

Other ways to better assist Australians adopting from overseas

Departmental performance

Published performance information

- 5.1 Publishing data on the performance on government agencies is now an accepted method of assessing how well government departments are serving the community. The Productivity Commission's review of government service provision, which compare the performance of the states and territories, is one example.¹
- 5.2 Chapter one of this report noted that state and territory departments tend to focus more on reducing the rate of adoption breakdown, which would be a drain on their resources at a later stage. They also focus on ensuring that no adoptions into Australia involve child trafficking as is required by the Commonwealth-State Memorandum of Understanding (MOU) delegating authority to state and territory Central Authorities.
- 5.3 Adoption groups, however, focus on different aspects of intercountry adoption:
 - the low per capita rates of intercountry adoption in some Australian jurisdictions compared with others, such as NSW and Queensland;² and

1 See <http://www.pc.gov.au/gsp/index.html>, viewed on 23 October 2005.

2 Families with Children from China-Australia, sub 86, p 20.

- the delays in processing in some jurisdictions, as for example, Queensland is seen to be failing in meeting its obligations.³

5.4 Adoption groups were concerned that these low levels of performance mean that children overseas must wait longer to be placed in a family. Since they will be older when they are placed, these children faced greater difficulties with health and, indeed, survival as well as increased rates of adoption breakdown.⁴ Similarly, the prevention of child trafficking and ensuring that children be placed into families where the adoption has the greatest chance of succeeding is also in children's best interests.

5.5 To the committee's knowledge, neither the Productivity Commission (the main publisher of government performance information) nor the Australian Institute of Health and Welfare (the main publisher of adoption information) release performance information on adoptions. Members of the adoption community, therefore, submitted some statistics.⁵ The result is provided in the table below.

Table 5.1: Selected effectiveness data for intercountry adoptions for 2003-04

Jurisdiction	Population	Adoptions finalised	Per capita adoption rate	Processing time
New South Wales	6,731,400	66	101,991	< 1 year
Victoria	4,972,800	86	57,823	< 1 year
Queensland	3,882,000	49	79,224	2-5 years
Western Australia	1,982,200	44	45,050	1-2 years
South Australia	1,534,300	72	21,310	< 1 year
Tasmania	482,100	22	21,914	Approx 1 year
Australian Capital Territory	324,000	26	12,462	< 1 year
Northern Territory	199,900	5	39,980	Approx 1 year

Source: *Families with Children from China-Australia*, sub 86, p 20, *Harding L and R*, sub 46, p 2.

5.6 A number of factors need to be taken into account before analysing this table.⁶ For example, some jurisdictions expend greater resources on establishing new programs than others. As chapter one shows, Victoria is the lead state for the largest number of programs. In evidence, representatives from the Australian Capital Territory's Department of Disability, Housing and Community Services stated that because other

3 Fratel A, sub 64, p 2.

4 Australian Council for Adoption, sub 56, p 3.

5 *Harding L and R*, sub 46, p 2.

6 Australian Institute of Health and Welfare, sub 218, p 1.

states established and managed programs, they could devote more resources to processing files.⁷

- 5.7 Further, the table does not measure the aspects of intercountry adoption that the state and territory governments presumably focussed on. Figures on adoption breakdowns could be collected relatively simply.
- 5.8 The statistics, however, confirm the bulk of the evidence that the committee received during the inquiry about the performance of the states and territories. In terms of per capita adoptions, the table suggests that South Australia, Tasmania and the Australian Capital Territory have been the best states in which to apply. These are states to which people had shifted, or to where people were suggested to shift, in order to apply for intercountry adoption.⁸
- 5.9 The statistics in chapter one give a per capita adoption rate for the great majority of western nations in the range of approximately 10,000 to 20,000 people per adoption. Only the Australian Capital Territory, Tasmania and South Australia achieved rates close to this in 2003-04. Other jurisdictions are well outside better international practice in relation to volume of files.
- 5.10 In the hearings, the committee asked the representatives from the New South Wales and Victorian departments why their per capita intercountry adoption rates were below those in jurisdictions such as Tasmania and the Australian Capital Territory. These officials did not answer in terms of comparing their operations with other jurisdictions. Instead, their response was that they process the applications that they receive.⁹ The committee does not regard this response as satisfactory on a number of grounds:
- it does not take into account factors such as the number of people who may be dissuaded from applying once they learn of the costs or delays involved, which can be created by poor departmental performance;
 - it does not take into account those who drop out if the staff making the presentation display a confronting or anti-adoption attitude; and
 - it displays a focus on process, rather than delivering results.
- 5.11 The table also confirms the evidence that Queensland has been the worst state in which to apply, due to the considerable delays caused by closing applications for over two years between 2002 and 2004. The committee

7 Mickelburgh S, transcript, 17 August 2005, p 4.

8 Leckenby K, sub 2, p 1, Wild C, sub 52, p 10.

9 Dawson S, transcript, 12 October 2005, p 10, Clements D, transcript, 10 October 2005, p 27.

received a number of submissions from people who had either left Queensland themselves or knew of people who had left Queensland.¹⁰

- 5.12 In fact, Queensland's performance has been so problematic that staff members in the Queensland department suggested that applicants move interstate.¹¹ When the Department of Child Safety reopened applications for two months in late 2004, it received 800, yet its goal recently has been to process 100 applications annually. Families with Children from China suggested to the committee that, unless the department takes significant action, it will be several years before applications are again accepted.¹² Clearly this is not complying with the Commonwealth-State MOU.
- 5.13 The committee was greatly concerned when it discussed this state of affairs with adoption groups in Brisbane. The fact that applicants feel they need to move interstate is an indictment of bureaucratic inefficiency. It is also a reflection of the low priority the Queensland government gives to intercountry adoption.
- 5.14 As a way of making adoption departments more accountable, the committee makes the following recommendation:

Recommendation 16

- 5.15 **The Productivity Commission and the Australian Institute of Health and Welfare liaise to determine who will publish performance information on intercountry adoptions. This information must include data on timeliness, separations and efficiency indicators such as the cost of each file processed.**

Obligations under the convention

- 5.16 Article 9(b) of the Hague Convention states that central authorities should '...expedite proceedings with a view to obtaining the adoption.'¹³ In the committee's view, Queensland has breached this provision by closing applications for intercountry adoptions for two years. The committee regards New South Wales performance of 100,000 people to an adoption as at best borderline.

10 Wild C, sub 52, p 1, Adoption NT, sub 144, p 1, Elvery D and D, sub 155, p 1.

11 Families with Children from China-Australia, sub 86, p 22.

12 Families with Children from China-Australia, sub 86, p 22.

13 Article 35 makes a similar requirement of competent authorities.

- 5.17 The New South Wales position may be explained by the Department of Community Services' desire to focus on their core business:

In New South Wales, we wish to return to a situation where the primary focus of our social work resources is on assessing and supporting the 105,000 children who are the subject of 216,000 risk of harm reports every year in New South Wales. That is what we need to focus on.... New South Wales does not consider it to be appropriate to deploy scarce casework resources to negotiate and administer a plethora of intercountry adoption agreements....¹⁴

- 5.18 As discussed in chapter one, the Hague Convention cannot be enforced through the document itself. To be enforceable, countries need to provide a proper domestic legislative framework. The only timeliness provision the committee is aware of in Australia is clause 10(1) of the South Australian *Adoption Regulations 2004*, which requires that a decision on application must be made within 18 months of its lodgement.

