



Australian Government
Attorney-General's Department

Access to Justice Division

Attorney-General's Department
Intercountry Adoption Strategic Plan 2009

Attorney-General's Department
Intercountry Adoption Branch

What is the purpose of this strategic plan?

The purpose of this strategic plan is to outline the way in which the Attorney-General's Department, as the Australian Central Authority (ACA) under the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*, will ensure Australia has a nationally consistent and coordinated approach to the establishment and management of ethical and viable intercountry adoption programs.

Without a coordinated approach, the resources available to government agencies, stakeholders and prospective adoptive parents risk being diverted from activities most likely to produce the optimum results for children needing permanent family placement outside their country of origin, to activities that may produce outcomes that may not be reliable, sustainable or credible. A strategic, principles based approach provides the best opportunity to realise the most effective and credible intercountry adoption programs and arrangements which maintain and promote the international principles that govern intercountry adoption. This will also ensure that appropriate procedural safeguards are in place to protect the best interests of the child.

Introduction

Australia recognises that intercountry adoption must be based upon the best interests of the child and take place in accordance with the principle of subsidiarity. This principle means that priority must be given to enabling a child to remain in the care of a family in their country of origin but recognises that intercountry adoption may offer the advantage of a permanent family where a suitable family cannot be found in the child's country of origin.

The Attorney-General's Department also recognises the importance of adoption to family creation and considers it necessary to adopt a strategic approach to the development of Australia's intercountry adoption program. The aim of the strategic plan is to ensure that:

- existing programs are effectively and efficiently maintained, developed and reviewed, in accordance with clearly defined workplans
- opportunities for new programs which are able to operate consistently with Hague Convention principles are identified and explored in a timely and efficient manner
- all stakeholders and State and Territory Central Authorities are able to appropriately participate in the development of the program into the future, and
- where possible, assistance is provided to partner countries to allow them to better provide for the best interests of their children and ensure appropriate procedural safeguards are in place.

Background

The Hague Convention

The international principles that govern intercountry adoption are set out in the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*. The Hague Convention was concluded on 29 May 1993 and entered into force on 1 May 1995. Australia ratified the Convention on 25 August 1998 and it entered into force in Australia on 1 December 1998.

The Hague Convention establishes standards and safeguards to ensure that intercountry adoption takes place in the best interests of the child, with respect for his or her fundamental rights. It also establishes a system of cooperation among parties to guarantee the observation of those safeguards. To this end, countries are required to take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption, and to deter all practices contrary to the objects of the Convention. The observance of Convention standards and procedural safeguards thereby protects against the abduction or sale of, or traffic in, children. Australia also has obligations under the *UN Convention on the Rights of the Child* to ensure basic safeguards are in place.

A fundamental underlying principle of the Hague Convention is that of subsidiarity. This provides that countries should give priority to enabling a child to remain in the care of a family in their country of origin, but recognises that intercountry adoption may offer the benefit of a permanent family where a suitable family cannot be found in the child's country of origin.

In order to meet its international obligations, Australia must uphold the integrity of its intercountry adoption programs and ensure, in cooperation with the State of origin, that intercountry adoptions take place only in the best interests of the child. Although not all countries with whom Australia has adoption agreements are signatories to the Hague Convention, Australia requires that all adoption programs are ethical, viable and meet the standards set by the Convention. Australia will only establish and maintain programs with countries where it can be satisfied that the Convention standards are in place.

To this end, the Commonwealth, States and Territories engaged in lengthy negotiations prior to Australia's ratification of the Hague Convention culminating in the *1998 Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*.

Historical Roles of the Commonwealth, States and Territories

Until mid-2007, primary responsibility for the establishment and management of intercountry adoption programs rested with State and Territory Governments. This arose after a 1991 agreement between the Commonwealth, States and Territories known as the *Protocols and Procedures for the Development of New Programs for Intercountry Adoption with New Countries*.

Historically, State and Territory Governments generally investigated the establishment of a new program after interest was raised by adoptive parents or adoptive parent support groups. This meant that programs were largely established on

an ad hoc basis and, in some cases, the development of programs was dependent on the goodwill and proactive involvement of intercountry adoption support groups.

Historically, the main function of the Attorney-General's Department, as the Australian Central Authority under the Hague Convention, was to enable the performance of Australia's obligations under the Hague Convention and to ensure that Australia, as a whole, complied with the requirements and standards of the Hague Convention.

