

## Overseas adoption in Australia

There are two ways that Australian citizens, holders of an Australian permanent visa or eligible New Zealand citizens can take to adopt a child from overseas. They are:

- Intercountry adoptions - these include adoptions supported by Australian state and territory central authorities under either the Hague Convention on Protection of Children and Cooperation in Respect to Intercountry Adoption (Hague Convention) or through a bilateral arrangement
- Expatriate adoptions - these are privately arranged overseas adoptions which are undertaken by Australians residing outside Australia.

## Intercountry Adoption Australia

Intercountry Adoption Australia has been established to help parents living in Australia navigate the intercountry adoption process. Intercountry Adoption Australia brings together information in one central place through a national website and a free telephone information line.

Visit Intercountry Adoption Australia's services managed by the Department of Social Services.

Intercountry adoption refers to overseas adoptions supported by Australian state and territory central authorities. Through this process, Australian citizens or permanent visa holders work with their Australian state and territory central authority which will assess the suitability of potential parents and work with various countries to progress and finalise adoption decisions and provide ongoing support. Specific information about intercountry adoption is available from Intercountry Adoption Australia frequently asked questions.

### Starting the intercountry adoption process

The first step is to contact Intercountry Adoption Australia who will talk you through the process and put you in contact with your state or territory central authority.

The state or territory central authorities provide support and education to prospective adoptive parents. They provide advice and assistance about the procedural aspects of the intercountry adoption application programs, conduct adoption assessments on a family's suitability to adopt, decide adoption applications and provide post-adoption support. You should seek advice from your state and territory adoption authority before starting any adoption process to adopt a child from outside Australia.

**More Information:** Intercountry Adoption Australia  
Australian state and territory central authorities

## Intercountry adoption programmes in place

Australia has intercountry adoption programmes with a number of countries that are conducted under either:

- the 'Hague Convention' - between Australia and another country which has ratified the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (the Hague Convention) or between 2 other countries (excluding Australia) where an adoption occurs between them
- 'bilateral' adoption arrangements - made between Australia and other specified countries.

Specific information about intercountry adoption is available from Intercountry Adoption Australia.

**More Information:** Intercountry Adoption Australia

## **Expatriate adoption and guardianship**

When an Australian living overseas adopts a child from the country where he or she is living or a third country, it is called expatriate adoption. The adoption occurs through the country's domestic processes and is finalised in that country.

The Australian Government's involvement in expatriate adoptions is limited to determining whether or not the child meets immigration requirements in order to enter and remain in Australia. If the child meets immigration requirements and is granted a visa, the child will be under the guardianship of the Minister for Home Affairs once the child arrives in Australia. This guardianship arrangement is in accordance with the Immigration (Guardianship of Children) Act 1946 (the IGOC Act).

## **I have adopted a child privately from overseas and want to bring my family to Australia**

We assess and decide applications for visas and citizenship in accordance with Australian migration and citizenship law. This includes assessing visa and citizenship applications for your child to enter or remain in Australia.

The adoption must comply with the laws of the child's country of usual residence and must be finalised in that country. Expatriate adoptions are not managed by Australian state and territory central adoption authorities and might not be consistent with the principles of the Hague Convention on intercountry adoption.

We are not able to grant a visa to a child who does not meet the requirements set out in the Migration Regulations 1994, even if an adoption has already occurred and is lawful in the country overseas. The adoptive parents might have established a legal parent-child relationship in the country overseas and if a visa is not granted, the child won't be able to enter and reside permanently in Australia.

As there are risks for both the child and the adoptive parents in this process, before you proceed with an expatriate adoption, it is recommended that you seek independent legal advice both in Australia and in the child's country of usual residence.

Australian Commonwealth, state and territory central authorities are not responsible for expatriate adoptions, and do not assess or approve applications for such adoptions. The Australian Government does not issue letters of no objection. We provide this information page, which you can print off and submit to the authorities in the country where you are adopting.

### **Information Page:** Adoptions by Australians Overseas

If you have adopted your child outside Australia without the involvement of the state or territory central authority and your child is applying from outside Australia, further information is available on the subclass 102 Adoption visa.

### **More Information:** Adoption visa (subclass 102)

If you adopted your child outside Australia without the involvement of the state or territory central authority and your child is now in Australia, further information is available on the subclass 802 Adoption visa.

