# SUBMISSION TO THE INTERDEPARTMENTAL COMMITTEE
# REVIEW OF INTER-COUNTRY ADOPTION

February 2014

## 1. Introduction

1.1. The Australian Committee for UNICEF (**UNICEF**) is committed to the principles outlined in *The Hague Convention on the Protection of Children and Cooperation in Respect to Inter-Country Adoption* **(the Hague Adoption Convention**) and the *Convention on the Rights of the Child 1989* (**CRC**), and we note that Australia is a signatory to both Conventions. In particular, UNICEF is committed to *the best interest of the child* as a guiding and foundational principle in consideration of any potential changes to the existing inter-country framework and associated services.

1.2. UNICEF acknowledge the assistance of DLA Piper Australia (**DLA Piper**) in drafting this submission and DLA Piper's on-going support and contribution to UNICEF.

## 2. Submission Parameters

2.1. This submission to the Interdepartmental Committee (**IDC**) Review of Inter-Country Adoption will focus on the following areas identified under the IDC terms of reference:

2.1.1. Changes to Commonwealth and/or State legislation that would improve and streamline the inter-country adoption processes in Australia; and

2.1.2. Alternative means of delivering inter-country adoption programs.

## 3. Recommendations

3.1. The new legislative and regulatory framework must comply with *The Hague Adoption Convention* and the *CRC.*

3.2. That any changes to the legislative and regulatory framework must focus on the *best interests of the child.*

3.3. That restrictions be imposed so that State Central Authorities can only deal with those countries that are signatories to and implementers of *The Hague Adoption Convention*.

3.4. That specific strategies and minimum standards be implemented to support adoptive parents and protect the child's right to identity (including cross cultural sensitivity training).

3.5. That the legislative and regulatory framework be amended to ensure that adoption compliance certificates are scrutinised and independently verified so that no child is adopted unless the family tracing and reunification process has been adequately undertaken and has been unsuccessful.

3.6. That that timing of inter-country adoption should not compromise the quality of the process.

3.7. That consistent engagement between Australia and other Hague Convention Countries that we have active inter-country adoptions with, should be considered part of programmatic due diligence.

## 4. UNICEF Global Position Statement on Inter-Country Adoption

4.1. UNICEF has received many enquiries from families hoping to adopt children from countries other than their own. UNICEF believes that all decisions relating to children, including adoptions, should be made with the *best interests of the child* as the primary consideration. T*he Hague Adoption Convention* is an important development, for both adopting families and adopted children, because it promotes ethical and transparent processes, undertaken in the best interests of the child. UNICEF urges national authorities to ensure that, during the transition to full implementation of *The Hague Adoption Convention*, the *best interests of each individual child* are protected.

4.2. The *Convention on the Rights of the Child*, which guides UNICEF's work, clearly states that every child has the right to know and be cared for by his or her own parents, whenever possible. Recognising this, and the value and importance of families in children's lives, UNICEF believes that families needing support to care for their children should receive it, and that alternative means of caring for a child should only be considered when, despite this assistance, a child's family is unavailable, unable or unwilling to care for him or her.

4.3. For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care which should be used only as a last resort and as a temporary measure. Inter-country adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution. In each case, the *best*

*interests of the individual child* must be the guiding principle in making a decision regarding adoption.

4.4. Over the past 30 years, the number of families from wealthy countries wanting to adopt children from other countries has grown substantially. At the same time, lack of regulation and oversight, particularly in the countries of origin, coupled with the potential for financial gain, has spurred the growth of an industry around adoption, where profit, rather than the best interests of children, takes centre stage. Abuses include the sale and abduction of children, coercion of parents, and bribery.

4.5. Many countries around the world have recognised these risks, and have ratified *The Hague Adoption Convention*. UNICEF strongly supports this international legislation, which is designed to put into action the principles regarding inter-country adoption which are contained in the *Convention on the Rights of the Child*. These include ensuring that adoption is authorised only by competent authorities, that inter-country adoption enjoys the same safeguards and standards which apply in national adoptions, and that inter-country adoption does not result in improper financial gain for those involved in it. These provisions are meant first and foremost to protect children, but also have the positive effect of providing assurance to prospective adoptive parents that their child has not been the subject of illegal and detrimental practices.