The 2005 'Overseas Adoption in Australia' Report and Renegotiation of the Commonwealth-State Agreement

Following the release of the 2003–2004 Annual Report of the Australian Institute of Health and Welfare, the House of Representatives Standing Committee on Family and Human Services ('the Committee') conducted an inquiry into the adoption of children from overseas. On 28 November 2005, the Chair of the Committee, the Hon Bronwyn Bishop MP, released the Committee's Report: *Overseas Adoption in Australia* (the Report). The Report included 27 recommendations designed to improve the system of intercountry adoption in Australia.

A primary recommendation of the Report was that responsibility for establishing and managing overseas adoption programs be transferred to the Attorney-General's Department. The States and Territories would maintain a key role in assessing and approving applications for adoptions. The former government and current government both accepted this recommendation.

In response to the Report, Ministers agreed that there was a need to formulate a strategic plan for intercountry adoption programs.

Recommendation 1 of the Report stated that the Attorney-General renegotiate the *1998 Commonwealth-State Agreement* with the States and Territories.

The revised Agreement, the *Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Program*, was signed by relevant Commonwealth, State and Territory Ministers in July 2008. The new Agreement implements a number of key recommendations made by the Committee.

Current Roles of the Commonwealth, States and Territories

Under the new Agreement, the Commonwealth now has primary responsibility for establishing and managing Australia's intercountry adoption programs. The State and Territory Central Authorities are responsible for the operational aspects of intercountry adoption, including processing individual applications for intercountry adoption. This means that all intercountry adoption casework, including education, assessment, approval and placement services, is handled by the relevant State or Territory.

The Agreement provides a framework for the Commonwealth Government to work in collaboration with the States and Territories to manage and improve intercountry adoption in Australia. Cross-jurisdictional working groups have also been established pursuant to the Agreement to investigate important issues concerning intercountry adoption in Australia. These include consideration of the greater harmonisation of

intercountry adoption laws, fees and assessment practices and the investigation of alternative models of service delivery.

Arrangements in the new Agreement involve collaboration and coordination amongst the Commonwealth, States and Territories. Ongoing participation of the State and Territory Central Authorities is facilitated through biannual meetings of all Australian Central Authorities under the continued chairmanship of the Commonwealth, regular meetings of the working groups and ad hoc meetings and teleconferences on particular issues. Consultation with the States and Territories is particularly important given their experience and expertise in intercountry adoption matters.

Participation of other key stakeholders

The Attorney-General's Department recognises the central importance of consultation with all key stakeholders. A range of non-government stakeholders can be identified in relation to Australia's intercountry adoption program. Key stakeholders include:

- adoptees
- adopters
- Intercountry Adoption Support Organisations (IASOs)
- intercountry adoption specialists
- countries of origin
- birth parents
- overseas Central Authorities
- the Hague Conference on Private International Law
- International Social Services, and
- the National Intercountry Adoption Advisory Group (NICAAG).

NICAAG, formerly known as the National Peak Overseas Adoption Support Group, was established in March 2008. The Group was established in response to a key recommendation of the Report and followed extensive consultation with the intercountry adoption community in Australia about its formation. NICAAG provides advice to the Government on intercountry adoption issues and works to ensure that the intercountry adoption community in Australia is well represented. This facilitates a collaborative approach to the development of Australia's intercountry adoption programs.

Providing assistance to partner countries

In implementing this strategic plan, consideration will be given to the ways in which assistance can be provided to partner countries to allow them to establish and maintain safeguards to ensure that intercountry adoptions take place in the best interests of their children and to better enable them to meet Hague Convention standards. This can be done in a number of ways, including:

- visiting countries that Australia has an existing intercountry adoption program with, or to explore a possible new program with, to exchange information on how to work cooperatively within Convention principles
- inviting officials of these countries to visit Australia to exchange information on how to work cooperatively within Convention principles, in collaboration with States and Territory Central Authorities

- identifying opportunities to support the work of the Hague Conference on Private International Law in relation to intercountry adoption, and
- through capacity building and governance activities supported through Australia's aid programs and provided by appropriately qualified experts in a transparent and accountable way (for example, through the Intercountry Adoption Technical Assistance Programme administered by the Permanent Bureau). These activities will reflect the priorities determined jointly by Australia and aid recipient countries.

