

## Intercountry relative child adoptions

This paper sets out Australia's policy on intercountry relative child adoptions.<sup>1</sup> It provides general information about principles and processes, recognising that this is one of several options for bringing a relative child to Australia. As with any intercountry adoption process, an intercountry relative child adoption must only take place if it is in the best interests of the child, and must be in accordance with principles set out in the *Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption* (Hague Convention), as well as legislative requirements in Australia, including Australian state and territory legislative requirements. Intercountry relative child adoption should only be considered after alternative options to meet the placement needs of the child are explored, and must always be initiated through the child's country of origin rather than Australia.

### What is intercountry relative child adoption?

Intercountry relative child adoption refers to the adoption of a child from an overseas country by a biological relative in Australia, creating a permanent parent/child relationship.

A relative adoption will end the legal relationship between the child and their birth family. Relative adoptions do not include customary or traditional adoptions, which do not end the legal relationship.

Intercountry relative child adoption can only be pursued for the genuine purpose of providing a permanent family for a child in need of intercountry adoption – that is, relative adoption is for a child who needs a family, rather than being a way to find a child for a family. An intercountry relative child adoption is not a way to bring a family member to Australia for access to opportunities such as an Australian education. Information on other possible options for bringing a relative child to Australia is set out below.

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<sup>1</sup> The adoption of Australian children by relatives overseas is outside the scope of this policy.

# Principles guiding intercountry relative child adoption

Intercountry relative child adoption to Australia must only take place in accordance with the following guiding principles:

1. Intercountry relative child adoptions must be consistent with the principles set out in the Hague Convention, Australian Government policy, state and territory adoption legislation, and the legislative and policy requirements of the country of origin.
2. Intercountry adoption, in all forms, must only take place if the child is legally adoptable, and adoption is in his or her best interests.
3. The intercountry adoption of a particular child must always be initiated by the child's country of origin, not the receiving country.
4. Alternative options to meet the placement needs of the child, including in their country of origin and through mechanisms other than adoption, should be explored before intercountry adoption is considered.
5. Intercountry adoption by a biological relative may provide a permanent placement option to provide for a child's long-term care, wellbeing and development, where a suitable family cannot be found for that child in his or her country of origin.

## What are the other options for bringing a relative child to Australia?

The Australian Government provides a variety of different pathways for people to come to Australia either temporarily or permanently. The Visa Finder can help find the Australian visa most likely to meet your specific circumstances. The Visa Finder is available on the Department of Immigration and Border Protection ([DIBP](#)) website at: [DIBP Visa Finder](#). More information about visas for children is available in Booklet 2, Child Migration, which is also on the DIBP website.

Further advice about child migration can be sought from a registered migration agent. A list of registered migration agents is available from the [Office of the Migration Agents Registration Authority](#).

An Australian family may also be able to care for a child from overseas through guardianship or permanent care arrangements. Australian government agencies cannot provide individual advice on these types of arrangements, and suggest families considering this option obtain independent legal advice.

## What is the process for intercountry relative child adoption?

An intercountry relative child adoption process can only begin in Australia once there has been a request to the relevant Australian state or territory central authority by the relevant authority in the child's country of origin. Generally, the following process applies:

1. The relative<sup>2</sup> in Australia contacts the relevant authority in the country where the child lives and advises of their interest in the child's circumstances. If appropriate, the relative requests that the overseas authority conduct an assessment of the child for adoption. State and territory central authorities in Australia will not contact an overseas authority to request an assessment of a child for a relative adoption.
2. The overseas authority will determine whether the child is legally able to be adopted and, if so, whether intercountry relative adoption is in the child's best interests. Some countries may not allow for the adoption of a child by a relative overseas, or may have different requirements from those in Australia about how closely a relative must be biologically related to the child.
3. If satisfied that the child is legally able to be adopted and intercountry relative child adoption is in the child's best interests, the overseas authority will contact the relevant Australian state or territory central authority and provide a report on the child's circumstances, and a request for the child to be adopted by their relative.
4. When the Australian state or territory central authority receives the request from the overseas authority, they will determine:
  - Whether the request complies with the standards and principles of the Hague Convention (with assistance from the Australian Central Authority where necessary).<sup>3</sup>
  - Whether the adoption would be in accordance with state or territory law, including whether the relative meets eligibility requirements.
    - Some states and territories have specific requirements for intercountry relative child adoption. For example, in some jurisdictions it is only possible to pursue this type of adoption in special or exceptional circumstances, where other family law orders would not make adequate provision for the welfare and interests of the child.

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<sup>2</sup> For the purpose of this paper, the term 'relative' includes couples who may jointly seek to adopt a child.