4.6. The case of children separated from their parents and communities during war or natural disasters merits special mention. It cannot be assumed that such children have neither living parents nor relatives. Even if both their parents are dead, the chances of finding living relatives, a community and home to return to after the conflict subsides, exist. Thus, such children should not be considered for inter-country adoption, and family tracing should be the priority. This position is shared by UNICEF, UNHCR, the International Confederation of the Red Cross, and international NGOs such as the Save the Children Alliance. This position is also supported by DLA Piper.

## 5. Summary of Existing Inter-Country Adoption Models

5.1. It is Chapter III of *The Hague Adoption Convention* that governs 'Central Authorities' and 'accredited bodies' in facilitating inter-country adoptions.

5.1.1. A 'Contracting State' must designate a Central Authority to discharge the duties imposed on such authorities by *The Hague Adoption Convention* (Article 6(1)). Where a Contracting State is a federal State, such as Australia, more than one Central Authority may be appointed (Article 6(2)).

5.1.2. An 'accredited body' is an adoption agency which has been through a process of accreditation (in accordance with Articles 10 & 11) which meets any additional criteria for accreditation which are imposed by the accrediting country, and which perform certain functions of the Convention in the place of, or in conjunction with, the Central Authority (HCCH, *'The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention - Guide to Good Practice'*, Guide No. 1, 2008, p 15 (*'Guide to Good Practice'*)).

5.2. In Australia, the Australian Central Authority is located within the Commonwealth Attorney-General's Department, and is responsible for providing policy insight, managing adoption programs with States of origin, and for Australia's obligations under the Convention. This Central Authority does not process inter-country adoption applications. The practical task of processing inter-country adoptions is managed by the State and Territory Central Authorities, which are located in each State and Territory's Child Welfare Departments.

5.3. There are no accredited bodies currently operating in Australia. In Australia, inter-country adoption is the sole purview of government.

5.4. In 2008, the Inter-Country Adoption Alternative Models Working Group (no longer in existence) considered the possibilities for accreditation of NGOs and approved persons for processing inter-country adoptions (Siobhan Clair, *'Child Trafficking and Australia's Inter-Country Adoption System'*, 2012, University of Queensland Human Trafficking Working Group, p 20, NB: referenced link no long accessible). It was noted by Clair that this was in response to arguments for allowing private not-for profit bodies to be involved in facilitating adoptions on the basis that this would "*increase efficiency, reduce waiting periods, and boost levels of adoption to numbers comparable to other receiving countries such as the United States"* (p 20). It is not apparent that this option has been properly considered by the Australian Government since then as a means of improving Australia's inter-country adoption system.

5.5. Examples of other developed countries which rely on accredited adoption agencies to facilitate inter-country adoption follow, and might be of guidance to the Australian Government in reviewing Australia's inter-country adoption system.

***United Kingdom***

5.6. The UK has a dual system for processing inter-country adoptions, which can occur either through local council or through a voluntary adoption agency. It has been observed that voluntary adoption agencies are a more time and cost efficient means of arranging inter-country

adoptions. There appear to be approximately 27 voluntary adoption agencies operating throughout the UK (www.cvaa.org.au).

***United States of America***

5.7. Inter-country adoptions in the USA are regulated by the federal Government while being managed by a privatised system using non-government organisations and adoption services. It has been reported that around 20,000 inter-country adoptions take place in the USA each year under the privatised system (ABC, *'Celebrity campaign to reform adoption laws'*, The 7.30 Report, 13 March 2008). The *Inter-Country Adoption Act 2000* USA and subsequent regulations allows for the accreditation of organisations to provide inter-country adoption services. The State Department established the Council on Accreditation, which is charged with evaluating agencies for accreditation and on-going monitoring of accredited agencies. Approval requires compliance with the federal accreditation regulations. The accreditation process involves review of the applicants' written policies and procedures, and on-site meetings with leadership, staff, and local stakeholders. Accreditation is valid for four years, at which point the agency is required to apply for renewal. The State Department maintains a list of adoption services providers for prospective parents to access in order to decide which provider they wish to use. The list contains approximately 190 adoption service providers.

