

Senate Committee Inquiry – Citizenship Act Amendments –Question 1

Question: What are the department’s responses to the issues raised in the submissions, including Senator Marshall’s question on page 18 of the Hansard regarding what review and monitoring is done by the Hague Convention secretariat?

Answer:

	Issues raised	In the following submissions	Response
1	Consultation & Transparency		
A	Complete details about the Government’s change agenda have not been made public.	Dr Patricia Fronek et al	The report of the Interdepartmental Committee (IDC) on Intercountry Adoption was released in April 2014. The Prime Minister announced on 5 May 2014 that the Council of Australian Governments agreed to a national system for intercountry adoption.
B	There has been insufficient opportunity for the Government to avail itself of the advice and expertise of the wider adoption community.		The Government consulted widely with the adoption community in developing its reforms. The Prime Minister invited major stakeholders to make submissions to the IDC, and the Attorney-General’s Department (AGD) issued an open invitation on its website. 107 submissions informed the IDC report.
C	Concern that a new model for intercountry adoption may lead to the introduction of parent-led private agencies and involve ‘for-profit’ non-government organisations.		Article 11 of the Hague Convention requires an accredited body to a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation; b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.
2	Bilateral Arrangement Countries		
A	Intercountry adoptions under bilateral arrangements do not guarantee the same protections nor meet the same standards as those from countries which have ratified and	Forced Adoptions Implementation Working Group	AGD requires that all Australia’s intercountry adoption partner countries comply with the standards and principles of the Hague Convention, regardless of whether the country is a party to the Hague Convention.

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<p>are signatories to the <i>Hague Convention on protection of children and co-operation in respect of intercountry adoption</i> (Hague Convention) and are not arranged in the best interests of the child.</p>	<p>Dr Patricia Fronek et al Origins Victoria Inc Vanish Inc</p>	<p>The intercountry adoption frameworks and safeguards that Australia’s partner countries have in place to support practical compliance with the standards and principles in the Hague Convention include:</p> <ul style="list-style-type: none"> • that adoptions take place in the best interests of the child with respect to his or her fundamental rights • that a child should be raised by his or her birth family or suitable permanent care should be found in the country of origin wherever possible • that safeguards are in place to prevent the abduction, sale and trafficking in children for adoption. <p>AGD assesses and monitors Australia’s intercountry adoption programmes using a number of measures including:</p> <ul style="list-style-type: none"> • ongoing review of relevant legislation, guidelines and infrastructure for practical compliance with the Hague Convention • monitoring of the practical operation of programmes • regular dialogue with countries including Central Authorities, adoption agencies, liaison with Post and visits in-country • reports from International Social Service on country situations and children’s issues • exchanging information with other countries <p>(Article 9 of the Hague Convention requires Central Authorities to provide each other with general evaluation reports about experience with intercountry adoption and reply to justified requests from other Central Authorities or public authorities for information about a particular adoption situation)</p> <ul style="list-style-type: none"> • participation in Hague Convention Special Commission meetings,
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			and <ul style="list-style-type: none"> maintaining relationships with other relevant stakeholders. <p>All Australia's active intercountry adoption programmes have been assessed as complying with the standards and principles of the Hague Convention. Australia has bilateral arrangements with only two non-Hague Convention countries: (i) Taiwan which is not a party to the Hague Convention; and (ii) South Korea which is in the process of ratifying the Hague Convention.</p>
B	<p>The proposed amendments will facilitate Australia opening more intercountry adoption programmes with non-Hague Convention countries and therefore decrease the Australian Government's responsibility and accountability to children and families and the principles of the Hague Convention. Additional safeguards will be required to ensure adoptions arranged in non-Hague countries comply with the standards of the Hague Convention.</p> <p>The Government is pursuing bilateral agreements with seven new countries, five of which have not signed the Convention.</p>	<p>Ms Sandi Petersen</p> <p>International Social Service NSW</p> <p>Committee on Adoption and Permanent Care Inc</p> <p>UNICEF Australia</p> <p>Ms Evelyn Robinson</p>	<p>The Bill does not affect Australia's ability to open intercountry adoption programmes with countries that are not parties to the Hague Convention.</p> <p>Australia will only consider opening a new intercountry adoption programme where it can be demonstrated that there is practical compliance with the Hague Convention. If a bilateral programme was opened, the relevant country would be prescribed under the Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998.</p> <p>All seven countries currently being investigated by AGD (Kenya, Bulgaria, Latvia, Poland, USA, Vietnam and Cambodia) have ratified the Hague Convention.</p>
3	Practices of Countries of Origin		
A	If an adoption is finalised in the child's country of origin, there is a risk that it takes place without the prior assessment of prospective	Ms Evelyn Robinson	All prospective adoptive parents adopting through one of Australia's intercountry adoption programmes are assessed, by state and territory central authorities, prior to being matched with a child

