
The Parliament of the Commonwealth of Australia

Overseas Adoption in Australia

Report on the inquiry into adoption of children from overseas

House of Representatives

Standing Committee on Family and Human Services

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Foreword

The House of Representatives Standing Committee on Family and Human Services resolved on 16 February 2005 to conduct an inquiry into the adoption of children from overseas after reviewing the 2003-2004 Annual Report of the Australian Institute of Health and Welfare.

The committee determined its terms of reference, giving particular emphasis to identifying any inconsistencies between state and territory approval processes for overseas adoptions and any inconsistencies between the benefits and entitlements provided to families for birth children as distinct from adopted children.

There has been a massive decline in the number of adoptions in Australia in the last 35 years. In fact, the total number of local adoptions per annum has dropped from a peak in 1971-72 of over 9,000 to 73 in 2003-04. Intercountry adoption is now the dominant form of adoption in Australia. By 2003-04 intercountry adoptions represented some three quarters of total adoptions and run at 300-400 adoptions per year. By contrast, there are tens of thousands of children in foster care or other forms of out of home care. It is also significant that increasing numbers of children are being born as a result of Assisted Reproductive Technology, such as IVF (6,800 IVF live births in 2002).

Members of the committee had originally envisaged a relatively short inquiry simply comparing state, territory and Commonwealth provisions and benefits. However, it quickly became quite apparent that the issues were far more complex as the inquiry tapped into broader concerns surrounding intercountry adoptions.

By the end of the inquiry, the committee had received and authorised for publication 274 submissions, held 12 public hearings across Australia, taken formal evidence from over 100 people across the country representing governments, organisations or themselves, and heard from another 50 people at our less formal community forums. These forums are an innovation of the committee which allows individuals to come and make short statements without having made formal submissions.

In addition, the committee inspected the ACT Government's Adoptions Unit, attended two meetings of Commonwealth, state and territory intercountry adoption authorities and held an international telephone link up with an overseas adoption agency.

A stand out feature of the inquiry for Members has been the overwhelming enthusiasm of adoptive parents themselves and the great love and pride with which they hold their children. The enthusiasm is evident by the contribution so many of them make to the numerous adoption support groups who provide information, lend emotional support and bring families together at social gatherings. The committee also valued the evidence it received from those who had been adopted, including those still in parental care and those now adult, who spoke of their adoption experiences.

The committee also heard from mothers who had had their children adopted between the 1950s and 1970s when the adoption regime was harsh and indifferent to their needs.

The committee was surprised to find a general lack of support for adoption – both local and intercountry – in most of the state and territory welfare departments which are responsible for processing all adoption applications. The lack of support ranged from indifference to hostility, much to the distress of prospective parents seeking to adopt children from overseas.

State and territory intercountry adoption units are generally under resourced, leading to long queues for those seeking intercountry adoptions, long processing times and an intercountry adoption rate that remains low by international standards.

There are particular problems in Queensland where the evidence showed prospective parents had moved interstate to enable them to apply and have the opportunity of a positive outcome. In addition, New South Wales has a very low per capita intercountry adoption rate that is one eighth of the rate in Australia's leading jurisdiction, the ACT.

This lack of resources and support for intercountry adoption is part of the wider story of adoption in Australia generally. Rates of local adoptions in Australia have dropped dramatically. Parents adopting from overseas stated that their chances of adopting a child through local adoption were virtually nil.

Following the unsympathetic adoption practices between the 1950s and 1970s, the policy focus has been on the birth parents and a belief that children should maintain their biological links above all else. The term 'in the best interests of the child' seems to be used as a shield against any criticism of current adoption policy. This has led to tens of thousands of children being placed in foster care and other

forms of out-of-home care when adoption could well have been in their best interests.

Another troubling feature of the inquiry was the trepidation with which many prospective parents approached the committee, fearing that they might jeopardise their applications if they were critical of their state or territory welfare department.

The committee has come out unequivocally in support of intercountry adoptions as a legitimate way to give a loving family environment to children from overseas who may have been abandoned or given up for adoption. Intercountry adoptions can, without doubt, be in 'the best interest' of children.

The cornerstone of intercountry adoption in Australia is the international Hague Convention on Intercountry Adoption. The Convention, to which Australia is a signatory, states the principles and conditions under which intercountry adoption will operate. Implementation of the Convention in Australia is governed, in turn, by the Commonwealth-State Agreement for the Implementation of the Hague Agreement. The Commonwealth-State agreement establishes arrangements by which the Commonwealth as signatory to the Hague Convention will work with the state and territory welfare departments which are responsible for administering intercountry adoption programs.