***Denmark***

5.8. The Department of Family Affairs in the Danish Ministry of Family and Consumer Affairs is Denmark's Central Authority, and the Ministry has authorised two private non-profit organisations to act as adoption placement agencies for inter-country adoptions. The Department also oversees the agencies' fulfilment of the conditions of their authorisations. It is preferable that inter-country adoptions be performed through these placement agencies, although exceptions may be made where a person wants to adopt a child they are closely related to or for other *"special reasons"*.

5.9. The process for inter-country adoption in Denmark involves Joint Councils (set up at the five regional state administrations) making the decision at first instance of whether an applicant can be approved as an adoptive parent. This process involves an investigation by the Secretariat of the Joint Council, which is divided into three phases: (1) investigation into satisfaction of requirements, (2) a pre-adoption counselling course, and (3) interviews with the Secretariat. In order to be approved as a prospective adoptive parent, the applicant must, as a general rule, register at one of the two adoption placement agencies before commencing phase three of the investigation. The adoption placement agency is tasked with creating contact between a Danish

prospective adoptive parent and a foreign child who has been given up for inter-country adoption, in accordance with the rules in the child's State of origin. The agency is also tasked with ensuring the adoption is carried out in the proper way, both legally and morally.

***Norway***

5.10. In nearly all cases of inter-country adoption in Norway, the adoption is arranged through one of the three accredited adoption organisations. Exceptions include adopting a child from the person's own country of origin, or from a country with which they have special and strong ties or connections. The Ministry of Children and Family Affairs has established guidelines for the examination and approval of adoption homes for inter-country adoptions. The three accredited adoption organisations operating in Norway need the permission of the National Office for Children, Youth and Family Affairs to arrange placement of children from foreign countries, and are subject to the supervision of the National Office. The three organisations are non-profit organisations, in accordance with the Convention requirements.

5.11. The Norwegian Directorate for Children, Youth and Family Affairs (**Bufdir**) is Norway's Central Authority, and is administratively linked to the Ministry for Children and Family Affairs. Bufdir regional offices give advance approval to applicants who want to adopt a child from another country, and supervises the work of the approved adoption organisations. Local authorities (municipalities) investigate applicants and advise the National Office for Children, Youth and Family Affairs before an advance approval to adopt a child from a foreign country is given. A prospective adoptive parent must apply for advance approval, which is issued by the Directorate for Children, Youth and Family Affairs, before the application can be sent to the country of origin. The prospective adoptive parent must first contact the Child Care Office or Social Office in their municipality and register as applicants. Before the application can be decided upon, prospective adoptive parents must register a members of one of the three accredited adoption organisations. The adoption organisations are responsible for arranging adoptions to the applying families in Norway, if the application for advance approval is granted.

5.12. In each jurisdiction identified above, the State has central control and oversight of the inter-country adoption process, in accordance with the Convention requirements, but the practical processing and facilitating of inter-country adoptions is delegated to accredited non-profit adoption organisations. The fact that many developed countries rely on adoption agencies indicates this is a relevant consideration for the Australian Government in reviewing Australia's inter-country adoption system.

## 6. Improving the Function & Integrity of Inter-Country Adoption Processes in Australia

### 6.1. Current inter-country adoption position under Commonwealth legislation

6.1.1. The Commonwealth Government, under *The Hague Adoption Convention*, is responsible for ensuring Australia's compliance with its obligations under that Convention. In particular, the Attorney-General's Department is the responsible body.

6.1.2. The *Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Program* further articulates the particular duties of the Commonwealth pursuant to this obligation:

- Provide, in consultation with States, strategic leadership, guidance and national coordination in development and management of Australia's programs with other countries;
- Notify the Permanent Bureau in the Hague of any changes to the designation of the Commonwealth or the State Central Authorities (and any accredited bodies);
- In consultation with the States, take responsibility for the establishment and management of bilateral and multilateral agreements between Australia and other countries;
- In consultation with the States, develop and maintain a national strategic plan for future development and management of Australia's inter-country adoption program;
- Convene a committee on inter-country adoption representing the Commonwealth and States that will report to the Community and Disability Services Ministers' Advisory Council; and
- Chair and provide the Secretariat support in biannual meetings of the Commonwealth and State Central Authorities for inter-country adoption.