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	adopters by Australia authorities.		(regardless of whether an adoption is finalised overseas).
B	That “the laws and practices of poor countries, with less capacity to approach conformity to the requirements of the <i>Hague Convention</i> , to determine our future citizenry”	Vanish Inc	See response to Question 2A (page 1-2 of this document).
4	Needs of Adoptive Parents vs Best Interests of the Child		
A	The amendments proposed in this Bill will allow for the same pressure to fast track adoption in countries of origin to meet the needs of prospective parents.	Dr Patricia Fronek et al	This Bill does not change adoption processes in children’s countries of origin.
5	Post-Adoption Requirements/Support		
A	There is a danger if an adoption is finalised in the child’s country of origin, that post-adoption assessments of the child and family will not be completed by Australian authorities.	Ms Evelyn Robinson	See response to Question on Notice number 2. (This Bill does not change existing post-adoption support arrangements.)
B	There should be monitoring of adopted children to reduce adoptive placements breakdown and reports to child protection across Australia. The fast adoption process may increase the numbers of intercountry adoptions and Government resources may need to increase to monitor the arrangements once the child is in Australia.	Origins Victoria Inc	
C	That the same post adoption support will not be available to children adopted via bilateral arrangements.	Vanish Inc	
D	What are the future implications for children adopted under bilateral arrangements in terms of finding information about their adoption?	Vanish Inc	This Bill has no impact on children adopted under bilateral arrangements finding information about their adoptions.

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Open Adoption (relationship between adopted child and their biological family)		
6	<p>These amendments may limit adoptees' access to their biological parents, their cultural heritage and family history.</p>	<p>Article 30 of the Hague Convention imposes on Australia, and any states with which Australia has programmes, an obligation to preserve any information they have about the child and his or her origins. There is also an obligation to ensure the child has access to that information under certain conditions. Origin searching support information, relating to Australia's existing intercountry adoption programmes, is available from the relevant state and territory government department listed on the post adoption support services contact details page on the AGD website.</p>
7	<p>Trafficking/Exploitation</p>	
A	<p>Where a passport is no longer required for a child, this is a point that the child and family is open to exploitation. As a result of this change, there is potential for an increase in baby trading and farming as it could become a lucrative business if demand outweighs supply of children and be open to the involvement of organised criminal organisations.</p> <p>The Government has a responsibility to monitor all intercountry adoptions to protect the rights of the child consistent with the UN Conventions and onshore processing procedures. By children being granted passports outside of Australia, processes should be put into place to ensure that children have not been stolen from families; removed under false pretences or part of criminal activities involving baby farming.</p>	<p>Origins Victoria Inc</p> <p>Vanish Inc</p> <p>Under these amendments, a passport is still required for the child, either from their country of origin or from Australia. None of the safeguards for intercountry adoption will be compromised by these amendments.</p> <p>AGD maintains the existing rigorous processes to protect against trafficking/exploitation – see response to 2A.</p>

