

Intercountry adoption Policy

1. Purpose

This policy specifies how the Department for Child Protection (DCP) meets its obligations under the *Adoption Act 1988* (the Adoption Act) as well as its obligations under the *1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* (the Hague Convention) and any bilateral agreements for intercountry adoptions between Australia and other countries.

2. Scope

The policy applies to DCP staff involved in the process for intercountry adoptions.

In this policy, intercountry adoption refers to adoption of a child habitually resident overseas through existing established arrangements with partner countries.

Intercountry adoption predominantly occurs in relation to 'unknown' children in partner countries but may also include adoption of 'known' children in the case of:

- a child born overseas by a relative in Australia (relative child adoption)
- a sibling of a child born overseas (subsequent sibling adoption)
- a child born overseas that is known but not related to the adoptive parent (known non-relative adoption).

This policy does not include local adoption or adoption from care. Please refer to the [Local Adoption Policy](#) for more information.

3. Authority

3.1 Legislative context

- [Adoption Act 1988](#) (Adoption Act)
- [Adoption \(General\) Regulations 2018](#) (Adoption Regulations)
- [Immigration \(Guardianship of Children\) Act 1946](#)
- [Child Safety \(Prohibited Persons\) Act 2016](#)
- [Family Law \(Hague Convention on Intercountry Adoption\) Regulations 1998 \(Cth\)](#)
- [Family Law \(Bilateral Arrangements – Intercountry Adoption\) Regulations 1998 \(Cth\)](#)

3.2 Whole of Government requirements

- Article 21 of the [United Nations \(UN\) convention on the rights of the child](#)

3.3 DCP requirements

DCP fulfils its obligations under the Adoption Act and the Adoption Regulations in accordance with the DCP [Legislative Compliance Framework](#).

- [1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption](#)

- Memorandum of Administrative Arrangement between DCP and the South Australian Registrar of Births, Deaths and Marriages (accessible via the [DCP Partnerships Agreements, Agreement Register](#))
- [Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Program](#)
- [National Practice Agreement Intercountry known non-relative child adoption](#)
- [National Practice Agreement Intercountry relative child adoption](#)
- [National Practice Agreement Intercountry subsequent sibling adoption.](#)

3.4 Principles

This policy is informed by the objects and guiding principles of the Adoption Act the objects of the Hague Convention and Article 21 of the UN convention on the rights of the child. These include:

- the best interests of children and young people both in childhood and in later life is the paramount consideration
- the child or young person's views must be taken into account
- other options for providing permanency of care for a child or young person in the child or young person's country of origin are to be considered prior to adoption
- openness in adoption is encouraged as being in the best interests of the child or young person
- if contact with the birth family is not appropriate or possible, the child or young person should have knowledge of their birth family and cultural heritage
- access should be provided in regards to certain information relating to adoptions.

3.4.1 Regulatory framework

Most intercountry adoptions are governed by the Hague Convention, which places obligations on both the child's country of origin and the receiving country. Countries that are not party to the Hague Convention may enter into bilateral agreements that often reflect similar requirements to those set out in the Hague Convention.

Australia does not require partner countries to have signed the Convention but does require the principles and standards of the Convention to be met.

DCP does not facilitate ad hoc intercountry adoptions of an unknown child from a country with which Australia does not have a regulated program.

3.4.2 Ethics of intercountry adoption

The Hague Convention sets out agreed minimum standards and procedures to regulate the adoption of children between countries.

The core belief of the Hague Convention is that the birth family or extended family should raise a child wherever possible. Where care by birth parents or extended family is not possible, then other forms of care in the country of origin should be considered. Only when all other placement options for a child in their country of origin have been explored and ruled out, should intercountry adoption be pursued and only if this is determined to be in the best interests of the child. Birth parents and family should be counselled and involved in this decision, including giving informed consent to an adoption.