6.1.3. The Commonwealth purports to discharge these abovementioned duties, and otherwise implement the obligations of the Convention, through the following Commonwealth legislation:

- *Family Law Act 1975* (Cth);
- *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cth); and
- *Family Law (Bilateral Agreements - Intercountry Adoption) Regulations 1998* (Cth).

6.1.4. Additionally, the Commonwealth oversees any immigration pursuant to adoption processes. The relevant Commonwealth legislation for these processes is:

- *Australian Citizenship Act 2007* (Cth);

- *Immigration (Guardianship of Children) Act 1946* (Cth);
- *Migration Act 1958* (Cth);
- *Migration Regulations 1994* (Cth); and
- *Australian Passports Act 2005* (Cth).

6.1.5. Otherwise, the Commonwealth has empowered the State and Territory governments (**State Central Authorities**) to undertake the actual application process, assessment of prospective parents' suitability to adopt and other related practicalities in the delivery of the adoption service.

6.2. **Proposed amendments to Commonwealth legislation on inter-country adoption**

6.2.1. Bearing in mind the Commonwealth legislation referred to above, reforms could be implemented to further improve the inter-country adoption practices of Australia. These reforms are suggested to ensure compliance with *The Hague Adoption Convention*, as well as the CRC, and to increase the focus on the *best interests of the child* and the minimum standards concerning prospective adoptive parents.

6.2.2. These changes ought to be considered because of recent issues identified with the Australian system, in particular, the ease with which children have been trafficked through dealings with particular overseas jurisdictions and their respective adoption authorities.

6.2.3. Reforms should be implemented in the following areas:

- The ability of State Central Authorities to deal with non-Convention countries (and generally with 'overseas jurisdictions');
- Evidentiary requirements to establish legitimacy of overseas adoption;
- Oversight by the Commonwealth Central Authority; and
- Cooperation between Commonwealth and State Central Authorities.

*Ability to Deal with Non-Convention Countries*

6.2.4. Under the current legislative framework, most State Central Authorities do not restrict Australia from participating in inter-country adoptions with non-Convention countries. Restrictions ought to be imposed such that State Central Authorities can only deal with those countries that are signatories to *The Hague Adoption Convention*.

6.2.5. The Commonwealth laws similarly allow non-Convention countries to engage in inter-country adoption with Australia - by references to *"another country"* (which can be a

Convention or non-Convention country) and the interchangeable use of *"competent authority"* (for a Convention and non-Convention) in the *Family Law Act 1975* (Cth). Indeed, the inter-country adoption between numerous non-Convention countries is significant, as reported by the Australian Institute of Health and Welfare (2002-03 to 2011-12). In particular, Australia has engaged in inter-country adoption with the following non-Convention countries: Ethiopia (although this ceased in 2012), Taiwan, Azerbaijan, Bolivia, Burundi, Colombia, Fiji, Guatemala, Hong Kong and Nicaragua.

6.2.6. Further, the Commonwealth is able to formalise inter-country adoption programs between Australia and non-Convention countries through bilateral agreements. In particular, Section 111C(3) (International agreements about adoption etc.) of the *Family Law Act 1975* (Cth) states:

*"The Regulations may make such a provision as is necessary or convenient to give effect to any bilateral agreement or arrangement on the adoption of children made between: Australia, or a State or Territory of Australia and a prescribed overseas jurisdiction."*

6.2.7. This above mechanism was used to create an inter-country bilateral agreement with China in 1998, which was at that time was a non-Convention country (only becoming a Convention country in 2006), through the *Family Law (Bilateral Agreements - Inter-Country Adoption) Regulations 1998.*

6.2.8. Importantly, the ability of the Commonwealth to give protection to or aid children of non-Convention countries is limited. Section 11CD (Jurisdiction relating to the person of a child) of the *Family Law Act 1975* (Cth) states:

*"A court may exercise jurisdiction for a Commonwealth person protection measure only in relation to: a child who is present and habitually resident in Australia or a child who is present in Australia and habitually resident in a Convention country".*

6.2.9. Further, section 111CK (Jurisdiction to appoint, or determine the powers of, a guardian for a child's property) of the *Family Law Act 1975* (Cth) provides:

*"A court may exercise jurisdiction for a Commonwealth property protection measure only in relation to a child who is habitually resident in Australia, or a child who is habitually resident in a Convention country".*

*Evidentiary requirements to establish legitimacy of adoption*

6.2.10. The evidence required to substantiate an overseas adoption as legitimate is currently an area of concern for Commonwealth legislation.

