



CHAPTER 8 INTERCOUNTRY ADOPTION

8.1 History of intercountry adoption in Queensland

There has been long-standing community interest in Queensland in intercountry adoption as a means of providing a family for children in need. The Department's 1968 annual report noted that:

... many enquiries have been received for the adoption of Vietnamese children ... The Commonwealth has ascertained ... that the Vietnamese Government does not favour the adoption of their children by people in foreign countries.

Similar reference is made in the Department's 1969 report and the Department's 1970 report noted that:

... enquiries have recently been received regarding the possibility of adopting Peruvian children who have been orphaned in the earthquake disaster in that country. It is considered, however ... that any proposed solution to the Peruvian problem by adoption may only lead to further disruption and trauma for the children involved.

In the early 1970s, the Department continued to receive enquiries from people regarding the possibility of adopting children from foreign countries.⁴⁴ People were advised that intercountry adoption:

*... must be approached with extreme caution because of the high degree of risk of the applicants being motivated by sentiment ... (and because) It is doubtful if sufficient knowledge has been acquired regarding the effects on such children of being removed into a culture other than their own.*⁴⁵

Concern about the interests of children in intercountry adoption and safeguards for families adopting children from overseas was apparent in the early 1970s, as evidenced in the Department's 1974 annual report with reference to:

... a conference between the Commonwealth and the States to ensure correct procedures in dealing with the Government of South Vietnam ... (as) the present arrangements are most unsatisfactory and involve risks to children and to people seeking such adoptions.

Queensland's first major involvement in intercountry adoption was a response to the evacuation of children from orphanages in war-affected Vietnam. After the evacuation of Vietnamese children, the number of Queenslanders offering to care for them far exceeded the number of children requiring placement and enquiries from people seeking to adopt overseas children were ongoing.⁴⁶

Adoption agreements were signed with two South East Asian countries in 1979 to implement adoption practices which protected couples wanting to adopt a child from overseas "but even more so as a safeguard for those children who will be eventually brought into this country".⁴⁷ Amendments to the *Adoption of Children Act 1964* were approved in 1979 to facilitate the practical aspects of arranging intercountry adoption.

Government-to-Government negotiations regarding intercountry adoption continued in 1980 and 1981⁴⁸ and, as a result, children from overseas requiring adoption started to be placed with prospective adoptive parents in Queensland regularly during the 1980s.

⁴⁴ Report of Director, Department of Children's Services, 1971. annual report 1972 and 1973, Department of Children's Services.

⁴⁵ Annual Report 1972, Department of Children's Services.

⁴⁶ Annual Report, 1975, Department of Children's Services.

⁴⁷ Annual Report, 1979, Department of Children's Services.

⁴⁸ Annual Report 1980 and 1981, Department of Children's Services.

In 1983-84, six children from overseas were placed with adoptive parents in Queensland and the State had agreements with Thailand, Sri Lanka and the Philippines, with an agreement with Korea being drafted.⁴⁹

In 1984-85, 20 children from overseas, comprising 11 children from Korea, five children from Sri Lanka and four children from the Philippines, were adopted by Queensland families. There were 13 children from overseas adopted by Queensland families in 1985-86.

The Department's 1985-86 annual report cautioned that the adoption of a child arranged outside the requirements of the *Adoption of Children Act 1964* may result from malpractice and in the child being refused entry into Australia because the adoption had not been approved by the relevant adoption authority in Australia.

In April 1986, the Council of Social Welfare Ministers adopted new principles on intercountry adoption, which stated that "intercountry adoption is a service for children where the rights, welfare and interests of each child shall be paramount." The guidelines were established to safeguard the best interests of children in intercountry adoption and to ensure a co-ordinated approach to negotiating intercountry adoption between Australian States and Territories and overseas adoption authorities.⁵⁰

In 1986-87, 16 children from overseas were adopted by Queensland families and working arrangements were negotiated with two more countries in accordance with the Standards adopted by the Council of Social Welfare Ministers.⁵¹

In 1987-88, 22 children from overseas were adopted by Queensland families and working arrangements were negotiated with another country in accordance with the Standards.⁵²

Adoption applicant eligibility criteria and matters to be considered in assessing adoption applicants, including Foreign Children's Adoption applicants, were prescribed in the *Adoption of Children Regulation 1988*. The *Adoption of Children Act 1964* was amended in 1988 to provide for keeping four separate adoption applicant lists: the General Children's Adoption List; the Relative Children's Adoption List; the Foreign Children's Adoption List; and the Special Needs Children's Adoption Lists.⁵³

The number of children from overseas adopted by Queensland families each year since 1987-88 is included in Figure 5 (over).

