

**SUBMISSION NO. 123**

AUTHORISED: *25.05.05* *Adoptive*

**ANNEXURE A**

**SUBMISSION TO THE INQUIRY INTO  
ADOPTION OF CHILDREN FROM OVERSEAS**

  
21 April 2005

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# 1. Purpose of Document

This purpose of this document is to respond to the terms of reference of the Inquiry into Adoption of Children from Overseas, specifically outlining the inconsistencies between Australian jurisdictional approval processes and the inconsistencies between benefits and entitlements.

## 2. Inconsistencies between State and Territory approval processes

### 2.1 Costs

As Table 1 below indicates, the cost of adoption in different Australian jurisdiction varies significantly.

The particularly disproportionate costs of some States may unfairly preclude the ability of people in these States to adopt.

Victoria	NSW	Qld	S.A.	W.A.	Tasmania	ACT	NT
\$6250 (1 <sup>st</sup> )	\$9,700 (1 <sup>st</sup> )	\$2,053	\$8,200	\$2,236	\$2,052	\$4,154	\$6,053
\$4950 (2 <sup>nd</sup> )	\$6,900 (2 <sup>nd</sup> )						

Table 1: Costs of adoption in different Australian jurisdictions

A more substantive discussion of costs is included in point 4 below.

### 2.1 Age

The age limits on adopting parents varies from State to State. Table 2 below highlights the different age requirements between Australian States.

Victoria	NSW	Queensland	South Australia	Western Australia	Tasmania
<ul style="list-style-type: none"> <li>In overseas adoption, use the age criteria set by the overseas country</li> </ul>	<ul style="list-style-type: none"> <li>Must be 21 or more years and 18 or more years older than the child</li> </ul>	<ul style="list-style-type: none"> <li>Must be 21 years or more and, if male, 18 years older than child and, if female, 16 years older than child</li> <li>Age is an element for assessment in suitability to adopt but no other prescription is made</li> </ul>	<ul style="list-style-type: none"> <li>A person cannot apply for registration as a prospective adoptive parent unless the person is 18 years of age or over but under 55 years of age</li> </ul>	<ul style="list-style-type: none"> <li>In a first adoption, the age gap between the applicant and the child can be no greater than 45 years for the youngest applicant and 50 years for the eldest of a couple;</li> <li>In a subsequent adoption the age gap can be no greater than 50 years for the youngest applicant and 55 years for the eldest; the age gap for a single person can be no greater than 45 years</li> </ul>	<ul style="list-style-type: none"> <li>Must be 18 years older than the child; no more than 40 years age difference between child and applicant if no other child in family or 45 years if another child; each applicant is under 50 years</li> </ul>

Table 2: Age limits for adopting parents by jurisdiction

Given the long time line associated with adoption, some prospective parents become too old to adopt by the time they are deemed to be eligible on other criteria. There are a number of well-documented cases of couples who have been forced to move interstate (at great personal and financial cost), when one prospective parent becomes too old to adopt in a specific jurisdiction. This was a particularly acute problem in Queensland when the Department of Child Safety did not accept adoption applications for almost three

years due to a lack of staff (a situation which is difficult to comprehend given that the adoption process appears to be entirely "user-pays").

### Recommendation

It is recommended that there be a consistent upper age limit across jurisdictions for adopting parents and that this be raised to at least 55 years of age.

## **2.3 Weight requirements**

Many jurisdictions prevent people who are overweight from adopting. The criterion often utilised to determine weight is the Body Mass Index or BMI, which employs a simple height/weight ratio, without taking into account body shape. Prospective parents who have furnished a doctor's certificate attesting to their overall health and fitness despite their weight are often still refused the right to adopt. Weight and fitness are not an issue for biological parents, as long as they do not affect fertility.

### Recommendation

It is recommended that weight not be a criterion on which a prospective adopting parent can be rejected.