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	That Australia will no longer be involved in the process of confirming that a child has been relinquished and adopted according to Hague principles and standards – leading to Australia being open to allegations of child trafficking.	
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Senator Marshall's question		
8	What review and monitoring is done by the Hague Convention secretariat?	<p>Article 33 of the Hague Convention requires Contracting States to monitor the Convention's operation and implementation, and take appropriate measures to address instances where any provision of the Convention is not respected, or risks not being respected. In Australia, the Secretary of AGD fulfils this monitoring role, as the Australian Central Authority for the Hague Convention.</p> <p>Contracting States have entrusted the Hague Permanent Bureau with responsibility for monitoring and reviewing the practical operation of the Convention, and for providing States with assistance to ensure its effective implementation and operation. Part of that monitoring and review involves issuing surveys – the latest of which is available here: http://www.hcch.net/index_en.php?act=publications.details&pid=6159&dtid=33</p> <p>The Intercountry Adoption Technical Assistance Program (ICATAP) is administered by the Hague Permanent Bureau. ICATAP provides assistance directly to the governments of certain States which are planning ratification of, or accession to, the Convention, or which have ratified or acceded but are experiencing difficulties with implementation of the Convention.</p> <p>See http://www.hcch.net/upload/icatap_e.pdf for further information.</p>

Question:

What is the life-cycle of the adoption process, in particular, the post-adoption process?

Answer:

Adoption process

The intercountry adoption process in each state and territory is similar, but not identical.

Each state and territory has its own laws on intercountry adoption.

Differences in processes and requirements may also occur in each overseas partner country.

A summary of the adoption system in Australia is available on the AGD website:

<http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Pages/Australiasintercountryadoptionssystem.aspx> (also in **Attachment A**). **Attachment B** provides a visual representation of the process.

Post Adoption

The Committee asked about whether there is a difference for post adoption support requirements between partner countries that have acceded to the Hague Convention and those that have not.

Post adoption reporting: All of Australia's partner countries have post adoption reporting requirements. While different programs have different requirements, all require monitoring of an adopted child's situation for a period of time after the child is placed with their adoptive family. **Attachment C** provides a summary of the post adoption reporting requirements for each of Australia's intercountry adoption programs.

Post adoption support: State and territory central authorities also monitor and provide support for families after an adoption. They ensure the child is being appropriately cared for and is adjusting to life with their new family. They can also provide advice to families on the challenges commonly faced by adoptive families and offer assistance in identifying appropriate resources.



General summary of the intercountry adoption process

Important: We do not deal with individual adoption applications.

For information on individual adoption applications contact the relevant state or territory central authority.

Below is a general summary of key steps in the intercountry adoption process. Please note that the timeframes for adopting a child vary for a range of reasons and are subject to change.

The process can take a number of years. During this period, you are encouraged to get involved with an intercountry adoption support organisation to receive advice and support from past adoptive families. These organisations can also help you learn more about the culture of the country from which you have applied to adopt.

Contact details for the state and territory central authorities and intercountry adoption support organisations are on the department's website www.ag.gov.au/intercountryadoption.

1. Initial contact

The first step is to contact your state or territory central authority by email, telephone or via their website. Initial information will be provided electronically or by post. Some states or territories may require interested people to lodge an expression of interest form and/or attend one or more information sessions.

2. Education seminars and formal application

State and territory central authorities provide detailed education seminars to provide prospective adoptive parents with a range of information about intercountry adoption.

Issues covered include:

- the specific needs of adopted children
- bonding and attachment
- country program information.

These education seminars may occur at different stages of the application and assessment process.

Formal adoption applications require a range of detailed information to be provided by prospective adoptive parents.

3. Adoption assessment

Detailed information on the assessment process, requirements and criteria are available from each state and territory central authority.

An adoption assessment considers a family's suitability to parent an adopted child and to meet the child's specific needs. Assessments usually involve a number of interviews with an adoption assessor (a social worker or psychologist). After the assessments, the assessor completes a report.