Structure of this strategic plan

Existing programs

Part 1 of this strategic plan outlines the strategy for ensuring existing intercountry adoption programs are effectively and efficiently maintained, developed and reviewed.

New programs

Part 2 of this strategic plan outlines the strategy for ensuring opportunities for new ethical and viable programs based on children requiring adoptive families are identified and explored in a timely and efficient manner.

Part 1: Principles for managing existing intercountry adoption programs

Principles

The key principles in managing existing intercountry adoption programs are:

- the maintenance of effective, credible and reliable programs that meet the Hague Convention standards, including appropriate measures and procedural safeguards to ensure that intercountry adoptions:
 - take place in the best interests of the child
 - with respect for his or her fundamental rights
 - with regard to the principle of subsidiarity, and
 - without coercion or inducement – to protect against the abduction or sale of, or traffic in, children
- that programs provide an effective means for children in need of families to join suitable Australian families wishing to adopt children
- that opportunities to expand programs are explored as appropriate. Whether a program might be considered for expansion will depend on a number of factors, including:
 - an assessment of the effectiveness of the program in the past, and the sustainability of the program in the future
 - whether the country has, and is likely to continue to have, the number of children in need of families that would warrant committing resources to exploring possibilities for expansion
 - whether the country has expressed an interest in expanding the existing intercountry adoption program with Australia
 - whether the country has, or can be assisted to have, the capacity to manage an expanded program, including its capacity to effectively process an expanded number of applications from Australian families and without risk to Hague Convention standards
 - whether the country has appropriate procedural safeguards in place to protect against the abduction or sale of, or traffic in, children (for example, a national child protection system)
 - whether, if there have been allegations of the abduction or sale of, or traffic in, children, the relevant authorities have taken appropriate action
 - the likelihood of successfully expanding the program if such an activity were commenced, and

- that programs are periodically reviewed (as resources permit) to ensure that they continue to align with Hague Convention standards and other international and domestic obligations (priority will be given to reviewing any programs where child trafficking allegations or concerns have been raised).

There are three types of existing programs:

- an 'open' program
- a 'suspended' program, and
- a 'closed' program.

In certain circumstances, a sending or receiving country may consider it necessary to suspend or close an existing intercountry adoption program. This may be for several reasons, such as concerns about the operation of the program in that country, child trafficking allegations or concerns, and possible non-compliance with the Hague Convention principles (see Attachment A). In some circumstances, programs will be closed or suspended at the request of the overseas country.

Where child trafficking allegations or concerns have been raised, the following factors may provide an indication that trafficking has taken place or is at risk of taking place:

- a sudden increase in numbers of children available for intercountry adoption
- an increase in healthy infant children available for intercountry adoption (falling outside the typical profile of orphanage populations in that country)
- a high incidence of abandonment as opposed to formal relinquishment of children
- a lack of strong control and oversight by the relevant Central Authority
- extreme poverty or social disruption in the country of origin, increasing the incentive to facilitate illegal adoptions for financial gain
- the country has no established child protection strategy or framework in place
- news reports in the country of origin or in a receiving country raise allegations or concerns
- no strong commitment to domestic adoption as a priority over intercountry adoption, or strong incentives exist to give preference to intercountry adoption over domestic adoption
- no guaranteed funding from government for children in institutionalised care
- previous instances where concerns have been raised and not addressed to the satisfaction of the Attorney-General's Department
- a financial reliance on intercountry adoption for the viability of local welfare programs, and

- inadequate mechanisms to manage a high level of demand from overseas countries for children for adoption.

This is not an exhaustive list and none of the factors provide a definitive indication that trafficking has taken, or may take, place. All of the circumstances taken together in a country of origin need to be considered.

Where credible child trafficking concerns are raised, immediate action may be necessary in consultation with the relevant overseas authorities to ensure safeguards are in place to protect other children being placed with Australian families. Consideration may also be given to suspending the relevant intercountry adoption program.

Where child trafficking allegations have been substantiated and it is established that other children may be at risk, AGD will consider suspending the program until appropriate safeguards are in place to protect children.

Managing an 'open' program

An open program operates under a bilateral agreement or arrangement between Australia and another country (whether a Hague Convention country or not) that:

- provides the framework for the operation of an intercountry adoption program, and
- is operative, in that Australia is able to send applications on behalf of prospective adoptive applicant(s) to the other country and the other country will consider and, if appropriate, allocate a child in need of a family to a prospective adoptive applicant(s).