Arrangements for an adoption program with Ethiopia were formalised in 1993-94 and discussion regarding the implications of ratifying the Hague Convention were held between Australian States, Territories and the Commonwealth Government.⁵⁴

The Department's 1994-95 annual report noted that Queensland had "active intercountry adoption programs with 10 countries".

Australia ratified the Hague Convention in 1998 and it came into effect on 1 December 1998. In March 1999, the Queensland Parliament passed the *Adoption of Children (Hague Convention on Intercountry Adoption) Amendment Act* and, in December 1999, the intercountry adoption program between Australia and China commenced.

⁴⁹ Annual Report, 1983-84, Department of Children's Services.

⁵⁰ Annual Report, 1985-86, Department of Children's Services.

⁵¹ Annual Report, 1986-87, Department of Children's Services.

⁵² Adoptions Australia 2000-01, Australian Institute of Health and Welfare; Annual Report, 1986-87, Department of Children's Services.

⁵³ First Annual Report, 1986-87, Department of Family and Youth Services

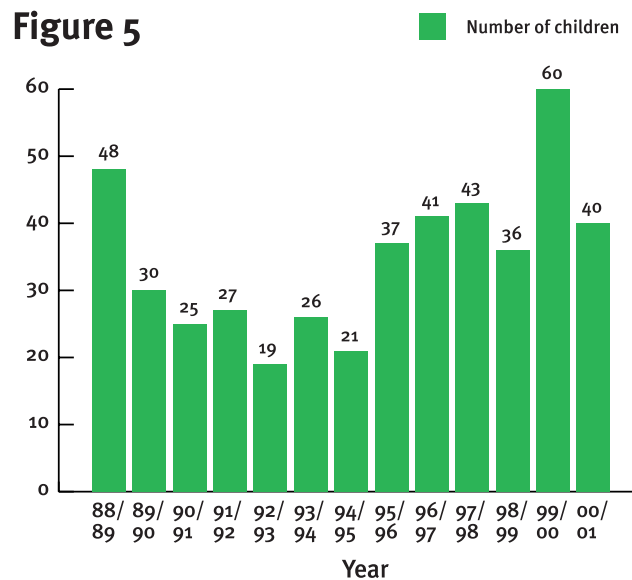
⁵⁴ Annual Report, 1993-94, Department of Family Services and Aboriginal and Islander Affairs.



By 2000-01, Queensland had intercountry adoption agreements with 12 countries, four of which had ratified the Hague Convention. See section 8.3 of this consultation paper for further information.

Figure 5

Number of children from overseas countries adopted by Queensland families from 1988- 89 to 2000-01⁵⁵



8.2 Current practice

The Department of Families is the only body that can lawfully arrange for people living in Queensland to be assessed as prospective adoptive parents for a child living overseas. The Department is also the only body which can lawfully forward applications from approved prospective adoptive parents in Queensland to relevant overseas adoption authorities for consideration.

Applications from approved prospective adoptive parents can only be forwarded to overseas adoption authorities with which Australia has negotiated agreements and to which Queensland is a party, or to countries that have ratified or acceded to the Hague Convention.

8.2.1 Application, eligibility and assessment

Until recently the Department received applications from people who wanted to adopt children from overseas. In accordance with recent amendments to the Act, in future, the Department will call for expression of interests from people seeking to adopt children from overseas. The Department must determine the eligibility of persons who seek to be assessed as prospective adoptive parents. If eligible, the Department must assess a person's suitability to be approved as a prospective adoptive parent. (Chapter 10 provides more detailed information about the selection and assessment of adoptive parents).

If favourably assessed, the approved prospective adoptive parents' application is forwarded to the adoption authority in the relevant country for consideration. The overseas adoption authority receiving the application may match the prospective adoptive parents with a child requiring adoption.

⁵⁵ Adoptions Australia 2000-01, Australian Institute of Health and Welfare.

8.2.2 Medical examination of children

Children adopted by Queensland families are required to meet standard migration requirements including health criteria and must undergo a medical examination to determine whether they meet the health criteria specified by the Department of Immigration and Multicultural Affairs (DIMA). The Department of Families liaises with overseas adoption authorities to ensure children undergo the required medical examinations and tests and to determine when children will be ready to travel with their adoptive parents to Queensland.

