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## Family Lawyers

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### SPEECH – INTER COUNTRY ADOPTION

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**Australia's Approach to the Convention on the Protection of Children & Co-Operation in Respect of Inter Country Adoptions ("the Hague Convention") – Family Law (Bilateral Agreements – Inter Country Adoption) Regulations 1998 ("Bilateral Agreement") which operates with China**

In December, 1998 Australia joined the 25 countries which had already ratified or acceded to the Hague Convention of 29 May, 1993. Ratification was authorised by the Federal Parliament in the Family Law Reform Act 1995 (Cth) when it inserted s 111C in the *Family Law Act 1975* (Cth). It was implemented by the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 ("the Hague Adoption Regulation") which came into force on 1 December, 1998. The Convention came into force on 1 May, 1995.

The Hague Convention gains its force of law in Australia through section 111C of the *Family Law Act 1975*. Section 111C(1) provides that regulations may be made where necessary to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit under the Convention on the Protection of Children and Co-operation in Respect of Inter Country Adoption ("the Hague Convention"). The *Family Law (Hague Convention of Inter Country Adoption) Regulations 1998* were enacted under this provision.

The purpose of the Regulations is to give effect to the Convention by making provision for the appointment of central authorities to carry out Australia's obligations under the Convention, to provide for recognition in Australian law of adoption Orders made in other Convention countries and to confer jurisdiction on courts to make adoption Orders under the Convention. In Australia, each state and territory has established a Central Authority and the Commonwealth Attorney General's Department has established a principle Central Authority.

#### **The relevant regulations under the *Family Law (Hague Convention of Intercountry Adoption) Regulations 1998***

In Australia adoption, including the adoption of children from overseas countries, has always been a matter of state law. The ratification of the Convention does not alter this principle, and state law is being altered to conform to the provisions of the Convention. The Hague Adoption Regulations, reg 34(1), renders the provisions of the regulations (other than those dealing with Commonwealth and state central authorities) inapplicable where a state has an Intercountry adoption law with the same effect as the regulations.

The essence of the Convention is that each country involved in the adoption, the state of origin and the receiving state, must approve the adoption. A request for the adoption of a child in an overseas country by parents habitually resident in Australia must (art 14) first be made to the central state authority or to an accredited body (being a non-profit organisation approved by the State Central Authority) of the state in which they reside. The state authority must first satisfy itself that the “applicants are eligible and suited to adopt” (art 15) and prepare a report on the applicants for transmission to the Central Authority of the state of origin of the child. The Central Authority of the state of origin must then prepare a report on the child, ensure that the necessary consents have been given and determine, on the basis of the reports prepared, whether “the envisaged placement is in the best interests of the child” (art 16).

Article 17 provides that a decision in the state of origin that a child should be entrusted to prospective adoptive parents may only be made if:

1. the Central Authority of that state has ensured that the prospective adoptive parents agree;
2. the Central Authority of the receiving state has approved such decision, where such approval is required by the law of that state or by the Central Authority of the state of origin;
3. the central authorities of both states have agreed that the adoption may proceed; and
4. it has been determined that if the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving state.

Only if those conditions are satisfied may the child be transferred to the receiving state under art 19.

The adoption order may be made in either state. The Hague Adoption Regulations require that the agreement of both central authorities is obtained and that the child is present in Australia at the time the order is made: reg 14 for the case where applicants resident abroad seek the adoption of an Australian child, and reg 15 where Australians seek the adoption of a child habitually resident in another Convention country. Under art 23 of the Convention an adoption compliance certificate issued by a competent authority of the state of adoption “shall be recognised by operation of law in the other contracting states”. Regulation 19 provides that an adoption compliance certificate is evidence that the adoption was agreed to by the relevant central authorities and complies with the Convention. Provision is made for the recognition of such adoptions in reg 18. It must be noted that Australia is not considered a country of origin, and is able to place all children within Australia.

If the law governing the adoption does not provide for the termination of the legal relationship between the child and its natural parents, recognition of the order will not by itself terminate that relationship in Australia either. But under art 27 and reg 20 it is possible to apply to an Australian Court for a conversion order whereby the legal relationship is extinguished. In Pt 5 of the Hague Adoption Regulations the courts having jurisdiction in adoption matters of the state in which the adoptive parents are habitually resident are invested with federal jurisdiction.

