

For information  
on 11 March 2004

**Bills Committee on  
Adoption (Amendment) Bill 2003**

**Response to the Submission from Mother's Choice**

**Purpose**

This paper sets out our response to the submission from Mothers' Choice to the Bills Committee on 11 February 2004.

**Background**

2. We note that Mothers' Choice is generally in support of the expeditious passage of the Bill, and has rendered comments on two specific issues -

- (a) Mother's Choice fully supports the proposed abolition of privately arranged adoptions by unrelated persons through individuals, barristers or attorneys. However, they have suggested allowing licensed bodies other than those authorized by the Social Welfare Department (SWD) to make adoption arrangements so as to give more choices to birth parents and prospective adoptive parents; and
- (b) Mother's Choice has suggested revising clause 31 (section 26) of the Adoption (Amendment) Bill 2003 (the Amendment Bill), so that it can be construed flexibly to allow Accredited Bodies (ABs) to facilitate not only intercountry adoptions, but also to continue with their local adoption efforts in the HKSAR.

3. In relation to paragraph 2(a) above, we understand that Mother's Choice would like to see non-governmental organizations (NGOs) which are interested in handling adoptions on their own be allowed to do so. As for paragraph 2(b) above, as far as we are aware, Mother's Choice has never been involved in processing local adoptions and the question of 'continuing

with their local adoption efforts' in the HKSAR is perhaps more of a philosophical concern.

### **Present Position**

4. The present regime in respect of local adoption and the impact of the Adoption (Amendment) Bill on the current arrangements on local adoption are set out in the paper 'Changes arising from the Adoption (Amendment) Bill 2003 – Impact on the Current Arrangements on Local Adoption' (ref : LC Paper No. CB(2) 1566/03-04(02)). Having carefully considered the views of Mother's Choice and the local situation, we believe that our proposed system of accreditation would enable NGOs with interest in making arrangements for adoption to do so if they meet the accreditation criteria.

5. At present, SWD takes up all duties in relation to local adoption of DSW wards<sup>1</sup> by local prospective adopters, whereas NGOs (Mother's Choice and International Social Services - Hong Kong) assist in arranging adoption for DSW wards with special needs through their adoption network in overseas countries.

6. The number of adoption applications in Hong Kong in respect of local children is relatively small each year and most of these cases involve children who are wards under the legal guardianship of DSW. For example, from April to December 2003, a total of 109 adoption orders granted/received was handled by SWD. Among them, 92 (or 84%) involved adoption of DSW wards (76 local adoption cases and 16 overseas adoption cases), while only 17 (or 16%) were cases of privately arranged adoptions, of which 2 were adoptions by unrelated persons. In the case of children who are wards of DSW, being the legal guardian, DSW has the full obligation and responsibility of overseeing the children's long-term welfare plans and making decisions as to the eligibility of applicants and whether placements for adoptions should proceed. Involvement of SWD in these cases is therefore essential.

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<sup>1</sup> A DSW ward means a child or juvenile to whom DSW has been appointed his legal guardian under section 34(1)(a) of the Protection of Children and Juveniles Ordinance (Cap. 213).

7. The provisions in the Bill would not affect the role of NGOs in relation to privately arranged adoptions by related persons. Privately arranged adoptions by unrelated persons will be affected. Clause 29 (section 23A) of the Amendment Bill seeks to prohibit a person, other than SWD or a person authorized by SWD, to make arrangements for the adoption of a child or place a child for adoption, unless the prospective adoptive parent(s) is/are his/her birth parent(s) or relative(s), or save in pursuance of an order of the Court. The justifications for this provision were set out in the paper ‘Changes arising from the Adoption (Amendment) Bill 2003 – Impact on the Current Arrangements on Local Adoption’ (ref : LC Paper No. CB(2) 1566/03-04(02)).

8. The Amendment Bill also contains provisions that empower DSW to authorize persons to handle all kinds of adoption cases, including local adoptions by unrelated persons (be these DSW wards or not). This is reflected in the Amendment Bill as follows -

- (a) under clause 29 (section 23A(1)<sup>2</sup>) of the Amendment Bill, persons (corporate or incorporate), if authorized by DSW, may make arrangement/placement for adoption;
- (b) clause 31 (section 27(5)<sup>3</sup>) of the Amendment Bill provides that DSW may designate ABs to assist in assessing adoption applications (including applications made under section 27(1), which may be applications for local adoption); and

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<sup>2</sup> Section 23A(1) provides that :

“(1) Other than the Director or any person authorized by the Director for the purposes of this subsection, a person shall not make arrangements for the adoption of an infant, or place an infant for adoption, unless –

- (a) the prospective adopter or (where 2 persons are to apply jointly as spouses for adoption of the infant) either of the applicants is a parent or relative of the infant; or
- (b) the person is acting in pursuance of an order of the Court.”

<sup>3</sup> Section 27(5) provides that :

“On receipt of an application for an assessment under subsection (1) or (2), the Director may –

- (a) designate an accredited body to collect such information as the Director may reasonably require to enable him to make the assessment;
- (b) in making his assessment, take into account any recommendation made by that body on the basis of such information.”

- (c) clause 31 (section 29(2)<sup>4</sup>) of the Amendment Bill provides that DSW may authorize ABs to assist in proceeding with adoption placements (including placements following applications made under section 27(1), which may be applications for local adoption).

9. Pursuant to the above, after the legislative amendments, NGOs duly accredited as ABs under section 26(1) may, subject to section 27(5) and section 29(2), be allowed to handle local cases of adoption by unrelated persons (be these DSW wards or not) as ABs.

10. In fact, the current system has operated smoothly. Over 90% of DSW ward cases referred for local adoptions are placed by SWD within 3 months, and it normally takes about 10 to 12 months for the whole process to be completed (with 6 months being the statutory adoption placement period). As explained at the last meeting of the Bills Committee held on 4 March 2004, given the relatively small number<sup>5</sup> of local adoptions by unrelated persons (be these DSW wards or not), initially, we envisage that SWD will be responsible for making arrangements for such adoptions. The Bill contains specific provisions to enable NGOs to become accredited as ABs. Depending on further developments, ABs may assist in the assessment and placement process in future.

## **Presentation**

11. Members may wish to take note of the information above to facilitate consideration of the Adoption (Amendment) Bill 2003.

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<sup>4</sup> Section 29(2) provides that :

“If the Director decides that an applicant under section 27(1) or (2) is suitable to be an adoptive parent, he may, as and when the Director is of the opinion that the placement of a particular infant with the applicant would be in the best interests of that infant, proceed with the placement or authorize an accredited body to proceed with the placement.”

<sup>5</sup> For example, from April to December 2003, a total of 78 local adoption orders granted for adoptions by unrelated persons (76 involving DSW wards and 2 privately arranged) were handled by SWD. Between April 1999 and December 2003, all the 25 privately arranged adoption cases by unrelated persons were handled by SWD (e.g. as the GAL).