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**REPORT ON KEY FINDINGS  
FROM THE**

**REVIEW OF THE  
*ADOPTION ACT 1993***

Department of Disability, Housing and Community Services  
ACT Government

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## ***PART 1: REVIEW METHODOLOGY***

### **Background**

When enacted, the *Adoption Act 1993* (the Act) was viewed as progressive legislation which included provisions such as the Aboriginal and Torres Strait Islander placement principle; access to origins information; more open adoption; and acknowledgement of the overarching principle of the "best interests" of the child. The legislation has helped to ensure that in the main the Territory's adoption practice has remained relevant to the children it was developed for.

In the light of major initiatives over the last ten years, including the *Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption* and the enacting of the *ACT Human Rights Act 2004*, there is a need to review sections of the Act in terms of contemporary relevance and accountability requirements. It is also essential that the Act be consistent with the *Children and Young People Act 1999*, that it incorporates the principles of the *United Nations Convention on the Rights of the Child* and reflects Government policies as defined in the ACT Children's Plan and the ACT Social Plan.

In November 2005, the Commonwealth House of Representatives Standing Committee on Family and Human Services released a report on its *Inquiry into Adoption of Children from Overseas*. This report also made comment on local adoption matters. Nationally several hundred persons and agencies made submissions, gave formal evidence or attended community forums reflecting a high level of interest and areas of concern about current adoption practices.

The profile of adoption in the ACT community has also changed; overseas and stepparent adoptions now comprise over 80 % of adoption orders made in the ACT. Adoption of babies from the local community is unusual and often related to complex family difficulties.

It is also important to acknowledge the impact of past adoption practices upon Aboriginal and Torres Strait Islander communities. In their policy paper, *Achieving Stable and Culturally Strong Out of Home Care for Aboriginal and Torres Strait Islander Children*, the Secretariat of National Aboriginal and Islander Child Care Inc. (SNAICC) clearly state "Adoption is not part of Aboriginal culture...The Stolen Generations and their families are to this day dealing with the trauma of past adoption policies" (p21). Due to the cultural and spiritual significance of connection to family SNAICC does not endorse adoption, other than customary Torres Strait Islander adoptions within extended families, for Aboriginal and Torres Strait Islander children.

The review has not yet concluded and is currently being managed jointly between the Department of Disability, Housing and Community Services and the Department of Justice and Community Safety.

This report provides an overview of key findings from the review.

### **Review Objectives**

The objectives of the review have been to:

1. Review the operation of the *Adoption Act 1993*;
2. Identify the main issues concerning the operation of the Act; and
3. Provide Government with proposals for change.

### **Consultation**

The paper entitled "A Better System for Children without parents to care for them" was released for public comment on 1 May 2006 for a period of eight weeks until 23 June 2006. See Attachment "A" regarding Publicity.

Consultation included targeted interest groups and written submissions. The group expressing most interest in the issues were parents of children adopted from overseas and this is reflected in the comments received.

The consultation process indicated a limited representation of all parties to adoption. Due to the nature of adoption (often interpreted as personal, private and highly sensitive) it is often difficult to engage a broad cross-section of people to comment openly about their experiences of adoption and acquire their views on contemporary adoption practices.

The key review findings have been informed by 2 public consultations and related government reviews and inquiries. See Attachment "B" regarding Responses and Attachment "C" for Relevant Reviews and Enquiries.

### **Summary of Findings**

The overall findings of the consultation process indicated general consent, often with qualification, with the legislative amendment proposals.

There were three primary matters of contention elicited through the consultation process:

1. The right to retain the given name of an adopted child;
2. Changing the name of the "Adoption Information Service" to "Family Information Service"; and
3. The consolidation of Adoption Legislation with the *Children and Young People Act 1999*.

### **Next Steps**

The proposed next steps of the Review are as follows:

1. The release of the Key Findings Report;
2. A daytime and evening forum for community feedback regarding the Key Findings Report; and
3. The development of proposed policy, which will form the basis for drafting instructions for amendments to the Adoption Act.

## ***PART 2: KEY REVIEW FINDINGS***

### **1 Preamble / Objects and Principles**

Submissions and public meetings supported legislative amendments to include clear principles in the Act to guide adoption practice.