Although China has not ratified the Convention it became a signatory to the Convention in November, 2000. Provisions proceeding on the same basis as the Convention, namely that both

the state of origin and the receiving state must agree to the adoption, are found in the Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998 which came into force on 14 July 1998. So far those regulations only apply to the People's Republic of China.

## **Legal Procedure (Victoria)**

### **Adoption (Amendment) Act 2000**

Victoria is a state of Australia which has been extremely proactive in progressing state adoption law to bring Australia's obligations to the Hague Convention on a state level. Currently Victoria is operating under Commonwealth Regulations in relation to adoptions under the Hague Convention. Adoption law in Victoria with respect to Australian adoptions are governed by the Adoption Act 1984. After the amendments take effect the Adoption Act 1984 will also regulate Hague adoptions.

On 6 June, 2000 the *Adoption (Amendment) Act 2000* was assented to which amended the *Adoption Act 1984* (Vic). The amendments come into effect on a day or days to be proclaimed or if not proclaimed before 1 January 2002 then on this day. The amendments flow from Australia's ratification of the Hague Convention on Intercountry Adoption as well as to give effect to the Bilateral arrangement on the adoption of children between Australia and China.

The purpose of the amendments are to amend the Adoption Act (Vic) in ways that are consistent with the fundamental purpose and intention of the Hague Convention. The amendments were designed to give effect to Article 4 of the Convention which provides that an Intercountry adoption can only take place if the competent authorities of the state of origin have established that the child is adoptable and that such an adoption is in the best interests of the child.

The Adoption (Amendment) Act 2000 inserts a new Part IVA into the Adoption Act 1984. The sections under Part IVA were drafted as a result of the ratification by Victoria of the Hague Convention in respect to Intercountry adoption. This part incorporates the provisions of the Convention in Victorian law.

Section 69A sets out the requirements for the adoption of a child from Victoria who is going to live in a Convention Country. Before the court can make an order for the adoption of a child it must be satisfied that both the relevant Central Authorities have agreed to the adoption and that it is in accordance with the Convention.

Section 69B provides the requirements for the adoption in Victoria of a child from a Convention country. Both relevant Central Authorities have to agree to the adoption and that the adoption complies with the Convention. The adoption must also comply with section 15 of the Adoption Act 1984.

Section 69K provides that the Secretary to the Department of Human Services is appointed to be the Central Authority for Victoria.

Section 69L gives the State Central Authority all the functions of a Central Authority under the Hague Convention except any functions ascribed to the Commonwealth Central Authority under Commonwealth regulations.

Applications for adoption may be made to the Supreme Court or the County Court at the option of the applicant. If the County court considers it, in all the circumstances, more appropriate

to hear the matter in the Supreme Court, the County Court may direct that the application be transferred to the Supreme Court, however this rarely, if ever occurs.

In the administration of the Adoption Act 1984, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

For further background I have attached a paper written by Helen Brain, Manager Statutory Services, of the Department of Human Services which provides an excellent background of the implementation of the Hague Convention in Australia (See Attachment "A1").

### **Who may be adopted? – (NB – Victorian Procedure)**

Section 10 provides that the Court may make an adoption order where the child is under 18 years of age, OR where the child had been brought up, maintained and educated by the applicant or some close relatives of the applicant.

### **Who May Adopt?**

Section 11 provides that the following may adopt:

- (a) a married couple of at least two years
- (b) a relationship of 2 years duration which is recognised as a traditional marriage by an Aboriginal community.
- (c) A de facto relationship of not less than 2 years
- (d) or a combination of the above where the sum of the total of the relationships is not less than 2 years.

Under section 11(3) the court may also grant an adoption order to a single person where the court is satisfied that special circumstances exist in relation to the child which make it desirable to do so.

Additionally, section 15 requires that the court must be satisfied of certain matters before it can make an order granting the adoption. This includes receiving a written report as well as satisfying itself that the applicants satisfy the prescribed requirements in relation to the approval of the applicants and child. The prescribed requirements are proscribed under Regulation 35 of the Adoption Regulations 1998 (See Attachment "A").