8.2.3 Adoption visa and entry permit

Prospective adoptive parents who are matched with a child, and who accept the proposed placement of the child, must obtain the relevant visa and entry permit for the child from DIMA. The visa must be obtained prior to travelling overseas to take custody of the child as it provides the authority for the child to enter and permanently reside in Australia. The requirements for an adoption visa include approval from the Department of Families for the prospective adoptive parents to adopt the child.

8.2.4 Guardianship

Under the provisions of the *Immigration (Guardianship of Children) Act 1946*, the Commonwealth Immigration Minister becomes the guardian of children entering Australia on adoption visas but the powers and functions of this guardianship are delegated to the relevant State or Territory adoption authority. In Queensland, guardianship is delegated to the Director-General of the Department of Families and ceases when the final adoption order is made.

8.2.5 Interim orders and period of supervision

Where the adoption of an overseas child is to be finalised in Queensland, the overseas adoption authority requires the Department of Families to make an interim order regarding the child. While an interim order is in place the Director-General retains guardianship of the child and the legal custody and responsibility for the child's day-to-day care is transferred to his/her prospective adoptive parents. Interim orders usually remain in place for 12 months but may be extended to two years – Interim orders are further discussed in section 11.4 of this consultation paper.

Under the Hague Convention, adoption orders finalised in a country that has ratified or acceded to the convention, can be recognised in Queensland. Under the *Family Law (bilateral arrangements – Intercountry Adoption) Regulation 1998*, adoption orders finalised in the People's Republic of China are also recognised in Queensland. Where an order is finalised in another country, the Director-General is required to supervise the child for an interim period upon the child's arrival in Queensland with his/her adoptive parents.

8.2.6 Post-placement reports

After a child is placed with his/her adoptive/prospective adoptive parents in Queensland, the Department is required to report regularly to the overseas adoption authority on the child's progress during the interim order or period of supervision.

Information obtained during post-placement contact is considered when determining whether it would be in the best interests of the child for an adoption order to be made in favour of the prospective adoptive parents with whom the child has been placed.



Adoption authorities in some countries require adoptive parents to give an undertaking to continue to provide post-placement reports until the child reaches 18 years of age.

8.2.7 Placement disruption

The Department is obliged to review a child's placement with his/her adoptive/prospective adoptive parents if the placement does not progress satisfactorily. A child's placement must also be reviewed if there is a change in the prospective adoptive parents' circumstances that affects their ongoing eligibility or capacity to care for the child.

Where placement difficulties are experienced, the Department may arrange for support to assist the family or may facilitate a referral to an appropriate service. If a child's needs cannot adequately be safeguarded, it may be necessary for the Department to remove the child from the care of the prospective adoptive parents.

The Department is obliged to liaise with the overseas adoption authority in cases where a child's placement with prospective adoptive parents is disrupted before the adoption order has been finalised. In some instances, the Department must advise the relevant overseas adoption authority if there is a disruption to a child's adoption after an adoption order has been made.

Post-adoption services regarding adoption disruption are discussed in Chapter 12.

8.2.8 Final adoption order

An adoption order finalised in the child's country of origin is recognised in Australia if that country has ratified or acceded to the Hague Convention or the country of origin is the People's Republic of China. Although the Department is still responsible for supervising the child's placement for an interim period, there are no additional procedures required for the order to be recognised in Australia.

The adoption of a child from a country that has not ratified or acceded to the Hague Convention or is not the People's Republic of China, may be finalised in Queensland if the child's placement with the prospective adoptive parents proceeds satisfactorily.

Under the *Adoption of Children Act 1964*, the Chief Executive of the Department of Families is authorised to administratively approve the making of adoption orders in Queensland.

After an adoption order is made, the Chief Executive authorises the Registry of Births, Deaths and Marriages to issue an amended certificate of birth for the child that names the child's adoptive parents as his/her parents. The child's adoptive parents can obtain the child's Queensland certificate of birth from the Registry of Births, Deaths and Marriages in Brisbane.

8.3 The Hague Convention and bilateral agreements

Children from countries that have negotiated adoption agreements with Australia and to which Queensland is a party, or children from countries that have ratified or acceded to the Hague Convention may be adopted by approved Queensland adoption applicants.

The Australian Government ratified the Hague Convention and it came into force on 1 December 1998. The Hague Convention establishes a system of reciprocal co-operation between Contracting States (i.e., countries or states, territories or provinces within countries that have ratified or acceded to the Hague Convention) and provides a common set of fundamental principles to guide intercountry adoption practice between them.

