



## **SUBSEQUENT SIBLING ADOPTION – POLICY AND PROCEDURES**

This document sets out the general principles that apply to subsequent sibling adoptions. It is based on the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (Hague Convention) and *The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice* (Guide to Good Practice).

Subsequent sibling adoption occurs when a family adopts the known sibling/s of their adopted child or children. This differs from ‘relative adoption’, which is the adoption of a child by the child’s biological relatives and ‘known child adoption’, where the child is previously known to the prospective adoptive parents but unrelated to them or their adopted child or children.

A separate policy paper on relative and known child adoption is available on the Australian Government [Attorney-General’s Department’s website](#).

### **BACKGROUND**

In many countries, children are relinquished or abandoned due to poverty and/or illness. In some situations, a family may place one or two children for adoption whilst continuing to care for their other children. Sometimes other siblings are later relinquished or their birth family dies, and the children become in need of a new family. When this situation has arisen, the cases have been complex and required a significant investment of resources from the Commonwealth, State and Territory Central Authorities.

### **CONCERNS AND RISKS OF SUBSEQUENT SIBLING ADOPTIONS**

While it may be possible in some circumstances, attempting to adopt the sibling of an already adopted child/ren runs the risk of being inappropriate under, or contrary to, the following Hague Convention principles and standards:

*The child must be ‘adoptable’*

Article 4(a) of the Convention requires that the competent authorities in the country of origin have established that the child is ‘adoptable’, according to the law and procedures of that country. This means the competent authorities in the country of origin must have decided that the relevant child is lawfully able to be adopted before any intercountry adoption can be contemplated, even if the child’s sibling/s have previously been adopted by a particular prospective adoptive family.

*The Subsidiarity Principle must be met*

Article 4(b) of the Hague Convention requires the competent authorities of the child’s country of origin to have given due consideration to possibilities for placement within the country of origin and to have determined that intercountry adoption would be in the child’s best interests. This means possible options for placing the child with relatives or another family within the child’s country of origin, should be considered before intercountry adoption. The Guide to Good Practice

emphasises that the Convention refers to ‘possibilities’ for placing a child in their country of origin, but does not require all possibilities to be exhausted.<sup>1</sup>

The Guide notes that the competent authorities of the country of origin and receiving country are to consider whether a particular placement would be in the child’s best interests under the guidance of the Convention. In some cases it may be preferable to reunite a child with sibling/s previously adopted by an overseas adoptive family, rather than place that child with a non-related family in the country of origin.<sup>2</sup> On the other hand, it should not be assumed that placing a child with biological siblings abroad will always be better for the child than being cared for by other family members or the larger community in their country of origin. All relevant factors should be assessed on a case-by-case basis in accordance with the best interests of the child. In this respect, subsequent sibling adoption may not always be possible.

*There must be no improper financial gain or inducement*

The Hague Convention prohibits improper, financial or other gain from an activity relating to intercountry adoption. This includes any real or perceived financial or other inducements offered in the context of formal relinquishment of the child.<sup>3</sup>

If adoptive parents adopt a child or sibling group and provide financial or other support to the birth family and subsequently adopt a known sibling or siblings, this may be perceived as providing financial inducement or pressuring birth families to relinquish their children for adoption. This would be directly contrary to the Hague Convention and could jeopardise Australia’s commitment to uphold the Convention principles. If a State or Territory Central Authority suspects that financial or other inducements have been offered or made to the birth family, they may choose not to assess and approve that prospective adoptive parent.

*There must be no inappropriate pre-placement contact*

Inappropriate pre-placement contact can occur when prospective adoptive parents make contact with the child’s carer or authorities prior to confirmation from the country of origin and the relevant State or Territory Central Authority that such contact is appropriate. This also includes travel to the country of origin prior to that confirmation in the hope that presence in the country will expedite the process. Such contact is concerning for a number of reasons, particularly because it opens prospective adoptive parents to the possibility that donations and contributions may be sought in return for expediting the application or that their actions may be seen as inappropriate. It also risks Australia’s international standing if its citizens are seen to be applying inappropriate pressure on other countries’ governments and agencies.<sup>4</sup>

Contact between the prospective adoptive parents and the parents or caregivers of potential siblings of their adopted child or children can contribute to further challenges in meeting the requirements of the Convention.<sup>5</sup> The Hague Convention prohibits contact between prospective adoptive parents

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<sup>1</sup> Guide to Good Practice, page 29, paragraph 50.

<sup>2</sup> Guide to Good Practice, page 114, paragraph 517.

<sup>3</sup> Article 32 of the Hague Convention.

<sup>4</sup> The Guide to Good Practice clearly states that countries of origin should not be under pressure from prospective adoptive parents to give priority to their request, see paragraph 315.

