operation in 1997. That legislative review led to a raft of amendments that were passed in 2003. A further review of the Western Australian Adoption Act will commence in June 2006.

The principle of the *Adoption Act 1994* S.3 has as its paramount considerations:

- the welfare and best interests of the child to be adopted;
- that adoption is a service for a child;
- that adoption occurs where there is no other appropriate alternative for the child.

The child who is to be adopted is the starting point for an adoption.

Applicants and adoption

While the applicants are an integral part of adoption, they are not at an individual level the focus of the *Adoption Act 1994*. The legislation focuses on the child, while by necessity detailing the attributes and suitability required for approval as new parents for children who may need adoption. The Act envisages that the Department will recruit suitable people who will be available for a child who is in need of adoption (S.40).

The Act further expects that there will be a range of suitable prospective adoptive parents available for a child. Under S.45 the relinquishing birth parents express their preferences as to the characteristics and attributes of people who may adopt the child. Under S.45 (a)(ii) birth parents usually select the prospective adoptive parents.

There follows a process of negotiation (S.46) between the parties as to the content of the Adoption Plan. The Act expects that the Adoption Plan will be achieved with the help of the adoption staff if necessary. If the relinquishing parents are not satisfied with the range of prospective adoptive applicants or cannot achieve an adoption plan that satisfies them, new parents for the child may be selected by them. The Act has provision for dispensation of Adoption Plans in certain circumstances (s.74)

The Act makes further restrictions on suitable prospective parents by requiring the Director General to make the placement decisions based upon a series of criteria S.52 – 54.

Placing the interests of children first.

There has been a general shift in thinking about children since the first adoption legislation came into force in Western Australia in 1896. As late as the mid 1950's children, in their early teenage years, were seen as potential income providers for the family. Schooling continued only for those who wanted or could afford a tertiary education. Most teenagers went to work. Labouring and trades' positions were commonly available in the expanding economy during the post World War economy. Further the structure of industry was such that labour was more in demand than knowledge. The isolation of the economic state was greater and rate of change in all spheres was not appreciated at that time.

The *United Nations Convention on the Rights of the Child 1990* sets out a range of principles to which most countries ascribe. Increasingly children became appreciated not as 'little adults' or potential 'economic units' or 'commodities' but as people with particular needs and rights. The Convention informed the development in 1993 of *the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoptions*. Australia became a full member of that Convention in 1998. Western Australia incorporated the *Hague Convention* on intercountry adoptions into its *Adoption Act 1994* as Schedule 2 in 1999. The *Adoption Regulations 1995* were also amended at the same time.

Differences between Authorities

A focus upon inconsistencies and differences will inevitably highlight the variations that exist. Whether the differences are material remains the question. Reframing the question to look at similarities and commonalities shows the strengths in the existing systems.

Difference in decision making at the state level is not likely to change until the policy and legislative frameworks are more aligned. Rather than dwelling upon the differences all authorities work together for the benefit of those involved.

Commonwealth and States Agreement on Adoptions

The Commonwealth Attorney General's Department convenes Regular Central Authority meetings, which provide a valuable forum for progress to be made on intercountry adoptions. *The Commonwealth/State Agreement for the Implementation of The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*, 1998, established the basis for progress. The Commonwealth provides a supportive coordinating role, including monitoring (Paragraphs 2 & 3). The States and Territories continue with the constitutional responsibility for intercountry adoption services (Paragraph 4).

National Minimum Principles in Adoption.

In 1993 the Community Services Ministers of all Australian states and territories agreed to follow a set of principles for adoptions. These were applied with the view to Australia moving towards the *Hague Convention* and formed a set of aims around which all jurisdictions would amend their own legislation over time. That has largely happened now in Australia. All jurisdictions have or are modifying and updating adoption legislation to incorporate the *Hague Convention* on intercountry adoptions and are picking up the national minimum principles as they apply.

Jurisdiction.

Constitutionally each State and Territory has the responsibility for laws about adoption. Each State and Territory is a State Central Authority of *the Hague Convention* on intercountry adoptions. The Commonwealth is not responsible for arranging adoptions.

The Commonwealth's power relates to the external treaties power and these are overseen by the Commonwealth Attorney General. The Commonwealth Attorney General is the Australian Central Authority for the Hague Convention on intercountry adoption and is the single public face for Australia. The Commonwealth Department of Immigration and Multicultural and Indigenous Affairs upholds the integrity of adoption laws through the visa and border control mechanisms. The Commonwealth's Health Assessment Service authorises panel medical officers in the sending countries to examine children prior to a visa being issued for travel to Australia.