The committee believes the Commonwealth has been very hands-off in its approach to overseas adoption despite its central authority status. This report's recommendations require an improvement of state and territory practices via renegotiating the 1998 Commonwealth State Agreement and a more active role for the Commonwealth.

In essence, the committee seeks better harmonised, more efficient and more accountable processing of applications for intercountry adoptions at the state and territory level. In turn, the Commonwealth must take greater responsibility for establishing and managing overseas adoption programs.

At the same time, the Commonwealth should take a number of administrative and legislative steps to remove inconsistencies between the benefits and entitlements provided to families for biological and adopted children.

One of the ways in which under resourced government state and territory welfare departments could become more efficient is if accredited non government organisations take on some of the applicant screening and assessment work. There is provision for non government organisations to have such a role in the Hague Convention and the Commonwealth-State agreement and it is a common practice overseas. By their track record, the states and territories have not delegated adoption processing enthusiastically to non government organisations in the past - although there are some late signs that this may be changing. The committee is

keen to see properly trained and resourced accredited bodies help process adoption applications.

I would like to thank the many individuals and organisations who have contributed to the inquiry in one form or another and who have generously shared their time and information. For some people, sharing their experiences on the record has been difficult and distressing and the committee thanks them for their courage and involvement in the inquiry.

Completion of the inquiry would not have been possible without the diligent and enthusiastic support of my colleagues on the committee, particularly my Deputy Chair, Julia Irwin MP. A special mention must also go to Harry Quick MP who became so engrossed in the inquiry that he travelled to China to visit orphanages there for himself! I would also like to thank the Committee Secretary James Catchpole and the members of the secretariat team whose work was of an outstanding nature.

I believe that our recommendations, if implemented, will strengthen Australia's intercountry adoption programs. These children overseas will face a better future in a loving family in Australia than living on the street or in an orphanage in their country of origin. As indicated in Appendix A, the Committee also believes that an inquiry into domestic adoption practices could also truly be in 'the best interests of the child'. I commend to you the report.

A handwritten signature in black ink, reading "Bronwyn Bishop". The signature is written in a cursive, flowing style.

Hon Bronwyn Bishop MP
Chairman



Membership of the Committee

Chairman Hon Bronwyn Bishop MP

Deputy Chair Mrs Julia Irwin MP

Members Hon Alan Cadman MP

Ms Kate Ellis MP

Mrs Kay Elson MP

Mr David Fawcett MP

Ms Jennie George MP

Mrs Louise Markus MP

Mr Harry Quick MP

Mr Ken Ticehurst MP

Committee Secretariat

Secretary Mr James Catchpole

Inquiry Secretary Mr David Monk

Senior Research Officer Ms Margaret Atkin

Research Officer Ms Belynda Zolotto

Administrative Officers Ms Kyriaki Mechanicos

Ms Emily Shum



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.



List of abbreviations

| | |
|--------|--|
| AACAA | Australians Aiding Children Adoption Agency |
| ABC | Australian Broadcasting Corporation |
| AIHW | Australian Institute of Health and Welfare |
| AIWA | Adoptions International of Western Australia |
| ARCS | Adoption Research and Counselling Service |
| ASFC | Adoption Support for Families and Children |
| AusAID | Australian Agency for International Development |
| BMI | Body mass index |
| DFAT | Department of Foreign Affairs and Trade |
| DIMIA | Department of Immigration and Multicultural and Indigenous Affairs |
| DOCS | Department of Community Services |
| ESWS | Eastern Social Welfare Society |
| ICAB | Intercountry Adoption Board |



List of recommendations

Recommendation 1

The committee recommends that the Attorney-General renegotiate the Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (hereinafter referred to as the Commonwealth-State Agreement) with the states and territories. (*para 2.20*)

Recommendation 2

The Attorney-General's Department continue to be the permanent chair of the Intercountry Adoption Central Authorities Meetings to oversee the agenda which will drive the commonality of adoption policy, resources and quality frameworks. (*para 2.44*)

Recommendation 3

In renegotiating the Commonwealth-State Agreement, the Commonwealth shall ensure a greater harmonisation of laws, fees and assessment practices, including:

- more general, principle-based criteria in legislation;
- more robust, transparent and documented practices; and
- standardised assessments across the jurisdictions.

