



APPENDIX 1

The United Nations Convention on the Rights of the Child – 1989

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia*, foster placement, Kafala of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties which recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) recognize that intercountry adoption may be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;
- (e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.

Council of (Australian) Social Welfare Ministers National Minimum Principles in Adoption - June 1993

1. General Principles

1. The interest of the child is the paramount consideration.
2. Adoption is a service for children, not for adults wishing to acquire the care of a child.
3. Adoption is only one of a range of substitute care services.
4. Within legal parameters as set down in legislation, a flexible approach should be taken regarding any negotiated arrangements supporting an adoption.
5. Adoption arrangements should be subject to a consistent criteria.
6. Adoption placements are valued as an important resource in providing permanent family care for (some) children.
7. If children cannot be brought up within their birth family, they are entitled to grow up in a permanent, secure and loving family environment.
8. A child has the right to be brought up within their birth family, wherever possible.
9. A child has the right to be considered for placement within the extended family prior to placement outside its family.
10. A birth family has the right to community and government support to allow the child to be maintained within the family.
11. The adopted person/birth family, regardless of age, has the right to independent representation throughout the adoption process.
12. The child should preferably be placed in a culturally/ethnically appropriate placement.
13. Adoption is a process regulated by Australian State/Territory legislation.
14. The adopted person's legal status must be enshrined in the legislation.
15. Persons involved in the adoption process should not be discriminated against or disadvantaged by State/Territory legislative differences.
16. The meaning and effect of adoption orders should be the same regardless of State/Territory boundaries.
17. State authorities should provide equitable and accessible services to all parties of adoption on an individual basis.
18. State/Territory government departments (or approved agencies) have responsibility for the matching of children with adoptive parents.
19. Processing of applications, receipt and notification of allocations and the forwarding of confidential information will be undertaken by State/Territory government departments (or approved agencies).
20. Adoption arrangements, by consenting parties, presented to "courts" should be consistent with the adoption principles.
21. Birth parents have the right to express their wishes and be involved in the planning for the placement of their child.
22. Birth parents have the right to be kept informed of the progress of their child following placement with adoptive parents, and to have a right of access to the child if this is in the interests of the child.
23. Adoptive parents must be assessed through an approved process according to consistent criteria as being suitable to adopt.
24. Adoptive parents and children have a right to legal security.

2. When is Adoption Appropriate?

1. Adoption is one of a range of alternatives for legally securing a child's place in the family. An adoption order should, therefore, only be granted if it is considered to be the best option in the interests of each particular child.
2. Adoption should not be considered for children in step-families or living with relatives, unless it can be demonstrated that a guardianship order would not serve their needs.
3. The availability of permanent care orders through the Family court is recognised and should be subject to the same principles as apply to adoption orders. Both orders involve the transfer of care and responsibility of children to a third party.



3. Access to Information

1. All persons who are adopted have a right to know they are adopted.
2. Adult adopted people have a right to identifying information about their biological parents.
3. A birth parent has a right to information about his or her child.
4. A birth parent has a right to identifying information on his or her child once the child has reached legal adulthood under Adoption legislation.
5. Adopted people and birth parents have the right to state that they do not wish contact and for that wish to be conveyed to the other party.
6. Appropriate information and counselling should be available to all parties to an adoption

4. Open Adoption

Open adoption is an adoption arrangement where ongoing contact between the birth parent(s) and their child occurs following adoption proceedings and is acknowledged in the adoption order.

1. Openness and honesty in family relationships should be encouraged in all adoptions.
2. Openness in adoption arrangements should be achieved as far as is possible with a minimum of welfare or State intervention and should not undermine the parental authority of adoption parents. Notwithstanding this, professional support and advice should be readily available to families involved in open adoption arrangements.
3. Birth parents, if expressing a desire to do so, should be involved in the selection of approved adoptive parents for their child(ren), having regard to the paramount consideration of the needs of the child(ren) concerned.

5. Services to Relinquishing Parents

1. Prior to the adoption of a child, the informed consent of each person who is legally the parent of that child should be sought to the adoption.
2. Prior to taking consent for an adoption, the witness should have responsibility to ensure that the birth parent has been informed about the implications of adoption and about all the alternatives available to him or her.
3. Information about the implications of signing consent to an adoption and explaining the time period and process for revoking consent should be given to relinquishing parents in writing prior to their signing consents.
4. No consent to an adoption should be taken prior to the birth of the child concerned nor for a specified period after the birth.
5. Counselling/support should be available to birth parents throughout the period of revocation.
6. Birth parents should be permitted reasonable access to their children during the revocation period.
7. Birth parents should be allowed to revoke the adoption consent without pressure at any time during the revocation period and have the child returned to their care as soon as is possible.
8. Children should not be placed with prospective adoptive parents until after the revocation period has expired.
9. Birth parents should be given as much information as possible about the prospective adoptive parents and be allowed to participate to the greatest extent as is reasonably practical in the selection of approved adoptive parents for their child having regard to the paramount consideration of the needs of the child(ren).
10. Adoption agencies should ensure that appropriate post adoption counselling and support services are available to relinquishing parents.