Regulation 35 of the Adoption Regulations 1998 provide what the Court must consider before any adoption order is granted. Regulation 35 Provides:

For the purpose of section 15(1)(a) of the Act, the prescribed requirements are that -

- (e) the personality, age, emotional, physical and mental health, maturity, financial circumstances, general stability of character and the stability and quality of the relationship between the applicants and between the applicants and other family members, are such that he or she has the capacity to provide a secure and beneficial emotional and physical environment during a child's upbringing until the child reaches social and emotional independence;

- (f) if an applicant has had the care of a child before applying for approval as suitable to adopt a child, he or she has shown an ability to provide such an environment for the child.

## **Wishes of the Child.**

Section 14 provides that the court shall not make an adoption order unless the court is satisfied that so far as practical the wishes and feelings of the child have been ascertained and, and due consideration given to them, having regard to the child's age and understanding. The 2000 amendments to section 14 strengthens the provisions relating to the wishes of the child by requiring the child to undergo counselling from an approved counsellor as to the effects of the adoption, if appropriate to the child's age and understanding. The counsellor is required to write a report to the court.

## **Appeals**

Division 2A S129A provides for review with VCAT (See Attachment "B").

## **Administrative Procedure – (Adoption Application, Allocation and Placement) – Victorian (See Attachment "C": Process of placement adoption of Intercountry children at page 13 Australian Institute of Health & Welfare Canberra)**

Victoria currently has working arrangements with a number of countries, either through the bilateral Government to Government arrangements or under the Hague Convention. There is certain basic information and requirements for all countries (noting that information provided below is subject to change without notice and based on a report distributed by the Department of Human Services distributed to parents in August, 2001)

## **Information and Application**

5. Inquiry received by Intercountry Adoption Service (ICAS) and Information Kit sent out with invitation to Information Night. There are 4 information nights held each year.
6. Attendance at Information Night is required and both applicants should attend. Information is provided, including a Registration of Interest form.
7. Registration of Interest form received by Department and an application is offered. The Application includes; application form, medicals, police checks, references, financial and family information forms.

## **Education Sessions**

8. When all documentation has been received, cleared by ICAS, and provided all treatment for infertility has been completed, applicants are invited to attend education groups. These are generally held on 3 days over a 3 week period; sessions are conducted both on weekdays and at weekends. Both applicants must attend all sessions.
9. Following Education Sessions, applicants are requested to write their life stories, prepare a genogram and a country project on one or two countries of their choice.

## **Assessment**

10. (a) Once the assessment documentation has been received, a Private Contract Worker (PCW) will undertake the assessment. An assessment consists of a number of interviews by the PCW, over a 3 month period. The PCW will provide their written assessment to ICAS. Applicants receive a copy of their Home Study and are invited to make comments.
  - (b) In Victoria there is a policy that children over the age of nine are not placed with adoptive families except in exceptional circumstances (such as in the case of siblings where the younger sibling is under nine).
  - (c) In Victoria there is a policy that requires one or other (or both) parents to be available for full time care of a pre-school child for the first six to twelve months after placement. For school age children the expectation is for parent/s to be available for out of school hours. Note that most employed applicants are entitled to Parental Leave/Adoption Leave.
11. Outcomes of application are:
    - (a) Approval
    - (b) Deferral
    - (c) Non-approval

All decisions are conveyed verbally and in writing by the Unit Manager, ICAS to the applicants. Reasons for (b) and (c) will be discussed with the couple, as well as given in writing. There is a procedure for appeals.

## **Preparation of the File for Overseas**

12. The Home Study and the specific documents that the overseas country requires from the applicants are compiled and sent to the overseas country by ICAS.

## **Allocation**

13. Allocation of a child is received by ICAS and discussed with applicants by their PCW. The allocation is considered for a minimum of 24 hours before acceptance or non-acceptance by the applicants.

Further family formation undertakings to be signed, a pregnancy test is required and applicants are given a letter plus sponsorship papers to lodge with Department of Immigration and Multicultural Affairs.

14. The acceptance of child is conveyed to the overseas country by ICAS. Further documents sometimes need to be sent at this stage.
15. Procedures in overseas country are completed; these include medical clearance and legal procedures so that child may be issued a visa to travel.

- 16. Applicants are notified by ICAS when the child is ready to travel and they advise ICAS of travel plans prior to departure. A pregnancy test is required at that time.
- 17. Applicants' travel arrangements are conveyed to overseas country by ICAS.
- 18. Applicants travel to overseas countries and bring their children home.