Once an intercountry adoption arrangement or agreement has been established it is vital that ongoing work be carried out to ensure the program is maintained and remains viable, opportunities for expansion of the program are considered and the program continues to comply with the principles outlined in the Hague Convention. This includes the maintenance of appropriate procedural safeguards to protect against the abduction or sale of, or traffic in, children. Undertaking consultation and ensuring the effective exchange of information is also important.

To ensure these outcomes, the management of programs will involve:

- ongoing gathering and exchange of information relevant to the program
- monitoring of the program and the identification of issues and concerns relating to the program. This may include the development of measures to address these concerns where appropriate. For example, where practice concerns have been raised, the Attorney-General's Department may request that the relevant overseas authority provide appropriate education and training to intercountry adoption agencies operating in their country
- periodic review of programs as resources permit. The review will include consideration of the viability of the program, its ongoing compliance with Hague Convention standards (including maintaining appropriate procedural safeguards) and future options for the program (including continuation without change, negotiations for remedial action, expansion, suspension or closure). Central

Authorities and the Community and Disability Services Ministers' Council will be advised of the outcomes of a review

- assessment of programs for possible expansion, including the need of an overseas country for more adoption applications from Australia
- consultation with States and Territories and the NICAAG to identify issues relating to the program in light of the experience of adopting families and adoptees
- information sharing with States and Territories, as well as overseas adoption support group organisations with the aim of increasing awareness of the intercountry adoption programs entered into by Australia and their basic requirements, and
- maintenance and consolidation of existing relationships with the countries with which Australia operates an intercountry adoption program. This usually would include periodic visits by official Australian delegates to the other country as well as invitations for representatives of relevant organisations/agencies of the other country to visit Australia.

Managing a 'suspended' program

A suspended program arises when a bilateral agreement or arrangement between Australia and another country is either temporarily or indefinitely inoperative. A program may be suspended unilaterally by the overseas country. For example, due to a focus on domestic adoption the country may not have children in need of intercountry adoption.

If, after a review, or at any other time, it becomes apparent that it may be necessary to suspend an intercountry adoption program when it is not at the request of the other country then the Attorney-General's Department will:

- identify the key issues and/or concerns leading to the consideration of the suspension of the intercountry adoption program (for example, where child trafficking allegations or concerns have been raised)
- gather further information relevant to these issues and/or concerns and/or assurances from overseas authorities that appropriate procedural safeguards are, or will be put, in place
- engage in negotiations with the other country – raising and evidencing concerns (at the appropriate level), seeking information, and proposing options for resolution (for example, where there are child trafficking concerns, implementing additional safeguards)
- exchange information – continuing to share information until such time as the concerns and issues resulting in the suspension of the program are addressed. This may result in the program being reopened or closed
- consult – with relevant agencies, organisations, support groups and Governments relevant to the issues and/or concerns to work towards a resolution. This may include exchanging information with other receiving

countries, and raising concerns with the Permanent Bureau of the Hague Conference on Private International Law

- monitor – the progress of measures taken to overcome the issues and/or concerns, and
- review – the status of the program throughout the above steps and continue assessing the options for the program, for example continued suspension, closing the program or re-opening the program.

Interim measures may be implemented prior to formal suspension in circumstances where immediate action is necessary. For example, where credible child trafficking concerns are raised, the Government may consider suspending adoptions from particular overseas agencies or limiting the sending of new applications. These measures would remain in place until a program review has been completed and the agency's reliability and adherence to Hague Convention standards can be confirmed. The Department will assist the relevant overseas authorities as appropriate to ensure that emergency measures are implemented to combat any child trafficking practices.

Where the Department has sought further information or assurances that issues/concerns with a particular program are, or will be, addressed, the relevant overseas authorities should provide a response within a reasonable period of time. If a response is not provided within a reasonable period of time, the Department may recommend to the Attorney General that he suspend the program.

Managing a 'closed' program

A closed program exists when a bilateral agreement or arrangement between Australia and another country is inoperative.

The Attorney-General's Department will do the following in relation to closed programs:

- consider the reasons for the closure of the program
- periodically monitor and review the status of the program, and
- maintain contact with agencies in the country, as appropriate.