- 5.19 The committee believes that interested members of the community should be able to ensure that adoption departments comply with the requirement in the Hague Convention to act expeditiously. The states and territories should amend their legislation to reflect the provisions in the Hague Convention.

Recommendation 17

- 5.20 **The Attorney-General approach the respective state and territory ministers and request they amend their adoption legislation to include the provisions of the Hague Convention that require central authorities and competent authorities to expedite adoptions.**

Accredited bodies

- 5.21 As discussed in chapter two, articles 10 and 11 of the Hague Convention allow, but do not require, the creation of accredited bodies in member countries to manage intercountry adoptions. The Commonwealth-State MOU expands on the requirements on accredited bodies in the Hague Convention and some pieces of state legislation have provision for accrediting bodies.

14 NSW Department of Community Services, transcript, 12 October 2005, p 4.

- 5.22 Accredited bodies can have various roles, including information sessions, processing applications, assessing parents, supervising the adoption and providing post adoption services.¹⁵
- 5.23 Many of these roles are similar to what an adoption support service might provide, except for processing applications and assessing parents. If an accredited body takes on these roles, it must act independently of the parents. In one sense, the potential adoptive children overseas are the clients of this part of the process.
- 5.24 There are currently no formally accredited bodies in Australia, although one body was accredited in South Australia until 31 March 2005. This chapter first examines the history of accredited bodies and non-government organisations seeking accreditation in the three states where there has been the greatest interest for this outcome in the adoption community.

South Australia

- 5.25 Australians Aiding Children Adoption Agency had its origins in the 1980s in ASIAC, an adoption support service.¹⁶ Unlike some adoption groups, the agency was supportive of the Hague Convention in 1998 and the more robust approach it implied for non-government organisations.¹⁷
- 5.26 The agency appeared to have the support of its state government, including annual funding of \$43,100.¹⁸
- 5.27 In December 2003, the then South Australian Minister for Social Justice, the Hon Stephanie Key, commissioned a review of intercountry adoption, including the operations of the agency. The review team comprised representatives from the Department of Human Services and KPMG.¹⁹
- 5.28 The review report, completed in August 2004, noted that the agency did good work overall and had strong stakeholder support. It recommended that the current arrangements continue.²⁰ The areas for improvement included clarifying the relationship between the agency and the

15 *Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption*, Clause 18 of the Schedule.

16 Priest S, transcript, 17 October 2005, p 25.

17 Joint Standing Committee on Treaties, *Fifteenth Report*, (1998), p 12.

18 Department of Human Services, *Review of Intercountry Adoptions and Post Adoption Services* (2004) p 2.

19 Department of Human Services, *Review of Intercountry Adoptions*, p 12.

20 Department of Human Services, *Review of Intercountry Adoptions*, p 4.

government, improving the government's supervision of the agency and developing a policy on fees.²¹

5.29 During this review, a 'serious complaint' was made in relation to the agency's operations that reportedly amounted to a breach of its operating licence. In response, the Department for Families and Communities engaged KPMG to conduct a follow up review that included an examination of the immediate actions required to address the concerns in the complaint.²² The KPMG report did not specify the complaint, although the Department for Families and Communities advised the committee in evidence of two items that may have amounted to a breach of the licence:

- some adoptive parents had been offered children before they were formally approved for adoption;²³ and
- on six occasions in twelve months, risk assessment reports, which are attached to the home studies where a family may not be approved, were not forwarded to the Department for Families and Communities.²⁴

5.30 The KPMG report made some further recommendations and highlighted the priority recommendations from the first review. It also had a short list of recommendations that, it argued, should be implemented within the next three to six months as a condition of the agency keeping its licence.

5.31 This review, however, had a number of shortcomings. The first was that the majority of the recommendations that needed to be implemented for the agency to keep its licence were either the responsibility of the Department for Families and Communities or the joint responsibility of the agency and the department. These recommendations included:

- the department establishing an expert panel to review assessment reports and approve prospective adoptive parents;
- the department reviewing the large number of roles vested in the manager of the Adoptive Families Information Service in the department;
- the department taking over the role of liaising with overseas agencies and authorities; and
- the department establishing a strategic planning framework.²⁵

21 Department of Human Services, *Review of Intercountry Adoptions*, pp 4-9.

22 KPMG, *Intercountry Adoption Services* (2004), Department for Families and Communities, pp 1-2.

23 Beare C, transcript, 17 October 2005, p 60.

24 Beare C, transcript, 17 October 2005, p 59.

- 5.32 It does not appear logical that the agency's future depended on the department implementing certain recommendations.
- 5.33 The second problem with the KPMG report was is, by making comparisons with other states and territories, it implied that the South Australian system was arranging too many adoptions. It stated that the agency was the only one of its type in Australia and South Australia is disproportionate in the number of children adopted to it.²⁶
- 5.34 What this analysis overlooks is any international comparison, especially with Hague countries. An international comparison would add considerable value, given many countries are required to meet the Hague standard. The data in chapter one and later in this chapter demonstrate that South Australia's adoption rates are slightly lower than most western nations, which does not appear problematic. Given the Hague Conventions requests central authorities to expedite intercountry adoptions under certain conditions, a relatively high adoption rate could well be an indicator of success.
- 5.35 The third problem with the KPMG review was that it stated that South Australia is disproportionate in the number of children subject to child protection notifications and placement breakdowns. The report provided no data, either for South Australia or comparative jurisdictions.²⁷ The data presented to the committee tells a different story.
- 5.36 In relation to child protection notifications, the department stated in evidence that there were 8 notifications for approximately 70 placements, which gives a notification rate of 11.4%.²⁸ In 2003-04, South Australia had notification rates of 9.1% for children aged under 1 and 7.3% for children aged between 1 and 5. Assuming adopted children are equally spread across these age ranges, the weighted average for notifications in the South Australian community for the same age range as adopted children is 7.7%. This leaves a gap between the general community and the adopted children of 3.7% in extra notifications.
- 5.37 In the committee's view, the explanation for this remainder is that adoptive families are under much greater scrutiny than the general

25 KPMG, *Intercountry Adoption Services* (2004), Department for Families and Communities, pp 4-9.

26 KPMG, *Intercountry Adoption Services* (2004), Department for Families and Communities, p 6 of Attachment 2.

27 KPMG, *Intercountry Adoption Services* (2004), Department for Families and Communities, p 6 of Attachment 2.

28 Beare C, transcript, 17 October 2005, p 73.

community. Social workers can enter adoptive families' homes and are professionally required to report any concerns they may have. In other words, the harder one looks for trouble, the more one will find.