## **3. Inconsistencies between benefits and entitlements**

### **3.1 Maternity payment**

A Maternity Payment of \$3,079 is paid to families which "... recognises the extra costs incurred at the time of a new birth or adoption of a baby."<sup>1</sup>

While support for adoptive families is inherent in the purpose of the Maternity Payment, the overwhelming majority of adoptive families are excluded from receiving the payment because eligibility requirements state that adopted children must be less than 26 weeks of age at placement. The majority of children adopted from overseas are over six months of age. In Australia, of the 370 inter-country adoptions in 2003-2004, 52% of the children were aged between 1 and 4 years<sup>2</sup>.

This is highly anomalous, as adopting parents often face far greater costs than biological parents, given:

- the exorbitant charges associated with overseas adoption (between \$25,000 and \$50,000); and
- the requirement that one parent take between six months and one year off work (depending on jurisdiction) to care for his/her child (a requirement not imposed upon biological parents).

When one considers that only about 500 adoptions occur each year in Australia<sup>3</sup>, the cost to Government of providing the maternity payment to all adopting parents is relatively negligible, and certainly offset by the contribution of the adopting parents to the Australian population rate.

### Recommendations

It is strongly recommended that age restriction of 26 weeks of the Maternity Payment be removed for all adopting families.

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<sup>1</sup> [http://www.familyassist.gov.au/internet/fao/fao1.nsf/content/payments-maternity\\_payment](http://www.familyassist.gov.au/internet/fao/fao1.nsf/content/payments-maternity_payment)

<sup>2</sup> Australian Institute of Health and Welfare (2004) "Adoptions Australia 2003-04, Child Welfare Series, No. 35

<sup>3</sup> There were 502 adoptions in Australia in the 2003-04 financial year, of which 370 were inter-country adoptions: "Adoptions Australia 2003-04 (2004) Australian Institute of Health and Welfare, Child Welfare Series, No. 35

### 3.2 Consultation

The development of the "maternity payment" appears not to have involved considered discussions with the adoption community, a failing often attributed to policymakers developing family-related policies.

#### Recommendation

It is recommended that the formulation of any federal or State family policies should involve consultation with the adoption community.

### 3.3 Paid leave

Three months' maternity leave is available for many mothers who have given birth, but unless an adopting parent works for the public sector, s/he may be lucky to receive one week's leave. Indeed, according to the Work and the Family Unit of the Department of Employment and Workplace Relations, only 1% of workplaces provide adoption leave.

This is manifestly inequitable, especially given that most State Governments require one adopting parent to stay home for a significant period of time after the adoption takes place, as follows:

Victoria	NSW	Qld	S.A.	W.A.	Tasmania	ACT	NT
1 year	6 months	1 year	1 year (strongly encouraged)	1 year (strongly encouraged)	1 year	1 year	6 months

Table 3: Period of time an adopting parent is required to remain at home, by jurisdiction

The rationale for this requirement is manifestly sensible, given that most of the children adopted from overseas have spent considerable time in institutional care, which has been well-documented to cause considerable deprivations to the child. A great deal of time and nurturing is required to enable previously institutionalised children to attach themselves to their new family. This is all the more reason to ensure that parents are financially supported when they remain at home to care for their child.

#### Recommendation

It is recommended that paid adoption leave be of the same duration as paid maternity leave.

### 3.4 Unpaid leave

While the *Workplace Relations Act* 1996 provides 12 months' unpaid adoption leave for families adopting a child, this leave only applies if the child is under five years of age at adoption. Thus, there is no legislated protection for parents to take any leave from work if they adopt a child older than 5 years of age. This is particularly anomalous, given that the older a child is at adoption, the greater the child's post-placement needs, and thus the more time that the adopting parent must devote to caring for their child.

#### Recommendation

The *Workplace Relations Act* 1996 should be amended to enable parents adopting a child of any age to access unpaid adoption leave.

### **3.5 Information**

Adoptive families are entitled to some tax benefits, including Family Tax Benefits A and B. In discussions with many adoptive families, it is clear that they have never been advised of these entitlements. By contrast, upon the birth of a child, biological parents receive a "bounty bag" which is a kit including advice about all the tax benefits to which they are entitled as parents of a newborn.

