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Appendixes A – C

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Contents

Appendix A: Legislation

A1 Summary of legislation

Commonwealth

Intercountry adoption in Australia at the Commonwealth level is governed by the following legislation:

- *Family Law Act 1975*
- Family Law (Hague Convention on Intercountry Adoption) Regulations 1998
- Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998.

The following legislation relating to immigration matters also governs aspects of intercountry adoption:

- *Immigration (Guardianship of Children) Act 1946*
- *Migration Act 1958*
- Migration Regulations 1994
- *Australian Citizenship Act 2007.*

New South Wales

- *Adoption Act 2000*
- Adoption Regulation 2015.

Level of court

- Supreme Court of New South Wales.

Step-parent adoptions

Step-parents apply directly to the Supreme Court to adopt a stepchild in their care.

The child must be at least 5 years of age, and have lived with the step-parent for at least 2 years immediately before the application. For a child under 18 years of age, the step-parent must provide a report with their application to the court to assist in its decision making. This report must be completed by an adoption assessor approved by the New South Wales Department of Communities and Justice (DCJ).

Other relative adoptions

There is provision for adoptions by relatives. The child must have had an established relationship for at least 2 years with the applicant(s). These adoptions are made only in exceptional circumstances—that is, where a parental responsibility order or other order made through the Family Court would not adequately provide for the interests and welfare of the child.

Carer adoptions

Children who are unable to live with their parents or extended family are placed with authorised carers (foster carers) under an order of the Children's Court allocating parental responsibility to the Minister of DCJ or directly to the carer. An authorised carer, who is also

an approved adoptive applicant, may adopt a child in their care, if open adoption is assessed as being an appropriate permanency plan for the child. Adoption must be clearly preferable to any other order, and in the best interests of the child.

Both birth parents are actively encouraged to participate in developing an adoption plan and give consent to an open adoption. Where the child and carer(s) have established a stable relationship, and it is assessed that adoption will promote the child's welfare and is in their best interests, the Supreme Court may dispense with the consent of one or both birth parents. Where possible, a parent whose consent is dispensed with must be notified of the adoption application. The consent of any other person with any aspect of parental responsibility for the child is also required.

The sole consent of a child aged 12 or over must be given, where the child has been assessed as having the capacity to understand the effects of giving consent, and has been cared for by the prospective adoptive parent(s) for at least 2 years. Where possible, the birth parent(s) and any guardian must be notified of the adoption application. No other consent is required. Where a child aged between 12 and 18 does not have the capacity to give consent, the Supreme Court may dispense with the requirement for their consent. If this occurs, the consent of the parents and any other person with any aspect of parental responsibility for the child is required.

All parties to a carer adoption are encouraged to participate in developing an adoption plan—a written plan that explains how the child will remain connected with their birth family and culture through their growing years. At least 2 parties to an adoption must agree to the adoption plan. A non-consenting birth parent who agrees to an adoption plan is to be treated as if they were a party to the adoption of the child.

If an adoption plan is registered in the Supreme Court, it becomes part of the adoption order, and becomes enforceable as an order of the Supreme Court.

Adoption applications may be filed by DCJ, an accredited adoption service provider (AASP) (Anglican Community Services, Barnardos Australia, Family Spirit Adoption Services, Life Without Barriers and Key Assets) or the proposed adoptive parent(s), with the consent of the Secretary of DCJ or the relevant AASP Principal Officer where required.

Local and intercountry adoptions

To apply for an adoption in New South Wales, applicant(s) must:

- live in New South Wales
- be aged over 21
- be either a single person or a couple who have been living together continuously for 2 years.

Gazetted selection criteria apply and are available from

http://www.facs.nsw.gov.au/download?file=319617

The main consideration for any adoption order's being made is that it is clearly preferable and in the best interests of the child, in both childhood and later life.

All parties to local adoption are encouraged to participate in developing an adoption plan—a written plan that explains how the child will remain connected with their birth family and culture through their growing years. At least 2 parties to an adoption must agree to the adoption plan. A non-consenting birth parent who agrees to an adoption plan is to be treated as if they were a party to the adoption of the child.

If an adoption plan is registered in the Supreme Court, it becomes part of the adoption order, and becomes enforceable as an order of the Supreme Court.

Arrangements must be made by DCJ or a non-government agency accredited as an AASP by the New South Wales Office of the Children's Guardian.

Intercountry adoption arrangements can only be made by DCJ as the New South Wales Central Authority.

Official client

An applicant becomes an official client of adoption and permanency services when a formal application has been lodged (after lodging an expression of interest, and attending the relevant training seminar).

Adoption of Indigenous children

Adoption is not customary in Aboriginal communities, and is the least preferred permanency option for Aboriginal and Torres Strait Islander children. Instead, alternative permanent care options are typically pursued for Indigenous children in out-of-home care.

There are provisions in the NSW Adoption Act for the adoption of Aboriginal children for whom it is the best permanency option, and where all other permanency options have been considered. Open adoption for Aboriginal children is not actively promoted by DCJ but can occur when it is clearly preferable to any other care arrangements.

Indigenous children must be placed in accordance with the Aboriginal and Torres Strait Islander Placement Principles, and additional requirements must be met under the Adoption Act before an adoption order can be made.

For children adopted from out-of-home care, an adoption plan for the Aboriginal child is registered in the Supreme Court, along with the cultural plan. Where possible, a significant person should be identified, who agrees to support the child's connection with their culture and community following the adoption. The Adoption Information Unit provides support to families, and, where necessary, may seek a review of the registered adoption plan by the New South Wales Supreme Court.

If an adoption plan is registered in the Supreme Court, it becomes part of the adoption order, and becomes enforceable as an order of the Supreme Court.

Adoption of adults

A person aged 18 or over, who was cared for by the prospective adoptive parent as their child before turning 18, and who is in a 'fit condition' to give consent may give sole consent to their own adoption. The Supreme Court must not dispense with the consent of a person who is 18 or over.

An adoption application is generally lodged directly with the Supreme Court, with little or no involvement from DCJ's Open Adoption and Permanency Services other than providing a report to the Supreme Court at the Court's request.

Victoria

- *Adoption Act 1984*
- Adoption Regulations 2008
- *Adoption Amendment Act 2013*
- *Adoption Amendment Act 2015.*

Level of court

- Supreme Court of Victoria
- County Court of Victoria.

Step-parent and other relative adoptions

In all cases when a child is placed with relatives, attempts are made for this to happen on an order made through the Family Court. An adoption order in favour of a relative or step-parent is made only in exceptional circumstances, and if an order from the Family Court will not make adequate provision for the welfare and interests of the child.

A solicitor may prepare an application for formal adoption by a step-parent or other relative. The application must be made to the Victorian Department of Justice and Community Safety (DJCS Vic) or an approved non-government adoption agency for an assessment report on the prospective adoptive parent(s). The report is submitted with the application to the County Court or Supreme Court.

Adoptions are arranged by the DJCS Vic or an approved non-government agency (listed in the section following).

Local and intercountry adoptions

To apply for an adoption in Victoria, the applicant(s) must be either:

- 2 people:
  - who are married to each other
  - whose relationship is recognised as a traditional marriage by an Aboriginal community or an Aboriginal group to which they belong
  - who are in a registered domestic relationship with each other
  - who are living in a domestic relationship, and have been for not less than 2 years before the date on which the order is made
- a single person, if the child faces special circumstances.

The Adoption Amendment (Adoption by Same-Sex Couples) Act came into effect on 1 September 2016. This Act means that lesbian, gay, bisexual, transgender and intersex couples can apply to adopt under the same circumstances as any other couple in Victoria.

Intercountry adoptions are arranged only via the DJCS Vic. But local adoptions may be arranged by the DJCS Vic or approved non-government organisations (Anglicare Gippsland, Anglicare St Luke's, Anglicare Western, Family Spirit, Child and Family Services Ballarat, and Connections).

Official client

An applicant becomes an official client for the purposes of intercountry adoption when they make an application.

Adoption of Indigenous children

The Victorian Adoption Act recognises the principles of Indigenous self-management and self-determination, and that adoption is not available in Indigenous child-care arrangements.

Restrictive eligibility criteria are in place for the selection of adoptive parents for Aboriginal and Torres Strait Islander children. The birth parent(s) of an Indigenous child can place the condition on adoption that the child go to an Indigenous adoptive parent(s) or that a right of

access be granted to the birth parent(s), other relatives, and members of the Indigenous community.

Adoption of adults

Section 10 of the Victorian Adoption Act allows the court to grant an adoption order for the adoption of an adult who has been brought up, maintained and educated by the applicant(s) acting as the parent(s) of the person. The adoption proceeds without the involvement of the DJCS Vic or approved adoption agency and does not require the consent of the person's birth parent(s).

Queensland

- *Adoption Act 2009*
- Adoption Regulation 2020.

The Adoption Act and its regulations took effect on 1 February 2010 with a review/update assented to in November 2016.

Level of court

- Childrens Court of Queensland.

Step-parent adoptions

Adoption by step-parents can be arranged only through the Queensland Department of Children, Youth Justice and Multicultural Affairs (DCYJMA).

Other relative adoptions

If adoption by a relative is the best option for securing a child's long-term care, the DCYJMA can ask a relative to consider being assessed as a prospective adoptive parent for the child. But the relative cannot initiate the process.