First Term of Reference

"Any inconsistencies between state and territory approval processes for overseas adoptions."

General approach to overseas adoptions

In line with the main principle that adoption is a service for a child who may need an adoptive family placement, Western Australia's approach to intercountry adoptions is set out in the "Western Australian Adoption Policy". Prospective adoptive applicants who are found to be suitable are made known to overseas authorities. An applicant's file or 'homestudy' is sent to their country of preference. If the country should require adoptive placements for children the Western Australian applicants may be considered. Despite the common view, there are more applicants who wish to adopt healthy young children than there are such children "legally awaiting" adoptive homes.

Western Australia observes the principle of subsidiarity in *the Hague Convention*. The principle involves a hierarchy of decisions about the placement of children who need a legally arranged alternate family placement. It starts with a child who needs an alternate family being placed

within the family or kinship system. If that is not possible the child is placed with a family in that region. This is followed by a placement with a family within the country. If there is no family available the child is offered for adoption in another country. Not all countries that engage in overseas adoption support that approach.

Australia supports the principle that children are not items of trade, not commodities to be offered to the highest bidder. For that reason the *Hague Convention* requires there to be separation between agencies involved in intercountry adoption and those who provide physical aid to sending countries. Donations of cash or goods should not be part of the adoptive process. Non government voluntary groups are involved in sending aid to developing countries and support facilities where children are in need of adoption. Some groups would like to become accredited to arrange adoptions from those countries. The potential for conflicts of interest are considerable. The Australian Central Authorities do not support the provision of aid linked to adoption of children. (Article 8 Hague Convention).

Some adoptive applicants consider such standards as barriers to an increase in the numbers of children adopted by Australians.

The adoption process

All States have a three stage process for applicants. Applicants demonstrate their eligibility, then their suitability and finally a child may be placed with the applicants.

In Western Australia decision making for the suitability of applicants is the role of the Adoption Applications Committee. This Committee, established in the *Adoption Act 1994*, determines the suitability of applicants for adoptive parenthood. Western Australia is the only State using this structure. The Committee is composed of Department and independent members. Decisions about applicants are final. Decisions made may be appealed upon process but not outcome. Other review and appeal mechanisms are outlined in the *Adoption Act 1994*.

The Adoption Applications Committee mechanism has been successful with a number of changes to members over the years. The rejection rate of 6% may be considered low. However, most potential applicants withdraw from the process prior to making an expression of interest in adoption once they are informed what adoption involves. Rather than the time or process, it is often the awareness that adoption is not what they imagined it to be.

The process in Western Australia is that the Department provides information and education seminars about adoptions (\$420 per couple plus \$120 for intercountry applicants). After the seminars, people lodge an Expression of Interest and are then invited to apply to be adoptive parents. People apply and pay \$750 administration fee and \$986 assessment fee (for a first

assessments for an intercountry adoption). The applicants demonstrate their eligibility, (Police Screening, Medical checks, database checks, referee reports.). They are assessed by a contract assessor. Their report is considered by the Adoption Applications Committee to determine suitability. If a child is allocated the Department places the child according to s.52 of the *Adoption Act 1994*. There is a supervision period of six months where the family is visited monthly to support the child's settling-in. At the end of the six months, where the Order of Adoption has not already been finalised (eg.China), the Department prepares a Report to the Family Court of Western Australia on the placement. The family apply to the Family Court for an Adoption Order.

Adoption, especially intercountry adoption, is a legal process. Confidence in the outcome is based upon the observance of minimum standards. Documentation and authentication all take time. This necessary aspect cannot be avoided or shortcut. While checking documents and processes are always slow points, Western Australia has significantly reduced the time it takes in processing in the past five years.

A concern and frustration for applicants is the time it takes countries to allocate a child. Considerable time in the process occurs once the file leaves Australia. One technical difficulty experienced is that the state legislation cannot determine what the overseas country will do. The decisions made about matching children, the staffing and time taken to process applications is in the hands of the sending country. While Australia offers adoptive placements for children it is not appropriate to make demands of other countries about their processes.

Second Term of Reference

"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."