6.2.11. In particular, in respect of adoption of children from a Convention country to another Convention country, Regulation 17 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cth) simply provides:

*"...the adoption is recognised and effective, for the laws of Commonwealth and each State, on and from the day the certificate becomes effective".*

6.2.12. Further, given its application to even non-Convention countries, Regulation 19 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cth) states:

*"...An adoption compliance certificate is evidence, for the laws of the Commonwealth and State, that the adoption to which the certificate relates: (a) was agreed to by the Central Authorities of the countries mentioned in the certificate; and (b) was carried out in accordance with the Convention and the laws of the countries mentioned in the certificate".*

6.2.13. Regulation 7 of the *Family Law (Bilateral Arrangements - Intercountry Adoption) Regulations 1998* (Cth) provides, in very similar terms:

*"An adoption compliance certificate is evidence, for the laws of the Commonwealth and each State, that the adoption to which the certificate relates was carried out in accordance with the laws of the overseas jurisdiction whose competent authority issued the certificate."*

6.2.14. Additionally, this bilateral agreement means that the adoption compliance certificate, however described, is considered to be the equivalent of an Australian court order and therefore does not require the consent of natural parents, as per Section 11(1)(a) of the *Australian Passports Act 2005* (Cth).

6.2.15. The only limitation placed upon the automatic acceptance of documents produced by overseas bodies is contained within Regulation 22 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cth) which states:

*"...If a State Central Authority considers that an adoption, or a decision made in accordance with Article 27 of the Convention, is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption or decision*

*relates, the State Central Authority may apply to a court for a declaration that the adoption or decision is not recognised".*

6.2.16. This legislation is highly problematic because it allows the State Authority to accept the adoption certificate as proof that a child is eligible for adoption without verifying the child's status. The legislation must require the State Central Authority to investigate whether the child is eligible for adoption: the tracing and family reunification process has failed or the child's parents consent to adoption. The legislation should include the safeguards outlined below under the bullet point *Access to information and family tracing* to ensure that no child is adopted if there is a reasonable possibility of reuniting that child with family or relatives. The State Central Authority should require NGO verification of the adoption certificate verifying that family tracing and reunification has failed and the child is genuinely eligible for adoption.

6.2.17. These legislative provisions place significant faith in the country issuing the relevant certification and documentation, not allowing for such documentation to be appropriately reviewed and verified by Australian authorities. More specifically, Australia may unwittingly be the recipient of forged documents. Such practices have been found to have occurred in Australia's dealings with India and Ethiopia, the former a Convention country and the latter a non-Convention country. The documents could also contain administrative errors, especially in developing countries that lack the resources to properly record information. This issue is particularly problematic given State and Territory's unqualified acceptance of certificates and documents created by other (non-Convention) countries.

6.2.18. This area requires significant reform to create additional levels of scrutiny and verification of internationally-produced adoption documentation.

*Oversight by Commonwealth Central Authority*

6.2.19. The issues referred to above, relating to the regulation of non-convention adoption schemes with Australia and the evidentiary burden associated with establishing legitimate adoption practices, are all symptoms of the limited oversight by the Commonwealth Central Authority. Requiring additional oversight by the Commonwealth could mean that only Commonwealth legislation requires amendment in this regard (rather than amending the multiple State/Territory statutes).

6.2.20. The limited oversight point is highlighted by Article 22 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cth) which states:

*"This regulation applies if a **State Central Authority** considers that an adoption, or decision made in accordance with article 27 of the Convention is manifestly contrary to public policy"* (emphasis added).

6.2.21. Additional steps to action this consideration are again the responsibility of the State Central Authority, with no indication of Commonwealth Central Authority involvement at any stage.

6.2.22. There seems to be very limited oversight by the Commonwealth Central Authority on the practical processes carried out by the State Central Authority - often requiring the State Central Authority to regulate itself, in the above manner - such that the Commonwealth's obligations under the *Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Program* do not appear to be fulfilled.