Local and intercountry adoptions

A person is eligible to have their name entered or remain in the expression of interest register if:

- the person is an adult
- the person or the person's spouse is an Australian citizen
- the person is resident or domiciled in Queensland
- the person is not pregnant
- the person is not an intended parent under a surrogacy arrangement within the meaning of the *Surrogacy Act 2010*
- for a person who has been an intended parent for a surrogacy arrangement within the meaning of the Surrogacy Act—the surrogacy arrangement ended at least 6 months earlier
- the person does not have custody of (does not include children of whom the person is an approved carer):
  - a child aged under 1
  - a child who has been in the person's custody for less than 1 year
- for a person who has a spouse:

- the person and the spouse made an expression of interest jointly under division 2
- the spouse is also eligible under the same conditions
- the person and the spouse are living together.

A person who made an expression of interest jointly with their spouse is not eligible to have the name of that spouse remain in the expression of interest register if they are no longer the person's spouse.

The DCYJMA is the only agency legally authorised to arrange adoptions in Queensland.

Official client

An applicant becomes an official client after they lodge an expression of interest to adopt a child with Adoption and Permanent Care Services.

Adoption of Indigenous children

The Queensland Adoption Act respects Indigenous custom by not promoting adoption as an appropriate option for the long-term care of an Indigenous child.

The Act includes safeguards to ensure, where parents and guardians of an Indigenous child do explore adoption for a child's care, that the child's culture is respected, and the adoption proceeds only if there is no better option available for the child's long-term stable care.

The DCYJMA must provide counselling and information to all parents involved, and the option to receive counselling and information about specific issues from an Indigenous person considered appropriate by the parents of the Indigenous child.

The Act includes the Aboriginal and Torres Strait Islander Child Placement Principle, which requires the DCYJMA to consider placing the child (in order of priority) with:

1. a member of the child's community or language group
2. another Indigenous person who is compatible with the child's community or language group
3. another Indigenous person.

The DCYJMA must consult an appropriate Indigenous person in selecting a couple to be considered as the child's prospective adoptive parents.

An adoption plan between the parties to the adoption is mandatory if an Indigenous child is to be adopted by a couple from outside his or her community. The plan must include agreement on how the child might be assisted to develop a cultural identity, including establishing links with cultural heritage and with members of his or her community or language group.

Before making any decisions about the adoption of an Indigenous child, the Childrens Court is required to consider the views of an appropriate Indigenous person about the child's interests, and any traditions or customs relevant to the child.

Adoption of adults

The Queensland Adoption Act does not make provision for an adult to be adopted. An adoption order can be made only for a child aged under 18.

Western Australia

- *Adoption Act 1994*
- Adoption Regulations 1995

- *Family Law Act 1975*
- *Family Court Act 1997.*

Level of court

- Family Court of Western Australia.

Step-parent adoptions

Step-parents can apply to adopt a child under the Adoption Act if they have been married to, or in a de facto relationship with, a birth parent of the child for at least 3 years. The consent of the non-custodial birth parent, or an order from the Family Court of Western Australia to dispense with such consent, is required. Before the adoption can be finalised, an adoption plan is negotiated between the non-custodial birth parent and the adoptive parent, or dispensed with by the Family Court.

Step-parents wishing to adopt their stepchild are required to provide written notification to the Western Australian Department of Communities of their intention to apply for an adoption order at least 60 days before their application is filed.

After receiving notice of the step-parent's intention to adopt, the Chief Executive Officer (CEO) of the Department of Communities will arrange for a report to outline whether the applicant satisfies the legislative requirements for an adoption order to be made.

Other relative adoptions

Adoption by relatives is permitted under certain circumstances. The definition of 'relative' is limited to a person's grandparent, sibling, uncle or aunt. A relative adoption can occur only where the relative has had full-time care of the child for at least 2 consecutive years.

Approval of the child's placement with the prospective relative adoptive parent(s) must be authorised by the CEO of the Department of Communities, with a view to the child's being adopted by the relative.

Before making an adoption order in favour of a relative, the Family Court must be satisfied that there are good reasons to redefine the relationships within the child's family, and that it would be preferable to a parenting order under the *Family Law Act 1975* (Cwlth) and the Western Australian Family Court Act.

Where the child is in the care of the CEO of the Department of Communities under a protection order (time limited), or (until age 18) made pursuant to the Western Australian *Children and Community Services Act 2004,* relative adoption can occur if relatives meet the adoption criteria requirements, and the CEO is satisfied that the child's adoption is preferable to a protection order (special guardianship).

Carer adoptions

Approval of the child's placement with the carer must be authorised by the CEO of the Department of Communities with a view to the child's being adopted by the carer. Where the child is in the care of the CEO under a protection order (time limited), or (until age 18) made pursuant to the Children and Community Services Act, carer adoption can occur if carers meet the adoption criteria requirements, and the CEO is satisfied that the child's adoption is preferable to a protection order (special guardianship).

Carers must have had full-time care of the child for at least 2 consecutive years before applying to adopt the child. Birth parental consent is required for the child's adoption, or an order from the Family Court can be made to dispense with consent under certain

circumstances. Unless dispensed with by the Family Court, an adoption plan must be negotiated by parties to the adoption.

Local and intercountry adoptions

All adoptions are arranged through the Department of Communities. Applicants must meet specific eligibility criteria before being considered for assessment.

For local adoptions, all known birth parents must give consent to their child's adoption. Birth parents are involved in selecting prospective adoptive parents using non-identifying profiles.

An adoption plan is required between the birth parent(s) and adopting parent(s).

As well, the intercountry adoption process must meet principles and standards of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Western Australia manages individual adoptions under these agreements.

Official client

An applicant must meet specific eligibility criteria to be considered as an adoptive parent. An applicant becomes an official client after the Department of Communities has considered their expression of interest application.

As part of the adoption process, applicants are required to attend the relevant education sessions before lodging their expression of interest.

Adoption of Indigenous children

Section 3(2) of the Western Australian Adoption Act acknowledges that adoption is not part of Aboriginal or Torres Strait Island culture, and that the adoption of an Indigenous child should occur only in circumstances where there is no other appropriate alternative for the child.

Under section 16A of the Western Australian Adoption Act, before making a decision on the prospective adoption of an Aboriginal or Torres Strait Islander child, the CEO of the Department of Communities must consult with:

- an officer of the Department of Communities who is Indigenous
- an Indigenous person who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community
- an Indigenous agency that, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community.

Adoption of adults

An adult may be adopted by a person who was his or her carer or a step-parent immediately before he or she turns 18. Both the prospective adoptee and the prospective adoptive parent(s) must consent to the adoption, and both birth parents of the prospective adoptee must be notified of the intention to apply for an adoption order.

Parties who are required to sign consents must not do so unless the CEO of the Department of Communities has provided them with the information set out in Schedule 1 of the Western Australian Adoption Act.

The CEO is not required to provide a report to the Family Court (unless requested by the Court).

South Australia

- *Adoption Act 1988*
- Adoption (General) Regulations 2018
- Adoption (Fees) Revocation Regulations 2020
- *Adoption (Fees) Notice 2021*.

Level of court

- Youth Court of South Australia
- Family Court of South Australia.

Adoption Act review

In December 2016, the *Adoption (Review) Amendment Act 2016* was passed in the South Australian Parliament. It put into place the recommendations of a 2015 review of the Adoption Act commissioned by the South Australian Government, and provides for:

- the abolition of information vetoes and their phasing out over 5 years
- adoption by same-sex couples
- integrated birth certificates for adoptees
- adult adoption
- discharge of adoption orders in special circumstances
- notification of the death of a party to an adoption.

Several amendments began in 2017, with the remainder starting on 15 December 2018.

Step-parent adoptions

In all cases, 'leave to proceed', granted in the Family Court, is required before step-parents can apply to adopt a stepchild.

Adoption by step-parents is granted only when there is no other order that will adequately provide for the interests and welfare of the child. The Department for Child Protection is required to provide counselling for the relevant consents, as well as a report to the Youth Court.

Other relative adoptions

Adoptions by relatives other than step-parents are granted only when there is no other order that will adequately provide for the interests and welfare of the child. The Department for Child Protection is required to provide counselling for the relevant consents, as well as a report to the Youth Court.

Local and intercountry adoptions

To be eligible, the applicant(s) must be either:

- a couple in a qualifying relationship for a continuous period of at least 5 years at the time the adoption order is made, or 3 years for allocation or placement of the child
- a single person, in special circumstances.

Official client

An applicant becomes an official client when they lodge an expression of interest to adopt a child with the Department for Child Protection.

Both members of a couple must attend an information session about adoption before lodging an expression of interest.

Adoption of Indigenous children

The Adoption (Review) Amendment Act elevated the Aboriginal and Torres Strait Islander Child Placement Principle to the Objects and Guiding Principles of the Adoption Act. This requires that 'a person or body exercising a function or power under this Act in relation to an Aboriginal or Torres Strait Islander child must observe the Aboriginal and Torres Strait Islander Child Placement Principle'. This includes the Department for Child Protection and the Youth Court.

The Adoption Act requires that the Youth Court must not make an adoption order for an Indigenous child 'unless satisfied that adoption is in the best interests of the child and, taking into account the rights and welfare of the child, clearly preferable to any alternative order that may be made under the laws of the State or the Commonwealth'.