6. Eligibility and Suitability Criteria

1. Age
 1. The maximum age difference between the oldest of the applicants and the first child placed in the family should be 40 years.
 2. In subsequent placements, or where there is already a child in the family, the maximum age difference between the eldest of the applicants and the child should be 45 years.
 3. The age criteria should apply to Australian born and intercountry adoptions.
2. Marriage
 1. Single applicants should be permitted to apply to adopt a child.
 2. Couples in established defacto relationships be afforded the same status by agencies as married couples and subject to the same assessment of stability.
3. Health
 1. Applicants for adoption must meet basic health requirements which will not impede their ability to care for the child. The life expectancy of the parents and their health should be such that they can parent the child and provide quality care until the child attains independence.
 2. The assessment of health should occur prior to any general assessment of suitability as adoptive parents.
4. Criminal Abusive History
 1. Applicants for adoption should be excluded if they have an established record of violent offences, abuse of children or have had a child removed from their care under child protection legislation.
5. Appeal Mechanisms
 1. Parties in the adoption process should have appropriate review and appeal mechanisms available to them.
6. Preparation of Applicants
 1. Preparation of applicants prior to adoption by way of information giving and training is a crucial and integral part of the adoption process, which assists in the self-selection, sustaining placements and reducing disruption of placements.
7. Co-operation between States and Territories
 1. States and Territories should co-operate in the exchange of literature on current State programs for the continual improvement of their adoption and permanent care programs.
8. Post Placement Support Services
 1. Follow up and post placement support are a crucial and integral part of the adoption process.

7. Children with Special Needs

1. No child should be disadvantaged in securing a permanent family placement because of the lack of resources to support such a placement.
2. Children with special needs have the same right as any other child to a secure a permanent family relationship.

8. Adoption Arrangements

1. All adoption arrangements in Australia should be made through approved adoption authorities and in accordance with the relevant legislation of the particular State or Territory.
2. All children have a right to independent counselling/representation to ensure that they understand the implications of an adoption, their wishes are being heard and to protect their interests in the adoption process.



9. Transfer Between States of Applicants and Children

1. Applicants for adoption should be treated in fair and equitable manner when transferring their application between States/Territories and not be unfairly advantaged or disadvantaged by such a transfer.

10. Dispensation of Consent

1. State and Territory welfare agencies should exercise the option to dispense with parental consent only when it has been considered along with other options considered to be in the best interests of the child.

11. Step Parent and Relative Applications

1. Custody/guardianship orders through the Family Court that do not interfere with the biological relationship to birth parents (and siblings) should generally be sought.
2. Adoption is not considered to be in the best interests of, or appropriate for children in step families or living with relatives unless it can be clearly demonstrated that a guardianship order would not serve their needs.

Adoption Act (NSW) 2000

Sect 7

What are the objects of this Act?

The objects of this Act are as follows:

- (a) to emphasise that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice,
- (b) to make it clear that adoption is to be regarded as a service for the child concerned,
- (c) to ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage,
- (d) to recognise the changing nature of practices of adoption,
- (e) to ensure that equivalent safeguards and standards to those that apply to children from New South Wales apply to children adopted from overseas,
- (f) to ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements,
- (g) to encourage openness in adoption,
- (h) to allow access to certain information relating to adoptions,
- (i) to provide for the giving in certain circumstances of post adoption financial and other assistance to adopted children and their birth and adoptive parents.

Sect 8

What principles are to be applied by person making decisions about the adoption of a child?

- (1) In making a decision about the adoption of a child, a decision maker is to have regard (as far as is practicable or appropriate) to the following principles:
 - (a) the best interests of the child, both in childhood and in later life, must be the paramount consideration,
 - (b) adoption is to be regarded as a service for the child, not for adults wishing to acquire the care of the child,
 - (c) no adult has a right to adopt the child,
 - (d) if the child is able to form his or her own views on a matter concerning his or her adoption, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances,
 - (e) the child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved,
 - (f) if the child is Aboriginal the Aboriginal child placement principles are to be applied,
 - (g) if the child is a Torres Strait Islander the Torres Strait Islander child placement principles are to be applied.

- (2) In determining the best interest of the child, the decision maker is to have regard to the following:
 - (a) any wishes expressed by the child,
 - (b) the child's age, maturity, level of understanding, gender, background and family relationships and any other characteristics of the child that the decision maker thinks are relevant,
 - (c) the child's physical, emotional and educational needs, including the child's sense of personal, family and cultural identity,
 - (d) any disability that the child has,
 - (e) any wishes expressed by either or both of the parents of the child,



- (f) the relationship that the child has with his or her parents and siblings (if any) and any significant other people (including relatives) in relation to whom the decision maker considers the questions to be relevant,
- (g) the attitude of each proposed adoptive parent to the child and to the responsibilities of parenthood,
- (h) the nature of the relationship of the child with each proposed adoptive parent,
- (i) the suitability and capacity of each proposed adoptive parent, or any other person, to provide for the needs of the child, including the emotional and intellectual needs of the child,
- (j) the need to protect the child from physical and psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviour, or being present while a third person is subjected or exposed to abuse, ill-treatment, violence or other behaviour,
- (k) the alternatives to the making of an adoption order and the likely effect of the child in both the short and longer term of changes in the child's circumstances caused by an adoption, so that adoption is determined among all alternative forms of care to best meet the needs of the child.