6.2.23. The Commonwealth Central Authority must regularly visit and engage with the Hague Convention Countries that we have active inter-country adoptions with and develop a proper inter-governmental relationship with these countries. Building these relationships will ensure adequate due diligence, scrutiny and open communication. This process should be considered part of programmatic due diligence to protect the rights and safety of adopted children.

6.2.24. Amendments to require further Commonwealth oversight are recommended for this reason.

*Cooperation between Commonwealth & State Central Authorities and between State Central Authorities*

6.2.25. A related problem is the devolution by the Commonwealth of all powers relating to the practicalities associated with the adoption process itself (to the relevant State and Territory authorities). Indeed, the dispersal of powers amongst the several State Central Authorities creates a statutory framework that is both complex and multi-layered, which, coupled with the oversight point noted above can result in issues going unreported or not provided for in legislation.

6.2.26. The complexity of the system is indicated by the large Part 5 (Jurisdiction of the Courts) of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (Cth) detailing the separate jurisdictional limitations or otherwise of each State and Territory

(relating to each State Central Authority). The separate legislation in each State and Territory on the matter is further evidence of the system's intricacy.

6.2.27. A more centralised approach to the process may increase the transparency and reduce the likelihood of issues of concern going undetected. Further, centralisation may also assist the Commonwealth's to fulfil its duties under the *Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Program*.

6.3. **Current inter-country adoption position under State & Territory legislation**

6.3.1. We note the following adoption legislation for each State & Territory:

- *Adoption Act 1993* (ACT);
- *Adoption Act 2000* (NSW);
- *Adoption of Children Act 2011* (NT);
- *Adoption Act 2009* (Qld);
- *Adoption Act 1988* (SA);
- *Adoption Act 1984* (Vic); and
- *Adoption Act 1994* (WA).

6.3.2. Please see **Annexure A** for an overview of how the adoption legislation of each state and territory is similar and different.

6.3.3. The State and Territory legislation is comprehensive, and the majority of that legislation implements *The Hague Adoption Convention* (South Australia, Tasmania and Northern Territory do not), and specifically provide that the *best interests of the child* are to be paramount considerations. However, the legislation lacks consistency with each other State & Territory, both in form and substance.

6.3.4. The inter-country adoption process would be greatly aided by harmonizing all state/territory-level legislation, as a unitary legal framework would assist in streamlining the process by making it less complex and less convoluted. Despite the fact that state and territory Central Authorities process adoption applications locally, the system as a whole would benefit from a unified set of laws, as this would have the potential to enable

increased cooperation between the various Central Authorities, and sharing of resources and corporate knowledge.

6.4. **Proposed amendments to State & Territory legislation on inter-country adoption**

6.4.1. It would greatly assist the adoption process in this country if the areas identified below were consistent across all States & Territories:

- *Recognition and implementation of The Hague Convention* - All States & Territories must ensure that *The Hague Adoption Convention* is adequately implemented in each stage of the adoption process, noting that the legislation in South Australia, Tasmania and the Northern Territory does not expressly reference *The Hague Adoption Convention*.

- *Alignment with the CRC* – The inter-country adoption process must expressly comply with all the principles of the CRC. The CRC should guide the amendment of the legislation to ensure all provisions are compatible with the rights of children under the CRC.

- *Unified selection and eligibility criteria* - At present, selection and eligibility criteria for prospective adoptive parents vary greatly between the States & Territories. Unified selection criteria would assist in implementing a more streamlined process across Australia.

- *Placing a cap on the fees of processing adoptions to avoid prohibitive costs* - None of the current state-level legislation deals with the matter of cost, despite its relevance to prospective adoptive parents.

- *Recognition of adoption orders made in Convention countries (or perhaps approved Convention countries)* - We refer to and repeat our comments above with respect to orders and certificates issued by countries other than Australia.

- *Provisions permitting authorised persons (including professionally skilled accredited agencies and not-for profits) to process adoptions* - The Central Authority in each state or territory is responsible for processing adoptions. Under *The Hague Adoption Convention*, Central Authorities are permitted to delegate their duties to other persons (including organisations), however, at present few States & Territories make such provisions. Permitting approved persons and bodies to process adoption applications and assist in the adoption process would likely decrease waiting times, and has the potential to streamline the process. The use of professionally skilled not-for profit agencies may be a preferable

model as many of these organisations have a high level of expertise in working with children and are best placed to determine the best interests of the child. The accreditation process must ensure that these non-government bodies have demonstrated experience working with children and have the necessary expertise to undertake inter-country adoptions. Again, having a unified adoption system would assist non-government bodies in processing adoption applications in a consistent and expeditious manner.