The court must also consider a report from the Chief Executive of the Department for Child Protection setting out consultation that has occurred with a recognised Aboriginal or Torres Strait Islander organisation, as well as any submissions made by or on behalf of a recognised Aboriginal or Torres Strait Islander organisation consulted in relation to the child.

Adoption of adults

The Adoption Act provides for the adoption of adults in certain circumstances. The court must be satisfied:

- that a significant parent-to-child relationship existed between the prospective adoptive parent or parents and the child before the child attained the age of 18
- that the child appears to understand the consequences of adoption on the child's interests, rights and welfare.

In determining whether a 'significant parent to child relationship existed', the Court will take into account:

- whether the child was cared for by the prospective adoptive parent or parents as their child before the child reached the age of 18
- whether the child was, under the South Australian *Children's Protection Act 1993*, placed in the care of the prospective adoptive parent or parents, before the child reached the age of 18.

Tasmania

- *Adoption Act 1988*
- Adoption Regulations 2016
- *Adoption Amendment Act 2007*.

Level of court

- Magistrate sitting alone.

Step-parent adoptions

Adoption by a step-parent is possible in some circumstances. If the child's father has not legally established his paternity, an application may be considered by the Department of Communities Tasmania. If the child's paternity has been legally established, adoption is possible only in special circumstances that justify adoption, and when other available orders will not provide adequately for the welfare and interests of the child.

All applications for an adoption order in favour of a step-parent adoption must be made through the Department of Communities Tasmania.

Other relative adoptions

The magistrate's power to make an adoption order in favour of a relative is limited to special circumstances that justify adoption, and when other available orders will not provide adequately for the welfare and interests of the child.

All applications for an adoption order in favour of a relative must be made through the Department of Communities Tasmania.

Carer adoptions

Adoption may be considered for a child in out-of-home care where it is considered to be in the child's best interests. The Department of Communities Tasmania has established a policy that provides advice and clarifies the requirements on adoption by foster carers.

All applications for an adoption order in favour of a foster carer adoption must be made through the Department of Communities Tasmania.

Local and intercountry adoptions

To be eligible, the applicant(s) must be either:

- a couple who are married or in a registered relationship and have lived together in a stable, continuous relationship for not less than 3 years
- a single person, in special circumstances that relate to the welfare and interests of the child.

Adoptions by non-relatives can be arranged by the Department of Communities Tasmania or a non-government organisation approved by the Tasmanian Minister for Children.

Official client

An applicant becomes an official client for the purpose of intercountry adoption once their adoption application has been registered with the Department of Communities Tasmania.

Adoption of Indigenous children

Adoption of Aboriginal or Torres Strait Islander children is not included in the legislation, although the birth parent(s) may express wishes about the race of adoptive parent(s). The cultural differences of Indigenous Australians are recognised, and placement within the Indigenous community is preferred.

Adoption of adults

The Tasmanian Adoption Act provides for adult adoptions when a person has been brought up, maintained and educated by the prospective adoptive parent, or either of the prospective adoptive parents, or the prospective adoptive parent and his or her deceased spouse.

The magistrate cannot make an order for the adoption of a person who is, or has been, married. It must also be satisfied that there are special circumstances for the welfare and interests of the person that make it desirable for the person to be adopted.

Australian Capital Territory

- *Adoption Act 1993.*

Level of court

- Supreme Court of the Australian Capital Territory
- Family Court of Australia (step-parent adoptions only).

Step-parent adoptions

Adoption by step-parents can be arranged only through Child and Youth Protection Services.

Other relative adoptions

Adoptions by relatives other than step-parents are granted only when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Adoption by relatives can be arranged only through Child and Youth Protection Services.

Local and intercountry adoptions

To be eligible, the applicant(s) must be either:

- a married couple for more than 3 years
- a de facto couple for more than 3 years
- a single person, in particular circumstances.

Further detail about eligibility is outlined in section 14 of the Adoption Act. Adoptions by non-relatives must be arranged through Child and Youth Protection Services.

Official client

A person becomes an official client when the Assessment and Support Unit of Child and Youth Protection Services receives a completed application form.

Adoption of Indigenous children

Restrictive eligibility criteria apply for prospective adoptive parents, in accordance with the Aboriginal and Torres Strait Islander Child Placement Principle.

Adoption of adults

Adult adoptions are legal under the Australian Capital Territory Adoption Act, where the adoptee, or at least one applicant, lives in the Australian Capital Territory, and has been brought up, maintained and educated by the applicant(s) under a de facto adoption.

Northern Territory

- *Adoption of Children Act 1994*
- *Adoption of Children Amendment Act 2006*
- *Adoption of Children Act 2018.*

The Northern Territory Adoption of Children Amendment Act, which came into effect on 3 July 2006, enables Australian birth certificates to be issued for overseas-born adoptees whenever the necessary birth information is provided by the country of origin. This applies irrespective of whether the adoption is finalised in the Local Court or as a foreign adoption order, automatically recognised under Australian law.

Level of court

- Northern Territory Local Court.

Step-parent adoptions

Other arrangements are sought before an adoption order is considered, only supported in exceptional circumstances.

Other relative adoptions

Adoptions by relatives other than step-parents are granted only when a guardianship or custody order will not adequately provide for the interests and welfare of the child.

Carer adoptions

Carers may lodge an expression of interest to adopt the child they are caring for in special circumstances. Birth parental consent is required for the child's adoption, unless the Local Court has made an order dispensing with that consent. These are extremely rare as there are alternative options including Permanent Care Orders.

Local and intercountry adoptions

Eligibility requirements allow/require the applicant(s) to:

- be no more than 40 years older than the child, or 45 years older than the child if previous children are in the family
- have other requirements on the age of adoptive parent(s) considered in exceptional circumstances
- couples must have been in a relationship for not less than 2 years and this includes de facto and same sex couples
- be a single person in exceptional circumstances.

All adoptions must be arranged through the Department of Territory Families, Housing and Communities.

Official client

An applicant becomes an official client when they lodge an adoption application.

Adoption of Indigenous children

Adoptions of Indigenous children can occur only if alternative custody with the child's extended family cannot be arranged. If an order is made, it must comply with the Aboriginal and Torres Strait Islander Child Placement Principle.

Adoption of adults

The Court may, on application, make an order for the adoption of an adult that has been brought up, maintained and educated by the applicant or applicants, or by the applicant and a deceased or estranged spouse of the applicant, as their child. The Court will not make an

order for the adoption of a person who is or has been married, is living or has lived in a de facto relationship or has entered into a traditional Aboriginal marriage.

A2 Provisions for open adoptions

New South Wales

New South Wales recognises that a variety of relationships might exist between a child's adoptive and birth families, but strongly supports the child's connections with their birth family and culture through openness in adoption attitudes, and actions between birth and adoptive families.

An adoption plan—which details how the adoptive parent(s) will support the child's connection to their birth family and culture, and which includes regular contact and/or exchange of information—is usually provided to the court at the time an adoption order is sought.

For local adoptions in New South Wales, the birth parent(s) participate in choosing the adoptive family for their child. If required, DCJ or the agency that arranged the adoption might help mediate ongoing contact after the adoption order.

Victoria

The Victorian *Adoption Act 1984* allows an adoption order to include conditions on information exchange and/or access between the parties. After signing the consent, the birth parent(s) are given the opportunity to express their wishes about contact and information exchange, which are considered when placement decisions are made.

The Adoption Act requires that birth parents' wishes are taken into account when selecting an adoptive family. In practice, at the time of signing the consent, birth parents are asked whether they wish to be actively involved in selecting an adoptive family. They are encouraged to consider profile information on approved adoption applicants who have been assessed as suitable for the child, and to indicate their preferred adopter(s).

After placement, there might be direct contact between the parties, or an exchange of information.

Queensland

Under the Queensland *Adoption Act 2009*, all parties to an adoption have access to non-identifying information.

Where an adoptee is aged under 18, parties to an adoption can access identifying information only if both the adoptive and birth parents agree and provide consent.

Where a child's prospective adoptive parent(s) and birth parent(s) wish to have contact after the adoption order is made, an adoption plan is compulsory, and must be in place before a final adoption order can be made. The DCYJMA must help parties negotiate an adoption plan at the time a child's adoption is arranged, or after an adoption order has been made, if assistance is requested.

Western Australia

Since the inception of Western Australia's *Adoption Act 1994*, all adoptions in Western Australia are done in the spirit of openness, recognising the need for people affected by adoption to have access to information.

An adoption plan enables contact and exchange of information between parties to the adoption. Before a child is placed, an adoption plan is negotiated between the birth parent(s) and prospective adoptive parent(s). Under certain circumstances, the adoption plan can be dispensed with by applying to the Family Court of Western Australia.

Adoption plans can be modified by parties to adoption, and be approved by the Family Court. Before parties can apply to the Family Court to modify the adoption plan, they are required to participate in a mediation process conducted by the Department of Communities. The CEO of the department must certify that mediation has been completed.

Mediation is not required for adoption plans for an adoption by a step-parent, relative or carer. These parties can apply directly to the Family Court to vary the adoption plan.

South Australia

Under the South Australian *Adoption Act 1988*, open arrangements are possible between parties to the adoption. This can involve access to information and/or contact between the parties. The contact arrangements are not legally binding, and are facilitated and mediated by the South Australian Department for Child Protection.