DCP works to safeguard and protect the rights, welfare and interests of children being adopted. DCP only facilitates intercountry adoptions if the principles and standards of the Hague Convention are met in practice, regardless of whether the country has signed the Convention.

Under no circumstances will DCP put pressure on an overseas country to make children available for adoption or coerce or influence the decision of the overseas guardians of a child.

4. Policy requirements

Intercountry adoption occurs when an Australian citizen or permanent resident, who is habitually resident in Australia, adopts a child from another country through the authorities in that country.

An adoption order, made either in the child's country of origin or in an Australian state or territory, establishes a legally recognised parent-child relationship between the child and their adoptive parents. In South Australia adoption orders are made by the Youth Court.

DCP works in child focussed way with all parties to an adoption. The parties to an adoption are the child or young person being adopted, the birth parents who are considering adoption for their child as well as persons who wish to adopt.

4.1 Roles and responsibilities

Each country that signs the Hague Convention is required to have a central authority to implement its standards. The Australian Government Department of Social Services (DSS) performs the duties of the Australian Central Authority under the Hague Convention. DSS is responsible for establishing and maintaining intercountry adoptions with overseas countries and monitors compliance with the Hague Convention.

There is also a central authority for each state and territory. Responsibility for intercountry adoption is shared across these central authorities. DCP is the central authority for South Australia. Intercountry adoptions are arranged by DCP in conjunction with overseas accredited government and non-government adoption authorities.

Australia has agreements with a number of partner countries for intercountry adoption. These are listed on the [Intercountry Adoption Australia](#) website. At any point in time, some of these programs may be inactive, placed on hold or closed.

The South Australian Government determines which of these overseas adoption programs it will engage with to arrange an adoption. Participation in partner country programs differs across states and territories in Australia.

Each partner country specifies its own particular requirements, including the characteristics of children in need of intercountry adoption and eligibility requirements for prospective adoptive parents.

DCP's role in facilitating adoption varies according to whether it is an adoption finalised in Australia, or an adoption finalised in the country of origin.

A key function undertaken by DCP is managing the Prospective Adoptive Parents Register (PAPR). Pursuant to regulation 7 of the Adoption Regulations the PAPR is divided into sub-registers relating to children of a particular kind. Prospective adoptive parents apply to be registered under a particular sub-register. DCP operates the following sub-registers:

- Local Adoption Register
- Intercountry Adoption Register.

As far as possible, DCP intends that the Intercountry Adoption Register reflects the diversity of the South Australian community and includes prospective adoptive parents who originate from and/or share cultural ties with the overseas partner countries.

Adoption finalised in Australia

Under the Federal *Immigration (Guardianship of Children) Act 1946*, a child placed with prospective adoptive parents overseas is under the custody of the Minister of Immigration from when the child arrives in Australia until the adoption order is made by the Youth Court. Responsibility for custody is delegated from the Minister of Immigration to the Chief Executive, DCP. Adoption Services is responsible for administering guardianship of children during this pre-adoption period.

Adoption finalised in country of origin

Where an adoption order is made in the country of origin, the child enters Australia under the care of their legal adoptive parents and as an Australian citizen.

The country of origin are responsible for assessing applications to adopt and determining if there is a match of prospective adoptive parents with a particular child, according to each receiving state program criteria.

DCP's role in the intercountry adoption process is to:

- manage screening, education and assessment of applicants, for placement on the PAPR
- submit applications on behalf of prospective adoptive parents to the partner country for which they are eligible and provide ongoing case work support to prospective adoptive parents
- determine the suitability of a country's match, advise prospective adoptive parents of the match and formally confirm the placement with prospective adoptive parents and the partner country
- where possible, facilitate contact between the child in their country of origin and their prospective adoptive parents, and support prospective adoptive parents in planning and preparing for a child's transition into their care and in connecting with relevant professional services
- support the process for prospective adoptive parents to take custody of, and bring a child to Australia:
 - for an adoption finalised in Australia, this includes liaising with the overseas country and supporting prospective adoptive parents to attend court and finalise the adoption, organise a passport and citizenship for the child, take custody of the child and bring the child to South Australia
 - for an adoption finalised in country of origin, this includes liaising with the overseas country and supporting prospective adoptive parents to apply for an adoption visa, take custody of the child, fulfil immigration requirements and bring the child to South Australia
- provide ongoing case management and monitoring for all children subject to the making of an adoption order. This includes the provision of post-adoption reports to the overseas country and any relevant updates
- provide regular updates and required documentation to the overseas country.