Adoption assessments consider many elements relevant to the parenting of an adopted child, including:

- parenting capacity
- physical and psychological health
- motivations and expectations
- current and past relationships
- an understanding of and ability to meet the specific needs of adopted children.

4. Decision regarding the approval of an application

Each state and territory central authority makes the decision regarding the approval of adoption applications, based on the information prospective adoptive parents provide, and in accordance with the relevant legislation.

This department does not have any role in this process. The department cannot change the decision made by a state or territory central authority regarding any individual application.

5. Preparation and forwarding of adoption application overseas

Each overseas authority has specific requirements about the content of adoption applications (dossiers). Some countries use a quota system which limits the number of applications that can be sent by Australia to that country per year. There are more prospective adoptive parents than there are children in need of families or unfilled quota places. This can create a waiting period before an application can be sent overseas.

6. Waiting period

Waiting periods for applications between approval and a placement proposal (allocation) are influenced by many factors. These may include:

- the number of children identified as being in need of intercountry adoption (by the overseas authority)
- the number of applications received by the overseas authority
- the resources of the overseas authority.

These waiting periods are outside Australia's control.

7. Placement proposal

The overseas authority forwards the placement proposal, including social and medical information about the child to the state or territory central authority for approval. Once approved, the state or territory central authority will contact the prospective adoptive parents for their acceptance of the proposal. The amount of information included in

placement proposals varies considerably across country programs and depends on the child's individual circumstances.

8. Immigration application process

The ability of an adopted child to enter Australia depends on immigration requirements being met. The process followed may vary depending on the country involved. Prospective adoptive parents will usually begin the immigration application process before they travel to the overseas country. See the [immigration and citizenship for children adopted overseas](#)¹ section on the department's website for more information.

9. Travel to meet the child

The timeframe between accepting a placement proposal and travelling to meet the child varies between countries. Travel arrangements should not be confirmed until the state or territory central authority advises to do so. The amount of time families are required to spend in the overseas country also varies. These timeframes are determined by the overseas authorities.

10. Post-placement support

State and territory central authorities will provide support and supervision following placement. See the [post-adoption support](#)² section on the department's website for more information.

It is recommended that all adoptive parents seek a full medical check for their child from an appropriately qualified and experienced doctor as soon as possible after they return to Australia.

¹<http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Pages/Immigrationandcitizenshipforchildrenadoptedoverseas.aspx>

²<http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/PostAdoptionSupport/Pages/default.aspx>

11. Finalisation of the adoption

Finalisation of an adoption refers to the legal process whereby the prospective adoptive parents become the legal parents of the child. The way in which an adoption is finalised depends on the process used in the country of origin and the procedures of the state or territory.

Final adoption decision made in the country of origin

For some of Australia's intercountry adoption programs, a final adoption order or decision is made in the country of origin. Where an adoption has been finalised in the country of origin, the adoption order may be recognised under Australian law. A period of post-placement supervision takes place after the child enters Australia.

Adoption order finalised in Australia

For some of Australia's intercountry adoption programs, the adoption is not finalised in the country of origin. In these cases, the adoption needs to be finalised in line with state or territory processes (usually in a state or territory court) after the child arrives in Australia. This occurs after a period of post-placement supervision.

Attachment B: Outline of the Intercountry Adoption Process in Australia*



Responsibility	
	State or Territory Central Authority
	Prospective Adoptive Parents
	Overseas central authority

*This diagram provides a broad outline of the intercountry adoption process only. There may be variations in the process across states/territories, country programs and special needs adoptions.