- 5.38 In relation to breakdowns, the department advised that there were four breakdowns over three years.²⁹ From 2001-02 to 2003-04, there were 194 adoptions in South Australia, which gives a breakdown rate of 2%. As discussed in chapter one, a breakdown rate of 2% in adoptions would be regarded as a successful outcome. Note that in the case of breakdown, there is a subsequent placement with other adoption approved parents.
- 5.39 Despite claims made in the KPMG report, it appears that Australians Aiding Children Adoption Agency was effective in both giving children from overseas a safe, family environment.
- 5.40 In February 2005, Minister Weatherill announced he would revoke the agency's licence so that from 1 April 2005, all adoptions would be handled by the department.³⁰ In evidence, the prior executive officer of the agency stated that this announcement came as a surprise to her.³¹
- 5.41 The minister gave three reasons for the change. The first was that it would make intercountry adoptions a smoother process and eliminate duplication.³² The committee's first comment is that the ultimate test of whether this reason is valid is whether the closure of the agency delivers any efficiency improvements. In evidence, the department stated that it was still bedding down the new system and was yet to produce any efficiencies, although they may occur later.³³
- 5.42 The committee's second comment about this reason is that, if the system had strong support from adoptive parents, a decision to change the system to make it more efficient should be accompanied by a communication strategy with stakeholders and the publication of statistics to test whether the new system delivers these efficiencies and indeed better outcomes. The committee is pleased to note that the department has been communicating with the community.³⁴ The committee has already recommended that more comprehensive performance information be published.

29 Lucas J, transcript, 17 October 2005, p 73.

30 The Hon Jay Weatherill MP 'South Australia's Adoption Rules to be Made Simpler' media release, 3 February 2005, viewed on 5 September 2005 at <http://www.ministers.sa.gov.au/minister.asp?mId=15&pId=6&sId=4046>.

31 Priest S, transcript, 17 October 2005, p 25.

32 The Hon Jay Weatherill MP 'South Australia's Adoption Rules to be Made Simpler'.

33 Squires R, transcript, 17 October 2005, p 65.

34 Squires R, transcript, 17 October 2005, p 65.

- 5.43 The committee's third comment is that no efficiency data was released in the minister's press release or either of the reviews, so no case was made that the process was inefficient. Given that South Australia, Tasmania and the Australian Capital Territory had high per capita adoption rates compared with most other jurisdictions, it seems unlikely (although still possible) that the processes were inefficient.
- 5.44 The minister's second reason for closing the agency was that it would give South Australia the same system as in other states and territories, ensuring consistency across the nation.³⁵ As the data in this chapter and chapter one show, South Australia processed a similar number of adoptions as most other western nations, well ahead of New South Wales, Victoria and Queensland, and had a breakdown rate of 2%. In the committee's view, South Australia's actions in terminating the agency's licence seemed premature and failed to recognise that South Australia was performing better than the more populous states based on international comparisons.
- 5.45 The minister's third reason was:
- This change reflects the government's commitment to accept greater responsibility for the quality of adoption assessments and for placement processes. This is consistent with the State Government's commitment to child protection outlined in the Keeping Them Safe policy.³⁶
- 5.46 In other words, the closure of the agency was a matter of government policy. The previous executive officer of the agency also believed that this was the reason.³⁷ The committee agrees that this was the key reason why the Australians Aiding Children Adoption Agency was closed. Although the agency had some process issues, it appeared to achieve results, both in maintaining a flow of files and in keeping a low level of breakdowns. In the committee's view, a reasonable approach would have been to work with the agency to improve its processes, rather than close it.

New South Wales

- 5.47 Australian Families for Children, previously known as Friends of Bolivia, has existed since 1981. In some respects, its history is the history of intercountry adoption in Australia.

35 The Hon Jay Weatherill MP 'South Australia's Adoption Rules to be Made Simpler'.

36 The Hon Jay Weatherill MP 'South Australia's Adoption Rules to be Made Simpler'.

37 Priest S, transcript, 17 October 2005, p 24.

- 5.48 In 1981, the New South Wales Department of Community Services informally authorised Australian Families for Children to establish and administer an adoption program with Bolivia. In 1988, the agency established programs with Colombia, Costa Rica, Chile, Peru and India. In 1989, the department signed a contract with the agency to provide intercountry adoption services.
- 5.49 With the ratification of the Hague Convention in 1998, the department advised the agency that it could apply for accreditation in November that year. The agency applied and the department advised that, in the absence of legislation to support the accreditation, the application must be suspended.
- 5.50 For several years thereafter, the department and the agency signed deeds of cooperation for the Colombia program. Most of the other programs were gradually discontinued after the countries of origin signed the Hague Convention. This event usually led to the need to renegotiate aspects of each program, which has not occurred. The Colombia deed expired in April 2004 and is yet to be resigned.
- 5.51 In December 2004, six years after the agency's request for accreditation, the department released the criteria. These criteria become law with the proclamation of the various sections of the *Adoption Act 2000* on 1 July 2005.³⁸
- 5.52 Clause 5C of the *Adoption Regulation 2003* states that the accreditation requirements are the NSW Adoption Standards. The standards were developed by the department in consultation with adoption service providers in New South Wales.³⁹
- 5.53 The assessments will be conducted by the Office of the Children's Guardian using benchmarks developed by that office and based on the standards.⁴⁰ The Children's Guardian is an independent statutory officer under section 178 of the *Children and Young Persons (Care and Protection) Act 1998*.
- 5.54 In evidence, the agency made a number of comments about these criteria. The first is that a body seeking accreditation must demonstrate

38 Discussion drawn from Australian Families for Children, 'Accreditation Application by AFC – Chronological Order of Events', exhibit 30, pp 1-2.

39 Department of Community Services, *Intercountry Adoptions: A Reform Proposal for NSW*, viewed on 24 August 2005 at http://www.community.nsw.gov.au/documents/adoptions_intercountry.pdf.

40 Office of the Children's Guardian, 'Adoption Standards', viewed on 28 October 2005 at http://www.kidsguardian.nsw.gov.au/adoption/adopt_stds.php.

competence in the whole range of adoption services, rather than any particular component. The agency was initially only seeking to be accredited for post-approval functions, such as post adoption support and then build up its skills. The current requirements include other functions such as assessing adoptive parents.⁴¹

- 5.55 These wider requirements mean that agencies will need more initial investment in people and processes before they can become accredited. The agency estimated these costs at \$500,000 over three years and noted that funding requests to federal and state agencies had been refused. The agency was concerned about this lack of funding, given that local adoption agencies receive significant financial support.⁴² For example, the Centacare Adoption Program received \$338,000 in funding from the department in 2003-04.⁴³
- 5.56 The committee's conclusion from this history is that the services provided by Australian Families for Children have been left to 'wither on the vine'. The formalising of intercountry adoptions under the Hague Convention appears to have led to additional costs for both central authorities, in this case the Department of Community Services, and non-government organisations.
- 5.57 On 12 October 2005, the department responded to a question by the Chairman as to whether it wanted an accredited non government service to undertake intercountry adoption processing in New South Wales by stating:
- Absolutely – or more than one. We do not think that there should be a single service provider. We believe that there should be a number of service providers.⁴⁴
- 5.58 Subsequently, on 2 November 2005, the department placed an advertisement in the national press calling for expressions of interest from eligible organisations to provide intercountry adoption services.⁴⁵
- 5.59 The committee awaits to see whether the delays and lack of cooperation and commitment to intercountry adoption demonstrated in this case study are about to change with the placement of this advertisement.
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41 Brisson R, transcript, 23 September 2005, p 26.