- *Access to information and family tracing* - Currently, the majority of the States & Territories provide for access to information to adoption records and associated documentation. However, none make provisions requiring family tracing to have occurred prior to inter-country adoptions from foreign countries being approved in Australia. The legislation should be amended to ensure the following:
    - Adoption of unaccompanied or separated children should only be considered once it has been established that the child is in a position to be adopted: efforts to trace and reunite the child with family have failed or parents have consented to the adoption;
    - Unaccompanied or separated children must not be adopted in haste at the height of an emergency;
    - Any adoption must be determined as being in the child's best interests. This includes giving consideration to the possibility of the child being adopted by relatives in their country of residence. Priority should be given to adoption by relatives. If this is not an option, preference should be given to adoption within the community or culture the child came from.
    - The views of the child, depending upon the child's age and degree of maturity, should be sought and taken into account in all adoption procedures. The child must be counselled and duly informed of the consequences of adoption and of the child's consent to adoption. Such consent must be given freely and not induced by payment or compensation of any kind.
    - Adoption should not be considered:
        - Where there is reasonable possibility of successful tracing and family reunification is in the child's best interests;
        - If it is contrary to the expressed wishes of the child or the parents;

- Unless a reasonable time has passed during which all feasible steps to trace the parents or other surviving family members has been carried out. This period may vary with circumstances, in particular, those relating to the ability to conduct proper tracing; however, the process of tracing must be completed within a reasonable period of time. The International Committee for Red Cross should be consulted to provide verification that the family tracing process has been adequately undertaken and was unsuccessful.

- *Requirements and Support for adoptive parents* – Prospective adoptive parents should be required to include a plan on how they intend to maintain the child's cultural identity as part of their adoption process. The legislation should be amended to provide for compulsory cross cultural sensitivity training for prospective adoptive parents. Strategies should be designed to ensure the child's right to identity is not breached by the inter-country adoption.

## 7. Contact

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## Annexure A

| | Special provisions for inter-country adoption | Implements the Hague Convention | Provision re best interest of the child | Recognition of Australian adoption orders | Recognition of Convention Country adoption orders | Delegation of processing of adoption applications | Access to information |
|---|---|---|---|---|---|---|---|
| **ACT** | Part 4A | Yes, Division 4.2.A, Schedule 1 | Section 4(a) | Section 53 | Section 57L (with conditions) | Part 6 | Part 5 |
| **NSW** | Part 2 | Yes, section 106, schedule 1 | Section 7(a) | Section 102 | Section 107<br><br>Not automatic; the Director-General or the principal officer of an accredited adoption service provider may make an application to the court for an order recognising the adoption | Chapter 3<br><br>Section 11(1)(b) adoption services may be provided by accredited organisation<br><br>S 12(a) non-profit organisations may apply to be accredited | Chapter 8 |
| **NT** | No | No | Section 8 | Section 49 | Section 50 | Section 4 - Minister may delegate to a person any of his / her powers | Part 6 |

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| | | | | | | and functions under the act | |
| **Qld** | Part 9, division 3 | Yes, Schedule 1 | Division 2 | Section 291 | Section 292 (with conditions) | No | Part 11 |
| **SA** | No. | No | No | Section 20 | Section 21(a) | No | Part 2A (but only be reference to Open Adoptions) |
| **Tas** | No | No | Section 8 | Section 59 | Sections 59 and 60 | Part II, Division 1 (approved agencies may arrange adoptions) | Part VI |
| **Vic** | Part IVA | Yes, Schedule 1 | Section 9 | Section 66 | Section 69D (with conditions) | Division 3 - accredited bodies | Part V |
| **WA** | Part 3, Division 11 | Yes, Schedule 2B | Section 3 | Section 136 | Section 136A (with conditions) | Section 9 - Private adoption agencies - licensing | Part 4 |