Reviewing a program against Hague Convention standards and principles

When reviewing an open, suspended or closed program, the Attorney-General's Department will consider the extent to which it complies with the standards and principles of the Hague Convention.

The Attorney-General's Department will use the checklist at Attachment A for this review. Further analysis may be required for major principles, including:

- commitment to the subsidiarity principle through support to birth families or local adoption processes in the child's country of origin
- procedures for obtaining and recording consents necessary for the adoption process (including evidence that consents are freely and legitimately obtained)
- procedures to establish that a child has been orphaned

- procedures to establish that a child has been abandoned and that sufficient efforts have been made to establish the identity of the child and locate the child's family
- commitment to preserving information on a child's origin and facilitating access to that information
- implementation of procedural safeguards to protect against the abduction or sale of, or traffic in, children, and
- commitment to principles of the UN *Convention on the Rights of the Child*.

The review may be conducted in consultation with the country concerned, State and Territory Central Authorities, the NICAAG and other stakeholders.

Part 2: Principles for establishing new intercountry adoption programs.

Approach

The Attorney-General's Department will take a strategic, principles based approach to establishing new programs. Our approach will include:

- assessing whether countries do, or are able to, comply with the standards and principles of the Hague Convention (particularly by ensuring that adequate safeguards are in place, or will be put in place, to protect against the abduction or sale of, or traffic in, children)
- identifying countries which have, and are likely to continue to have, children in need of suitable families in Australia
- identifying whether there is interest from Australian families in adopting the children from those countries in need of intercountry adoption
- deciding whether to expand existing programs or establish new programs (although these are not mutually exclusive)
- analysing any experience other government agencies, State and Territory Central Authorities, or stakeholders have had with that country
- assessing the experience of other countries programs with that country, and
- assessing reports of civil society and non-government organisations.

Ad hoc requests

An 'ad hoc request' for intercountry adoption is an individual request to adopt a child from a country with which Australia does not have an existing intercountry adoption program. Each ad hoc request will be considered on a case-by-case basis.

The relevant State or Territory Central Authority ('Receiving Central Authority') must have accepted an ad hoc request before prospective adoptive parents are entitled to make a formal application for adoption and be assessed to determine their suitability to adopt. The Receiving Central Authority may seek advice from the ACA in making a decision to accept an ad hoc request. If their request is accepted, applicants will be subject to the normal intercountry adoption process (and waiting times) applicable in their relevant State or Territory.

As a general principle, accepting ad hoc requests will not be consistent with a coordinated, strategic and therefore effective approach to Australia's management of intercountry adoption programs. Managing ad hoc requests involves the commitment of significant resources from governments. This can divert effort from the maintenance or establishment of broader, more accessible programs that are likely to better provide for the best interests of children. However, in some cases, pursuing ad hoc requests can assist in exploring the likelihood and feasibility of establishing new intercountry adoption programs with particular countries and facilitate an appropriate placement of a child or children.

There is an increased risk for children and prospective adoptive parents when engaging in adoption processes outside established programs. It cannot be assumed that Hague Convention standards are being applied consistently and appropriately by countries or agencies with which we do not have an existing relationship. Resourcing constraints may limit the ability of the ACA to thoroughly assess the merits and risks of engaging in intercountry adoption with each particular country or agency. To protect the interests of adoptive children and prospective adoptive parents, Australian Central Authorities will not accept such requests unless particular criteria are met and exceptional circumstances are demonstrated. These criteria and exceptional circumstances are outlined below.

These criteria and exceptional circumstances are outlined in a policy statement, developed in consultation with State and Territory Central Authorities, available on the Attorney-General's Department's Intercountry Adoption website.

Consideration of compliance of program against Hague Convention standards and principles

When considering whether to establish a new intercountry adoption program, the Attorney-General's Department will consider the extent to which a country is able to comply with the principles and standards of the Hague Convention. If appropriate, the checklist at **Attachment A** will be used for the assessment. This assessment may be conducted in consultation with the country concerned, State and Territory authorities, the NICAAG and other stakeholders.

Summary

The Attorney-General's Department as the Australian Central Authority for intercountry adoption will take the following steps in considering whether to establish a new intercountry adoption program:

1. Scoping
2. Consulting
3. Briefing
4. Contacting
5. Negotiating
6. Establishing and Implementing
7. Monitoring and Reviewing

1. Scoping

This phase is designed to ascertain whether certain conditions exist both within Australia and in a particular country that would make an intercountry adoption program possible.