42 Brisson R, transcript, 23 September 2005, p 26.

43 Department of Community Services, *Annual Report 2003-04*, p 205, viewed on 28 October 2005 at http://www.community.nsw.gov.au/html/Annual_report04/index.htm.

44 NSW Department of Community Services, transcript, 12 October 2005, pp 17-18.

45 Department of Community Services, 'Provision of intercountry adoption services in NSW,' (advertisement) *The Australian*, 2 November 2005, p 6.

Western Australia

- 5.60 Three non-government agencies are active in intercountry adoption in Western Australia. They are:
- Adoption Research and Counselling Service (ARCS);
 - Adoption Support for Families and Children (ASFC); and
 - Adoptions International of Western Australia (AIWA).
- 5.61 ARCS has been operating for over 20 years and provides services to all parties involved in adoptions. It grew from research conducted by the University of Western Australia into the effects of adoption on relinquishing parents and adoptees. ARCS receives \$127,000 annually from the state government. Its services range from pre-adoption and pre-relinquishment counselling to working with people who are having reunions.⁴⁶
- 5.62 ASFC began as an aid and sponsorship group in 1973 to help displaced families and children during the Vietnam War. It then evolved into an adoption support group during Operation Babylift. ASFC has two aims. The first is to provide education and support to adoptive parents. The second is to organise aid and sponsorship for organisations that care for children. The agency receives \$60,000 per year in funding, as well as an additional grant to run education/information sessions for adoptive parents.⁴⁷ ASFC has run these sessions for the past 15 years.⁴⁸
- 5.63 Technically, neither of these groups is an accredited body as contemplated by the Hague Convention. Instead, they are licensed service providers under section 9 of the *Adoption Act 1994*. Clause 6 of the *Adoption Regulations 1995* lists a wide range of functions that may be performed under licence, which includes assessing parents. The Western Australian Government, however, appears to have limited their role to counselling and education, rather than the more independent function of assessments.
- 5.64 Although this counselling role gives these groups meaningful work, it does not appear likely to increase the volume of files processed overall. The main bottlenecks in intercountry adoption within Australia relate to parents being approved, which in Western Australia is still within the control of the government department.

46 Newbould J, transcript, 18 October 2005, pp 59, 63.

47 Personal communication, Keogh C, Department of Community Development, 26 October 2005.

48 Adoption Support for Families and Children, sub 141, p 4.

- 5.65 In evidence, AIWA stated that these two bodies are 'preferred service providers'.⁴⁹ Every three years, the state Department of Community Development approaches its preferred service providers and requests that they apply for another three years' funding. If they continue to meet the identified need, meet their contractual terms and operate effectively and efficiently, they will be invited by the department to apply for status as preferred service providers. An open tender will only be commenced if the department cannot procure the required services through this process.⁵⁰
- 5.66 The Western Australian Government's procurement policy for community services states that this review of preferred service providers should be transparent and there should be an avenue for any other organisation to challenge this decision.⁵¹
- 5.67 AIWA is a voluntary group that provides adoption information, counselling and resources. It does not receive government funding, but generates revenue through accepting donations and some fee for service work.⁵²
- 5.68 AIWA has been seeking to become an accredited body, rather than a licensed service provider. It originated with the Australia for Children Society that managed an aid and sponsorship program. When Australian governments decided that providing aid or sponsorship was inconsistent with the requirements of the Hague Convention, then AIWA was created as a separate, professional body with the purpose of becoming accredited.⁵³
- 5.69 This group has twice applied to become accredited. It lodged its first application in 1996 and received the formal refusal in March 1999. It recommenced the application procedure in 2001 and did not receive an application form for two years. Prior to 1 June 2003, AIWA submitted its second application, which is still under consideration. The group does not expect that the application will be approved.⁵⁴
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49 Rosenwald G, transcript, 18 October 2005, p 55.

50 Department of Community Development, 'Purchasing Quality Services,' viewed on 31 October 2005 at http://www.wa.gov.au/Resources/NotForProfitFundingAndGrants/Purchasing_Quality_Services.htm. See also Part 2 of the *Adoption Regulations 1995*.

51 Department of the Premier and Cabinet and the State Supply Commission, *Funding and Purchasing Community Services*, viewed on 31 October 2005 at http://community.wa.gov.au/Resources/NotForProfitFundingAndGrants/The_Funding_Process.htm.

52 Roberts M, transcript, 18 October 2005, p 50.

53 Rosenwald G, transcript, 18 October 2005, p 57.

54 AIWA, sub 173, p 13.

- 5.70 Clause 23B of the *Adoption Regulations 1995* states that, from 1 June 2003, any application for accreditation can only be made during a period specified by the department. In other words, AIWA will not be able to make any further applications for accreditation unless the department advertises that it wishes to receive them.
- 5.71 These limitations on accreditation, in combination with the 'grandfathering' provisions in the general community service procurement policy, mean that AIWA is unlikely to receive any state government funding for the foreseeable future. This may be the reason why the group has suggested it may be forced to close down.⁵⁵

International practice

- 5.72 Many, but not all, Hague countries have accredited bodies to conduct these functions. For example, Sweden has six accredited bodies,⁵⁶ Denmark has two,⁵⁷ Italy has 69⁵⁸, the United Kingdom has seven⁵⁹ and Ontario has 23.⁶⁰
- 5.73 International Social Service, an international non-government organisation funded by the United Nations and several western European governments,⁶¹ has produced a number of bulletins about accredited bodies under the Hague Convention. International Social Service's is of the view that accredited bodies work best when:
- they are subject to regular supervision;
 - there is a systematic review of the accreditations and authorisations;
 - they receive financial support; and

55 AIWA, sub 173, p 14.

56 Swedish Intercountry Adoptions Authority, 'Auktoriserade adoptionsorganisationer' viewed on 8 July 2005 at <http://www.nia.org.se/org/org.htm>.

57 Adoptions Naevnet, 'Adoptions in Denmark,' viewed on 8 July 2005 at http://www.adoptionsnaevnet.dk/info_english/adoptions.htm.

58 Presidenza del Consiglio dei Ministri Commissione per le Adozioni Internazionali, 'Deliberazione N. 163 Del 17 Dicembre 2003' viewed on 8 July 2005 at http://hcch.e-vision.nl/upload/accr_it.doc.

59 Hague Conference on Private International Law, 'Authorities - Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption,' viewed on 31 October 2005 at http://www.hcch.net/index_en.php?act=authorities.details&aid=231.

60 Ontario Ministry of Children and Youth Services, 'List of Adoption Agencies and Licensees Authorized to Handle Adoptions Involving Children Outside of Canada' viewed on 8 July 2005 at <http://www.children.gov.on.ca/CS/en/programs/Adoption/Publications/IAAList.htm..>

61 International Social Service, 'About ISS,' viewed on 27 October 2005 at http://www.iss-ssi.org/About_ISS/about_iss.html.