Attachment C – Post Placement Reporting Requirements for Australia’s intercountry adoption programs

Country Program	Hague Convention country?	Post placement reporting requirements
Bolivia	Yes	Post-adoption reporting requirements are set by the relevant court in Bolivia. Post placement reports are usually required every six months for two years after placement.
Chile	Yes	Post placement reports are required every six months for two years.
China	Yes	A total of six post placement reports are required. Reports are should be prepared at one, six and 12 months after adoption, and then at the second, third and fifth year after adoption. Post-placement reports must include information on the child’s health and development and at least eight current photos.
Colombia	Yes	Four post placement reports are required during the first two years. The first report must be sent three months after the adoption and the rest at six monthly intervals.
Fiji	Yes	Four post-placement reports are required in the first twelve months after the adoption. Reports, including photographs of the child, are to be sent to Fiji on a three monthly basis after the child arrives in Australia for a period of twelve months.
Hong Kong	Yes	<u>ISSHK</u> : Quarterly post-placement reports (usually for 12 months) and a court report. <u>Po Leung Kuk</u> : Arrival and quarterly post-placement reports for 12 months (including photos).
India	Yes	A total of six post-placement reports are required to be submitted for a period of two years after the arrival of the child in Australia. The reports are submitted on a quarterly basis during the first year, and half yearly during the second year.

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Country Program	Hague Convention country?	Post placement reporting requirements
Lithuania	Yes	<p>Families must provide six monthly post-placement reports for first two years, yearly for the subsequent 2 years and upon request thereafter.</p> <p>Reports must be in the prescribed form detailing the adopted child's integration into the family, living conditions, development and state of health and supported by visual material (i.e. videos or photographs).</p>
Philippines	Yes	<p>A total of three placement reports are required during the first six months of the adoption.</p> <p>Children are placed with adoptive families initially on a probationary placement for a period of six months. During this period, three post placement reports are sent at intervals of two months.</p> <p>Following receipt of the last post-placement report, and if the Philippines Intercountry Adoption Board (ICAB) is satisfied that an appropriate relationship is formed between the adoptive parents and the child, ICAB will send an Affidavit of Consent to the Adoption to the relevant state or territory Central Authority. This document constitutes the ICAB's consent to finalising the adoption in an Australian Court.</p>
South Africa	Yes	<p>The South African Central Authority requires the following post placement reports during the first five years after the child's placement:</p> <p><u>Year 1</u>: Post placement report to be provided six months after placement</p> <p><u>Years 2-5</u>: Post placement reports to be provided annually.</p>
South Korea	No. South Korea is in the process of ratifying the Convention.	<p>South Korean legislation requires post-adoption supervision for a year and the submission of six post-placement reports.</p> <p>Reports should be monthly for the first three months, and then quarterly.</p> <p>For the monthly reports, a social worker must visit the family at least once, while he or she must visit the family each time for the quarterly reports.</p>

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Country Program	Hague Convention country?	Post placement reporting requirements
		Even after the twelve months of supervision, if changes occur after the adoption, the relevant state or territory Central Authority is required to forward a report to the office of Eastern Social Welfare Service (ESWS).
Sri Lanka	Yes	<p>Three post-placement reports at three month intervals are required in the first nine months after a child's arrival in Australia.</p> <p>From the end of the first year to the end of the third year following the child's arrival, adoptive parents are required to provide progress reports and photos at six-monthly intervals.</p> <p>After the third year the adoptive parents are required to provide progress reports annually until the child is ten years old.</p> <p>These reports must also be notarised, legalised and then authenticated before being sent to the Sri Lankan Central authority.</p>
Taiwan	No	<p>Post placement reports are required for the first three years. There is no template for the reports, but agencies wish the family to cover some basic areas, such as adaption, health, development, schooling and big events.</p> <p><u>CSS</u>: Three department supervised reports, and then one CA supervised report and one self-report from the adoptive parents in the second and third years.</p> <p>Thereafter, CSS plan to continue an agreement with the adoptive parents to self-report once a year until the adoptee is 18 years old.</p> <p><u>CWLF</u>: CWLF requires three reports in the first year, and one annually afterwards. At least one report in the first year must be done by a licensed social worker (usually the 6-month report).</p> <p><u>Chung Yi</u>: Chung Yi requires a total of seven reports over a period of five years.</p> <p>The first three reports are to be completed at three, six and 12 months by the CA.</p> <p>Annual self-reporting by the adoptive parents is required for the following four years.</p>

