

## Relative/Known Child Adoption

The purpose of this fact sheet is to set out the NSW Department of Communities and Justices' (DCJ) position in regards to an adoption of a relative or known child who is not an Australian citizen and who is habitually residing in an overseas country.

DCJ Adoption and Permanency Services currently has responsibility for providing intercountry adoption services. The Director of DCJ Adoption and Permanency Services has the delegated position of the NSW Central Authority for the Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption (the Convention) of which Australia is a member.

### Definition of a relative/known child adoption

Relative adoption refers to the adoption of a child by the child's biological relatives. The NSW *Adoption Act* 2000 (the Act) defines who is a relative for the purposes of the Act. This includes a grandparent, son, daughter, grandchild, brother, sister, uncle or aunt of a person. This relationship can be through blood, or through a legal relationship such as marriage or adoption.

Known child adoption refers to the adoption of a child who is previously known to the family, who hopes to adopt the child, but is not related to them.

### Circumstances in which adoption of a relative or known child from overseas may be considered

DCJ rarely has involvement in adoption of a relative/known child from overseas. The only circumstances in which adoption of a relative or known child from overseas may be considered is when:

1. the child has lived with the family (who wishes to adopt the child) for the majority of his/her life immediately prior to the request for adoption, the child has come to regard the family as his/her emotional parents and the welfare authorities in the overseas country request that adoption be considered for the child or
2. the welfare authorities in the overseas country request DCJ to assess a family (who is a relative or known to the child) in New South Wales with a view to the placement of the child. In this situation, the welfare authorities (or a Court) would have determined that it is unsafe for the child to continue to live with his/her birth family and that there are no extended family members available to care for the child in the child's country of origin.

In addition to the above listed circumstances, the request made by an

overseas welfare authority must be consistent with the principles and requirements outlined in the Convention and the Act that governs adoption practice in NSW.

The Convention states that intercountry adoption should only occur where it is in the best interests of the child and with respect for the child's fundamental rights. The Convention includes requirements that ensure adoptions are carried out properly, with birth parents given counselling about the alternatives to and effects of adoption, no undue pressure being put on birth parents to relinquish their child for adoption and for intercountry adoption and, that the possibilities for the child to stay within their own country are canvassed thoroughly.

If an overseas welfare authority requests that NSW consider intercountry adoption for a particular child, it is not guaranteed that DCJ will support this request. DCJ may come to the view, from the evidence presented, that the circumstances outlined previously have not been met and the arrangement contravenes the Convention or the Act.

Section 11 of the *NSW Adoption Act 2000* states that **adoptions can only be arranged by the Secretary of the Department of Communities and Justice or an accredited adoption service provider, not private individuals.** This means that DCJ are not able to engage with family members or individuals about their desire to adopt a relative or known child who is living in an overseas country. DCJ is only able to deal directly with the overseas authority.

If a family wishes for DCJ to consider a relative or known child adoption, the following process must be followed:

### The process (for a relative/known child adoption)

1. The relevant overseas authority must prepare a detailed "Child Study Report" and forward this directly to the NSW Central Authority for consideration. This report needs to be prepared by a qualified welfare/social worker and detail the circumstances of the child and how they meet the circumstances outlined on page 1 of this fact sheet.
2. The NSW Central Authority will consider the report and:
  - a) If it makes a judgement that adoption cannot be supported, the overseas country will be advised and the inquiry will not proceed.
  - b) If the report shows that an adoption appears to meet the relevant circumstances, the NSW Central Authority will arrange training and assessment of the prospective adoptive parents. This process may take approximately six months or more.

3. The cost of an intercountry adoption in NSW is approximately \$10,000, which is non-refundable. Half (50%) of this fee is payable prior to the commencement of an assessment. The remainder of this fee is paid at the time of placement of the child. There is no guarantee that a family that undergoes an assessment will be approved as suitable to adopt. If the family is assessed as not suitable to adopt, the inquiry will not proceed.
4. If the family is assessed as suitable, the NSW Central Authority will forward the required documentation, including the adoption assessment report to the overseas authority for their consideration. If they are not suitable, the overseas authority will be informed and the inquiry will not proceed past this step.
5. If the overseas authority continues to support adoption, the NSW Central Authority will agree to facilitate the adoption as an intercountry adoption under the principles of the Convention and ensure whatever tasks are required to process the adoption are progressed.

### Immigration considerations

Where a relative/known adoption is not arranged through the relevant central authorities, there is a significant risk that the child will not meet Australian immigration requirements and, therefore, be unable to enter Australia.

The NSW Department of Communities and Justice do not issue visas for children coming into Australia. This is the responsibility of the Department of Home Affairs (Home Affairs). Any person seeking to care for a child who resides overseas should always seek independent immigration legal advice. The Department of Home Affairs' involvement in private adoptions is limited to determining whether or not the child meets immigration requirements in order to enter and remain in Australia. Home Affairs make their decisions regarding the issuing of visas in accordance with the Migration Act 1958 (Cth) and the associated regulations.

Further information regarding immigration and citizenship can be located on the Home Affairs website - [www.homeaffairs.gov.au](http://www.homeaffairs.gov.au).

Useful search terms include:

- Adoption visa
- Become an Australian citizen (by adoption)

## Private adoption arrangements

Attempts by individuals to make informal or private arrangements for overseas adoptions are not supported under the NSW *Adoption Act* 2000. The Act is clear on what processes are required so that an overseas adoption is recognised in NSW. Should these processes not be followed, the Act is clear that such an order may not be recognised within NSW.

## If you wish to pursue an intercountry relative or known child adoption

Please feel free to give a copy of this Fact Sheet to the overseas authority so they are aware what the NSW Central Authority's position and requirements are on this type of adoption. If an overseas authority wishes to contact DCJ Adoption and Permanency Services, they can send correspondence to:

[IntercountryAdoption@facs.nsw.gov.au](mailto:IntercountryAdoption@facs.nsw.gov.au)

If after reading this factsheet and reviewing information on the website, you are considering relative/known child adoption and have further questions, please contact Adoption and Permanency Services, Intercountry Adoption Program on (02) 9716 3003 or [IntercountryAdoption@facs.nsw.gov.au](mailto:IntercountryAdoption@facs.nsw.gov.au).

The Australian Government has a national website and telephone information line for people who would like to adopt children, including relatives, from overseas. You can contact Intercountry Adoption Australia (IAA) by telephone on 1800 197 760 from 9am to 5pm (AEST), Monday to Friday, or visit the IAA website for further details about Relative or Known Child Intercountry Adoption [www.intercountryadoption.gov.au/countries-and-considerations/apply/other-types-overseas/](http://www.intercountryadoption.gov.au/countries-and-considerations/apply/other-types-overseas/).