Scope for Maternity Allowance

This Inquiry by the House of Representatives Standing Committee on Family and Human Services may examine the scope to extend the present maternity allowance to adoptive parents.

In terms of impact, 152 out of the 370 children or 41% of children adopted from overseas in 2003/04 were with their adoptive parents before they turned one year of age (Australian Institute of Health and Welfare, Table A4.1, page 43). A further 194 children or 52 % were aged between 1 and 4 years. It is evident that the change to the allowance only recently announced, will be beyond the reach of those adoptive parents who have a child that will be

older than two years of age at placement. The change to the allowance will further encourage applicants towards younger adoptive children.

Structural determinant on Costs of adoption.

Each State and Territory Government has legislation in place for the adoption of children. Each jurisdiction is progressing towards implementing the agreed National Minimum Standards in Adoption and incorporating within their legislation *the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*.

While all legislation is similar, each is different in ways specified by each Parliament. The decision making in each jurisdiction reflects the State acts and administrative arrangements. Those States with private providers of local adoption services and post adoption services arrange intercountry adoptions through their child safety or welfare Departments. In Western Australia all aspects of adoptions are currently provided by the Department for Community Development. The level of resourcing can reflect the structural arrangement and where the adoption service sits within the overall organisation.

In Western Australia the Adoption Service of the Department for Community Development is the only adoption service provider. The Adoption Service is a statewide service with approximately 75% of adoptions occurring in the metropolitan area. Country adoptions are co-worked with the Adoption Service and the local Department for Community Development office.

In addition to this the Department delegates some education and training occurs through two non-government groups, Adoption Research and Counselling Service (ARCS) and Adoption Support for Families and Children, (ASFC). The Department uses contracted social workers and psychologists to undertake assessment for suitability reports on adoptive applicants. A pre-adoption counselling service, ARCS, and a post adoption service, Adoption Jigsaw, are funded by the Department.

FEES

The fees charged for intercountry adoption in jurisdictions reflect the allocation of staffing for adoptions, the policy approach to such things as cost recovery for services, user pays principle, payments to NGO's and the like. The decision in Western Australia has been to hold-down fees as low as possible. The Government has tried to contain adoption fees for those involved and the fees charged do not reflect the real cost of the services to the Department.

Western Australian Fees:

Information/Education Stage: Up to a maximum of \$110 per person per session. (Usually \$540 per couple).

Application stage \$750 for the administrative component,

Assessment Stage: \$986 and \$650 contribution for a first and second assessment respectively.

While the fee structure has not been increased in several years the direct cost to the Department for Community Development for an intercountry adoption was calculated to be \$9,000 per child (2003). The cost recovery entered into by the Department represents 25% for a first adoption or 18% for a second or subsequent adoption. When direct costs are considered the tax payer in Western Australia subsidises each overseas adoption by at least \$7,000.

There are other costs not factored into the direct adoption costs, such as the cost of legal and policy support, central authority costs, and adoption breakdowns, that add considerably to the cost of providing intercountry adoptions, for which there is no cost recovery. When indirect costs are included, the per adoption cost increases to a total of \$18,000.

The extent to which the state adoption fees influence the interest in overseas adoption has not been determined in the Australian context. Program costs have not been raised as an issue in Western Australia. Many adoptive applicants in Western Australia have experienced the Human Reproductive Technology/IVF procedures prior to adoption. The previous high cost of HRT/IVF does not then tend to dissuade people from embarking upon the adoption process.

The experience in the United States where overseas adoption is both expensive and more common may reflect more the prevailing community attitude towards adoption than it does the cost. The adoption of older children from domestic foster care in USA is again a different context and is supported by federal and state subsidies. The USA has not yet fully complied with the provisions of the Hague Convention and it will be some years before it does so. Comparisons with adoptions in the USA are not helpful given the different laws, attitudes and infrastructure in operation in USA.

Policy position

The Standing Committee has several policy positions to consider. Extension of 'financial benefits' in the Australian context usually occurs in response to political intervention or reaction to lobbying. The broader policy considerations appear to be secondary to some issues of concern that can directly affect adoptive parents and those wishing to adopt. There are already other anomalies in relation to the maternity allowance. The extension of allowance for adoptive parents may highlight demands for assistance by other groups in the community. For example, those who parent a child permanently because of parental desertion, change of carer, care provided by grandparents, could all argue for similar access. A proposal to actively encourage a higher level of intercountry adoption by the extension of the financial benefit may have unintended consequences that need to be fully explored with States prior to any recommendation being accepted.