### **2 Intercountry Adoption Administration**

#### ***2.1 Obligations under the 'Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption' (The Hague Convention)***

Submissions and public meetings supported legislative amendments to streamline the administration of Intercountry adoption through:

- The inclusion of obligations under the Hague Convention on Intercountry Adoption, including the role of the central authority; and
- The inclusion of an explanation of the different processes to be followed with Hague and non-Hague countries.

#### ***2.2 Role of the Department of Immigration and Citizenship***

Submissions and public meetings supported legislative amendments to include an explanation of the guardianship of non-citizen child functions of the Department of Immigration and Citizenship.

### **3 Adopted Child**

#### ***3.1 Right to Retain Given Name***

There was considerable debate around maintaining an adopted child's first names with a provision to add additional names:

- Two submissions supported this proposal;
- One interest group for the parents of children adopted from Ethiopia (AACASA) expressed in principle agreement to retaining of first names but did not believe it should be the subject of legislation; and
- Most submissions and comments did not agree with this proposal on the grounds that parents of non-adopted children have the right to name their children; it is discriminatory as some adoption orders are made overseas and not subject to ACT legislation; the name may have no link to the child's origins and is therefore not significant for them.

#### ***3.2 Participation of the Child in Adoption Decisions Concerning Them***

Submissions and public meetings generally supported legislative amendments to clarify when and how a child has the right to be consulted, or in some instances give formal consent, when decisions are made about their adoption:

- The submission from the Adoptive Families Association (AFA) did not support this proposal, as they are not convinced that children adopted from overseas are always at the same developmental level as children adopted locally, stating: "Most likely an adopted child from an overseas orphanage will be emotionally developmentally delayed and should not be compared to the decision making abilities of a local (within Australia) child being consulted about an adoption".

### **4 Birth Parents**

#### ***4.1 Adoption Consents – Counselling for Birth Parents***

Submissions and public meetings generally indicated support (with qualification) for legislative amendments to increase the mandatory period before consenting to adoption, to allow for the provision of counselling for birth parents:

- One written submission agreed with the proposal;
- One written submission from an individual believes that the mandatory consent periods should be increased as per the proposal but that counselling should be offered, but not mandatory;

- The submission from the AFA states that there is a conflict of interest between the rights of the child and the birth parent and that more advice should be obtained before including this in the legislation; and
- A verbal submission stated that the consent period should be extended to three months, although a stronger preference is for no adoption legislation at all and this provision be made for guardianship type orders only when substitute care is required. This commenter also agreed with counselling for birth parents if it emphasised the lifelong grief issues of relinquishment and addressed resulting mental health issues. Comments were additionally made with reference to a post adoption birth certificate with both birth and adoptive parents names listed and that birth parents should be able to be present at adoption hearings.

#### **4.2 Adoption Consents – Legal Advice**

Submissions and public meetings supported legislative amendments to ensure parents under the age of 18 years be given independent legal advice or extra counselling before signing adoption consents. One submission stated that a person could not be forced to have counselling.

#### **4.3 Attributes of Adoptive Family**

Submissions and public meetings supported legislative amendments to allow consenting parents to express their wishes about the attributes of the family who will adopt their child; these wishes should then be incorporated into a mutually agreed “Adoption Plan”.

#### **4.4 Definition of ‘Father’**

Submissions and public meetings supported legislative amendments to include a definition of “father” within the Act, for the purpose of consent to adoption.

### **5 Adoption Applicants**

Submissions and public meetings indicated a mixed response to persons applying to have their names placed on the Adoption Register, as having to be “resident or domiciled” in the ACT:

- One submission from an individual agreed with the proposal;
- Two submissions from organisations – AFA and Families of Children from China (FCC) Australia – disagreed with this proposal;
- One submission from an organisation – Australian African Children’s Aid Support Association (AACASA) – agreed in principle but stated “applicants whose work may require them to live outside the ACT for short periods of time during a wait of five years or more should not be disadvantaged”;
- One individual submission stated agreement in principle but hoped that the best interests of the child would prevail if the birth sibling of a child already adopted needed a home and the adoptive parents had moved interstate; and
- One individual submission agreed in principle but stated that people on the list should be able to pursue work opportunities elsewhere while waiting, with an understanding that they return to the ACT for placement.