Tasmania

Under the Tasmanian *Adoption Act 1988*, open adoptions are possible between parties to the adoption. The adoption forms (Adoption Regulations 2016) allow parties to express wishes about ongoing contact and information exchange at the time of the adoption. These exchanges are generally facilitated by the Department of Communities Tasmania. Arrangements for contact and information exchange are not legally binding.

Australian Capital Territory

Legislation allows for conditional orders (that is, where contact frequency and other arrangements can be specified). Since the Australian Capital Territory *Adoption Act 1993*, all adoptions are considered open—that is, some form of contact or information exchange is encouraged. Conditional orders are now routinely recommended to the court.

Northern Territory

Open adoptions have been available since the Northern Territory's *Adoption of Children Act 1994* was introduced. It is an option for relinquishing parents to request an open adoption, and an arrangement may be made with adoptive parents, although such an arrangement is not legally binding.

A3 Access to information and veto systems

New South Wales

Access to information

The New South Wales *Adoption Act 2000* makes different provisions for the release of information, depending on whether the adopted person is aged under or over 18, and whether an adoption order was made before or after 1 January 2010.

For adoptions made after 1 January 2010, the adopted person, adoptive parents, birth parents and adopted and non-adopted siblings of an adopted person can gain identifying

information about each other, and search for each other from the day the adoption order is made.

An adopted person aged under 18 requires the consent of their surviving adoptive parent(s) or the Secretary of DCJ to apply.

Birth parents and non-adopted siblings (where the adopted person is aged under 18) must first apply to the Secretary of DCJ for an authority (Adoption Information Certificate) to obtain identifying information. Before an authority can be released, an assessment must be made to determine whether the release of identifying information would pose any risk to the safety, welfare or wellbeing of the adopted person or adoptive parent(s).

Non-adopted siblings under the age of 18 require the consent of their parents or the Secretary of DCJ to apply.

Where the adopted person is aged 18 or over, an authority (Adoption Information Certificate) is not required. But if a non-adopted sibling is aged under 18, the sibling must have the consent of their parent(s) or the Secretary of DCJ. If consent is given by their parent(s) or the Secretary, an authority will be issued.

For adoptions made before 1 January 2010, birth parents, adoptive parents (with the consent of the adopted person) and adopted siblings can access identifying information once the adopted person turns 18. All parties must first apply to the Secretary of DCJ for an authority (Adoption Information Certificate). Before an authority is issued, a check is done to see whether the application is subject to an advance notice or contact veto.

While an adopted person is aged under 18, birth parents and adoptive parents can access non-identifying information. With the permission of the other parent(s) (birth or adoptive), identifying information may also be provided.

For people without other entitlements under the legislation to receive identifying information, the Secretary of DCJ may make adoption information available where it would be reasonable to do so.

Anyone who had a close personal relationship with a deceased adopted person or deceased birth parent may apply to the Secretary of DCJ who will evaluate their right to, and make decisions about releasing, the adoption information. This is referred to as inheriting rights.

Advance Notice Register

Adult adopted persons, birth parents and adoptive parents who are parties to an adoption may lodge an Advance Notice Application. This enables them to be advised if another party to an adoption applies for identifying information. The release of their personal information is then delayed for up to 3 months to allow the registered person to prepare for its release—for example, a birth mother might need time to tell her current partner about the adoption, or an adopted person may be sitting exams.

Contact Veto Register

Where an adoption order was made before 26 October 1990, the birth parent(s) and adult adopted person are able to lodge a contact veto. A veto cannot be lodged for an adoption that occurred after that date. The veto prevents only contact; it does not prevent the release of identifying adoption information.

Information that is subject to a contact veto will be released to an applicant only if he/she gives a written legal undertaking not to use that information to seek contact.

Once a veto is lodged and a legal undertaking signed, it becomes an offence for the person applying for the identifying information to try to contact the person who lodged the veto, or for them to have someone else try to make contact on their behalf.

Reunion and Information Register

Parties to an adoption and others may apply to register their name in the Reunion and Information Register. Their registration enables them to be matched with another person who has also registered for the same adoption. Once matched, the parties may then choose to be put in contact with each other and be reunited.

Registration on the Reunion and Information Register also enables the Adoption Information Unit and other adoption agencies to act on behalf of the registered person to locate a person from whom they have been separated as a consequence of adoption or foster care.

Victoria

Access to information

In Victoria, an adoptee aged 18 or over may apply for a copy of his or her original birth certificate and adoption records.

An adoptee aged under 18 requires the written agreement of his or her adoptive parent(s) before information can be given; the written consent of the birth parent(s) is also required before identifying information can be given.

From 1 July 2013, birth parents have a right to identifying information about an adoptee who is now an adult. Birth relatives may obtain non-identifying information from records about the adoptee. Identifying information can be given with the written consent of the adoptive parent(s) if the adoptee is aged under 18.

Adult children of adoptees have the same rights to information as the adoptee, provided the adoptee is first informed in writing and has not objected to the release of their adoption information or, where the adoptee is dead, a copy of the death certificate is provided.

Adoptive parents may apply for information about the birth family's background. The written permission of the birth parent(s) is required before identifying information may be released. Where the adoptee is aged 18 or over, they must be notified in writing of the intention to release identifying information about the birth family.

Veto system

Victoria has an adoption information register system on which people can record their wishes about giving or receiving information and making contact. An authorised agency can facilitate contact between parties to an adoption.

In 2013, the Victorian *Adoption Amendment Act 2013* introduced a contact veto scheme allowing adult adoptees to lodge a 'contact statement' specifying whether, or how, they wish to be contacted by their birth parent(s). Identifying information vetoes do not exist in Victoria.

In 2015, the Victorian *Adoption Amendment Act 2015* repealed the contact veto scheme. Contact statements that were lodged before the start of the Act, on 26 August 2016, will remain in force until they expire (5 years from lodgement).

Queensland

Access to information

The Queensland *Adoption Act 2009* makes different provisions for the release of information, depending on whether an adoptee is aged under or over 18, and whether an adoption order was made before or after 1 June 1991.

Adoptees and birth parents are entitled to receive identifying information once the adoptee has reached the age of 18. Where the adoptee is aged under 18, identifying information can be provided if consent is given by both the adoptive and birth parents.

In certain circumstances, eligible relatives of an adoptee or birth parent(s) who signed an adoption consent can obtain identifying information. This includes siblings of the adoptee who were not adopted.

The adoptee and the birth parent(s) who signed the adoption consent can lodge a contact statement to express their wishes about how they would prefer to be contacted, or to express their wish not to be contacted. It is no longer an offence for an adoptee or birth parent affected by an adoption order made before 1 June 1991 to contact another party who has requested no contact.

To support people accessing information and considering contact statements, the Queensland Government also funds Post Adoption Support Queensland to provide counselling and support to people affected by adoption. This service offers:

- telephone counselling and support
- face-to-face counselling
- support and information during the search process
- mediation and assistance for people wishing to make contact with relatives.

Veto (contact statement) system

In Queensland, the enactment of the Adoption Act brought significant changes to vetoes. The repealed Queensland *Adoption of Children Act 1964* provided for objections to contact—and objections to the disclosure of identifying information—to be lodged by adoptees or birth parents affected by an adoption order made before 1 June 1991.

On 1 February 2010, all objections then in force under this repealed Act were reconstituted as a contact statement that specifically requested no contact (effectively, a contact veto).

A contact statement remains in place, unless it is revoked by the person who lodged it, or the person dies. It is no longer an offence for an adoptee or birth parent affected by an adoption order made before 1 June 1991 to contact another party who has requested no contact. If a request for no contact is in place, identifying information can be provided only if the person seeking information has signed an acknowledgment indicating that they are aware that the contact statement requesting no contact is in place.

The release of identifying information can be restricted only if the Childrens Court has made an order preventing it, where it is deemed the release would pose an unacceptable risk of harm.

Western Australia

Access to information

All parties to an adoption may apply for access to either identifying or non-identifying information. Under the Western Australian *Adoption Act 1994*, all parties can apply for access to birth records and adoption court records (identifying information).

Birth parents, adoptive parents and adoptees may apply for access to information about the adoption from departmental records, at the discretionary authority of the Department for Communities. The level of information depends on the information recorded at the time and on whether the records still exist.

Birth siblings of adoptees have the right to access court records and birth registration information about their adoptee sibling, provided that the sibling and adoptee are both aged 18 or over.

Veto system

The 2003 amendments to the Adoption Act resulted in information vetoes no longer being effective, and in no new vetoes being able to be registered. People previously affected by an information veto can access identifying information. Contact vetoes are still in effect for the period stated by the person who lodged the statement of wishes, or until the person dies or cancels the veto.

A party to the adoption may apply to the Family Court of Western Australia for an order to prevent access to identifying information. The Family Court must be satisfied that access to the identifying information would likely place the applicant, their spouse or their children at serious risk.

South Australia

Access to information

In South Australia, adoptees aged 18 or over can access information in their original birth certificate, as well as details about their birth parents (if known), such as name, date of birth, physical attributes and personal interests.

Adoptees are also entitled to know the names of any biological siblings who were also adopted.

Information may be provided to an adoptee or a birth parent before the adoptee turns 18 in certain circumstances.

