

## *Position Statement: Intercountry Adoption*

### **Introduction**

Intercountry adoption is a complex and emotive area in which there have been a range of positions. Adoption in Australia, similar to other areas of practice, is influenced by the socio-political context of the time<sup>1</sup> and affects the adoption triad of parents, adoptees and adoptive parents. Historically, the practice of adoption has moved through a number of stages from one characterised by secrecy, to recognising harm to mothers, fathers and adoptees and the rights of children, and more recently to appearing to privilege prospective adopters in some jurisdictions.

Intercountry adoptions greatly benefit a number of children who have no family members who are able to care for them in their country of origin. Yet, for other children, intercountry adoption has been detrimental to their social, psychological and cultural wellbeing. Sadly, these include children who have been the victim of child stealing, coercion of parents and child trafficking. Therefore, it is of paramount importance that Australian society has policies that are based on clear principles and evidence.

This position statement details the principles and practices that the AASW believes should inform intercountry adoption. It outlines specific areas of concern and addresses the role of social workers.

### **Context**

The number of intercountry adoptions in Australia has always been small and is reported annually by the Australian Institute of Health and Welfare.<sup>2</sup> This number has declined, which is consistent with global trends in recent years. The result of this decline appears to have meant that older children and those with special needs are more likely to be adopted into Australia into the future.

The contemporary shift towards the goals of establishing programs with countries not party to the Hague Convention has been driven by influential lobby groups, and political positions consistent with privatisation and reducing government regulation. Specifically, the objects of the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (to which Australia is a signatory) are to ensure adoptions take place in the best interest of the child, and to establish cooperation between states to prevent abduction and the sale of or traffic in, children. Current Australian state and federal governments have instigated reforms that shift the responsibility of adoptions from government to the non-government sector. The success of these programs is measured by the number of adoptions and the speed by which they are achieved, not by their adherence to the Hague Adoption Convention.

At a federal level, the *Australian Citizenship Amendment (Intercountry Adoption) Bill 2014* and changes to the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998* now allow automatic recognition of adoptions made in Taiwan, the Republic of Korea and Ethiopia, countries that are not signatories to the Hague Convention on intercountry adoption. These amendments are likely to

<sup>1</sup> For comprehensive histories of local and intercountry adoption see: Quartly, M., Swain, S., & Cuthbert, D. (2013). *The market in babies: Stories of Australian adoption*. Clayton, Victoria: Monash University Publishing; Spark, C., & Cuthbert, D. (Eds.). (2009). *Other people's children: Intercountry adoption in Australia*. North Melbourne, Victoria: Australian Scholarly Publishing; Fronek, P. (2015). Intercountry adoption in Australia. *Encyclopedia of Social Work*.

<sup>2</sup> <http://www.aihw.gov.au/adoptions-publications/>

be used to facilitate adoptions with new countries including the United States where adoption is operated by the private sector. Unfortunately, wide consultation was not sought in relation to these changes and both amendments are criticised by a range of stakeholders and organisations such as UNICEF and International Social Services (ISS).<sup>3</sup> Contemporary intercountry adoption processes are frequently practised in a politicised environment in which the core values and principles of the Hague Convention and those of the social work profession are often challenged.

### Specific areas of concern

- In many cases involving intercountry adoption of older children, it is unclear how consent has been achieved consistent with article 4 of the Hague Convention. As a result this can affect the potential legitimacy of the adoption, raising legal as well as moral questions.
- In overseas situations where children cannot live with their parents or extended families and communities, strategies that maintain positive connections to family, community and culture are important. Adults who were adopted as children, even when their experience has been positive, have reported challenges related to family searching, family reunion and forming relationships with them, identity, culture and feelings of belonging and difference. This can be difficult to resolve when searching and reuniting is an overseas and cross-cultural experience. Accordingly, this is an area where much greater support is required.
- Adoptees often report to counselling and advocacy agencies feeling excluded from policy development and practices when these policies and practices are deemed to be in their best interests. Intercountry adoptees have identified the need for services geared towards their needs.
- Birth parents and families of adoptees have raised concerns of being marginalised and having little voice in the adoption processes.
- Prospective parents frequently come to overseas adoption due to infertility and are shifting their experience from a fertility system to a child-centred system. This can be a difficult transition due to the circulation of inaccurate information by lobbyists for overseas adoption in Australia. It is well reported that prospective parents are anxious to raise children and frequently face their own issues of grief and loss.<sup>4</sup> Education, information, empathy, support and/or counselling are important for prospective parents for whom there is often no certainty.