The objectives of the Hague Convention are:

- to establish safeguards to ensure intercountry adoptions take place in the best interests of the child with respect for his/her fundamental rights as recognised in international law;
- to establish a system of co-operation amongst Contracting States to ensure those safeguards are respected and thereby prevent the abduction of, sale of or trafficking in children; and
- to secure recognition in Contracting States of adoptions made in accordance with the Convention.

Australian States and Territories have ratified the *Commonwealth/State Agreement for the Implementation of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (Commonwealth State Agreement). The operation and administration of intercountry adoption case work and policy is the responsibility of each State. (See Appendix 4 for the text of the Agreement.)

As a result of Australia ratifying the Hague Convention, all Australian States and Territories, including Queensland, have endorsed the articles of the Hague Convention. The 48 articles of the Hague Convention are included in a Schedule in the *Adoption of Children Act 1964*. The Hague Convention applies if Australian children require adoption outside Australia or if children in a Hague Convention country require adoption in Australia.

The Secretary of the Commonwealth Attorney-General's Department is the designated central authority in Australia for the Hague Convention. The Manager, Adoption Services, Department of Families, is the designated central authority in Queensland and is required to fulfil the functions of a central authority in accordance with the Hague Convention. These functions include:

- processing day-to-day casework involved in a particular adoption;
- approving an application for the adoption of a child;
- giving consent to the adoption of a child;
- accrediting a body/bodies to carry out functions under the Hague Convention on behalf of the central authority in accordance with Part Three of the Convention, where applicable; and
- revoking the accreditation of a body for the purposes of Part Three of the Convention, where applicable.

There are no accredited bodies in Queensland at present. This issue is further discussed in Chapter 13.

Not all the countries with which Queensland has existing adoption agreements have ratified the Hague Convention. In accordance with the terms of the Commonwealth/State Agreement, the Department can continue to work with countries that have not ratified the Hague Convention, however, agreements must be reviewed. The agreement between Australia and Ethiopia is being reviewed.

As at 31 March 2002, 46 countries had ratified or acceded to the Hague Convention (Appendix 6 contains a list of these countries). Many of the 46 Hague Convention countries, like Australia, are receiving countries, i.e., countries that provide adoptive families for children.

Although Australian States and Territories can now arrange intercountry adoptions with the central authority of any signatory country requiring placements for children, the majority of intercountry adoptions continue to be arranged with countries with which Australia has negotiated adoption agreements.

As at 30 June 2001, Queensland was a party to adoption agreements with 13 countries (Appendix 6 contains a list of these countries).



8.4 The role of the Department of Families

The Department's administration of the intercountry adoption program is undertaken in accordance with the *Adoption of Children Act 1964* and the *Adoption of Children Regulation 1999*. It is also undertaken in accordance with international conventions which Australia has ratified, namely the Hague Convention and the UNCROC.

In accordance with the UNCROC, the Department's role is to ensure that a child deprived of his/her family environment is provided with special protection and assistance.

Further, in accordance with Article 21 of the UNCROC and as required by the Hague Convention, *State parties that recognize and/or permit the system of adoption shall:*

- ensure that the best interests of the child shall be the paramount consideration;
- ensure that adoption of a child is authorized only by competent authorities;
- recognise that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- ensure that the child concerned by intercountry adoption enjoys the safeguards and standards equivalent to those existing in the case of national adoption;
- take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;
- promote, where appropriate, the objectives of the present 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.

8.4.1 Liaison with adoption authorities in overseas countries

All adoption programs operating between Queensland and overseas countries are conducted on a Government-to-Government basis. The national guidelines on intercountry adoption endorsed by the Australian Council of Social Welfare Ministers and the relevant bilateral agreement or the Hague Convention provide the foundation for the operation of adoption programs between Queensland and specific countries.

In particular, the Department liaises with overseas adoption authorities regarding the operation of intercountry adoption programs and in relation to the matching and allocating of specific children with Queensland residents. The Department also co-ordinates intercountry adoption agreements with Ethiopia and Fiji on behalf of Australian States and Territories.

8.5 Queensland Government responsibilities

The Queensland Government's role in intercountry adoption is generally defined by international conventions and specifically defined in bilateral agreements in some instances. The duties associated with its role are delegated to the Department of Families which ensures Queensland's participation in arranging for children from overseas to be adopted by Queensland families is undertaken in accordance with international conventions and agreements, and Queensland's legislative requirements.