### **6 Step Parent and Relative Adoption**

#### **6.1 Seeking Leave of the Family Court**

Submissions and public meetings supported legislative amendments to require stepparent adoption applicants to seek the leave of the Family Court before proceeding.

#### **6.2 Guardianship Responsibilities**

Submissions and public meetings supported legislative amendments, in the case of stepparent or relative adoptions, to exclude the Chief Executive from automatically assuming guardianship after all consents have been signed.

## 7 Post Adoption Support

### 7.1 *Counselling/Support*

Submissions and public meetings identified a mixed response to the proposal that a provision be added for the Chief Executive to have some continuing counselling/supporting role, including financial support in special circumstances, after an adoption order is made:

- Two submissions from individuals agreed with this proposal;
- FCC Australia agreed with this proposal with a qualification that counselling not be mandatory;
- AFA members' views expressed a range of responses to this proposal, from complete disagreement, stating that the proposal was "overly invasive and prescriptive", to a qualified agreement as long as "it was somehow seen as truly supportive role and not an invasion by the Adoptions Unit"; and
- Consultation groups expressed the same fears that post adoption counselling sounds positive but may be "compulsory and invasive" rather than truly supportive.

### 7.2 *Identifying Publicity*

Submissions and public meetings generally supported legislative amendments to restrict identifying publicity for a certain time after adoption placements, and/or adoption orders are made, with the exception of one submission:

- Submissions from the AFA, consultation groups and an individual agreed with proposal with qualification, each supporting the prohibition of names of local adoption parties on courts lists and does not agree with restricting identifying details of Intercountry families and their support groups;
- One submission from an individual stated that there should be no restriction as it is an invasion of the family's entitlement to make decisions in relation to their children, stating "Advice can be provided to the adoptive family but they should be allowed to make decisions regarding publicity without interference".

## 8 Access to Information and Contact

### 8.1 *Definition of 'Birth Relative'*

Submissions and public meetings supported legislative amendments to change the definition of 'birth relative' to clarify that this includes birth relatives of the adopted person who were born after the adoption took place.

### 8.2 *Rape and Incest*

Submissions and public meetings supported, with qualification, legislative amendments to allow information about rape and incest, currently prohibited, to be provided:

- All submissions agreed with the proposal, most with the qualification that this proposal be accompanied by a provision that counselling and support is also provided.

### 8.3 *Contact Veto*

Submissions and public meetings supported legislative amendments to remove Contact Vetos for future adoptions, to register an objection to contact and provide counselling to parties seeking contact where an objection to contact has been made:

- AFA members were generally in agreement regarding this proposal; however most believe this issue is more relevant to local adoption.

### 8.4 *'Adoption Information Service' vs. 'Family Information Service'*

Submissions and public meetings generally did not support legislative amendments to change the name of the Adoption Information Service to "Family Information Service":

- One submission from an individual agreed with this proposal;
- The AFA and other individuals' submissions disagreed with this proposal on the basis that the service relates to adoption and this should be reflected in the title; and
- Consultation groups suggested that if the service includes supplying information to other people who have been in care, a title change to "Adoption and Information Service" might be acceptable.

### **8.5 Preservation of Records**

Submissions and public meetings supported, with qualification, legislative amendments to remove special provisions within adoption legislation relating to the preservation of records:

- All submissions agree with this proposal as long as the Territory legislation, for the preservation of records, is adequate to ensure that adoption records are kept indefinitely.

## **9 Procedures for Review of Decisions**

### **9.1 Appeal Mechanisms**

Submissions and public meetings supported, with qualification, legislative amendments to review the appeal mechanisms in the Act:

- One individual submission agreed with this proposal, as long as the time given for a decision is not excessively long, suggesting 30 days as an appropriate timeframe;
- One individual submission agreed with this proposal and suggested 28 days as an appropriate timeframe; and
- The AFA agreed in principle with this proposal but stated enough information was provided to make an informed comment.