- the central authority gives general policy support to accredited bodies.⁶²

5.74 International Social Service has commented that, in many countries, there are too many accredited bodies and some bodies were established too quickly for them to have the necessary expertise in handling intercountry adoptions. In some receiving countries, however, there are too few accredited bodies to cope with intercountry adoptions.⁶³ One of the reasons that International Social Service supports creating accredited bodies is:

... the Central and Competent Authorities of the receiving countries and the countries of origin rarely have the material and human resources (trained and experienced, interdisciplinary staff on site in sufficient number) to fully discharge the functions of preparing and supporting children, parents of origin and/or future adoptive parents.

5.75 This comment is consistent with the committee's findings in chapter one, namely that many community service departments in Australia are more focussed on children at risk in their own states and do not give priority to intercountry adoptions.

Discussion

5.76 In their National Report on intercountry adoption in Australia in 2003, an official from the Attorney-General's Department stated:

There is at present a lack of mutually beneficial co-operative arrangements between government and non-government organisations. Only one agency has been accredited in Australia. The new laws provide for accreditation of bodies, and provided they meet the standards established by law and required by the Hague Convention, there is no reason why they cannot play a more active role in the adoption process.⁶⁴

62 International Social Service - International Reference Centre for the Rights of Children Deprived of their Family, Monthly Review no. 71, October 2004, pp 1-2, viewed on 19 July 2005 at http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.71.eng_000.pdf.

63 International Social Service - International Reference Centre for the Rights of Children Deprived of their Family, 'Obligation to use an accredited body for Intercountry Adoption?' p 5, viewed on 8 July 2005 at http://www.iss-ssi.org/Resource_Centre/Interdiction_adoptions_internationales_priveesANG.pdf.

64 Degeling J, *International Adoption in Comparative Law, National Report for Australia*, Association Louis Chatin Pour la Defense des Droits de L'Enfant, Colloque sur L'Adoption Internationale, En Droit Compare, Paris, le 25-26 avril 2003, pp 31-32.

- 5.77 The committee agrees with this conclusion. As the experience in South Australia demonstrated, one of the key means by which more children can be given a family is if an accredited body is established that manages the bulk of the process. Australia's track record, however, is:
- the South Australian agency has been closed;
 - the New South Wales Department of Community Services took seven years to develop accreditation criteria; and
 - the Western Australian Government limits its non-government organisations to counselling and education and has closed for the foreseeable future applications for full accreditation.
- 5.78 One of the advantages of establishing an accredited body is that state and territory departments face less of a dilemma in resourcing intercountry adoption. Provided they provide sufficient base funding and devote sufficient resources to ensuring the accredited body meets its quality standards, much of the remaining resources can be provided in fees by the adoptive parents. As discussed in chapter three, adoptive parents accept that by paying fees they are not entitled to an adoption, but they do not accept long delays in their assessment.
- 5.79 During its review of the New South Wales Adoption legislation, the New South Wales Law Reform Commission took a similar view:
- The Commission agrees that DOCS does not have the resources to run intercountry adoption itself. What was intended by the proposal was that, by controlling intercountry adoption, DOCS would receive all expressions of interest and be the final decision-making authority with respect to all assessments, allocations and placements. But as well, accredited agencies would be needed to take responsibility for a great deal of the administrative workload.... The opportunity to accredit private non-government bodies will meet the criticisms of DOCS which relate to issues of resourcing, namely staff levels, staff turnover and the ability to process adoptions expeditiously and provide sufficient supervision and support.
- DOCS itself supports this approach, as does the Federal Government and all other State and Territory Governments.⁶⁵
- 5.80 The committee believes state and territory governments could do more to establish accredited bodies.

65 New South Wales Law Reform Commission, *Review of the Adoption of Children Act 1965*, (1997) Report 81, pp 418-420.

Recommendation 18

- 5.81 **The Attorney-General approach the relevant state and territory ministers to amend the Commonwealth-State Agreement to commit the states and territories to provide the necessary training, resources including adequate funding, and policy support to enable suitable non-government organisations of the required standard to be accredited in all jurisdictions.**

Establishment and management of programs**The view of governments**

- 5.82 As discussed in chapter two, the states and territories establish and manage the overseas programs. The Commonwealth is involved largely at the end of the process through the Department of Foreign Affairs and Trade when arrangements are finalised.
- 5.83 Some state governments expressed concern that they were required to manage and establish programs. For example, New South Wales argued that:
- ... it would be more appropriate and efficient for the Commonwealth to assume responsibility for management of the intercountry adoption program.⁶⁶
- 5.84 That government's reasons were:
- the Commonwealth initially was meant to carry this task;
 - it represents cost-shifting because the states and territories are not funded for this work; and
 - bilateral agreements differ due to different governments negotiating them.
- 5.85 The first point appears to relate to the 1986 report on intercountry adoption by the Joint Committee on Intercountry Adoption, which comprised state and territory welfare ministers, the Department of Foreign Affairs and Trade and the Department of Immigration and Ethnic Affairs.
-

66 New South Wales Government, sub 175, p 2.

- There, the immigration officials agreed that their department should be responsible for managing and establishing programs overseas.⁶⁷
- 5.86 The New South Wales Government estimated the cost of establishing a new program to be \$35,000 to \$50,000.⁶⁸
- 5.87 In its submission, the Queensland Government indicated it they would be open to the Commonwealth having carriage of this aspect of intercountry adoptions.⁶⁹
- 5.88 In evidence, the Tasmanian Department of Health and Human Services stated that although they had been allocated responsibility for developing a program with South Africa, they did not have the resources for this task. This program is 'in abeyance'.⁷⁰
- 5.89 In 2004, the Commonwealth and state and territory governments agreed that all new programs would only be established with Hague countries. This will involve an amendment to the current Commonwealth-State MOU, which allows programs to be developed with non-Hague countries on the basis of compliance with the Hague Convention.⁷¹
- 5.90 One of the advantages for Australian governments in dealing with Hague countries is that they already have a high level of assurance that their program is properly managed and not subject to corruption and does not involve child trafficking. Note, on the other hand however, that nations with the greatest difficulties looking after children without families are usually too poor to comply with the requirements of Hague Convention ratification.

The view of adoption groups

- 5.91 Adoption groups were generally critical that not enough work was being done to establish new programs by Australian governments.⁷²
- 5.92 One example was the development of the China program. In 1991, a support group approached the Victorian Government with the proposal for a China program. The Commonwealth and other states and territories

67 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 84.

68 New South Wales Government, sub 175, p 3.

69 Queensland Government, sub 204, p 2.

70 Hobday U, transcript, 16 September 2005, p 75.

71 Australian Capital Territory Government, sub 200, p 4.

72 Wilson L, Turner S, sub 70, p 8, Byerley S, *International Adoptive Families of Queensland*, transcript, 21 July 2005, p 76.

agreed that Victoria should be the lead state and it commenced negotiations in 1992. One of the sticking points in the negotiations was that the Chinese authorities required that their adoption certificates be recognised under Australian law, whereas in all other cases the adoptions must be finalised by Australian courts.⁷³

5.93 Adoption groups viewed the resolution of this delay as follows:

After 6 years of negotiation and no results, a private citizen, who was trying to set up an accredited agency, identified the problem and discussed the solution with Senator Brian Harradine's office. Senator Harradine arranged passage of Australian legislation to enable compliance with Chinese legislation which basically solved the problem. We understand that it was the international law and treaty experience of the Commonwealth Departments of Foreign Affairs and Immigration that made the most difference in sorting out the legal requirements. This demonstrates that the States are out of their depth in negotiating international legal affairs.⁷⁴

5.94 Following the creation of the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998*, adoptions from China could proceed. The agreement with China was signed on 23 December 1999. It took seven years for the China program to be developed.