To gather information for the scoping phase the Attorney-General's Department may initiate contact with the country concerned and seek information on their adoption practices. The Department may also rely on other sources including International Social Services, the Hague Conference on Private International Law, information provided by State and Territory authorities, NICAAG, parent support organisations, information provided through the diplomatic post in that country and other sources as appropriate.

There are two phases of the scoping phase.

Phase 1:

- Identify a country that has children in need of families. The following factors may be used to help identify these countries:
 - a. public information (for example information provided by International Social Services) indicates the country may have children in need of adoption
 - b. the country is a Hague Convention country and a sending country
 - c. the country has an existing intercountry adoption program with other countries whether pursuant to the Convention or otherwise
 - d. the country is considering joining the Convention, and
 - e. the country has initiated contact with Australia in relation to intercountry adoption issues.
- Identify any features of that country that may impact on the likelihood and suitability of establishing a program with that country. For example:
 - a. the proximity of that country to Australia
 - b. the country's relationship with Australia such as cultural connections, intergovernmental links or historical ties
 - c. the country is a party, or is considering becoming a party, to the Hague Convention
 - d. the existence of an Australian diplomatic post in that country
 - e. Australia has an existing program with a neighbouring country
 - f. the country has expressed a willingness to consider opening a program with Australia
 - g. appropriate infrastructure is in place to ensure that intercountry adoptions take place in the best interests of the child and to protect against the abduction or sale of, or traffic in, children (for example, whether a national child protection system is in place)
 - h. the extent to which a program could comply with the standards and principles of the Convention as set out in **Attachment A**, and
- identify the benefits available to children in need of families in that country if the child were to be adopted by an Australian family (eg cultural community existing in Australia, existence of support groups, proximity to country of origin).

Phase 2:

- Identify any barriers that may exist, or are likely to exist, if an intercountry adoption program was to be established with that country, for example, uncertainty of compliance with the Hague Convention.

- Where available, identify any criteria that may limit the program having a broad accessibility for Australian applicants (for example the age and special needs of children needing intercountry adoption, or eligibility requirements such as both applicants must be citizens or nationals of that country etc).
- Identify what contacts and/or infrastructure is present in that country to assist in initiating discussion.

2. Consulting

Once a program has been identified through the scoping procedure as a possible new program, the Attorney-General's Department will consult with relevant parties.

In the consulting phase, the Department will seek information and comments from the key stakeholders including government agencies (such as the diplomatic post for the country in question) about such issues as:

- the findings arising from the scoping phase
- previous and/or existing relations with that country
- useful contact details including key government agencies, and
- providing support to the Attorney-General's Department in the event it decides to proceed to the next phase.

3. Briefing

The Attorney-General's Department will advise the Attorney-General of the outcomes of the Scoping and Consulting phases and make a recommendation on the desirability of continuing work on developing an adoption program with a country. The Department will advise stakeholders of the outcome.

4. Contacting

The Attorney-General's Department will enter more formal negotiations with the person, agency, organisation or government department responsible for establishing an intercountry adoption program with Australia.

In the 'Contacting' phase the Attorney-General's Department may initiate communication with that country in consultation with the Australian Department of Foreign Affairs and Trade.

5. Negotiating

The Attorney-General's Department will seek to develop a productive working relationship with the prospective country and establish the most effective method to progress discussions for establishing an intercountry adoption program.

During this phase the Department will send out an intercountry adoption package. The package will include such information as is appropriate about:

- the framework for intercountry adoption in Australia, including the standard to which Australian families are prepared and assessed as being suitable to adopt

- the benefits for the children and families of each country in establishing an intercountry adoption program, and
- an invitation to engage in further discussion whether in person, in writing or teleconference.

It will also be appropriate in this phase to consider a visit to that country to view the infrastructure in place and to meet with contacts. If a visit is organised, the Department will consult with the State Central Authorities (and accredited bodies if applicable) and, if appropriate, invite a representative(s) to accompany the Australian delegation.

If a positive response is received from that country, the Department will move to the next phase for the establishment of an intercountry adoption program.

If a non-committal or negative response is received from the prospective country, the Attorney-General's Department will assess, and if necessary seek further information about, the reason(s) for the response and consider what, if any, further action should be taken.