## **10 Consolidation of Adoption Legislation with the *Children and Young People Act 1999***

Submissions and public meetings generally did not support legislative amendments to consolidate the ACT Adoption legislation with the *Children and Young People Act 1999*:

- One submission from an individual agreed with this proposal;
- FCC Australia strongly disagreed with this proposal on the basis that adoption should not be linked with juvenile justice and this "incorporation would lead to further marginalisation of adoption in the ACT bureaucracy";
- One individual submission disagreed with this proposal on the basis that combining the two Acts would add to the perception sometimes held that adoption is "somewhat pathological". This submission also stated agreement with adoption for some children in long term foster care and believes that this can be achieved without the consolidation of the two Acts. A further comment was made, stating that the *Children and Young People Act 1999* could be amended to include a "Post Care Information Service";
- Consultation group comments reflected similar issues presented above; and
- AFA members were unable to reach a position on this proposal; some members were in support and other opposed to this proposal, but the organisation would be willing to consult on an expanded proposal.

## ATTACHMENT A

### Publicity

The public consultation period was launched on 1 May 2006 with a press release inviting comment on the proposals contained in the issues paper "A Better System for children without parents to care for them".

- Channel 9 Television and The Canberra Times carried news items in the week beginning 1 May 2006.
- The consultation was advertised in The Canberra Times on Saturday 27 May 2006 and in the Canberra Chronicle on Monday 29 May 2006.
- Visual displays were placed in the Erindale and Tuggeranong libraries from 23 May 2006 to 17 June 2006 outlining the issues and inviting comment.
- Public forums were held in the Erindale and Tuggeranong libraries on the 13 June 2006 and the 17 June 2006.
- A brochure advertising the consultation period and outlining the issues was printed for community distribution.
- Copies of the paper were forwarded with request for comment to:
  - Minister's Youth Council
  - Women's Consultative Council
  - ACT Aboriginal and Torres Strait Islander Community Consultative Council
  - Adoptive Families Association of the ACT
  - Foster Care Association of the ACT
  - Youth Coalition of the ACT
  - ACT Council of Social Service
  - CREATE
  - ACROD
  - Canberra Men's Centre
  - Post Adoption Resource Centre (NSW)
  - Other Australian State and Territory Adoption Services
- Brochures were placed in ACT libraries, Community Health Centres, Family and Child Centres, Women's Information and Referral Centre, Family Planning and Sexual Health Service and the Civic Government Shop Front.

## **ATTACHMENT B**

### **Responses**

- Written comments were received from the following organisations:
  - The Adoptive Families Association of the ACT (AFA)
  - Families with Children from China-Australia (FCC-Australia) Inc.
  - Australian African Children's Aid and Support Association Inc (AACASA) (families who have adopted from Ethiopia)
  
- Written comments were received from the following individuals:
  - Three overseas adoptive parents, one local adoptive parent, one stepparent adoption applicant and one overseas adoption applicant.
  
- Verbal comments were received from one person who preferred to remain anonymous but identified herself as a person who had a long history of interest in adoption issues.

**ATTACHMENT C****Related reviews and inquiries**

Related reviews and inquiries, and their related Government Responses, have also informed the key review findings, principally:

- The Commonwealth House of Representatives Standing Committee on Family and Human Services Report, *Overseas Adoption in Australia: Report on the Inquiry into Adoption of Children from Overseas*, November 2005 (The House of Reps Report).

The Government Responses to The House of Reps Report recommendations were released in May 2006 by the ACT Minister for Children and Young People to the Chair of the Commonwealth House of Representatives Standing Committee on Family and Human Services Report, *Overseas Adoption in Australia: Report on the Inquiry into Adoption of Children from Overseas*.

**Overseas Adoption in Australia: Report on the Inquiry Into Adoption of Children from Overseas (The House of Reps Report)**

**Recommendation 17** - The Committee recommends that 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.

**Government Response: AGREED**

The planned review of the ACT Adoption Act recommends the inclusion of the Hague Convention as a significant overarching principle to guide the operation of the Act.

**Recommendation 22** - The Committee recommends that the Attorney-General in renegotiating 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 Australia provisions be the model to be followed.

**Government Response: AGREED IN PRINCIPLE**

This is a matter for all States and Territories to consider. The current ACT Adoption legislation provides for protection of identity of parties to an adoption however once the adoption is finalised these restrictions no longer apply. Parents then assume normal parental authority "as though the child was born to them".