## **Guardianship of Child**

For placements from some countries the child will enter Australia under the guardianship of the Minister for Immigration and Multicultural Affairs. Guardianship is delegated to the Secretary for the Department of Human Services under the Immigration (*Guardianship of Children*) Act 1946. Guardianship ceases on the granting of an adoption order in Victoria. This means that until an adoption order is granted in the Victorian County Court, the Secretary of the Department of Human Services is the legal guardian of the child. Permission must be sought from the guardian to remove the child from Australia during this period and for medical procedures where consent is required.

After a period of supervision of the placement (normally twelve months), which is a function of the guardianship delegation, the case will be reviewed and, if approved, an application for an adoption order may be made to the Victorian County Court under Section 15(1) of the Victorian Adoption Act 1984 or for some countries where an adoption is not automatically recognised under the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998.

After the adoption has been completed in Australia, an application is made to the Registry of Births, Deaths and Marriages for a birth certificate (Sixth Schedule). Australian Citizenship can then be sought through the Department of Immigration and Multicultural Affairs. The child is not entitled to inheritance under a will until after the adoption occurs in Victoria, so it is necessary to make special provision through a solicitor if the adoptive parents want inheritance rights to apply prior to the adoption.

The Adoption Orders from China and Hague Convention Countries with a full Adoption Order are automatically recognised on entry to Australia. Applicants apply for a grant of Australian Citizenship for their child in Australia and an Australian passport.

Applicants are requested to book an appointment for their child with Royal Children's Hospital (RCH) Intercountry Adoption Clinic within two weeks of their return (RCH Kit given at time of allocation) from overseas.

## **Post Placement Supervision (PPS) for all Placements**

- 19. Supervision of placement by the PCW is usually for 12 months or 2 years for Romania. The first visit is within two weeks of returning home. A total of three or more visits, as required, will be made over a ten month period (or a 2 year period for Romania). Both parents are requested to be present.
- 20. Copies of PPS reports and photographs are regularly sent to the child's country of origin by ICAS.
- 21. In addition to the PCW report, families are required to provide regular reports to ICAS on the progress of the placement. Copies of the self reporting forms will be issued at the time

- of allocation.
22. A final report is prepared for all placements. Prior to the report, applicants will provide ICAS with a doctor's report, a report from the Maternal and Child Health Nurse, teacher (if applicable) and photographs of the child.
- For adoptions recognised under the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998, and for China, the involvement of the Department ceases at the time of the final report. For most countries this will be at 12 months, but for Romania it will be at 2 years, as Romania requires 5 reports over this period.
23. If finalisation of the child's placement is recommended, the legalisation process commences. The placement proceeds to the preparation stage of legal documentation for Court. Applicants can complete their own court documents, or use the services provided by the parent support organisations or engage a solicitor to prepare their application.
- If not recommended, a review of the placement will take place.
24. Applicants attend adoption hearing at the County Court with a representative from Department of Human Services, family members, friends and solicitor. Once the Adoption Order is signed by the Judge, parents become full legal parents of the child, and the Department's guardianship responsibilities cease.
25. An Adoption Order and Memorandum of an Adoption Order are issued to Department of Human Services and forwarded to overseas country. File is then closed.
26. Applicants apply for a Victorian birth certificate for their child, Evidence of Australian Citizenship and an Australian Passport.

## **Statistics**

- Ø In a 12 month period between June, 1999 and June, 2000, 301 foreign born children joined Australian families while 265 local born infants were adopted nationwide.
- Ø Intercountry adoptions in Australia jumped from less than 10% of all adoptions in 1980 to 1981 to more than 50% in current times. (report Herald Sun). See Attachment "D": Intercountry placement adoptions 1999-00 (page 14 Australian Institute of Health and Welfare Canberra.)
- Ø Into my state, in Victoria, 700 foreign children have been adopted by Victorian families in the financial year 1988 to 1989.
- Ø According to up to date information from the Department of Human Services approximately 120 adoption Orders are made in Victoria each year with 70-80 Intercountry 20-30 local and 10 spousal adoptions.
- Ø In Australia it is recognised that children should remain as close as possible within their own communities and that the adoption of foreign babies can only be justified if local authorities have exhausted all other options. Intercountry adoption is viewed as a last resort. This is a push by UNICEF and has been recognised in Victoria's Adoption Act which was amended last year to formally recognise the aim at keeping children within

their country of birth. There are indications that China has changed its policy to give priority to adoptions by applicants with a Chinese heritage. As yet this has not impacted on Australian Chinese adoption applications.