An increase in the level of intercountry adoption will impose staffing pressures upon state Departments that are already hard pressed to meet the demands

for foster care and other child-safety services. Should the Standing Committee initiate policy changes at the Commonwealth level to increase overseas adoptions States and Territories will have limited ability to respond to the additional staffing requirements.

The adoption of overseas children has been largely driven by people who want to adopt. The Australian authorities have endeavoured to establish standards to protect children and applicants from exploitation. Australia's offer to assist the countries has been a response to local interest shown by Australian families. The scope to improve the harmonising of adoption legislation and processes within Australia is greatly increased by the continuation of the Central Authority's meetings and continued cooperation, as problems and solutions are shared.

Australia has achieved a fair degree of commonality about adoptions. All jurisdictions agree that the child is the primary focus for adoption. All use a three stage process of eligibility, suitability and placement. All provide preadoption information, education and training. All conduct suitability assessments using qualified and experienced professional staff and contract workers. Child protection and child safety are paramount

All jurisdictions continue to develop mechanisms to support intercountry adoption programs in accordance with the Hague Convention, and include:

- A review of the pre-existing bilateral program has been undertaken and Ministers will consider endorsing recommendations about countries at a forthcoming meeting.
- The protocols to be followed for the development of new programs under the Hague Convention are in train. Once these are agreed the protocol will be put forward for Ministerial approval.
- A lead State arrangement has been developed whereby one State or Territory takes responsibility to maintain frequent contact with a sending country and then update other jurisdictions about changes. The lead State monitors the flow of files to sending countries and makes recommendations about operational matters.
- National statistical data collection for adoptions.
- Western Australia follows the code of ethical practice in intercountry adoptions that was set out by the International Social Services of Geneva.

Such mechanisms take time and effort. There is no template for this work. Feedback from other Hague Convention countries has been very positive about the standards and procedures used in Australia.

There is a commitment to on-going improvement in terms of quality of services. Efficiency is one quest. More importantly however is the quest for effective outcomes for all involved, especially the child. Quality takes time. Adoptive parents do not always appreciate the impact of constant change upon the quality of service delivery. The programs change in response to

legislative and administrative changes in countries quite frequently and maintaining good services is not as simple as it appears.

Policy Dilemmas

Overseas adoption is a partial and short term child protection option for developing countries that do not yet have in place adequately resourced social welfare systems. There are sensitivities involved in how adoption is portrayed. Characterising Australia's overseas adoption programs as one form of humanitarian assistance is fraught as it raises questions about the operation of Australia's immigration process. Citing the availability of 'good homes available in Australia' for children overseas reflects badly upon the sending countries. It can also imply a level of superiority by Australians. A similar well intentioned approach was applied in former times in relation to Aboriginal children and children of the Empire with questionable results for those involved. Australia must be cautious in lauding itself as a place of adoptive opportunities on the one hand and refusing on the other hand to allow others to immigrate because of the impoverished circumstances in their homeland.

Some adoptive parents see overseas adoption as a form of humanitarian aid. Should the Standing Committee consider adoption to be a means of providing humanitarian assistance it may wish to consider some more direct financial or practical assistance. Australia has available well developed policy and program settings, experienced public servants skilled in intercountry adoptions. States and Territories have computer based information systems, data collection and statistical reporting. Some less well resourced countries may welcome assistance with information gathering, data systems and the like. The Australian Government might consider funding regular regional forums on Adoptions. While our partner countries are willing, they lack the financial resources to enable their staff to attend international educative forums, and training sessions. Provision of aid to child protection agencies could assist children who might otherwise be the subject of child abandonment or relinquishment.

While in real terms the numbers involved in adoptions are small and the financial impact of extensions to maternity allowance for the Commonwealth marginal, the signal it may send about Australia's attitude to overseas adoptions may have greater impact. As it is the States that are delivering the services there will be an inevitable flow-on that will challenge the States' limited resources.

Public Hearings

The Department would be happy to meet with the Standing Committee when they visit Western Australia. Ms Leah Bonson Director East, who is responsible for adoptions, and Mr Colin Keogh Manager, Adoption Service can meet with the Standing Committee to clarify any matters about adoptions in Western Australia.