5.95 Another concern of adoption groups is that, by limiting new programs to Hague countries, Australia is automatically reducing the number of children being adopted. Countries that do not have the resources to comply with the Hague Convention are more likely to have children in need of a family.⁷⁵ To test this argument, the committee developed the table below.

Table 5.2: Comparison of Hague and bilateral programs, 2003-04

	Hague countries	Bilateral countries
Total active programs	11	7
Children adopted	67	302
Average adoptions per program	6.1	43.1

Source: Attorney-General's Department, sub 187, pp 11-14, Australian Institute of Health and Welfare, sub 135, p 6. This table excludes one adoption from Italy, which was a kinship adoption, rather than under a program.

73 Senator Hill, *Senate Hansard*, Wednesday, 11 December 1996, pp 7180-7181.

74 Cornhill R and N, sub 33, p 10.

75 Harding L and R, sub 46, pp 2-3.

Discussion

- 5.96 The committee is concerned about the management and development of programs in Australia. The establishment of new programs is a task where Australia is presenting itself to the world and managing its external affairs. This activity is intrinsically a Commonwealth endeavour.
- 5.97 As the development of the China program demonstrates, it appears that state and territory agencies do not have the expertise to establish and manage these programs effectively.
- 5.98 The committee views the history of overseas programs as a lost opportunity. The relevant administrations identified the immigration portfolio as the most suitable to take carriage of overseas programs in 1986, which was later overturned. The Department of Immigration and Multicultural and Indigenous Affairs, however, provided evidence to the committee as follows:
- it manages the visas required for all adoptees;
 - it has a specialist position in Bangkok to investigate child trafficking;⁷⁶ and
 - it has a network of officials in countries of origin that have knowledge of local conditions.⁷⁷
- 5.99 If this department were to manage overseas programs, then state and territory departments would have additional resources for managing their core activities, such as accrediting a body to manage intercountry adoptions within their jurisdiction. Accordingly, the committee makes the following recommendation:

Recommendation 19

- 5.100 **Responsibility for establishing and managing overseas adoption programs be transferred to the Attorney-General's Department in consultation with the Department of Foreign Affairs and Trade and the Department of Immigration and Multicultural and Indigenous Affairs.**

76 Mills G, transcript, 9 May 2005, p 73.

77 Mills G, transcript, 9 May 2005, p 62.

- 5.101 The committee is also concerned about the limited number of effective programs being established. Although the focus on Hague countries is convenient for departments in Australia, Hague programs do not give families to many children. The data comparing Hague and bilateral programs confirms the argument made by adoption groups that the countries least able to officially comply with the Hague Convention are those that have the most children in need.
- 5.102 The Special Commission held at the Hague on the convention in 2000 made the following recommendation:
- ... States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention.⁷⁸
- 5.103 In other words, the Special Commission did not suggest that Hague countries only deal with other Hague countries. Rather, it suggested that Hague countries could deal with non-Hague countries provided they were able to maintain proper standards as best they could. This approach would appear to also help educate countries of origin in what safeguards are required.
- 5.104 Further, the committee is surprised that Australian governments opted to only establish new programs in Hague countries when Australia attended this special commission and the recommendation was unanimously supported.⁷⁹

Recommendation 20

- 5.105 **Future overseas programs be established on the criteria of the number of children needing families and the extent to which the country of origin has implemented the Hague Convention, given the resources available to it.**

⁷⁸ Hague Conference on Private International Law, *Report and Conclusions of the Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, 28 November – 1 December 2000*, p 31, viewed on 22 August 2005 at <http://hcch.e-vision.nl/upload/scrpt33e2000.pdf>.

⁷⁹ Hague Conference on Private International Law, *Report and Conclusions of the Special, 28 November – 1 December 2000*, pp 6, 31.

- 5.106 During hearings, the Western Australian Department of Community Development suggested that AusAID, Australia's international aid agency, could provide assistance by giving technical aid to improve the capacities of the orphanages and welfare departments in the countries of origin.⁸⁰
- 5.107 The committee believes this idea has merit. One of the problems with intercountry adoptions in Romania was that its governance structures were not sufficiently robust to manage intercountry adoptions after decades of communism. The Attorney-General's Department advised in evidence that Guatemala commenced intercountry adoptions before there were adequate checks and balances.⁸¹
- 5.108 If Australia wishes to implement programs with countries that do not currently have the necessary resources to formally comply with the Hague Convention, then it would be appropriate to include, with the program, some governance and capacity building aid. This will help ensure that the children are legitimately adoptable and improve the standards of administration in the countries of origin as well.

Recommendation 21

- 5.109 **To assist Australia develop intercountry adoption programs with non-Hague countries, the Department of Foreign Affairs and Trade authorise AusAID to develop capacity building and governance programs to assist those countries gain Hague Convention accreditation.**

Offences for publishing adoption details

Current provisions

- 5.110 As noted in chapter two, all states and territories have offences for publishing the details of parties to an adoption. The adoption community accepts that confidentiality may be appropriate for some aspects of adoption, particularly until the adoption is complete.⁸²
- 5.111 The details of the offences are given in table 5.3.

80 Bonson L, transcript, 18 October 2005, p 4.

81 Duggan K, transcript, 10 October 2005, p 38.

82 Families with Children from China-Australia, sub 86, p 10.

- 5.112 The committee's first observation is the wide variation in penalties. The fines for individuals range from \$2,500 to \$20,000. South Australia and the Northern Territory do not have imprisonment as a possible penalty, whereas the other jurisdictions have maximum periods of imprisonment of up to two years. This wide range suggests there is no uniform rationale for the offences. Imprisonment seems entirely inappropriate.
- 5.113 There is also a wide range of consent provisions. In many jurisdictions, only a court can consent to publishing adoption details. In Western Australia, however, consenting parties also include the minister and the adoption agency (if relevant). If the adoptee is over 18, they may consent and if the adoptee is under 18, their guardian may consent.
- 5.114 The Victorian legislation also has a range of consent options. It creates a 'prohibited period' that lasts until the adoption is legally finalised. After the prohibited period, the parties themselves can consent to publication of these details. In the case of a child under 10, their parent or guardian may consent. For a child over 10, they must give their consent in addition to their parent or guardian.
- 5.115 During the prohibited period in Victoria, the court must approve publication of the details of a party to an adoption, as well as the individuals themselves.
- 5.116 Adoption groups in some states advised the committee that the restrictions affect how they operate, even in their most innocuous activities. For example, the Australian Korean Friendship Group advised the committee that media crews technically should not publish images of adoptive community functions such as International Day in Brisbane. Adoption groups have been advised to remove from their newsletters photographs of children who have been allocated and parents' stories about the adoption process.⁸³

South Australia

- 5.117 The committee is most concerned about how these secrecy provisions were used in South Australia earlier this year. When adoption groups attempted to publicly demonstrate against the closure of Australians Aiding Children Adoption Agency, the following occurred:

The minister's department enclosed a fact sheet in all correspondence to current applicants that said in part "Under the law, it is an offence to publish in the media the name or names or

information tending to identify people who are a party to an adoption. The maximum penalty for a breach of this part of the Act is \$20 000...The law still applies where the adoption order has already been granted.” It was clear that adoption applicants were being told that they could not discuss the situation they found themselves in without risk of prosecution. As a result many objectors who wished to air their concerns on talkback radio were unable to discuss publicly their own adoption stories. Adelaide ABC talkback 891 hosts interviewed the Minister, Jay Weatherill, on this media ban on two separate occasions. Minister Weatherill was unable to give his opinion on whether people would be prosecuted for phoning a radio talkback program. The ABC sought legal advice and advised the adoptive community that they could not take calls for fear of people being recognised or discuss individual cases. Minister Weatherill was again asked one week later in regard to a rally on Parliament steps opposing the changes, whether the adoptive community would be prosecuted for speaking out on the steps of parliament. Once again he could not give his assurances that this would not be the case. The result of the ‘media ban’ was that the adoptive community was not afforded a voice to oppose the changes that the minister made even though those changes were in direct disregard of a review into the effectiveness of the agency AACAA and the review findings were in favour of the AACAA being retained. This seems to be a direct suppression of free speech.⁸⁴

- 5.118 Any provision in a piece of adoption legislation is meant to serve the best interests of children. In this case, it appears that the minister’s actions were designed to suppress public debate, rather than help children.

84 Families with Children from China-Australia, sub 86, p 11.

Table 5.3: Details of the offences for publishing adoption details

	New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania	Australian Capital Territory	Northern Territory
Maximum fine for an individual	\$2,750	\$10,481	\$3,000	\$20,000	\$10,000	\$2,500	\$20,000	\$5,000
Maximum imprisonment	12 months	2 years	6 months	None	12 months	6 months	2 years	None
Both penalties possible for an individual?	Yes	No	No	NA	Yes	No	Yes	NA
Maximum fine for a corporation	As above	\$104,810	As above	As above	As above	As above	\$100,000	As above
Court consent	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ministerial or official's consent	No	Secretary or the adoption agency.	No	Yes	Director-General or the adoption agency	No	No	Yes
Parent's or guardian's consent	No	After the adoption order	No	No	Guardian only	No	No	No
Adoptee's consent	No	Required after age 10	No	No	After they turn 18	No	No	No
Can offence occur after adoption order?	Unclear	Yes, but consent is possible	Unclear	Yes – under Minister's interpretation.	Yes, if consent required not given by adoptive parent and/or adoptee	Unclear	Unclear	Unclear

Source: Refer Appendix E.

Discussion

- 5.119 The current range of confidentiality provisions appear to be derived from the days when adoption was shrouded in secrecy. Families of mothers who adopted out their children were often motivated by avoiding any shame to those families.
- 5.120 This approach does not appear applicable to intercountry adoption. In over 90% of cases, adoptees bear little physical resemblance to their adoptive parents. To remove doubt that these children are their children, adoptive parents need to be able to legitimately state that they adopted their child or children.
- 5.121 As noted in chapter one, intercountry adoptees need to be able to celebrate their different cultural background. The current secrecy provisions hinder this process. Therefore, the committee believes that the current offences need to be clarified and wider consent provisions inserted. The Victorian legislation could be a useful model.

Recommendation 22

- 5.122 **The Attorney-General in re-negotiating the Commonwealth-State Agreement include provisions to harmonise legislation covering the right of parents to publicly discuss their adopted family. The Committee recommends the Western Australian provisions be the model to be followed.**

Smoothing the adoption process

Tracking files

- 5.123 The committee received evidence that adoptive parents are under considerable stress during the adoption process. This is partially due to the power that government departments have over them. Some government departments readily answered applicants' queries over the phone, such as in Tasmania.⁸⁵ Departments in other states, however,

85 Hobday U, Department of Health and Human Services, transcript, 16 September 2005, p 77-78.

discouraged adoptive parents from inquiring about progress with their files, which added to their anxiety.⁸⁶

- 5.124 The committee heard about how some agencies overseas use the internet to help adoptive parents track their applications:

If you were looking for a model of how best practice in an adoption agency would work then you would not need to look a lot further than the children's home society [of Minnesota]. Their communication with their clients is excellent... with the children's home society you can check on a web site. You have a confidential number to key in and you can find out where you are up to and what you have to do next and think, 'Good, I can start working on that.'⁸⁷

- 5.125 The committee believes a file tracking system should be introduced for Australian families. Giving parents information about their files will not only reduce their anxiety, but reduce the power imbalance that they experience with departments as well.

Recommendation 23

- 5.126 **The Attorney-General's Department negotiate with the central authorities to coordinate the establishment of a file ID tracking system so that adoptive parents may easily track their files throughout their application.**

The role of Australian embassies overseas

- 5.127 During evidence, the committee heard that Australian embassy staff often provide a high level of service. The Western Australian Department of Community Development stated:

They know about adoptions because they have been in other jurisdictions in other countries. They have seen the process come through. I did not have to tell them anything about it. They knew what we were talking about. That is a great help. They are knowledgeable, they are experienced and they are in a different situation. When you say something they reply, 'I know what you're talking about there.' It takes a long time to come up to

86 Sue-Belinda, community statements, transcript, 21 July 2005, p 62, Pirani C and D, sub 121, p 6.

87 Sue-Belinda, community statements, transcript, 21 July 2005, p 62.

speed on these matters but the people there were informed and did not need much information at all. It was good.⁸⁸

5.128 **Accepting Children Everywhere from Tasmania** stated:

My experience has been with the Philippines. My son and daughter are from there. Our daughter only came and joined us in February of this year. The embassy people and DIMIA and DFAT people that we are in contact with both here and overseas are exceptionally good. They are very efficient; there is never any problem with them. They are most helpful. In fact, they have been working very hard on behalf of a couple that we are aware of now who are actually in country in the Philippines because of a potential problem in the area where they were going to pick up their child. The embassy was working quite extensively on their behalf to ensure that everything was done to make it a smooth passage for them, and it has been so, we understand from other people.⁸⁹

5.129 The committee acknowledges the excellent work that our Australian embassies do to help adopting families. The committee, however, would prefer to see this process formalised, which would provide an additional level of comfort to adoptive parents. This would be in line with Commonwealth responsibility for dealing with other countries in accordance with recommendation 1.

