

Supplementary Submission to the Parliamentary Inquiry into Intercountry Adoption

Dear Ms Bishop

I write in response to the information provided to the Committee by the Attorney-General's Department (AG's) in submission number 187.

1. **AG's provided a response to Question 5, "Which of the countries which have ratified the Hague Convention has Australia entered into an agreement with, aside from the countries with which it has bilateral agreements?"**

AG's states in response "*Lithuania, Mexico and Turkey are the Convention countries with which the Australian States and Territories did not have a pre-existing bilateral agreement or arrangement*".

Prior to ratifying the Hague Convention in 1998, the Australian state and Commonwealth governments assured adoption support groups that when Australia ratified the Hague Convention there would be a far greater range of countries from which Australian families could adopt.

It appears that the 3 countries listed above are the **only** new countries with which Australia has established adoption agreements since ratification of the Hague Convention in 1998.

None of these countries appears in the Australian Institute of Health and Welfare list of countries from which Australians have **actually** adopted from 1994-95 to 2003-04 (see submission 135). I am personally aware that there have been 3 children from Lithuania enter Australia in the last 12 months and have heard there may be a few from Mexico, but I am unaware of any children being adopted from Turkey (Muslim countries don't usually adopt to non-Muslim countries). Since 1998, several countries with which Australia previously had agreements have ceased adopting children to Australia, eg Romania.

It would appear then that the country options for Australians who wish to adopt internationally have actually **worsened** since Australia ratified the Hague Convention, contrary to the assurances given. This supports the argument put forward by many adoptive parents and support groups that the Australian governments should be investigating non-Hague convention countries with a view to establishing new bilateral agreements such as Australia has with China and many other countries. If the government can satisfy itself that these countries satisfy the requirements of the Hague Convention, it would enable a greatly expanded range of countries to choose from and enable far more children to come to loving, permanent homes in Australia.

2. **I would also like to comment on the AG's response to Question 3** which asked for clarification of intercountry adoptions from Russia into New Zealand (NZ).

The AG's submission quotes undated information provided by the NZ government and a five year old NZ Law Commission report which highlights the fact that a NZ law is being used for an unintended purpose. This "unintended use" has been happening since 1990 and before, and is still occurring years later in 2005. Romanian children were given NZ Citizenship in 1990 as a result of this law and are living in NZ forever families as a result. As the AG's submission states, there are over 550 Russian children who gained NZ Citizenship through this law. The same law is used to gain citizenship for children adopted from China, a program initiated and run by the NZ government department, indicating that the NZ Government supports the use of this law.

The NZ situation indicates to me as a mere observer that, while the NZ Law Commission may not condone the unintended use of the legislation, there is obviously a positive purpose, and result, of the action taken by the adoptive parents. If there was a negative result, I assume the NZ government would have closed the "loophole" years ago. Instead the NZ Government is cooperating by providing Home Studies and Post Placement reports for Russian adoptees. I understand that there is considerable pressure from NZ adoptive families to increase the number of countries from which NZ families can adopt and any possible closure of the Russia program would lead to a huge outcry from adoptive families.

The Law Commission report, presumably compiled by lawyers, merely indicates that the legislation is not keeping up with the practice, a situation which may be undesirable from a legal viewpoint, but the acquiescence of the NZ government over 15 years indicates approval of the result. The solution would be to amend the legislation to bring it into line with accepted community standards.

I have sought clarification of these points from adoption support organisations in New Zealand. AG's is correct in stating that there is no official bilateral agreement or agreement under the Hague Convention between NZ and Russia. Yet the program is working efficiently and effectively according to NZ adoption support groups and families. It would appear that, even though there are no insurmountable or major problems with the program, the government and the legislation in NZ is simply not keeping up with community aspirations (as in Australia). There are also meetings held between the Russian (Department of Education) and NZ governments (Department of Child Youth and Family) to formalise and regulate the adoptions arrangements. While there is no official agreement, there are certainly government to government linkages and an "understanding".

However, the AG's submission goes on to state that *"The difficulties with this are stated as being the lack of 'any assessment of how well that country's legal system protects the welfare or interests of the child...Russian adoptions do not conform with the higher principles of the Hague Convention as there is no clear process for matching the child's needs and the abilities of the adoptive parents.' It notes that the lack of protection for children adopted by New Zealanders using this route is in marked contrast to the assurances that must be sought from Hague Convention countries."*

As the AG's submission acknowledges, this report is 5 years old. My understanding is that this statement relates to the situation existing many years previously. When these allegations were made in NZ some years ago a full report was written quoting Russian law, showing how the law embodies the normal child welfare requirements, has the usual "birth parent first, then extended family, then local adoption" priorities before intercountry adoption can be considered. The Russian law requires approval by a govt licensed homestudy agency, immigration approval etc.

Matching of children with prospective adoptive parents is done by social workers in the Russian government Education Department based on the description of the couple in the homestudy report provided by the NZ Government (as is the case with most countries, matching is not done by NZ as Russia thinks it is their responsibility) and must be approved by a judge in the Russian Family Court, with reports from child welfare officers, and various others, including the homestudy from the NZ Dept of CYF.