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Country Program	Hague Convention country?	Post placement reporting requirements
Thailand	Yes	<p>A total of three post placement reports are required over the first six months of an adoption before Thailand will approve a final adoption order under Thai law.</p> <p>Children are placed with adoptive families initially on a probationary placement for a period of six months. During this period, three post placement reports are produced at intervals of two months.</p> <p>Following successful completion of the six month probationary placement, the state or territory CA will send all three reports as a bundle to the Thai CA. If trouble arises with the placement, then a report should be sent immediately.</p> <p>After receipt of post placement reports, the post placement reports are submitted to the Child Adoption Board, which, if satisfied, will give its approval for the final adoption order under Thai law.</p> <p>At the completion of the post-placement supervision period, it is a requirement of DSDW that any adoption of a Thai child be registered with the Royal Thai Embassy in the child's country of residence. This process is a necessary step in finalising the adoption under Thai law.</p>

Senate Committee Inquiry – Citizenship Act Amendments –Question 3

Question:

The committee referred to concerns in some of the submissions and in evidence given at the hearing regarding private adoption processes. The Department offered to provide information about private adoption processes (including policy papers on expatriate adoptions and known-child adoptions).

Answer:

Broadly speaking, private intercountry adoptions are adoptions arranged directly between birth parents in one country and adoptive parents in another country. Under the national laws of certain countries private adoptions of this nature are permitted, while they are prohibited in many others. In Australia, private intercountry adoptions are not permitted, as intercountry adoptions must be facilitated by an Australian state or territory central authority (in compliance with the Hague Convention). This requirement applies equally to adoptions through the non-Hague country programs prescribed under the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*.

Expatriate adoptions

In Australia, the term ‘expatriate adoption’ is used for when an Australian living abroad adopts a child from the country where he or she is living (or another country). The adoption occurs through the overseas country’s domestic processes and is finalised in that country (and does not, therefore, involve a state or territory central authority). Further information about expatriate adoptions is in **Attachment A** (a fact sheet developed jointly by the Department of Immigration and Border Protection and the Attorney-General’s Department).

Known-child adoptions

Known (non-relative) child adoption refers to the adoption of a child who is known but not biologically related to the prospective adoptive parents. Australian intercountry adoption authorities may agree to facilitate a known non-relative child adoption in limited circumstances. In such cases, the usual Hague Convention compliant adoption processes and procedures will be followed. Australian authorities will not support independently arranged adoptions where prospective adoptive parents identify specific children they wish to adopt in overseas countries, as such arrangements are not consistent with the principles of the Hague Convention. The Department’s policy paper on known-child adoptions, developed in consultation with the state and territory central adoption authorities, is **Attachment B**.

Fact Sheet - Expatriate Adoption

What is Expatriate Adoption?

Expatriate adoption occurs when an Australian living abroad adopts a child from the country in which he or she is resident. The adoption occurs through the overseas country's domestic processes and is finalised in that country. Expatriate adoption can also include third country adoption, where an Australian living abroad in Country B, adopts a child from Country C. Although such adoptions may be legal and final in the overseas country/countries, it may not meet legal requirements in Australia.

Australian Commonwealth, State and Territory adoption authorities are not responsible for expatriate adoptions, and do not assess or approve applications for such adoptions.

Children adopted by Australian citizens or permanent residents via expatriate adoption arrangements are not automatically entitled to visas for entry to Australia. Any expatriate adoption must meet Australian immigration requirements in addition to being a lawful adoption in the overseas country.

Note: For some third country adoptions the immigration requirements outlined below may be different if the adoption was arranged between two Hague Convention countries (other than Australia).