A special referral can occur, when a country of origin engages with a range of receiving partner programs, including South Australia (receiving state), to seek prospective adoptive parents for a specific child, often older in age and with significant needs. In these instances, DCP will consider whether there is a potential suitable match for the child from persons on the Intercountry Adoption Register.

In the event that a match is identified and the prospective adoptive parents agree to the proposal, an application is forwarded to the country of origin for consideration. If the application is approved, Adoption Services will support the prospective adoptive parents in completing the processes in accordance with the receiving state requirements. These processes differ from those outlined in this policy.

DCP is also responsible for a range of functions related to supporting past adoptions including:

- providing social work support in connection with the release of information about past adoptions to certain parties according to the requirements in the Adoption Act

- maintaining records relating to adoption, including arrangements for sharing of information and vetoes on disclosure of information. Noting that the provisions allowing vetoes have been removed from the Adoption Act and vetoes will come to an end after 17 December 2022 unless revoked earlier
- where required, facilitating the provision of annual adoption updates to the overseas country
- notifying parties to an adoption of a death of another party – specifically related to birth parents, adoptees and siblings
- where possible, supporting ongoing contact between birth families, the child and adoptive families
- undertaking annual reviews of financial assistance provided to adoptive parents and reporting on the financial assistance program
- investigating concerns regarding alleged illicit or illegal intercountry adoption practices in relation to a child placed in South Australia.

DCP Legal Services' Freedom of Information Team is responsible for releasing information about adoptions. Referrals are commonly made to Relationships Australia SA, Post Adoption Support Services (PASS) and Intercountry Adoptee and Family Support Service (ICAFSS), funded by DCP and DSS respectively.

4.2 Eligibility

Applicants who apply for intercountry adoption must meet the eligibility requirements under South Australian legislation and as well as those of the overseas country program. Each partner country has its own specific adoption requirements and eligibility criteria. These can be found on the [Intercountry Adoption Australia](#) website.

Persons wishing to apply to be registered on the Intercountry Adoption sub-register of the PARP must meet the minimum criteria set out in the Adoption Act and Adoption Regulations (regulation 9). These are that an applicant must:

- be a resident or domiciled in South Australia
- be aged 18 years or over
- be a permanent resident of Australia
- be an Australian citizen, or in the case of joint applicants, at least one of the applicants must be an Australian citizen
- not have had a previous registration cancelled on the grounds that it was improperly obtained
- not be a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*
- not have had a child removed from their care under child protection legislation in South Australia, or any other State or Territory
- not be registered if convicted of an offence of:
 - violence towards a child
 - abuse of a child
 - abduction of a child
 - criminal neglect.

Applicant couples wishing to adopt a child together must have been living together in a qualifying relationship for at least five years in order to adopt, unless special circumstances apply (section 12 of the Adoption Act).

In addition to these legislative requirements, DCP also requires persons wishing to apply to be registered on the PARP to hold:

- a valid Working with Children Check (for applicants and their regular household guests)
- a check of child protection information held by DCP (for applicants and their regular household guests).

For those applicants who have stayed for an extended period in an overseas country, a police clearance for that country may also be required.

Eligibility is determined during a screening interview, following attendance at an information session and receipt of Expression of Interest documentation.