Once the adoptee reaches the age of 18, the birth parents can access the adoptive name of their relinquished child and the name(s) of the adoptive parent(s). Adoptive parents, descendants of an adoptee, and some birth relatives of the adoptee can apply for certain information under some circumstances.

Veto system

The adoption information veto system was abolished on 18 December 2017 through the South Australian *Adoption (Review) Amendment Act 2016*. A 5-year phase-out period starting on that date meant that all vetoes that were in place when the Amendment Act began will expire on 17 December 2022. A specific contact veto is not available under the amended South Australian *Adoption Act 1988.*

Previously, adoptees and birth parents could veto the release of identifying information about themselves. Adoptive parents could also place a veto on information about their identifying information, as long as this did not prevent the release of information about the adoptee. These veto provisions were available only for adoptions that occurred before the South Australian Adoption Act came into force in August 1989.

Tasmania

Access to information

In Tasmania, an adoptee aged 18 or over may apply for access to his or her pre-adoption birth record and information from the adoption record. An adoptee aged under 18 may apply for this information with the written consent of their adoptive parent(s).

Birth parents, birth relatives and lineal descendants of an adoptee may apply for non-identifying information at any time, or for identifying information when the adoptee is aged 18 or over.

Adoptive parents may apply for non-identifying information at any time, but may receive information that includes the name of a birth parent only with the written permission of the birth parent concerned.

All applicants who live in Tasmania must attend an interview with an approved counsellor before receiving information.

Veto system

The right to information is unqualified, but a contact veto may be registered. Any adoptee, birth parent, birth relative, lineal descendant of an adoptee, or adoptive parent may register a contact veto. Where a veto has been registered, identifying information is released only after an undertaking not to try any form of contact has been signed. An attempt to make contact where a veto is in force is an offence. A contact veto may be lifted at any time by the person who lodged it.

Australian Capital Territory

Access to information

Under the Australian Capital Territory's *Adoption Act 1993*, an adoptee aged 18 or over, birth parents, adoptive parents and birth relatives may apply for identifying information. Identifying information consists of a copy of, or extract from, an entry in a register of births about the adoptee, or information from which a birth parent, birth relative or adoptee may be identified (excluding the address of a place of residence).

Before the Adoption Act came into force in 1993, there was no provision for adoption information. But, as the Act is retrospective, information is now available for adoptions that occurred under the previous legislation.

Veto system

Under the Adoption Act, only contact vetoes may be registered. The veto has to refer to a specified person or a specified class of people.

The Act provides for an unqualified right to information, but also gives an adoptee aged over 17 years 6 months, an adoptive parent, birth parent, adult birth relatives, adult adoptive relatives, and adult children or other descendants of the adoptee the right to lodge a contact

veto. Once a veto is lodged, it becomes an offence for the information recipient to try to make contact with the person who imposed the contact veto.

Where information is requested, and a contact veto is in force, no information is given, unless the person requesting information has attended a counselling service and has signed a declaration that they will not try contact in any form.

Legislative changes delivered by the Australian Capital Territory *Adoption Amendment Act 2009*, make clear that vetoes can no longer be lodged on adoption orders made after 22 April 2010. These changes provide for greater accountability in obtaining consents to adoptions, increase the rights of birth parents and promote a more open system of adoption.

Northern Territory

Access to information

Legislation before the Northern Territory's *Adoption of Children Act 1994* did not allow the release of information to any parties to an adoption. The current Act supports a more open process, with identifying information being available, unless a veto has been lodged. Indigenous agencies, such as Stolen Generation and Link-Up, may be authorised to counsel for the purpose of supplying identifying information.

Veto system

A 3-year renewable veto may be lodged by the adoptee or birth parent(s) for adoptions finalised before 1994. There is no veto provision for adoptions finalised under the current Act.

Appendix B: Countries party to the Hague Convention

Table B1 lists the countries in which the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption has entered into force. These countries are legally obliged to apply the Hague Convention.

Table B1: Countries party to the Hague Convention, 26 October 2020

Country	Official name (if different)	Date the Hague Convention entered into force	Associated territories to which the Hague Convention applies	Relevant reservations, declarations, notifications or extensions
Albania	Republic of Albania	1 January 2001		
Andorra[(a)]	Principality of Andorra	1 May 1997		
Armenia[(a)]	Republic of Armenia	1 June 2007		
Australia	Commonwealth of Australia	1 December 1998		The Convention applies to all the territorial units of Australia.
Austria	Republic of Austria	1 September 1999		
Azerbaijan[(a)]	Republic of Azerbaijan	1 October 2004		
Belarus	Republic of Belarus	1 November 2003		
Belgium	Kingdom of Belgium	1 September 2005		
Belize[(a)]		1 April 2006		
Benin	Republic of Benin	1 October 2018		
Bolivia	Republic of Bolivia	1 July 2002		
Brazil	Federative Republic of Brazil	1 July 1999		
Bulgaria	Republic of Bulgaria	1 September 2002		
Burkina Faso		1 May 1996		
Burundi[(a)]	Republic of Burundi	1 February 1999		
Cambodia[(a)]	Kingdom of Cambodia	1 August 2007		
Canada		1 April 1997		The Convention applies to all 13 Canadian provinces and territories, but the date it entered into force differs for each province and territory.
Cape Verde[(a)]	Republic of Cabo Verde	1 January 2010		
Chile	Republic of Chile	1 November 1999		

(continued)

Table B1 (continued): Countries party to the Hague Convention, 26 October 2020

Country	Official name (if different)	Date the Hague Convention entered into force	Associated territories to which the Hague Convention applies	Relevant reservations, declarations, notifications or extensions
China	People's Republic of China	1 January 2006	• Hong Kong Special Administrative Region of the People's Republic of China. • Macau Special Administrative Region of the People's Republic of China.	The Convention applies to all municipalities, provinces, autonomous regions, and the 2 special administrative regions of the People's Republic of China.
Colombia	Republic of Colombia	1 November 1998		
Congo[(a)]		1 April 2020		
Costa Rica	Republic of Costa Rica	1 February 1996		
Côte d'Ivoire[(a)]		1 October 2015		
Croatia[(a)]	Republic of Croatia	1 April 2014		
Cuba[(a)]	Republic of Cuba	1 June 2007		
Cyprus	Republic of Cyprus	1 June 1995		
Czech Republic		1 June 2000		
Denmark	Kingdom of Denmark	1 November 1997	Faroe Islands—entered into force 1 April 2007.	The Convention did not originally apply to Greenland, but came into force in Greenland on 1 May 2010.
Dominican Republic[(a)]		1 March 2007		
Ecuador	Republic of Ecuador	1 January 1996		
El Salvador	Republic of El Salvador	1 March 1999		
Estonia[(a)]	Republic of Estonia	1 June 2002		
Eswatini[(a)]	Kingdom of Eswatini	1 July 2013		
Fiji[(a)]	Republic of Fiji	1 August 2012		
Finland	Republic of Finland	1 July 1997		
France	French Republic	1 October 1998		The Convention does not apply to France's overseas territories.
Georgia[(a)]		1 August 1999		
Germany	Federal Republic of Germany	1 March 2002		
Ghana[(a)]	Republic of Ghana	1 January 2017		

(continued)

Table B1 (continued): Countries party to the Hague Convention, 26 October 2020

Country	Official name (if different)	Date the Hague Convention entered into force	Associated territories to which the Hague Convention applies	Relevant reservations, declarations, notifications or extensions
Greece	Hellenic Republic	1 January 2010		
Guatemala[(a)]	Republic of Guatemala	1 March 2003		
Guinea[(a)]	Republic of Guinea	1 February 2004		
Guyana[(a)]		1 June 2019		
Haiti	Republic of Haiti	1 April 2014		
Honduras		1 July 2019		
Hungary	Republic of Hungary	1 August 2005		
Iceland[(a)]	Republic of Iceland	1 May 2000		
India	Republic of India	1 October 2003		
Ireland	Republic of Ireland	1 November 2010		
Israel	State of Israel	1 June 1999		
Italy	Italian Republic	1 May 2000		
Kazakhstan[(a)]	Republic of Kazakhstan	1 November 2010		
Kenya[(a)]	Republic of Kenya	1 June 2007		
Kyrgyzstan[(a)]	The Kyrgyz Republic	1 November 2016		
Latvia	Republic of Latvia	1 December 2002		
Lesotho[(a)]	Kingdom of Lesotho	1 December 2012		
Liechtenstein[(a)]	Principality of Liechtenstein	1 May 2009		
Lithuania[(a)]	Republic of Lithuania	1 August 1998		
Luxembourg	Grand Duchy of Luxembourg	1 November 2002		
Macedonia[(a)]	Republic of North Macedonia	1 April 2009		
Madagascar	Republic of Madagascar	1 September 2004		
Mali[(a)]	Republic of Mali	1 September 2006		
Malta[(a)]	Republic of Malta	1 February 2005		
Mauritius[(a)]	Republic of Mauritius	1 January 1999		
Mexico	United Mexican States	1 May 1995		
Moldova[(a)]	Republic of Moldova	1 August 1998		

(*continued*)