Can the AG's Department clarify for the Committee if they have actually researched the Russian legislation themselves or are they simply quoting third-hand reports? **Attachment A** contains some quotes from English translations of actual Russian legislation relating to adoption. I respectfully suggest that the Committee could ask either the AG's Department or the Parliamentary Library to research the up to date Russian legislation prior to accepting and quoting erroneous and outdated statements to the Inquiry.

Finally, these Russian adoptions are facilitated by Intercountry Adoption New Zealand (ICANZ) a fully and legally accredited adoption agency under the NZ Adoption Act. The fact that NZ has appropriately qualified and internationally recognised accredited adoption agencies lends further weight to the argument that Australia should have the same. The ICANZ website is at <http://www.icanz.gen.nz/>

Yours sincerely

Rob Cornhill

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Some quotes from English translations of actual Russian legislation relating to adoption

Resolution 275, March 29, 2000, 1. To approve the attached Rules of Referring Children for Adoption ... General Provisions 1. These Rules shall establish the order of the following operations: Referring Children, citizens of the Russian Federation, for adoption by ... foreign citizens.

IV 27 The above executive body ... shall provide the potential adoptive parents with information about a child who, according to the Family Code of the Russian Federation, may be adopted by Foreign citizens.

Information about the child... and a warrant for visitation ... shall be issued provided the potential adoptive parents have submitted the following documents: e) an adoption eligibility and report on living conditions from a competent body... (ie in NZ case, the CYF homestudy) with photo information.

31 The local body for guardianship and trusteeship shall submit to the district court an adoption justification report, certifying that the adoption corresponds to the interests of the child and testifying that the prospective adoptive parents had personal contacts with the child.

ABest interests of the child****

Resolution No. 267 of the Russian Federation Government, dated March 28, 2000, states that it is written with the aim of coordinating the activity of Federal bodies of executive power in implementation of state policy in the sphere of adoption of children that are Russian citizens, and in order to ensure the efficient protection of children's rights and legitimate interests... V. Putin.

Resolution 275, Rules IV 31. The local body for guardianship and trusteeship shall submit to the district court an adoption justification report, certifying that the adoption corresponds to the interests of the child

Article 98 of the Code of Family and Marriage Law of the Russian Federation 1995 Amendments, states A/Only children under 18 years may be adopted,... and if it is done in their best interest. Adoption of children by foreign citizens is only admitted if it is proved to be impossible to place those children for adoption in the custody of Russian citizens ... or for adoption by relatives.

Article 100, part 3 states Birth parents can give their consent to the child's adoption by his/her step parent, by relatives. In case birth parents give consent to adoption of the child by other persons, the bodies that are in charge of guardianship and custody shall give their conclusion whether such adoption is in the child's best interests. Birth parents can grant the right of choosing the adoptive parents to the bodies in charge of guardianship and custody.

Resolution No 275 of the Government of the Russian Federation, date March 29, 2000, Rules, 1.1 Adoption shall only be allowed with regard to minor children provided the single parent or both parents: have perished, are unknown or declared missing by a court judgement, are deprived of parental rights by a court judgement, have consented to adoption in compliance with the established order, have been living away from their child and avoided upbringing and sustaining their child at during six months due to a reason declared not valid by a court judgement. A foundling whose parents are unknown may be adopted in accordance with the order established by law of the Russian Federation provided there is an appropriate statement issued by an Internal Affairs Administration. A child left behind in maternity house or maternity department, or in other medical treatment and prophylactic institution may be adopted in accordance with the order established by law of the Russian Federation provided there is an appropriate statement issued by the administration of the medical institution.

Resolution 267, March 28, 2000: with the aim of coordinating the activity of Federal bodies of executive power in implementation of state policy in the sphere of adoption of children that are Russian citizens by foreign citizens, and in order to ensure the efficient protection of children's rights and legitimate interests, the Government of the Russian Federation hereby resolves:

1. To establish an Interdepartmental Committee for the issues of adoption of Russian children by foreign citizens
2. To approve the attached regulations governing the Committee activities and the list of its members.

Regulations:

1. The Interdepartmental Committee ...shall be a coordinating body...
3. The Committee shall have the following tasks: coordinate the activity of Federal bodies of executive power and executive authorities ... Work out general principles of state policy
6. The Minister of Education of the Russian Federation shall act as Chairman of the Committee
10. The Ministry of Education of the Russian Federation shall provide the organisational and technical support of the Committee activity

Resolution 275, March 29

In accordance with the Family Code of the Russian Federation, the Government of the Russian Federation hereby resolves:

2. To grant the Ministry of Education of the Russian Federation the right to give necessary explanation, in coordination with the interested Federal Executive bodies, concerning the application of the Rules approved by the Resolution

Rules 1 5 The Ministry of Education shall approve standards forms....

13 the Ministry of Education or an appropriate executive body in a constituent member of the Russian Federation shall select a child ... and issue a warrant for visiting the prospective child...

14 A decision on adoption of each child shall be made at a district court ...