- Ø For the years 1991- 1992 1998- 1999 most of the adopted children have come from Korea (608), India (225), Thailand (208), The Philippines (168) and Colombia (166). See Attachment “E”: Intercountry placement adoptions by countries of origin 1991-92 to 1999-00 (page41 Australian Institute of Health & Welfare Canberra)

## **Criticisms – Hague Convention**

Commentators have argued that the adoption process is too bureaucratic and cumbersome. Adoption practice in Australia is fragmented and potential adopters may be tempted to forum shop between states. However, it is difficult to do so as they must show that they are genuinely resident in a state before their application will be considered. Different age requirements cause difficulty to overseas governments when considering Australia’s program as a whole. However, on a practical level overseas governments only deal with applications that have already been processed in Australia.

## **Bilateral Arrangement between Australia and China**

Australia has a bilateral arrangement with the People’s Republic of China (‘PRC’) which is recognised by Australian law under the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998*. These regulations came into force on 14 July 1998, and only apply to the PRC.

China has signed the Hague Convention in Intercountry adoption on 30 November 2000, although they have not ratified it as yet. Signing the Convention is a strong indication that it will be ratified in the future in which case the bilateral arrangement will not apply.

## **Background**

Prior to Australia’s ratification of the Hague Convention on Intercountry Adoption every child entering Australia for the purposes of adoption did so under the guardianship of the Minister for Immigration and Multicultural affairs. Any adoption order made in the PRC could not be automatically recognised in Australia, as Australian law did not allow this. It was a critical issue for the PRC to have Australian law recognise an adoption order made in the PRC automatically, and therefore, allowing children to obtain Australian citizenship. The Chinese authorities were concerned that adopted children would become “stateless” as once an adoption order was made, the child’s citizenship was removed at the time of the order. Automatic recognition is granted to Chinese adoption Orders under section 69W of the Adoption Act.

In 1998 the Family Law Act was amended by 111C to allow regulations to be made to give effect to any bilateral agreement or arrangement on the adoption of children. The *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998* were then made under this section.

The Victorian Department of Human Services has led Australia’s negotiations with China on behalf of the State and Territory Community Services Ministers. The agreement between Australia and China took 6 years to negotiate. This was due to a change in the Chinese Ministry responsible for adoption. In addition, the Chinese Authority required a guarantee that

adoptions would be automatically recognised under Australian Law. The 6 years of negotiations culminated in the exchange of Diplomatic letters between the Australian Embassy, Beijing, and the Ministry of Civil Affairs of the People's Republic of China, marking the commencement of the Intercountry adoption program between Australia and China on 28 December, 1999. In March 2000 the first Australian files were sent to China. As a gesture of good will in commencing the program, the China Centre of Adoption Affairs (CCAA), indicated that they would halve the time lines for this first group. The files were translated and processed, with children matched and Notices (invitations) to Travel dispatched in half the anticipated time of ten to twelve months.

### ***The Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998.***

Regulations 5 and 6 are the substantive provisions in the regulations.

Reg 5(1) provides the scope of the application, where the regulations apply if:

- (a) an adoption, by a person habitually resident in Australia, of a child who is habitually resident in an prescribed overseas jurisdiction is granted in accordance with the laws of that overseas jurisdiction; and
- (b) an adoption compliance certificate issued by a competent authority of that overseas jurisdiction is in force in relation to the adoption

Reg 5(2) provides that the adoption is recognised and effective on and after the date that the adoption takes effect in the overseas jurisdiction

Reg 6 provides that recognition of the adoption includes the recognition that:

- (c) the relationship between the child and each of the child's adoptive parents is the relationship of child and parent; and
- (d) each adoptive parent of the child has parental responsibility for the child; and
- (e) the adoption of the child ends the legal relationship between the child and the individuals who were, immediately before the adoption, the child's parents; and
- (f) the child has the same rights as a child who is adopted under the laws of a State

### **Part IVB Adoption Act 1984**

The amendments inserts a new Part IVB in the Adoption Act 1984 Headed "Part IVB – Bilateral Arrangements For Intercountry Adoption" Sections 69T to 69Y are the relevant sections.