Table B1 (continued): Countries party to the Hague Convention, 26 October 2020

Country	Official name (if different)	Date the Hague Convention entered into force	Associated territories to which the Hague Convention applies	Relevant reservations, declarations, notifications or extensions
Monaco[(a)]	Principality of Monaco	1 October 1999		
Mongolia[(a)]		1 August 2000		
Montenegro[(a)]		1 July 2012		
Namibia[(a)]		1 January 2016		
Netherlands	Kingdom of the Netherlands	1 October 1998		The Convention applies to the Kingdom in Europe (excluding Aruba and the Netherlands Antilles).
New Zealand[(a)]		1 January 1999		
Norway	Kingdom of Norway	1 January 1998		
Panama	Republic of Panama	1 January 2000		
Paraguay[(a)]	Republic of Paraguay	1 September 1998		
Peru	Republic of Peru	1 January 1996		
Philippines	Republic of the Philippines	1 November 1996		
Poland	Republic of Poland	1 October 1995		
Portugal	Portuguese Republic	1 July 2004		
Romania		1 May 1995		
Rwanda[(a)]	Republic of Rwanda	1 July 2012		
San Kitts and Nevis[(a)]		1 February 2021		
San Marino[(a)]	Republic of San Marino	1 February 2005		
Senegal[(a)]	Republic of Senegal	1 December 2011		
Serbia[(a)]	Republic of Serbia	1 April 2014		
Seychelles[(a)]	Republic of Seychelles	1 October 2008		
Slovakia	Slovak Republic	1 October 2001		
Slovenia	Republic of Slovenia	1 May 2002		
South Africa[(a)]	Republic of South Africa	1 December 2003		
Spain	Kingdom of Spain	1 November 1995		

(continued)

Table B1 (continued): Countries party to the Hague Convention, 26 October 2020

Country	Official name (if different)	Date the Hague Convention entered into force	Associated territories to which the Hague Convention applies	Relevant reservations, declarations, notifications or extensions
Sri Lanka	Democratic Socialist Republic of Sri Lanka	1 May 1995		
Sweden	Kingdom of Sweden	1 September 1997		
Switzerland	Swiss Confederation	1 January 2003		
Thailand	Kingdom of Thailand	1 August 2004		
Togo[(a)]	Togolese Republic	1 February 2010		
Turkey	Republic of Turkey	1 September 2004		
United Kingdom	United Kingdom of Great Britain and Northern Ireland	1 June 2003	• England • Northern Ireland • Scotland • Wales • Isle of Man—entered into force 1 November 2003.	The Convention applies only to England, Wales, Scotland and Northern Ireland. An extension was later granted for the Isle of Man.
United States	United States of America	1 April 2008		
Uruguay	Oriental Republic of Uruguay	1 April 2004		
Venezuela	Bolivarian Republic of Venezuela	1 May 1997		
Vietnam	Socialist Republic of Vietnam	1 February 2012		
Zambia[(a)]		1 October 2015		
Total countries	**102**			

(a) These countries have acceded to the Hague Convention.

Notes

1. A country is counted as a Hague country only if the applicant's file was sent after the Hague Convention entered into force in this country.
2. Countries that participated in the 17th Session (a particular conference held in The Hague) are able to sign this Convention, with the option of also ratifying it. Alternatively, countries that did not participate in the 17th Session are able to accede to this Convention. By signing the Hague Convention, a country expresses, in principle, its intention to become a party to the Convention. But signature does not, in any way, oblige a country to take further action (towards ratification or not). A country is party to the Hague Convention if it has ratified or acceded to it—this involves the legal obligation for the country to apply the Convention once it has entered into force.
3. Nepal, the Russian Federation and South Korea have signed the Hague Convention, but are yet to ratify it.

Source: Hague Conference on Private International Law website.

Appendix C: Adoptions in Australia

The words used to describe those involved in an adoption carry sensitivities for all parties to the adoption. Both birth and adoptive parents can appropriately be referred to as 'parents'. In this report, the terms 'mother', 'father' or 'parent' are used to describe a child's biological parents. 'Birth mother', 'birth father' and 'birth parent' are considered less appropriate terminology, but, where required for clarity, these terms are also used in this report to refer to the biological parents (Higgins et al. 2016). The terms 'Adoptive mother', 'adoptive father' or 'adoptive parent' are used to describe parents who have adopted a child. The children who have been the subject of an adoption order are referred to as 'adopted children' or 'adoptees'.

C1 Adoption legislation and processes

A child can legally be adopted if all the necessary consents to the child's adoption have been obtained or dispensed with. Dispensation refers to the legal process in which a court declares that the consent of a parent or guardian is not required to proceed with an adoption. Dispensing with consent is a difficult, complex and sensitive process that is dependent on the individual circumstances of each case. Consent dispensation legislation is set by individual states and territories, occurs under strict conditions and must be in the best interests of the child.

People wishing to adopt a child must satisfy the government department or agency concerned that they will be suitable parents. Factors that might be considered in assessing the suitability of potential parents include their parenting capacity, age, health, reasons for wanting to adopt, marital status and the stability of their relationship. Eligibility requirements to adopt a child vary between jurisdictions (see Appendix A), as do eligibility requirements set by countries of origin for intercountry adoptions (IAA 2020b).

Intercountry adoptions

Legislation and responsibilities

The process for intercountry adoptions is strictly controlled:

- by each state and territory under the relevant state legislation
- by the Australian Government under the:
  - Commonwealth laws relevant to intercountry adoptions:
    - *Family Law Act 1975*
    - *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*
    - *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*
  - Commonwealth immigration laws relevant to intercountry adoptions:
    - *Australian Citizenship Act 2007*
    - *Immigration (Guardianship of Children) Act 1946*
    - *Migration Act 1958*
  - Migration Regulations 1994
- in accordance with the principles of the Hague Convention and the UN Convention on the Rights of the Child (see Box C1).

Box C1: What is the Hague Convention?

The Hague Convention entered into force for Australia in December 1998. It establishes:

- standards and procedures between countries, including legally binding standards and safeguards
- a system of supervision to ensure that these standards and procedures are observed
- channels of communication between authorities in countries of origin and receiving countries for children being adopted
- principles that focus on the need for intercountry adoptions to occur only where it is in the best interests of the child and with respect for their fundamental rights, and to prevent the abduction, sale or trafficking of children.

Appendix B provides a list of countries that were party to the Hague Convention as at 26 October 2020.

DSS, as the Australian Central Authority under the Hague Convention, is responsible for enabling the performance of Australia's responsibilities under the Hague Convention, building strong relationships with overseas countries and providing national policy leadership on international adoption practices.

State and territory central authorities also undertake responsibilities for intercountry adoption, including assessment of applications, preparation and support of families through the intercountry adoption process, provision of advice and assistance to families regarding specific overseas countries, monitoring individual applications, and support and supervision of families after the placement of adopted children (DSS 2020b).

Process

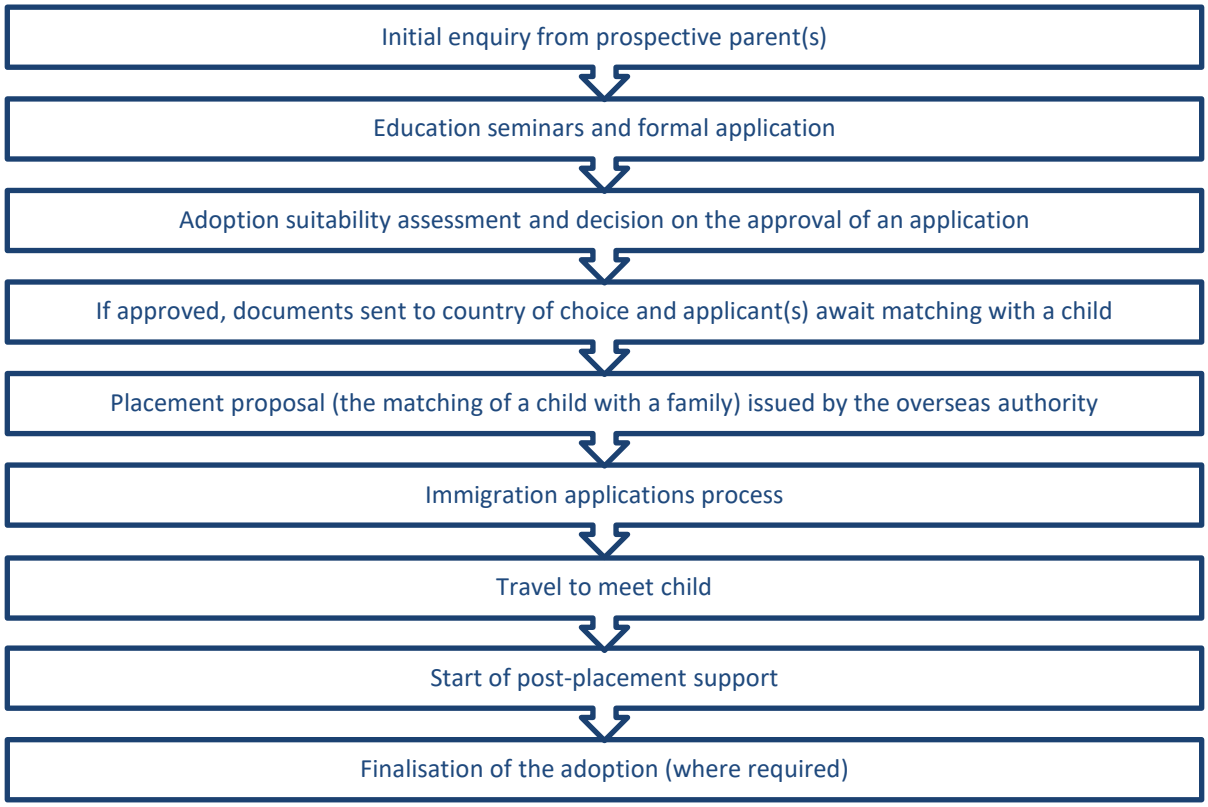
Although each state and territory has its own legislation for intercountry adoptions, the general process is similar across the jurisdictions (Figure C1). DSS and the state and territory central authorities work together to ensure that all of Australia's adoption programs meet the standards of the Hague Convention, regardless of whether partner countries are signatories.