<sup>3</sup> Consideration of compliance with the principles and standards of the Hague Convention will be on a case-by-case basis, including requests for: countries with which Australia has intercountry adoption programs; countries with which Australia has 'closed' or 'on-hold' intercountry adoption programs; countries with which Australia does not have an intercountry adoption program but which are parties to the Hague Convention; and countries with which Australia does not have an intercountry adoption program and which are not parties to the Hague Convention.

- Whether the child is legally able to be adopted and intercountry relative child adoption is in the child's best interests.
- Whether the child's proposed adoption by the relative in Australia is likely to be able to be progressed before the child attains 18 years of age.

The Australian state and territory central authority will charge a fee for this service.

5. Taking into account the considerations in item 4, the Australian state or territory central authority will advise the overseas authority whether or not it will consider the adoption request.
6. If an adoption request is being considered, the Australian state or territory central authority will complete an assessment report<sup>4</sup> on the relative to determine their eligibility and suitability to adopt the child under state or territory law.
  - If the relative is approved as eligible and suitable to adopt, the assessment report will be sent to the overseas authority. This will indicate that the Australian state or territory central authority is supportive of the proposed adoption being in the child's best interests. If the relative has not been approved as eligible and suitable to adopt, or there are concerns regarding their eligibility or suitability to adopt, the Australian state or territory central authority will notify the overseas authority in writing.
7. The overseas authority will determine whether the proposed adoption is in the child's best interests.
8. If the proposed adoption is judged to be in the child's best interests, the overseas authority and the Australian state or territory central authority will agree to facilitate the adoption.

It is important to be aware that an Australian state or territory authority may come to a different decision than the overseas authority on whether intercountry adoption is in a particular child's best interests. In order for a relative adoption to proceed, authorities in both countries must agree. The Australian Central Authority plays an advisory role, but the final decision in each case will be made by the state or territory central authority.

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<sup>4</sup> Some countries may have additional requirements for this assessment, for example psychological testing of the relative or preparation and translation of documents.

# What are the risks involved in relative adoption?

## Family relationships

An adoption order is a significant legal order that changes the legal identity of a child and severs any parent/child relationship that existed prior to the adoption. Relative adoption can lead to additional challenges and confusion for an adoptee in understanding their family relationships, their origin and developing their own identity. For example, where a child is adopted by an aunt (the sister of the child's birth mother), the birth mother becomes the child's aunt, and the child's biological siblings become the child's cousins. A complex and confusing family situation may be created, which may result in added challenges for the adoptee and other family members.

Whilst adoption terminates the parental rights and responsibilities of a child's birth parents, this does not mean that a child's birth family can no longer have a relationship with the child. Australian state and territory central authorities encourage, and may require, open adoptions, including for relative child adoptions, as they are recognised as being in the best interests of the child. Openness in a relative child adoption will help all parties concerned to communicate. It is also strongly recommended that all parties involved in a relative child adoption consider counselling before and after the adoption.

## Hague Convention compliance

There may be concerns over the compatibility of a proposed intercountry relative child adoption with the principles of the Hague Convention. These might include, for example, whether there are real or perceived financial or other inducements related to formally relinquishing the child. These concerns must be addressed by the relevant authorities in both countries. This includes preparing comprehensive reports about the relative and the child to assist in deciding whether to proceed with facilitating the adoption.

## Immigration risks

Where an intercountry relative child adoption (or any other privately arranged overseas adoption) is not arranged through the relevant Australian state or territory central authority (as set out in this document), there is a risk that the child will not meet immigration requirements. The DIBP is able to grant a visa to a child only where they meet the requirements set out in the Migration Regulations 1994, even if the adoption has already occurred in the overseas country.

# Who can I speak to about relative adoption?

## **Intercountry Adoption Australia**

IAA has a national website and telephone information line for people who would like to adopt children, including relatives, from overseas. You can contact IAA by telephone on 1800 197 760 from 9am to 5pm (AEST), Monday to Friday, or by the [IAA website](#).

## **Your state or territory central authority**

State and territory central authorities are responsible for considering and facilitating individual adoption cases. Specific enquiries about intercountry relative child adoption should be discussed with the relevant state or territory central authority, including whether any other alternatives may be available. Details for each state and territory are available from the [IAA website](#).

## **The relevant overseas authority**

Contact the relevant authority in the country where your relative child lives and request they conduct an assessment of the child for adoption. Contact details for all overseas authorities can be found on the [Hague Conference on Private International Law](#) website.

 **1800 197 760**

[www.intercountryadoption.gov.au](http://www.intercountryadoption.gov.au)