#### Recommendation

It is recommended that an "adoption bounty bag" be provided to all adopting families when they apply for a visa for their child, including all necessary information, such as tax-related concessions and the processes that adopting parents must undertake after returning to Australia with their child (e.g inclusion of the child on the family's Medicare card, access to child care nursing, etc.).

## **4. Overall costs**

### **4.1 Inequity between costs for adoptive and biological children**

The medical costs associated with the birth of a biological child are heavily subsidised by the federal Government through Medicare, which also funds expensive infertility treatments, such as IVF. In addition, having reached the Medicare safety net threshold, many services qualify for an additional Medicare rebate.

At the same time, adopting parents are required to furnish full user-pays fees to federal and State government departments to process their applications, which can be as much as \$15,000. These costs do not include the significant expenditure for travel to the country of adoption, attendant accommodation and administrative costs and other associated costs, such as charges by overseas orphanages, medicals and translation and notarisation of documents. Total costs can reach \$50,000. These costs would be a clear disincentive to many couples considering adoption.

Clearly, parents require a mitigation of the considerable costs associated with adoption. In the United States, a \$10,000 tax credit is provided to parents for each adopted child.

### **4.2 Administrative costs**

The federal Government has overall responsibility for managing inter-country adoption, but it has passed on the administrative duty to the various States and Territory health and/or community service departments. This has resulted in prospective parents having to:

- face a plethora of rules, regulations and fee structures depending on where they live; and
- pay both State and federal administrative charges, adding to the financial burden of adoption.

### 4.3 *Prejudice against the less affluent*

Given that there is no reimbursement of fees by either federal or State governments, and the overall cost of adoption can be as high as \$50,000, this precludes the ability of less affluent people to adopt, which is highly prejudicial for a Government-regulated process.

#### Recommendation

It is strongly recommended that:

- the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) waive administrative charges of \$1245 and attendant visa fee for adopting parents; and
- the considerable adoption fees be rebatable by Government, or at least tax deductible.

## 5. **Restricted regions for adoption**

On 1 December 1998, the Australian Government ratified the Hague Convention on Intercountry Adoption to implement internationally agreed standards for processing inter-country adoptions. To date, a total of 62 countries are a party to the Convention<sup>4</sup>.

Worldwide, there are more than 14 million HIV/AIDS orphans and by 2010, up to 25% of the children in some sub-Saharan countries will be orphans<sup>5</sup>. Orphans, especially in developing countries, are often subject to harsh circumstances, including child labour, sexual slavery and child abuse<sup>6</sup>.

There is clearly a desperate need for orphans from a number of countries to be placed with caring adoptive families, however, in 2003-04, only 370 inter-country adoptions took place in Australia<sup>7</sup>, and of these:

- only about one-tenth of inter-country adoptions were with Hague convention countries, while
- China and South Korea have accounted for over 60% of overseas adoptions to Australia<sup>8</sup>.

#### Recommendation

It is recommended that Governments work more actively to establish adoption programs with specific Hague Convention countries which have considerable and increasing numbers of orphaned children (e.g. South Africa).

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<sup>4</sup> "Adoptions Australia 2003-04 (2004) Australian Institute of Health and Welfare, Child Welfare Series, No. 35

<sup>5</sup> World Health Organisation (2004) "Key facts from The World Health Report 2004" [http://www.who.int/whr/2004/en/facts\\_en.pdf](http://www.who.int/whr/2004/en/facts_en.pdf)

<sup>6</sup> Global March against Child Labour (2005) "Past Haunts Present and Children Pay the Price" [www.globalmarch.org/clns/clns-march-2005-details.php](http://www.globalmarch.org/clns/clns-march-2005-details.php)

<sup>7</sup> "Adoptions Australia 2003-04 (2004) Australian Institute of Health and Welfare, Child Welfare Series, No. 35

<sup>8</sup> Hansard, Tasmania, Mrs Irwin (Fowler), Monday, March 7th 2005, [www.rodneycroome.id.au/other\\_comments?id=1551\\_0\\_2\\_0\\_C18](http://www.rodneycroome.id.au/other_comments?id=1551_0_2_0_C18)