Immigration Requirements for Expatriate Adoption

The Department of Immigration and Citizenship (DIAC) is responsible for issues relating to immigration, visas and citizenship in Australia. DIAC cannot help with adoption arrangements, its role is to assess and determine applications for visas in accordance with the requirements of the *Migration Regulations 1994*.

Children adopted through the States and Territories under Australia's intercountry adoption arrangements will usually enter Australia under the Adoption (Subclass 102) visa category. For a child adopted by Australian residents to be eligible for this type of visa they must meet a number of requirements, including that the applicants have completed the required training and assessment and the adoption has the approval of a State or Territory welfare authority.

Because expatriate adoptions occur without the involvement of State and Territory authorities, the only circumstance where a visa may be granted by DIAC under such an arrangement is where the adoptive parents have been living overseas for more than 12 months at the time of the migration application. The adoptive parent must show that:

- their residence overseas was not contrived to deliberately bypass any requirements concerning the entry of adopted children into Australia, and
- 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 his/her biological parents.

Note: Full and permanent adoption does not exist in the laws of some countries.

Caution

There are inherent risks involved for both the child and the adoptive parents in expatriate adoption as the adoption is arranged without any of the safeguards which exist in the programs managed by the Australian Commonwealth, State and Territory Central Authorities. The Australian Government's involvement in expatriate adoptions is limited to determining whether the child meets immigration requirements in order to enter and remain in Australia. This decision can only occur after the adoption order is made in the overseas country.

You need to ensure the adoption meets the requirements of the Migration Regulations as there is no provision to grant a visa to a child who does not meet these requirements, even if the adoption has already occurred and is lawful in the overseas country. If a visa is not granted the adoptive parents will have established a legal parent-child relationship in the overseas country without the child being able to enter and reside permanently in Australia.

Before you proceed with an expatriate adoption, it is recommended that you seek independent legal advice both in Australia and in the overseas country.



Australian Government
Attorney-General's Department

Attachment B

Intercountry known non-relative adoption

This document explains what known non-relative adoption means and the general principles and process that applies to these adoptions. This process differs from that of relative and ad hoc intercountry adoption applications. For more information on these processes, refer to the *Intercountry adoption relative child* and *Intercountry adoption ad hoc requests* policy papers.

What is known non-relative child adoption?

Known non-relative adoption refers to the adoption of a child who is known but not biologically related to the prospective adoptive parents.

Australian central authorities' view

There are five general principles for intercountry known non-relative adoption in Australia.

1. The purpose of an adoption is to provide for a child's long term care, wellbeing and development by creating a permanent parent/child relationship.
2. As a signatory to the *Hague Convention on Protection of Child and Cooperation in Respect to Intercountry Adoption*, Australia is committed to establishing safeguards to ensure that intercountry adoptions, in all forms, take place in the best interests of the child.
3. Intercountry adoption by a known non-relative in Australia may provide a permanent placement option for a child in **limited circumstances** where it can be demonstrated that placement with a specific family would be in the child's best interests.
4. Independently arranged adoptions where prospective adoptive parents identify specific children they wish to adopt in overseas countries are not supported as they are not consistent with the principles of the Hague Convention.
5. Australian state and territory central authorities may only facilitate intercountry known non-relative child adoptions where it is consistent with the relevant state or territory adoption legislation.

Who can I speak to about known non-relative child adoption?

State and territory central authorities are responsible for the consideration and facilitation of individual adoption cases. Specific enquiries about intercountry known non-relative child adoption should be discussed with the relevant state or territory central authority, including whether any other options may be available.

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Prospective adoptive children and parents must be assessed by their relevant central authority. Where an intercountry known non-relative child adoption is not arranged through the relevant central authority, there is a significant risk that the child will not meet Australian immigration requirements and, therefore, be unable to enter Australia.

What are the requirements for known non-relative adoptions?