Once a person has met South Australian legislative requirements, they can be assessed according to the eligibility criteria for the specific country the applicants are interested in adopting from.

4.3 Assessment

DCP assesses applicants' suitability to be placed on the PAPER according to requirements set out in regulation 10 of the Adoption Regulations. The assessment process also identifies the countries for which applicants are eligible and are interested in adopting from.

Adoption Services' assessment process comprises the following components:

1. **Training and education about adoption:** Applicants are required to attend and complete compulsory education workshops, inclusive of mandatory training which is facilitated by Adoption Services.

Once interested persons have completed the mandatory training requirements of the education workshops, Adoption Services will formally invite them (through an 'Invitation to Apply') to express their interest in being registered as a prospective adoptive parent on the Intercountry Adoption Register. Following receipt of an expression of interest, Adoptions Services will then assess and consider their placement on the Intercountry Adoption Register.

2. **Information gathering:** Adoption Services seeks a range of reports to provide information about applicant's circumstances and to help assess their suitability to adopt. These can include:

- a general health assessment
- other specialist medical or psychological reports
- financial statements
- home safety checklist
- three referee statements from individuals who can provide comment (as is relevant) on the person's parenting, repute, relationships, cultural fitness and suitability to adopt
- information from other third parties, such as schools or child care centres.

Adoption Services may also interview relevant persons or services to gather additional information to assess applicants' suitability as prospective adoptive parents.

3. **Home assessment visits:** Adoption Services will meet and interview applicants and their children at their home or in a DCP office location. In some instances, Adoption Services may also speak with extended family or friends.

The assessment process considers the suitability and capacity of applicants against the factors set out in regulation 10(4) of the Adoption Regulations. The assessment will also take into consideration the special needs of children and the characteristics needed to care for a particular type of child that is available for intercountry adoption within the country the applicant/s are interested in and eligible for.

In addition, some partner countries will have specific assessment requirements, such as a psychological assessment, which applicants must fund in addition to the standard adoption fee schedule.

Adoption Services will prepare a written report containing an assessment of the suitability of the applicant to adopt and of their capacity to adequately care for an overseas child. The assessment report is aligned with a template that has been agreed with other Australian states and territories. After considering the report, the Supervisor, Adoption Services, has the delegated authority to determine whether the applicant is a suitable person to adopt an overseas child and register the applicant on the Intercountry Adoption Register.

A decision on an application for registration as a prospective adoptive parent must be made within 18 months. Adoption Services will advise applicants in writing of the decision to approve or reject their application for registration on the PARP and provide a copy of the assessment report, as required by regulation 11 of the Adoption Regulations. Where an application has been rejected, in accordance with regulation 11(6), an applicant will also receive additional information of their right to seek a review of the decision (see section 4.8 below).

Once approved for registration, Adoption Services supports the prospective adoptive parents to complete, compile and forward required documentation in a dossier to the country of origin (the country from which an adoption is being sought). This process can involve various authentication methods and translations of documentation.

4.4 Placement

Placement of children with persons seeking to adopt is determined by the partner country. There are no guarantees that a partner country will approve an application to adopt or that prospective adoptive parents will receive a placement outcome. The country of origin assesses and determines suitability of a prospective adoptive parents' application. This may include seeking additional information in order to assess the application and match a child for adoption. Timeframes for a decision on applications can be lengthy and unclear.

The Hague Convention requires that decisions about placing a child take into consideration the culture and heritage of a child. Applicants who share the same or similar cultural/racial background as a child are prioritised for placements. Further, applicants assessed as motivated and capable of parenting an older child, sibling group and/or child with special needs are generally also prioritised for placements. Should the country of origin approve an application and determine a proposed placement, DCP has responsibility for confirming that the match is suitable and that the adoption will safeguard and promote the best interests, rights and welfare of the child (regulation 19(2)(c)).