As well as the requirements set by Australian adoption authorities, each country of origin also sets out requirements for prospective adoptive parents wishing to adopt a child from that country. These requirements vary between countries and include, but are not limited to, the age of parents, marital status, current family structure and nationality or ethnic background.

Fees associated with intercountry adoption vary depending on the Australian state or territory and the country of origin of the child; they are subject to change, and are affected by various factors. Details on country programs, including eligibility and fees, are available from the Intercountry Adoption Australia website (IAA 2020b).

The duration of various stages of the intercountry adoption process, such as the period between when a partner country receives an application and when applicants are matched with a child, is influenced by several factors outside the control of Australian adoption authorities. These factors include the number and characteristics of children in need of intercountry adoption, the number of applications received by an overseas adoption authority and the resources available to that authority. Waiting times for intercountry adoptions vary between countries.

Figure C1: Process for intercountry adoptions



Note: Intercountry adoptions may be finalised in various ways, depending on the type of adoption—see this 'Process' section for more details. This diagram is a simplified overview of the intercountry adoption process. Processes might vary between jurisdictions.

An intercountry adoption may be finalised in various ways. In some cases, a full adoption order can be made in the child's country of origin. This order is automatically recognised in Australia if the country is a party to the Hague Convention, and has issued an adoption compliance certificate.

Under changes made in 2014 to the Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998, full adoption orders in Taiwan and South Korea (countries with which Australia has bilateral arrangements) are also automatically recognised in Australia, if the relevant state or territory authority has agreed that the adoption could proceed.

Other adoptions from outside Australia might not be automatically recognised under Australian law. Where an adoption is not automatically recognised, the *Immigration (Guardian of Children) Act 1946* provides guardianship arrangements for the child. In these cases, the child will be under the guardianship of the Minister for Home Affairs once the child arrives in Australia (see Adoptions Australia 2020-21 Section 2.2).

This guardianship is usually delegated to the relevant state or territory central authority. The Minister's delegated guardianship remains valid until the child turns 18, leaves Australia permanently, becomes an Australian citizen or, as happens in most cases, the adoption order is finalised by an Australian authority.

Australia's intercountry adoption programs

In 2021, Australia had active intercountry adoption programs with 13 countries—Bulgaria, Chile, China, Colombia, Hong Kong, India, Latvia, Poland, South Africa, South Korea, Sri Lanka, Taiwan and Thailand (IAA 2020b).

Following the reactivating of Australia's adoption program with India, Queensland and the Northern Territory began assessing a small number of prospective adoptive parents, and providing files to the Indian central authority for consideration in April 2019 (IAA 2020b). No adoptions under this reactivated arrangement had been finalised by 30 June 2021.

In late 2018, the Philippines Government advised that the Australian adoption program with the Philippines would be placed on hold and no new applications for adoption would be accepted from Australian adoption authorities (IAA 2020b). Adoptions from the Philippines that appear in this report relate to child placements that occurred before the hold came into effect and that were subsequently finalised in 2020–21.

Not all of the countries with which Australia has an official adoption program are parties to the Hague Convention. Regardless of whether the convention is in force in a country, adoption programs are established with countries only where Australia can be satisfied that the principles of the Hague Convention are being met. In this context, bilateral arrangements exist with South Korea and Taiwan. Both countries have not currently ratified the Hague Convention—South Korea signed the convention in May 2013, but it had not entered into force during 2020–21 (see Appendix B).

Before 2017–18, countries where the Hague Convention had not entered into force were referred to in national reporting as 'non-Hague', regardless of whether Australia had an official intercountry adoption program with the country. Since 2017–18, to distinguish between countries with which Australia had an adoption program under a bilateral agreement and other countries that were not parties to the Hague Convention, the term 'bilateral adoption' was introduced (see Glossary for definitions of the adoption categories).

Box C2 describes 2 types of other overseas adoptions—ad hoc requests and private adoptions—which are outside of Australia's regular intercountry adoption processes.

Box C2: What are ad hoc requests and private adoptions?

Requests to adopt children from countries with which Australia does not have an existing intercountry adoption program are referred to as '**ad hoc requests'**. The relevant state or territory central authority considers these on a case-by-case basis.

As a general principle, individual ad hoc requests for intercountry adoptions are likely to be considered only in exceptional circumstances, as they are not consistent with Australia's management of intercountry adoptions.

For example, an application may be considered where the prospective adoptive parent(s) have a genuine and profound understanding of, and connection with, the culture and circumstances of an overseas country that satisfies Hague Convention standards and requirements.

The relevant state or territory authority must have accepted an ad hoc request before the prospective adoptive parent(s) can apply formally for adoption, and be assessed for suitability to adopt. If the request is accepted, applicants will be subject to the normal intercountry adoption process applicable in their relevant state or territory. Data on finalised ad hoc adoptions are not included in this report.

State and territory central authorities do not support adoptions arranged through a privately contracted adoption agency, or those that do not go through a government's central authority. These are known as **private adoptions**. Adoptions to Australia must either be approved by a state or territory central authority or meet Australian immigration requirements for expatriate adoption (Department of Home Affairs 2020) (see Section 3.2).

Local adoptions

Legislation and responsibilities

Each state and territory has legislation governing local adoption practices (an outline of the legislation for each jurisdiction is provided in Appendix A, Section A1). The individual state or territory authority for adoption works to ensure that local adoption practices follow required regulations.

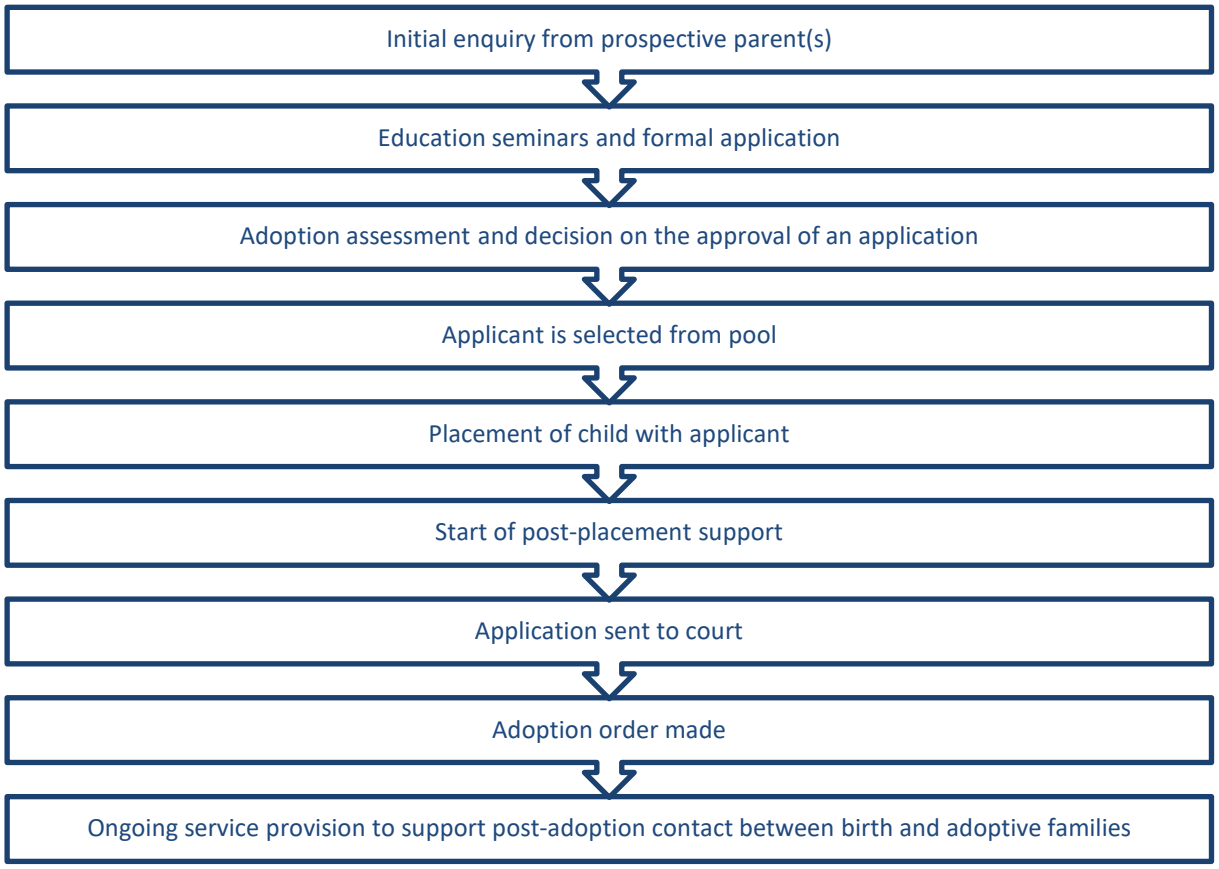
For local adoptions, in most cases, the responsible state or territory department will be the guardian of a child for whom general consents for adoption have been signed. For some approved non-government adoption agencies, the principal officer of the agency will be the guardian. The guardianship of a child remains in force until the adoption order is made, or consents for adoption are revoked, or until some other specified event occurs (such as when a suitable and willing relative is able to care for the child).