Overseas adoption authorities seek suitable adoptive families in Queensland when there are children in their country who would not otherwise have the opportunity to grow up in a family. These authorities also determine whether the needs of specific children would be best met by placement with an adoptive family in Queensland or with an adoptive family in another country or state.

The purpose of intercountry adoption and the desire of people to become the adoptive parents of children from overseas are often compatible, and intercountry adoption can have beneficial outcomes for children and adoptive parents. However, the Department's primary responsibility in facilitating intercountry adoption is to act in the interests of children from overseas who are or may be matched with adoptive parents in Queensland.

To fulfil its responsibilities to children under the UNCROC, the Hague Convention, and the *Adoption of Children Act 1964*, the Department must ensure:

- that equal standards are applied to safeguard the interests of children in Queensland and children from overseas requiring adoption;
- that the suitability of prospective adoptive parents and their capacity to parent a child from overseas is adequately assessed;
- that reasonable caution is exercised in approving the proposed placement of a child with approved prospective adoptive parents in Queensland;
- that the interests of children requiring adoptive placements are considered before the interests of people wanting to adopt a child; and
- that adoption policy and practice does not encourage the adoption of children from overseas in circumstances where there is a high risk of the child's adoption being disrupted, and where there are few alternative placement options and/or available therapeutic intervention services.

The Department is also responsible for providing ethical and professional services to people who want to be assessed as prospective adoptive parents. To fulfil its responsibility to people seeking to adopt a child from overseas, the Department must ensure:

- efficient and accountable adoption services are provided;
- peoples' suitability and capacity to parent a child from overseas requiring an adoptive family is adequately assessed; and
- reasonable caution is exercised in approving the proposed placement of a child with approved prospective adoptive parents in Queensland.

Would a legislative framework which includes the principles outlined in 3.6 and 3.7 of this consultation paper help the Government fulfil its responsibilities under the UNCROC and the Hague Convention discussed in 8.5 above?

Should consistent eligibility criteria and assessment standards apply to people seeking to adopt a child in Queensland and people seeking to adopt a child from overseas, to ensure the same safeguards apply in both situations?

8.6 Education and support services

Research indicates that the highest number of adoption disruptions occur in placements where adoptive parents of children from overseas:

- are not members of a parents' support group;
- do not participate in a preparatory course;
- have little support from other adoptive parents; and
- receive little follow-up from the local adoption authority after the child's placement.⁵⁶

⁵⁶ R. Hoskbergen, *Understanding and Preventing Failing Adoptions*, in E. Hibbs (ed) *Adoption, International Perspectives*, International Universities, USA, 1991.



Group preparation for people seeking to adopt a child, post-placement support for children and applicants and pre-placement support for children all positively influence the adoption outcome as does providing education to assist prospective adoptive parents assist children develop their cultural background and deal with racism in the community.⁵⁷

Other factors identified as necessary to support positive adoption outcomes include:

- effective strategies and resources to recruit prospective adoptive parents who have the capacity to meet the child's complex needs;
- the availability of support services for families to help them meet the child's ongoing needs post-adoption; and
- appropriate assessment.⁵⁸

Research also recognises the need to encourage adoptive parents to consider the adoption authority as a source of ongoing information and support post-adoption to enhance the outcomes, particularly if placement difficulties occur.⁵⁹ It is important for the Department to develop strategies to maintain positive working relationships with all adoptive parents, especially those who express dissatisfaction with the service provided or with decisions made by the Department in the application or assessment process.

This also recognises the value adoptive parent support groups may provide in undertaking a supportive and educative role for applicants and adoptive families.

Traditionally, the Department has not undertaken a formal role after making the adoption order, except for a very limited statutory requirement to respond to applications from eligible persons for identifying information once an adopted person turns 18. The extent of the Department's responsibility to enhance adoption outcomes by providing post-adoption support to children and families is examined in Chapter 12.

Should there be a requirement for the Department to provide and/or co-ordinate the provision of information and education services to ensure prospective adoptive parents:

- *have the capacity to assist a child to develop and/or maintain his/her cultural background; and assist a child who child encounters racism or discrimination;*
- *are provided with a source of support and information?*

⁵⁷ J. Triseliotis, J. Shireman, and M. Hundleby, *Adoption Theory, Policy and Practice*, Cassell, UK, 1997;

V. Groze, *Successful Adoptive Families*, Praeger Publishers, USA, 1996.

⁵⁸ Groze, 1996

⁵⁹ Barth and Berry, 1988