If no response is received after a reasonable period, the Department will endeavour to contact the recipient of the correspondence in the prospective country by telephone and/or follow up letter. If, after a further three months, a response has still not been received, the Department will decide whether it is appropriate to continue to seek a response from the prospective country at that time and/or whether it may be preferable to contact the prospective country at a future time.

6. Establishing and Implementing

In the formal negotiating phase, a senior member of the team representing the Attorney-General's Department in these matters shall lead negotiations between Australia and the prospective country. These negotiations will take place with a view to achieving an agreement or arrangement for the adoption of children in need of families by Australian adoptive applicants.

Whilst preferable, the agreement will not need to be in writing before becoming operational.

Throughout negotiations the Department will ensure that the integrity of Australia's existing intercountry adoption programs is maintained and that the best interests of the child underpin the negotiations.

The Department will consult with State and Territory Central Authorities, NICAAG and stakeholders, as appropriate.

All formal agreements will have the following (but not be limited to):

- measures in place to ensure satisfactory compliance with principles of the Hague Convention (including appropriate safeguards to protect against the abduction or sale of, or traffic in, children)
- designated Central Authority(ies) and Accredited Bodies (or their equivalents for non-Hague countries) in each country
- the procedures to be followed for an intercountry adoption under that program
- sharing and updating of information relevant to the program, and

- maintenance of records.

7. *Monitoring and Reviewing*

Programs will be monitored and reviewed in accordance with the procedures outlined in Part 1 for managing an open program.

Principles and requirements of the *Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption*

The following are the criteria the Attorney-General's Department uses in order to consider whether a country is Hague Convention Compliant. Essentially, the criteria examine the means by which children enter an adoption program.

Table 1: Compliance with Principles

	Hague Convention Principle	Principle In Place In Law/Practice Yes/No/Not Applicable
1	<ul style="list-style-type: none"> A child should grow up in a family environment (Preamble) 	
2	<ul style="list-style-type: none"> Families of origin should be supported to retain care of their children (Preamble) 	
3	<ul style="list-style-type: none"> Intercountry adoption may offer the advantages of a permanent family (Preamble) 	
4	<ul style="list-style-type: none"> Intercountry adoption should only be considered if a suitable family cannot be found in the State of Origin (Preamble) 	
5	<ul style="list-style-type: none"> Intercountry Adoption must take place in the best interest of the child with respect for his/her fundamental rights (1 a) 	
6	<ul style="list-style-type: none"> Children must be adoptable and all the necessary consents obtained without inducement (4 a, 4 c, 4 d and 16 c) 	
7	<ul style="list-style-type: none"> Certified adoptions made under the Convention shall be recognised in all other Contracting States (1 c and 23.1) 	
8	<ul style="list-style-type: none"> Recognition of an adoption may only be refused if it is contrary to public policy (24) 	
9	<ul style="list-style-type: none"> Information concerning the child's origin should be preserved (30.1 and 9 a) and accessible by the child as appropriate (30.2) 	
10	<ul style="list-style-type: none"> Intercountry adoption should have rights equivalent to those resulting from in-country adoptions (26.2) 	
11	<ul style="list-style-type: none"> No improper financial gain is to be obtained from intercountry adoption (8 and 32) 	
12	<ul style="list-style-type: none"> The abduction or sale of, or traffic in, children must not be permitted and laws and processes must actively protect against it (Preamble, 1 b and 32) 	
13	<ul style="list-style-type: none"> Central authorities provide the administrative framework for the Convention (6, 7, 8, 9, 13 and 14) 	

Notes

In considering countries that are not parties to the Hague Convention against these principles, the language of the Convention such as Central Authorities, Accredited Bodies and Contracting States needs to be considered. Numbers in brackets refer to the appropriate Article in the Convention.