Pursuant to section 19(4) of the Adoption Regulations, the Chief Executive must have regard to prospective adoptive parents who have a child residing with them for less than 12 months, or is likely to have a child residing with them in the next two years following selection, to ensure that the adoption is in the best interests of all new children entering the household. In accordance with the Hague Convention, Australia expects information on the adoptability of the child to be included in the report on the child which accompanies a placement proposal.

DCP considers the report from the country of origin and confirms that the match is suitable and, in particular, that the proposed adoptive parents have the necessary competencies to meet the holistic needs of the specific child.

In some cases, a child may not match the preferred criteria of the prospective adoptive parents. If DCP assesses that they may be capable of caring for a child, they may present the placement proposal and ask the applicants if they are willing to be re-assessed to ensure they can meet the child's needs.

If DCP is satisfied that the placement proposal is in the child's best interests, information about the child is shared with the prospective adoptive parents to enable them to decide whether to accept the placement

proposal. Adoption Services will encourage prospective adoptive parents to seek further professional advice in regards to the perceived and stated needs of a child, prior to making a final decision.

If the prospective adoptive parents accept the placement proposal, DCP will:

- confirm with the country of origin that the placement has been accepted by the prospective adoptive parents
- liaise with the country of origin regarding documents or processes required for the prospective adoptive parents to travel to the country of origin to settle the adoption and return to South Australia with their adopted child (in the case of an adoption finalised in Australia)
- liaise with the Department of Home Affairs to ensure immigrations forms are completed (in the case of an adoption finalised in country of origin).

The processes and requirement, including travel requirements, vary for each country and are subject to change.

Adoption Services provides case management support to all adoptive families once a child's adoption and/or pre adoption placement commences. Where an adoption order has been finalised in the partner country, Adoption Services provides case management for as long as is required by overseas program's post placement reporting requirements. Where the adoption order is finalised in South Australia, Adoption Services provides case management until the order is finalised in the Youth Court.

Where an adoption order has not already been made overseas, an application to the Youth Court for an adoption order is made by the prospective adopters. DCP supports the legal process by completing the overseas country's reporting requirements set out in the Adoption Act. Typically, an application for an adoption order cannot be made until the post-placement reporting and any other requirements of the overseas country have been fulfilled.

DCP also funds independent legal representation in the Youth Court for children and young people being adopted in instances where the Court determines legal representation is required.

4.5 Post adoption reporting

Post adoption reporting to the country of origin varies from country to country. Some partner countries require regular progress reports to be provided to the child's birth parents or former guardians via the adoption agency in the country of origin. Where this is the case, either DCP or the adoptive parents prepare the report and forward this to the relevant body.

4.6 Views of the child or young person and consent

The country of origin is responsible for obtaining the consent of a child being adopted and providing DCP with documentation showing that the necessary consents have been obtained.

Adoption Services reviews this documentation and reports any concerns to the Australian Central Authority for follow-up. An adoption only proceeds where it is clear that consent by the birth parents has been obtained legally.

DCP considers that adoption of a child over the age of nine years is not in their best interests, given family, social, language and cultural connections that have established by that age, and is generally not supported, except in the case of sibling adoptions.

Where an adoption order has not already been made overseas, an application to the Youth Court for an adoption order is made by the prospective adopters. Before making an adoption order, the Youth Court will interview a child or young person over the age of five to determine their views about the adoption and also appoint a legal representative for the child.

Children under the age of five will also be appointed a legal representative, but may not be interviewed. The Youth Court cannot make an adoption order for children aged over 12 without their consent.

4.7 Consent by birth parents or guardians

The country of origin is responsible for obtaining the consent of birth parents, birth family or guardians.

4.8 Review of decisions

A person who is dissatisfied with a decision made by DCP in relation to a person's registration on the PAPR can apply to the South Australian Civil and Administrative Tribunal for a review of that decision. This includes:

- inviting a person to apply to be on the register
- whether a person is a suitable person to be registered on the PAPR
- renewal of registration
- cancellation of registration.