These harmonisations should be developed in consultation with stakeholders such as adoption support groups, adopted children and adopted parents. (*para 3.43*)

Recommendation 4

The Attorney-General request the New South Wales Minister of Community Services to insert the eligibility criteria for adoptive parents in legislation and regulation, rather than the *Government Gazette*. (*para 3.45*)

Recommendation 5

In renegotiating the Commonwealth-State Agreement, the Attorney-General put the case to the relevant state and territory ministers for these jurisdictions to ensure that they establish consultative committees with adoption stakeholders, which include the following characteristics:

- majority stakeholder representation;
- a chairman independent of the department;
- access to adequate information on agency processes and costs;
- monitoring agency efficiency, among other roles; and
- publishing the committee's recommendations and the government's response. (*para 3.76*)

Recommendation 6

The Minister for Employment and Workplace Relations:

- amend the *Employment and Workplace Relations Regulations 1996* to remove the five year age limit for adoption leave and encourage the states and territories to make similar amendments to their workplace legislation; or
- contingent on enactment of section 94ZJ of the *Workplace Relations Act 1996* (the Act) as proposed in Schedule 1 of the *Workplace Relations Amendment (Work Choices) Bill 2005*, amend the Act to remove the five year age limit in the meaning of an 'eligible child' for the purposes of adoption leave and encourage the states and territories to make similar amendments to their workplace legislation. (*para 4.14*)

Recommendation 7

The Minister for Employment and Workplace Relations introduce amendments to the *Maternity Leave (Commonwealth Employees) Act 1973* so that adoptive parents in the Commonwealth public sector receive equivalent leave conditions to birth parents and encourage the states and territories to make similar amendments, where necessary, to their workplace legislation. (*para 4.20*)

Recommendation 8

The Minister for Employment and Workplace Relations ensure that the advisory material issued by that portfolio (in particular the Office of the Employment Advocate):

- make reference to adoption leave;

- suggest that making adoption entitlements equivalent to maternity and paternity entitlements reduces the risk of discrimination; and
- advise that adoption entitlements should be calculated on the period that the child has been in the care of the parent, rather than the child's age. (*para 4.28*)

Recommendation 9

The Minister for Family and Community Services remove the age limit for adopted children's eligibility for the maternity payment but require the claim to be made within 26 weeks of the child being placed in the care of adopting parents. (*para 4.37*)

Recommendation 10

The Minister for Family and Community Services amend the eligibility criteria for the maternity immunisation allowance in the case of children adopted from overseas so the eligibility period is two years after the child's entry to Australia. (*para 4.44*)

Recommendation 11

The Attorney-General approach the relevant ministers in the states and territories and request they amend their legislation for the registration of births so that adoptions completed overseas recognised by Australian law will be registered and lead to the issue of a birth certificate. (*para 4.64*)

Recommendation 12

The Minister for Immigration and Multicultural and Indigenous Affairs introduce legislation to amend the *Australian Citizenship Act 1948* so that children either adopted or born overseas to Australian citizens have equivalent rights to Australian citizenship by descent. (*para 4.69*)

Recommendation 13

The Minister for Education, Science and Training approach the relevant state and territory ministers requesting that school enrolment procedures for intercountry adopted children who are Australian citizens are the same as for children born in Australia. (*para 4.74*)

Recommendation 14

The Australian Passport Office implement a regular training program for their counter staff and counter staff at post offices so they can effectively deal with queries and applications from intercountry adoptive parents. (*para 4.79*)

Recommendation 15

The Minister for Human Services should encourage Medicare to introduce a policy for children adopted from overseas. Such a policy should:

- ensure staff are discrete with adoptive parents;
- include regular training of staff;
- expedite the issue of the Medicare card; and
- include the children on the parent's card where parents so wish.
(*para 4.87*)

Recommendation 16

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. (*para 5.15*)

Recommendation 17

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. (*para 5.20*)

Recommendation 18

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. (*para 5.81*)

Recommendation 19

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. (*para 5.100*)

Recommendation 20

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. (*para 5.105*)

Recommendation 21

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. *(para 5.109)*

Recommendation 22

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. *(para 5.122)*

Recommendation 23

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. *(para 5.126)*

Recommendation 24

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. *(para 5.130)*

Recommendation 25

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. *(para 5.136)*

Recommendation 26

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. *(para 5.141)*

Recommendation 27

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. *(para 5.147)*