<sup>5</sup> Article 29 of the Hague Convention prohibits contact between the prospective adoptive parents and the child’s parents or any other person who has care of the child until all required consents to the adoption have been provided (see Articles 4 and 5). The Explanatory Report explains that the prohibition contained in Article 29 is intended to prevent circumstances where improper payment or compensation for consents is most likely to occur.

and a child's biological parents or any other person who has care of the child until all required consents to the adoption have been provided by the relevant parties, unless there are specific circumstances deemed appropriate by the State or Territory Central Authorities. This includes other persons acting on behalf of prospective adoptive parents.

The Australian Central Authority strongly recommends that prospective adoptive parents do not make contact with or travel to countries of origin (aside from unrelated travel) until the country of origin and the relevant State or Territory Central Authority have confirmed that such contact is appropriate.

Prospective adoptive parents can indicate to their respective State or Territory Central Authority that they are willing to be assessed for future siblings of their adopted child or children. However, there is no guarantee that the child will automatically be placed with the prospective adoptive parents. The principle of subsidiarity and the best interests of the child will be paramount in all decisions made.

Prospective adoptive parents should advise their relevant State or Territory Central Authority should they wish to adopt possible siblings of their adoptive child or children so that enquiries can be made through the appropriate channels. If an overseas adoption agency or authority initiates a direct enquiry to adoptive families, the family should immediately raise this with their relevant State or Territory Central Authority. Generally contact with the overseas adoption agency or authority would need to cease should a subsequent sibling be considered for adoption in that family.

## **INTERPLAY WITH IMMIGRATION**

It is important that, if an Australian family wishes to undertake a subsequent sibling adoption, they do so through appropriate channels to ensure the child can legally enter Australia. In appropriate circumstances, this will generally mean waiting for the child to become legally able to be placed for intercountry adoption and working through their State or Territory Central Authority to adopt that child.

Only children adopted overseas through appropriate channels can enter Australia on a visa that is specifically for adopted children. The Adoption (Subclass 102) visa will only be granted following the satisfaction of immigration law requirements. These requirements are in place to protect the interests of the children involved.

As noted above, subsequent sibling adoption differs from relative adoptions. This is because the prospective adoptive parents are not related to the sibling/s of their adopted child or children and adoption severs familial ties between the adopted child and their birth family (including birth siblings). This means there is no 'relative' available to be assessed and approved to adopt the overseas sibling.

Therefore, to be able to sponsor a biological sibling of their adopted child for an Adoption (Subclass 102) visa, the prospective adoptive parents must formally adopt the child in order for them to be considered the "parent" of the child under immigration law. This principle would similarly apply to an Orphan Relative (Subclass 117) visa where prospective adoptive parents are unable to be considered a 'relative' for purposes of sponsorship.

Further information on child category visas is available on the Australian Government [Department of Immigration and Citizenship's website](#).

## **SUBSEQUENT SIBLING ADOPTION POLICY**

Australian States and Territories have responsibility for considering and facilitating subsequent sibling adoptions where appropriate. All specific enquiries should be made with the relevant State or Territory Central Authority in the first instance.

Despite the relationship between an adopted child and their siblings, it may not always be possible for a subsequent sibling adoption to take place.

State and Territory adoption legislation and the requirements of the country of origin will affect a prospective adoptive parent's ability to adopt a known sibling/s of their adopted child or children. In some cases, a prospective adoptive parent may no longer be suitable or eligible to adopt a child in their relevant State or Territory or in the sibling's country of origin.

The key principles for subsequent sibling adoptions are:

1. Intercountry adoption should always occur in a manner that is consistent with the Hague Convention principles and standards. Intercountry adoption, including subsequent sibling adoptions, may provide a permanent placement option as envisaged by the Hague Convention after other possibilities have been given due consideration.<sup>6</sup>
2. The Australian Government, State and Territory Central Authorities and Australia's overseas representatives will not become involved in, or assist with, subsequent sibling adoption cases before the sibling/s are legally adoptable in the country of origin.
3. It is inappropriate to procure, induce or put pressure on birth families to relinquish or abandon children for subsequent sibling adoptions. If it appears that there has been such procurement, inducement or pressure, the relevant State or Territory Central Authority may choose not to assess and approve that prospective adoptive parent.
4. Requests concerning subsequent sibling adoptions will be considered by State and Territory Central Authorities on a case-by-case basis, and only if the country of origin has determined that child is legally able to be placed for intercountry adoption and that the adoption would be in the best interests of the child.
5. Where a subsequent sibling adoption is not arranged through the relevant State or Territory Central Authority, there is a significant risk that the child will not meet Australian immigration requirements and will be unable to enter Australia.
6. All contact between prospective adoptive parents and overseas adoption authorities (and persons with care of children) should occur through State and Territory Central Authorities until such time as prospective adoptive parents are approved to travel to meet their child.

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<sup>6</sup> This is a requirement of Article 4(b) of the Hague Convention.