Table 2: Compliance with obligations on all Contracting States

Category	Hague Convention Principle	Obligation Already In Place In Law/Practice Yes/No/Not Applicable
1. Central Authority	<ul style="list-style-type: none"> Designate a Central Authority or multiple CAs (6.1) Where multiple CAs, designate the CA to which any communication may be addressed for transmission to the appropriate CA within that State Notify Hague Convention of accredited bodies (13) 	
2. Cooperation between Central Authorities	<ul style="list-style-type: none"> CAs to cooperate with each other: (7.1) Provide information as to: <ul style="list-style-type: none"> (a) laws of their state on adoption; and (b) other general information including statistics and standard forms (7.2) Keep one another informed about the operation of the Convention (7.2 b) 	
3. Cooperation within Contracting State	<ul style="list-style-type: none"> Promote cooperation amongst competent authorities in their states to: <ul style="list-style-type: none"> (a) protect children; and (b) achieve the other objects of Convention (7.1) 	
4. Obstacles	<ul style="list-style-type: none"> Eliminate obstacles to the application of the Convention (7.2.b) Take appropriate measures if provisions of the Convention has not been respected (33) Act expeditiously (35) 	
5. Accredited Bodies	<ul style="list-style-type: none"> Accredit competent bodies (10) Supervise accredited bodies(11) Ensure bodies are staffed by qualified persons and pursue non-profit objectives (11) 	
6. Evaluation	<ul style="list-style-type: none"> Provide each other with general evaluation reports about experience with intercountry adoption 	
7. Fees	<ul style="list-style-type: none"> Monitor fees charged (32.2) 	
8. Trafficking	<ul style="list-style-type: none"> Prevent improper financial or other gain (8, 32.1) 	

Table 3: Obligations on State of Origin

Category	Hague Convention Requirement	Obligation Already In Place In Law/Practice Yes/No/Not Applicable
1. Case planning	<ul style="list-style-type: none"> • Establish child is adoptable (4 a) • Give due consideration to placement of the child within the State of Origin (4 b) • Give consideration to wishes and opinion of child (4 d 2) • Determine intercountry adoption is in the child's best interests (4 b) • Give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background (16 b) • Determine the envisaged placement is in the best interests of the child (16 d) 	
2. Birth parents	<ul style="list-style-type: none"> • Promote adoption counselling service (9 c) 	
3. Contact by Adoptive Parents	<ul style="list-style-type: none"> • There shall be no contact between the applicants and the child's caregivers prior to determination of adoptability, except in specified circumstances (29) 	
4. Consent of person, institutions or authorities	<ul style="list-style-type: none"> • Provide counselling to those whose consent is required (4 c 1) • Counselling to include information on effects of adoption (4 c 2) • Consents expressed or evidenced in writing (4 c 2) • Consent of mother, where required, only given after the birth of the child (4 c 4) • Ensure that consent has not been induced by payment or compensation of any kind (4 c 3) 	
5. Consent of Child	<ul style="list-style-type: none"> • Provide counselling (subject to age) including effects of adoption (4 d 1) • Consent expressed or evidenced in writing (4 d 3) • Ensure that consent has not been induced (4 d 4) 	
6. Report on Child	<ul style="list-style-type: none"> • Prepare report on child (16.1) • Transmit (a) report on child, (b) evidence that necessary consents have been obtained, and (c) reasons for approval of placement to Receiving State 	

Attachment A

Category	Hague Convention Requirement	Obligation Already In Place In Law/Practice Yes/No/Not Applicable
	(16.2)	
7. Applicants	<ul style="list-style-type: none"> • Ensure that applicants agree to placement of child before entrustment (17 b) 	
8. Entry to receiving State	<ul style="list-style-type: none"> • Check placement is agreed to by responsible agency in receiving state before entrustment, where required. (17 b) • Check child may enter and reside permanently (17 d and 18) 	
9. Entrustment	<ul style="list-style-type: none"> • Ensure applicants are eligible and suitable to adopt prior to entrustment (17 d) 	
10. Transfer of Child	<ul style="list-style-type: none"> • Obtain permission for child to leave (18) • Child to be transferred to Receiving State in secure and appropriate circumstance and in the company of the adoptive or prospective adoptive parents if possible (19.2) 	
11. Recognition	<ul style="list-style-type: none"> • Recognise an adoption certified as having been made in accordance with the Convention (23.1) • Recognition means the creation of a legal parent-child relationship with accompanying obligations upon parents for the care and development of the child (26) 	
12. Adoption Information	<ul style="list-style-type: none"> • Preserve Information about the child's origins (30.1) • Ensure access to information (30.2) 	
13. Delays	<ul style="list-style-type: none"> • Act Expeditiously (35) 	

Notes:

* Bilateral programs were reviewed in 2004. The continuation of these bilateral programs was endorsed by the Community Services Ministers' Advisory Council in 2004. Note that China was not party to the Hague Convention at this stage.