In states or territories where known non-relative adoptions are permitted, applications will only be considered where it can be demonstrated:

1. The overseas adoption authorities have determined the child is legally able to be adopted and placement with known non-relative Australian prospective adoptive parents would be in the child's best interests.
2. A request to assess the Australian prospective adoptive parents has been received from the overseas adoption authorities.
3. There is a substantive, pre-existing relationship between the child and the prospective adoptive parents.
4. The prospective adoptive parents are not pursuing a known non-relative adoption to circumvent Australia's intercountry adoption processes.

How does the known non-relative adoption process work?

If you state or territory central authority agrees that known non-relative adoption may be appropriate for your situation, you should contact the relevant authority in the country where the child lives and request they conduct an assessment of the child for adoption. Generally, the following process will then apply:

1. The overseas authority must determine whether the child is legally able to be adopted and, if so, whether intercountry known non-relative adoption is in the child's best interests. State and territory central authorities will not contact an overseas central authority to request an assessment of a child for a known non-relative adoption.
2. If satisfied the child is legally able to be adopted and intercountry known non-relative adoption is in the child's best interests, the overseas authority will provide the relevant Australian state or territory central authority with a report on the child's circumstances, and a request for the child to be adopted by the known prospective adoptive parents.
3. When the Australian state or territory central authority receives the request, will determine if the request complies with the standards and principles of the Hague Convention (with assistance from the Australian Central Authority where necessary) and whether the adoption would be in accordance with state or territory law.
4. The Australian state or territory central authority will give consideration as to whether the child's proposed adoption by parents in Australia is likely to be able to be progressed before the child attains 18 years of age and will advise the overseas authority.
5. If an adoption placement is being considered for the child, the Australian state or territory central authority will complete an assessment report on the prospective adoptive parents to determine their eligibility and suitability to adopt the child under state or territory law. If the prospective adoptive parents are approved as suitable to adopt, the assessment report is sent to the overseas authority.

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6. The overseas authority will determine whether the proposed adoption placement is in the child's best interests.
7. If the adoption placement is judged to be in the child's best interests, the overseas authority and the state or territory central authority will agree to facilitate the adoption. The overseas authority is responsible for ensuring the necessary consents for the child's adoption are obtained.

What are the risks involved in known non-relative child adoptions?

Demonstrated relationship with child

Known non-relative adoptions may only be considered where there is a demonstrated relationship between the child and prospective adoptive parents (for example where the prospective adoptive parents have a relationship with the child's family or have previously been entrusted with caring for the child). This does not include situations where prospective adoptive parents wish to specify the overseas child they wish to adopt (for example, a child met while volunteering at an overseas orphanage, or a friend of a previously adopted child).

Circumvention of Hague Convention compliant adoption procedures

The Hague Convention prevents any contact between prospective adoptive parents and children in need of intercountry adoption until certain requirements are met. This is to ensure the adoption is arranged in the best interests of the child and to prevent inappropriate or illegal practices before the matching of children with prospective adoptive parents. Matching should only be conducted by professionals and based on the needs of the child with the qualities of the adoptive parents. Prospective adoptive parents must not self-select children to adopt in order to circumvent the process and waiting times of Australia's Hague Convention compliant processes.

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Question:

Why are parts of the Interdepartmental Committee (IDC) Report on Intercountry Adoption and submissions made to the IDC not publicly available? Can these be made available to the Committee and to the general public?

Answer:

The Department of Prime Minister and Cabinet (PM&C) has advised that:

- the report was redacted for privacy reasons, to protect the privacy of people who made submissions to the inquiry that were highly personal in nature, and
- sections of the report that contain the deliberative processes of the committee on issues that are under consideration by government were also not published.

Question:

What agreements are in place with Australia's current bilateral arrangement partners?

Answer:

Australia has bilateral intercountry adoption arrangements with two countries that are currently not parties to the Hague Convention, namely South Korea and Taiwan. South Korea is in the process of acceding to the Hague Convention. The government does not have formal government-to-government agreements with South Korea or Taiwan. The arrangements with these countries have existed since 1978 and 1984 respectively.