### **More Information:** Adoption visa (subclass 802)

Booklet 2 - Child Migration

## **Immigration requirements for expatriate adoptions**

Children adopted by expatriate Australians are subject to additional criteria that must be met before an Adoption visa can be granted, including (among other things):

- at least one of the adoptive parents must have been a resident outside of Australia for at least 12 months at the time of visa application
- the laws relating to adoption for the country in which the child is usually a resident have been complied with
- adoptive parents have obtained permission from the relevant authority in the country overseas for the child to be removed from that country
- adoptive parents 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
- the adoptive parents' residence outside of Australia was not contrived to deliberately bypass any requirements concerning the entry of adopted children into Australia.

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

**Note:** From 14 December 2015, we are unable to accept Adoption visa applications for children who have been adopted in Pakistan. This country is specified in a legislative instrument.

If you intend to adopt, or have adopted, a child from Pakistan, you will be unable to lodge a valid application for an Adoption visa for the child with us.

For information about the visa requirements for adopted children to enter Australia refer to visa information on the Department's website.

**More Information:** Adoption visa (subclass 102)

## **Guardianship overview for expatriate adoptions**

Adoptions from outside Australia might not be automatically recognised under Australian law. There are different processes for adoptions to be finalised and recognised, depending on:

- the country from which the child is adopted
- the state or territory in which the adoptive family lives
- the type of adoption overseas.

Where an adoption is not automatically recognised under Australian law, the Immigration (Guardianship of Children) Act 1946 (the IGOC Act) provides guardianship arrangements for the adoptive child.

You will be advised whether your adopted child falls within these guardianship provisions when a decision is made on the adoption visa. Generally, we will notify the relevant state or territory central authority (where you usually reside or intend to reside) when a child on an Adoption visa is likely to enter Australia under the IGOC Act.

## **Adopted children who are under the guardianship of the Minister**

The Minister is generally the legal guardian of children whose adoptions are yet to be finalised in Australia or are not recognised automatically under Australian law when they enter Australia.

This is because the prospective adoptive parents are not yet legally recognised as parents for the purpose of the IGOC Act either because the child was:

- adopted through a country's domestic processes without the involvement of an Australian state or territory central authority for intercountry adoption, or
- adopted through an intercountry adoption programme that requires the adoption to be completed after the child arrives in Australia.

The Minister can delegate his powers and functions as guardian to certain officers in the relevant central authority in the state or territory where the child lives.

### **Rights and responsibilities of the Minister as guardian**

Under the IGO Act, the Minister has delegated some of his powers and functions as guardian to particular officers in the state and territory central authorities. These officers are known as delegated guardians and have 'parental' responsibility for the child and can make decisions where a guardian's approval or consent is needed. In most circumstances, delegated guardians will make decisions in close consultation with the child's carers - usually the prospective adoptive parents.

To ensure that the relevant state or territory central authority is able to communicate effectively about the guardianship of the child, expatriate adoptive parents should make initial contact when the child arrives in Australia, and also inform the delegated guardian of any changes in residential, phone and email addresses, until such time as the adoption is formalised in Australia.

### **When guardianship of the Minister ceases**

The Minister's delegate will remain the guardian of the child until the provisions of the IGO Act cease to apply. Generally, this will be when the child meets one of the following:

- becomes an Australian citizen
- turns 18 years of age
- leaves Australia permanently
- has an order made under s11 of the IGO Act which removes them from the Minister's guardianship.

### **Citizenship for adopted children**

If the adoption process is completed in Australia under Australian law, the child automatically acquires Australian citizenship at the time of the adoption if both of the following apply:

- the child is in Australia and holds an Australian permanent visa
- at least one of the adoptive parents is an Australian citizen.

Children adopted in Australia do not apply for Australian citizenship. Instead, you can apply to get evidence of Australian citizenship. There is a fee for this type of application.

**More Information:** Form 119 — Application for evidence of Australian citizenship (234KB PDF)

### **Citizenship when adoption is finalised outside Australia**

A child adopted outside Australia by an Australian citizen under the Hague Convention or bilateral arrangement might be eligible to become an Australian citizen immediately on completion of the adoption outside of Australia if an Adoption Compliance Certificate has been issued and the adoption is recognised under Australian law.

An Adoption Compliance Certificate is certification that a full and permanent adoption has occurred under the Hague Convention or a bilateral agreement.

**More Information:** Form 1272 — Application for Australian citizenship for children adopted under full Hague Convention or bilateral arrangements (386KB, PDF)

A child adopted outside Australia by an Australian citizen under arrangements other than a full Hague Convention adoption might be eligible to apply for Australian citizenship by conferral. The child must

hold a visa that permits them to reside permanently in Australia and have travelled to Australia on that visa prior to applying for citizenship. Applications can be lodged outside Australia or after the child is in Australia.

**More Information:** Form 1290 — Application for Australian citizenship by conferral - Other situations (232KB PDF)

Steps to apply for adoption under Hague or bilateral arrangements