Section 69U provides that, unless a declaration has been made declaring that an adoption is not recognised under 69W, an adoption in a prescribed overseas jurisdiction (ie China) of a child habitually resident there by a person habitually resident in Australia is recognised if the adoption complies with the laws of that overseas jurisdiction and there is an adoption certificate in force for that adoption. Such adoption is effective from the date that the adoption takes effect in the overseas jurisdiction.

Section 69W provides for the Secretary to apply for, and the Court to make, a declaration that a particular adoption in a prescribed overseas jurisdiction is not recognised and has no effect in Victoria. This can only be done where the Court Determines that the adoption that would otherwise be recognised is manifestly contrary to public policy, taking into account the best interests of the child.

Section 69V provides that unless a declaration has been made under section 69W, and adoption under section 69U has the same effect as an adoption order under the Adoption Act 1984.

## Relevant Statistics

- Ø Australia is the 13<sup>th</sup> country to enter into a bilateral adoption agreement with China (as of 10 November, 1999).
- Ø Figures provided by adopting countries indicate that China has approximately 6,000 babies adopted by foreigners per year.
- Ø Statistics collected by Australia on 10 November, 1999 indicated that about 4,000 Chinese girls were adopted by US couples and 2000 a year go to each of the 12 other countries including Canada, Britain, France, Spain, Ireland, Belgian, Holland, Denmark, Sweden, Norway, Finland and New Zealand.
- Ø This program is now underway. The first 16 children (to 5 Australian States and Territories) arrived in September 2000.
- Ø Applicants need to be a minimum of 30 years of age and up to 45 to adopt an infant, 45-50 years to adopt a child up to 3 years, 50-55 years for an older child. As from 1 August 2001 the CCAA has advised that applicants up to the age of 45 are eligible to adopt an infant.
- Ø Couples should be married, though length of time of marriage is not stipulated by China. Single applicants are eligible to apply but priority may be given to couples. China will not accept applications from same sex couples or from single gay or lesbian applicants.
- Ø There should be a maximum of 3 children in the applicant family, unless there are exceptional circumstances. There should be a minimum of 18 months age difference between children in the family and the new child being placed.
- Ø There are both infants and older children and very occasionally twins for adoption. 95% of the children are female. The infants for adoption are aged between 8 months-20 months of age.
- Ø The cost at this stage can only be given in approximate amounts is, US\$4,500 this includes a \$3,000 US donation to the Chinese institution and the balance for a liaison guide in China (not optional).
- Ø Applicants should expect to wait 12 months for an allocation. There is approximately 8-10 weeks between allocation and travel. Both members of the applicant couple are expected to travel to China and can expect to be there for a period of 3 weeks. This is because the child must undergo the medical clearance required under Australian Immigration Law.

- Ø Adoptions from China are automatically recognised on entry to Australia.
- Ø The first family – child match was made in early June 2000 with others made in the following 2 months. It was estimated in July, 2000 that a Bilateral agreement would result in 100 Chinese/Australian adoptions each year. This figure is not a proscribed amount and may increase with time. Currently there are close to 100 applications being processed.
- Ø It is too early to tell whether the Bilateral Arrangement will need reform. The opinion proffered by the Department of Human Services is that it takes 12 months to 2 years to firmly establish a program.

### **Privately Arranged Adoptions**

The only circumstance where a Visa may be granted for a child adopted privately overseas is where the adopted parents have been living overseas for more than 12 months at the time of the migration application. They must show that:

- Ø Their residence overseas was not contrived to deliberately bypass any requirements concerning entry of adopted children into Australia.
- Ø They have lawfully acquired full and permanent parental rights by the child's adoption. This means that the adoption Order must sever the legal relationship between the child and its natural parents.
- Ø The relevant authorities and the overseas country have approved the child's departure to Australia.
- Ø The child also needs to meet the standard migration requirements including health criteria.
- Ø Save for the prescribed Bilateral agreement as in for China, the adoption Orders made under Australian law after the child arrives in Australia is a permanent resident and at least one of the adopted parents is an Australian citizen, the child will automatically acquire Australian citizenship. Application for Australian citizenship is not required but parents need to apply for a certificate of evidence (Citizenship also known as a declaration certificate).