In the case of Indigenous children, jurisdictions have additional legislation or regulations that help determine whether an adoption should be considered over other arrangements, such as the use of an alternative legal order.

Process

Figure C2 shows the process involved in placing local children with prospective adoptive parent(s), although the precise order of the steps might vary slightly between jurisdictions.

Figure C2: Process for local adoptions



Note: This diagram is a simplified version of the local adoption process. The number and order of steps might vary between jurisdictions.

Known child adoptions

Legislation and responsibilities

Known child adoptions are administered and/or recorded by the department responsible for adoption in each state and territory. The aim of this type of adoption is to provide the child with an enduring clear legal position, status, and stability within the family arrangement.

The majority of known child adoptions are by step-parents adopting their partner's children, or by long-term carers of children placed in their care, such as foster parents. Adoptions by relatives are less common and generally discouraged because of the potential to confuse or distort biological relationships. For example, if a child was adopted by their grandmother, the child's parent would legally become the child's sibling. Most states and territories have policies that promote the use of parental responsibility orders, rather than adoption when a child is to be permanently cared for by another relative, such as permanent care and guardianship/custody orders. However, in exceptional circumstances—that is, when a parental responsibility order would not adequately provide for the welfare of the child—legislation in most states and territories does allow adoption by relatives.

Known child adoptions by people who are not step-parents, carers or relatives, such as by commissioning (surrogate) parents, are uncommon in Australia. Where data are recorded by the department responsible for adoption in each state and territory, these adoptions are captured in this report under the 'Other' category in known child adoptions.

In some circumstances, known child adoptions might be finalised after the adoptee is legally considered an adult. The role of the department varies between jurisdictions when administering adult adoptions (see Appendix A, Section A1). As a result, not all such adoptions are captured in this report.

As is the case with local adoptions, jurisdictions have additional legislation or regulations that help determine whether an adoption should be considered to create permanent care arrangements for Indigenous children.

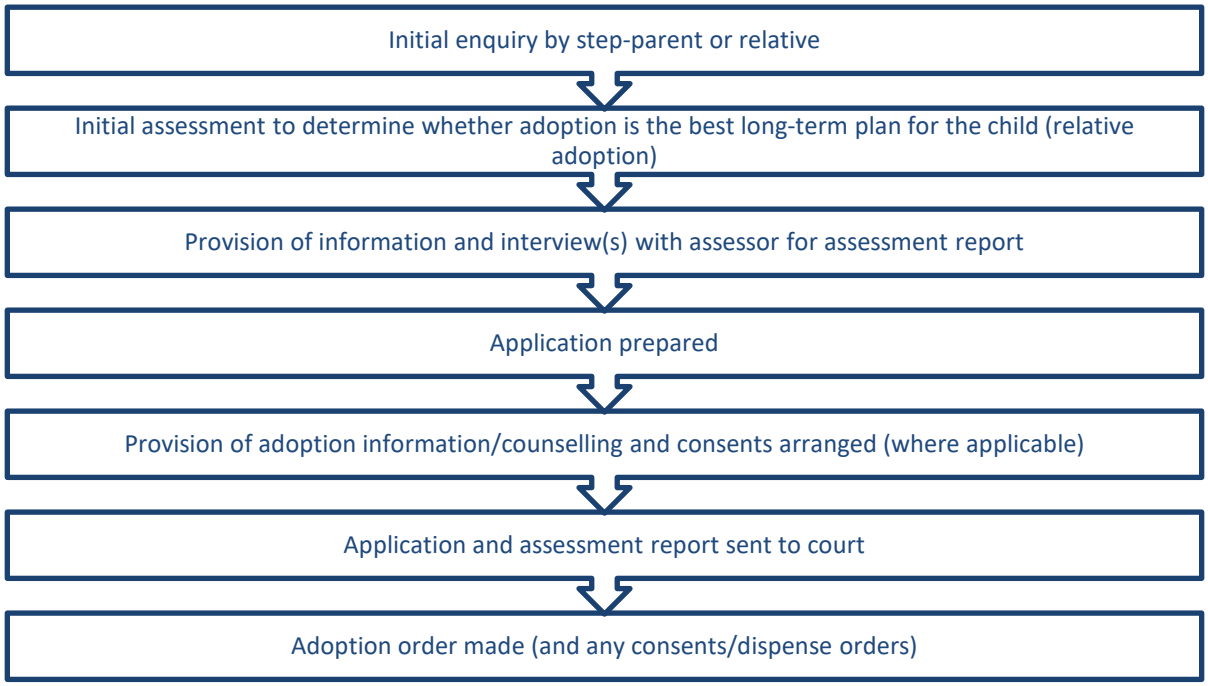
Process

Each state and territory has its own process for the adoption of known children.

Figure C3 broadly shows the process for adoptions by step-parents and relatives (intrafamilial adoptions). In some jurisdictions, the department responsible for adoption has limited involvement in this process, with prospective parents being responsible for preparing and lodging their own applications directly with the court.

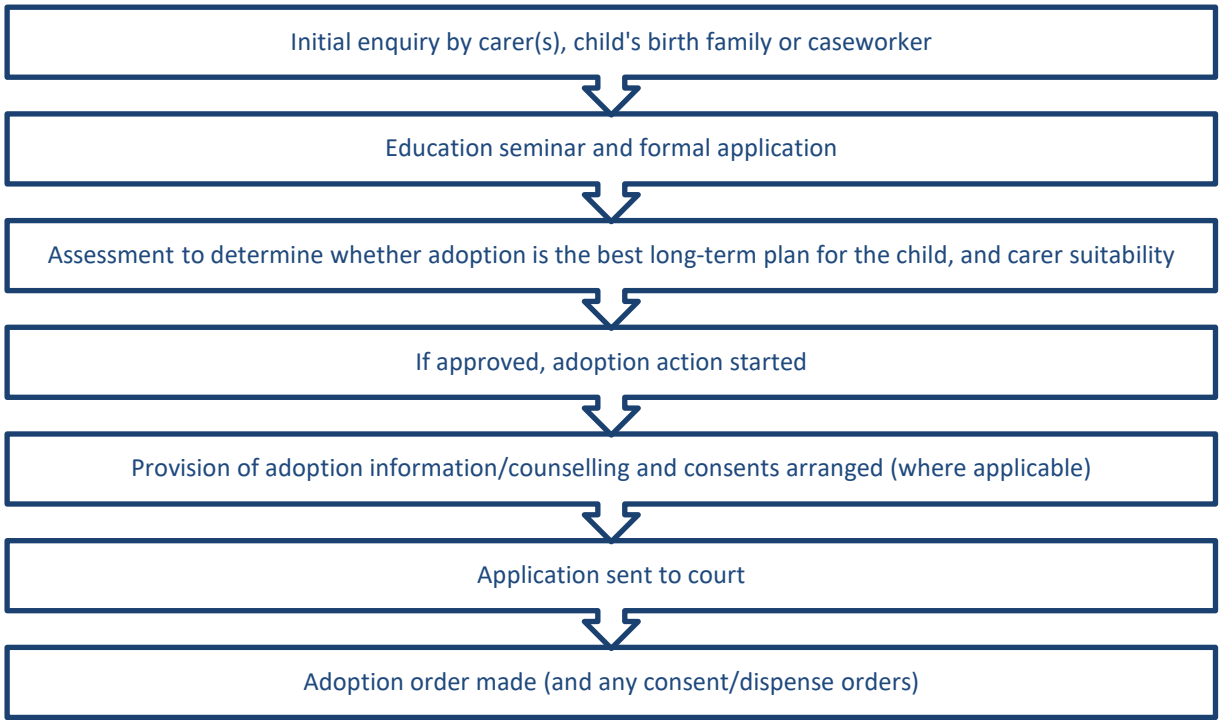
Figure C4 shows the process for adoptions by carers, such as foster parents, although some of the additional complexities associated with adoptions by carers are not shown. In both cases, the precise order of the steps might vary slightly between jurisdictions.

Figure C3: Process for step-parent and relative adoptions



Note: This diagram is a simplified overview of the step-parent or relative adoption process. The number and order of the steps might vary between jurisdictions.

Figure C4: Process for carer (known child) adoptions



Note: This diagram is a simplified overview of the carer (known child) adoption process. The number and order of the steps might vary between jurisdictions.

Abbreviations

AASP	accredited adoption service provider
CEO	Chief Executive Officer
DCJ	New South Wales Department of Communities and Justice
DCYJMA	Queensland Department of Children, Youth Justice and Multicultural Affairs
DJCS Vic	Victorian Department of Justice and Community Safety