Recommendation 24

5.130 **The Department of Foreign Affairs and Trade develop protocols with the Australian central authorities to govern the follow up of files in countries of origin by embassy officials when the files become significantly overdue.**

88 Keogh C, transcript, 18 October 2005, p 21.

89 Ford A, transcript, 16 September 2005, p 52.

Supporting the adoption community

The census

- 5.131 One of the issues apparent to the committee is that the data in relation to adoptive families could be improved and, as chapter one discussed, the data in relation to foster children and their families certainly needs to be improved. The disparity between the thousands of children in Australia in foster and other forms of out-of-home care and the low number of domestic adoptions – less than 100 is of grate disquiet to the committee.
- 5.132 The Australian census, held every five years, is a household based survey and appears well suited to gathering this kind of data. The household census form, however, is not clear on how to record whether a child is adopted or fostered or in another form of out of home care. A sample from the most recent census form, figure 5.1 on the next page, demonstrates this.
- 5.133 If a child is living with a family as a foster child or in another form of out of home care, then the final entry is required to be ticked and the word ‘foster’ inserted in the box. With such a form, however, the number of foster children is likely to be underestimated because:
- not all respondents will write ‘foster’ in the box;
 - foster children may be staying somewhere else for the night, and although this data is collected it is not released; and
 - the last item only refers to person 1. If the child is fostered to person 2, it is unclear how they would be recorded.⁹⁰

90 Siminski P, Chalmers J, McHugh M, *Foster Carers in New South Wales: Profile and Projections Based on ABS Census Data (2005)* Discussion Paper No. 139, Social Policy Research Centre, University of New South Wales, viewed on 3 November 2005 at <http://www.sprc.unsw.edu.au/dp/DP139.pdf>.

Figure 5.1: Household relationship answer box, 2001 Australian census household form

Child of both Person 1 and Person 2

Child of Person 1 only

Child of Person 2 only

Brother or sister of Person 1

Unrelated flatmate or co-tenant of Person 1

Other relationship to Person 1 – please specify

Source: Australian Bureau of Statistics, '2001 Census Household Form', p 3, viewed on 3 November 2005 at <http://www.abs.gov.au/Websitedbs/D3110124.NSF/497f562f857fcc30ca256eb00001b48e/22f6a467477b2e46ca256b12007e8ee2!OpenDocument>.

- 5.134 The census is also unlikely to comprehensively record adopted children because parents would probably enter these children under one of the top three boxes without additional information.
- 5.135 Given that adoption is now a more open process and children are aware that they have birth parents, there is no pressing reason why a check box should not be inserted to differentiate between adopted and birth children. It appears that amending the census form to record data on adopted and fostered children in families would not be a major task and would provide important information.

Recommendation 25

- 5.136 **The Australian census include check boxes or a similar method for recording children in the family who are either birth, adopted, fostered or other out of home care children.**

Adoptees visiting their country of origin

- 5.137 In chapter one, the report discussed the need for intercountry adoptees to incorporate their racial background into their identity. An important part of this process is for them to return to their birth countries. In *The Colour of Difference*, the editors interviewed 18 intercountry adoptees, of whom

seven had already returned to their country of origin and five had an intention to do so.⁹¹

- 5.138 In that book, one intercountry adoptee gave the following description of the value of his trip to his birth country:

...I reflect on the whirlwind week spent in a country that under different circumstances could have been my place of residence... The search for my birthplace, orphanage and my natural relatives is as much a metaphor for a search for my physical heritage as my emotional sense of belonging. I can say... that returning to my birthplace, Vietnam, was an important part of realising, confirming and resolving such issues.⁹²

- 5.139 Representatives of the Inter-country Adoptee Support Network affirmed in evidence the importance of intercountry adoptees returning to their birth countries:

... he is from Korea, which has extensive post-adoption support services for adoptees returning to their birth country. There are many adoptees, a large majority of them in Australia, who do not have that opportunity. We need to look at providing some resources or something to help adoptees go back to their birth country to search for and find their birth parents. A majority of them want to do that. Because of the way adoption was run 30 years ago we have hardly any records and hardly any ability to go back to our birth countries and find out our histories. I do not know what can be done, given that it is an international issue; it is not just an Australian issue. But I guess there needs to be a focus and emphasis on, and perhaps a review of, how we are trying to facilitate this now.⁹³

- 5.140 The committee agrees that, as part of assisting adoption generally and managing Australia's overseas affairs, Commonwealth departments should assist with arrangements including liaising with the proposed overseas adoption peak body recommended in recommendation 30. This assistance would not include travel expenses. Given that significant numbers of people will wish to make trips to the same agencies in the countries of origin, it would be more efficient for a single body, such as a Commonwealth department, to organise them.

91 Armstrong S, Slaytor P (eds) *The Colour of Difference – Journeys in transracial adoption* (2001) The Federation Press, p 21.

92 Armstrong S, Slaytor P (eds) *The Colour of Difference*, p 21.

93 Beveridge L, transcript, 23 September 2005, p 15.

Recommendation 26

- 5.141 **The Department of Immigration and Multicultural and Indigenous Affairs (or the Attorney-General's Department if the immigration portfolio does not take on responsibility for overseas programs) facilitate arrangements for international adoptees in Australia to return to their country of origin if requested. Such facilitation should not include airfares or travelling expenses.**

Funding

- 5.142 It was apparent to the committee during the inquiry that intercountry adoption groups are generally not well resourced. As noted earlier in this chapter, only two groups in Western Australia appeared to receive significant funding.
- 5.143 Intercountry adoption groups were critical of this lack of funding. They also noted that post adoption support groups, such as those which developed to assist mothers who were forced to give up their children between the 1950s and 1970s, did receive financial support.⁹⁴
- 5.144 The committee learnt that intercountry adoption groups need to be self-reliant. Adoptions International of Western Australia depend on donations and fees for services rendered.⁹⁵ Australian Families for Children advised the committee how they support their activities despite not receiving funding:

We need massive funding injected into support services for adoptive families. There is no funding whatsoever. I went through the DOCS web site and read their annual report for the last year. Every second funding grant that they provided was for family support services.

There is nothing like that for any intercountry adoptive families. We run our own support networks; we have to fund our own support networks. We run our own functions, activities and network services. We put our own newsletter together. If it were not for corporate sponsorship and donations from the public, we would not exist.⁹⁶

94 Law D, Australian Council for Adoption, transcript, 21 July 2005, pp 25, 28.

95 Roberts M, transcript, 18 October 2005, p 50.

96 Brisson R, transcript, 23 September 2005, p 29.

- 5.145 Chapter four discussed how adoptive families have reduced access to benefits and entitlements, largely due to a lack of knowledge on the part of many departments. Intercountry adoption appears to have a low profile in policy development, which has contributed to benefits and entitlements not suiting the circumstances of adoptive families. The committee notes that there is no national peak body to represent their interests. If there had been such a body, the committee doubts that many of the problems discussed in chapter four would have occurred.
- 5.146 The committee believes that Commonwealth funding for a peak adoption group is necessary. The Attorney-General's Department should establish a funding program for this purpose. The department is Australia's central authority for the Hague Convention and the committee is of the view that it should take greater responsibility for intercountry adoptions, beyond attending meetings at The Hague and coordinating communications overseas. It will obviously require a properly staffed unit. Currently there is only one person specifically dealing with overseas adoptions. More will be needed and the Attorney-General's Department has estimated:

I would not have thought the resources would need to be enormous. I would think five or six people perhaps could operate it ...⁹⁷

Recommendation 27

- 5.147 **The Attorney-General's Department establish a program to fund:**
- **a national peak overseas adoption support group; and**
 - **that such national peak body be responsible for distributing small to medium grants to local adoption groups to carry out the identified essential support function.**



Hon Bronwyn Bishop MP
Chairman

97 Attorney-General's Department, transcript, 3 November 2005, p 5.