### Principles informing intercountry adoption

The AASW acknowledges, in line with the United Nations Convention on the Rights of the Child, that 'the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.'<sup>5</sup> For most children this is the family into which they were born.

If intercountry adoption is proposed it is the position of the AASW that the following principles should apply:

1. The best interest of the child is of paramount importance.
2. No parent should be coerced to give up their child for adoption, either directly or indirectly due to poverty or other external factors.

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[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Intercountry\\_Adoption\\_Bill/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Intercountry_Adoption_Bill/Submissions)

<sup>4</sup> Goldberg, A. E. (2010). The transition to adoptive parenthood. In T. W. Miller (Ed.), *Handbook of stressful transitions across the lifespan* (pp. 165-184). Springer New York.

<sup>5</sup> Convention on the rights of the Child. Preamble. Available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

3. Older children should give clear consent free from coercion that is not coerced before they are adopted.
4. Intercountry adoption should not be allowed from countries that cannot provide transparency for the three principles above.
5. Intercountry adoption should only take place with countries that are signatories to the Hague Convention.

## Intercountry adoption and social work

Professional social workers are involved in adoption practice at many levels and in a range of roles, from direct practice to policy development. In this complex field it is essential to involve knowledgeable, well-trained, accredited and supported professionals across this range, such as social workers. Regardless of role, and in line with the profession's values and principles, social workers engaged in this challenging area of practice will focus on the micro and macro perspectives of adoption and are educated to apply a critical approach to practice and policy. In addition social workers are driven by the understanding that focusing solely on particular aspects of practice is insufficient to deal with the complexities of a rapidly changing contemporary phenomenon such as adoption.

Viewed most broadly, adoption is a transfer of a child from their birth family to the care of another. This transfer of care incorporates the full legal rights and obligations of parenting and family membership. From the social work perspective, adoption is only acceptable when adoption is in the best interest of the child and all avenues to enable the child to stay with their birth family have been exhausted. Implicit in this understanding of adoption is the expectation that a child should only be considered for adoption if a thorough psycho-social assessment has been completed that indicates that a child is permanently unable to live with their birth family. Similarly, prospective adoptive parents should be thoroughly assessed to ensure their ability to take on the demanding role of parent. Intercountry adoptions provide additional complications because of the difficulty of ensuring that children are indeed available for adoption and all efforts have been made to enable the child to remain with their birth family. It was for this reason that the Hague Convention was concluded. It is for this reason that the AASW supports adoption of children only from countries that are also signatories of the Hague Convention.

## Overview of the AASW's position

In line with the guiding principles and specific areas of concern it is the position of the AASW that:

- The *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* should form the basis for intercountry adoptions to Australia. By doing so Australia would comply with the minimum standards set down in the United Nations' 1989 *Convention on the Rights of the Child*<sup>6</sup> and the *Universal Declaration of Human Rights*<sup>7</sup>.
- In keeping with the Hague Convention, the AASW believes the Australian Government should be encouraged to develop policy that favours the needs, rights and culture of children. In particular, governments need to remain cognisant of past practices for which Australian governments have apologised<sup>8,9,10</sup> and enshrine in policy and legislation that adoption should be free of all forms of coercion.

<sup>6</sup> <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>7</sup> <http://www.un.org/en/documents/udhr/>

<sup>8</sup> <http://www.ag.gov.au/About/ForcedAdoptionsApology/Pages/default.aspx>

<sup>9</sup> <http://www.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples>

<sup>10</sup> <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/apology-to-the-forgotten-australians-and-former-child-migrants>

- In addition, governments and adoption agencies need to seek the full participation of children when it is age appropriate, in all actions that affect them, including adoption, and provide adequate and appropriate lifelong post-adoption services for families, adoptive families and adoptees in intercountry adoptions.
- All stakeholders should be recognised and included during consultation when developing policy and legislation, not just prospective adoptive parents.
- A critical perspective must be exercised over the influence that lobby groups have on adoption policies and practices that are prospective parent focused and not in the best interest of the child.

## Conclusion

Intercountry adoptions greatly benefit a number of children who have no family who are able to care for them in their country of origin. However for other children, it has been detrimental to their social, psychological and cultural wellbeing. Sadly, these include children who have been the victim of child stealing, coercion of parents and child trafficking. Because of this, it is the position of the AASW that the Hague Convention on *Protection of Children and Co-operation in Respect of Intercountry Adoption* should form the basis for intercountry adoptions to Australia focusing on the rights, needs and best interests of the child.