4.9 Discharging an adoption order

Pursuant to section 14 of the Adoption Act, an adopted person, their birth or adoptive parents or the Chief Executive, DCP, can apply to the Youth Court for an order discharging an adoption order. The Court can direct DCP to carry out an investigation into the circumstances relating to the discharge application.

Adoption orders may be discharged by the Court on the grounds that it is in the best interests of the adopted person to do so or where the order, or the consent to the order, was obtained by fraud, duress or other improper means. An order discharging an adoption order may be made regardless of the age of the adopted person.

4.10 Fees for the adoption process

Fees for the adoption process are charged in accordance with the annual fees notice. The fees are published in the Government gazette and on the DCP website.

DCP charges fees in relation to:

- lodging an expression of interest
- applying for registration as a prospective adoptive parent (including participation in workshops)
- preparation of an assessment report
- preparation of file for lodging with relevant country of origin
- selection of an applicant suitability report
- preparation of a report for the country of origin after placement of child.

Separate fees apply for the first and subsequent applications, as well as for transfers and conversions of registration.

Under regulation 24A, the Chief Executive, DCP, can agree to waive fees or accept payment by instalment.

Other state and federal government fees can apply, such as birth certificates and adoption visas. In addition, each partner country determines their own fees, plus other costs for example documentation preparation and translation fees. The DSS Intercountry Adoption Australia website publishes information on [the costs and relevant fees](#) of each country program. Prospective adoptive parents are responsible for meeting these costs.

4.11 Financial support

Prospective adoptive parents will incur a range of costs related to bringing a child to Australia from an overseas country. DCP does not provide any financial support in relation to these costs.

In exceptional circumstances, DCP may provide financial assistance to contribute to the ongoing costs of care for a child after they have been adopted. This is determined on a case by case basis, in accordance with the requirements in section 26 of the Adoption Act. Applications for financial support are prepared by Adoption Services and are approved by the Chief Executive.

5. Compliance, monitoring and evaluation

Compliance with this policy is monitored by the Executive Director responsible for Adoption Services.

6. Related documents

Related documents, forms and templates
Information to think about when applying to adopt a child, Adoption Services DCP, 2020
Intercountry adoption - 5 Stage Process, Adoption Services DCP, 2020
Adoption assessment report template
Adoption Services: Processing local and intercountry adoptions Procedure

7. Glossary

Term	Meaning
Adoption finalised in Australia	Under the Federal <i>Immigration (Guardianship of Children) Act 1946</i> , a child placed with prospective adoptive parents overseas, is under the custody of the Minister of Immigration from when the child arrives in Australia until the adoption order is made by the Youth Court. Responsibility for custody is delegated from the Minister of Immigration to the Chief Executive.
Adoption finalised in country of origin	Where an adoption order is made in the country of origin, the child enters Australia under the care of their legal adoptive parents and as an Australian citizen.
Central Authority	Central Authorities for intercountry adoption are appointed by each state and are responsible for upholding the standards and safeguards of the Hague Convention.
DSS	Australian Government Department of Social Services.
The Hague Convention	The Hague Convention aims to protect children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad and establishes international standards of practices for intercountry adoptions.

Term	Meaning
Intercountry adoption	An Australian citizen (or permanent resident) who is habitually resident in Australia, adopts a child from another country through the authorities in that country.
PAPR	Pursuant to regulation 7 of the Adoption Regulations, the Prospective Adoptive Parents Register is the official record for prospective adoptive parents.
Qualifying relationship	The relationship between two persons who are living together in a marriage or marriage-like relationship (irrespective of their sex or gender identity).
Receiving state	Means the state in which a receiving agency is located. For the purpose of this policy, the receiving state is South Australia.
Special referral	When a country of origin engages with a range of receiving partner programs, including South Australia (receiving state), to seek prospective adoptive parents for a specific child, often older in age and with significant needs.

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