REPORT OF THE
INTERDEPARTMENTAL COMMITTEE ON
INTERCOUNTRY ADOPTION

APRIL 2014
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INTRODUCTION

Membership of the Committee
The Prime Minister announced on 19 December 2013, that he would establish an Interdepartmental Committee on Intercountry Adoption, to report to him in March 2014, with options for implementing reform within Australia over the next 12 months, to improve intercountry adoption.

The Council of Australian Governments also agreed that Intercountry Adoption would be on the Council’s agenda for the first meeting in 2014.

The Committee is chaired by the Department of the Prime Minister and Cabinet. It has senior representatives from the Attorney-General’s Department, the Department of Foreign Affairs and Trade, the Department of Immigration and Border Protection and the Department of Social Services.

Terms of reference
The Committee’s terms of reference are to identify:

- impediments to intercountry adoption;
- immediate steps that could be taken for improving and streamlining the delivery of inter-country adoption services to make inter-country adoption easier and faster for Australian couples;
- longer term proposals for reform;
- possible new partner countries with which Australia could establish new intercountry adoption programmes;
- alternative means of delivering intercountry adoption programmes (including via NGOs); and
- any changes to Commonwealth or State legislation that would improve and streamline the intercountry adoption process.

The Committee is also to assess the cost implications of any options for reform, for families and for government.

In addressing the terms of reference, the Committee has been mindful that the best interests of the child is the paramount consideration in developing options for reforms to improve the regulation of intercountry adoption in Australia.

Consultation with stakeholders
The Prime Minister wrote to major stakeholders inviting submissions by 20 February 2014.
The Attorney-General’s Department also put an open invitation to make submissions, on the intercountry adoption page of the Attorney-General’s Department’s website.

In total 108 submissions have been received. Of those submissions 26 are from organisations and the remainder are from individuals representing adult adoptees, adoptive (or prospective) parents, academics, individuals with a professional interest in intercountry adoption and parents and children (now adults) deeply affected by past practices of forced adoption.

A range of impediments to intercountry adoption were identified including the lack of nationally consistent State and Territory regulation, prohibitive fees, waiting times and the standard of post-adoption support services.

The considerable majority of submissions were supportive of intercountry adoption and offered ideas to improve the system within an ethical, child focussed framework. 24 submissions did not support intercountry adoption, highlighting concerns with the safeguards in place to protect parents and children from unlawful practices and the effects on children of growing up outside their own culture.

In addition to submissions, the Prime Minister received around 60 items of correspondence on intercountry adoption reform. The issues raised are consistent with those coming through in submissions.

The Department of the Prime Minister and Cabinet also met with the Chair of the Forced Adoptions Implementation Working Group on 5 February 2014; held a telepresence meeting with States and Territories on 13 February 2014; met with International Social Services (ISS) on 19 February 2014; met with the Victorian Adoption Network for Information and Self Help (VANISH) and former members of the National Intercountry Adoption Advisory Group (NICAAG) on 21 February 2014. A number of individuals also contacted the secretariat by phone to share their personal experiences of adoption.
EXECUTIVE SUMMARY

Australia and the countries with which we engage in intercountry adoption subscribe to the fundamental principles of international law that seek to ensure that intercountry adoptions take place in the best interests of the child with respect to the child’s wellbeing and fundamental rights. These rights include growing up with love and care and the right to know and be cared for by their parents. Linked to this is that wherever possible, priority must be given to enabling a child to be cared for by a family in their country of origin and, if this is not possible, intercountry adoption may offer the advantage of a permanent family for the child.

Australia’s current approach to intercountry adoption

Australia regulates intercountry adoption in that context with a regulatory framework that involves Commonwealth and State and Territory laws, policies and agencies. The Commonwealth is responsible for intercountry adoption policy and for establishing and managing intercountry adoption programmes. The Commonwealth is also responsible for laws and policies concerning immigration and citizenship.

State and Territory government agencies are also responsible for significant parts of the intercountry adoption process for individual applications, from holding information sessions for prospective adoptive parents and assessing applications, through to supervising and supporting families who adopt a child through an intercountry adoption programme. The States and Territories are also responsible for all matters relating to child welfare, including foster care and domestic adoption.

Since 2004, the number of intercountry adoptions across the world (including to Australia) has declined and the characteristics of children available for adoption have also changed. The reasons for the decline are complex and varied. As traditional countries of origin improve in areas of economic and social development, options for domestic care also improve and there are fewer children in need of intercountry adoption, particularly children without health issues or impairments. As a result, eligibility criteria for adopting young, healthy children imposed by overseas countries have become more stringent with many families no longer being able to adopt or, if eligible, experiencing long waiting times. Children in need of intercountry adoption are increasingly older children, sibling groups and children with disabilities, developmental delays or complex medical or social backgrounds.

The level of support needed to assist children with special needs is higher and likely to be more long term than children without special needs. The eligibility criteria for adopting children with special needs is generally less stringent but in most cases prospective adoptive parents in Australia do not start the adoption process wanting to adopt a child with special needs and are often not well prepared for the realities of a child with special needs.

Key impediments to intercountry adoption

Submissions made to the Interdepartmental Committee on Intercountry Adoption express a significant level of frustration with Australia’s current approach to intercountry adoption.
Particular issues raised include:

- the Commonwealth’s approach to selecting intercountry adoption partner countries;
- the quality of States’ and Territories’ administration and level of support provided to prospective adoptive parents;
- the cost, waiting times and uncertainty of outcomes (not only overseas but also within Australia); and
- the standard of post-adoption support services.

Other criticisms relate to the current Commonwealth-State model of regulating intercountry adoption and the lack of nationally consistent laws, policies and procedures in Australia. This makes it difficult for families who move across States or Territories to receive a consistent and predictable level of support. It also makes it difficult to provide consistent outcomes across Australia.

Taken as a whole, these frustrations can represent significant impediments to Australians considering intercountry adoption. The ability to deal with many of the frustrations effectively depends on factors outside the Commonwealth’s immediate control, such as the number of children in need of adoption, quotas, moratoriums or eligibility requirements imposed by foreign countries and the delivery of intercountry adoption services by the States and Territories.

Given this, there is an imperative to be clear about the impact that any reforms are likely to have on each of these impediments to ensure that expectations of families are realistic with regard to the future of intercountry adoption in Australia, and to make clear that in many cases they will go towards improving the experience of people participating in intercountry adoption rather than making a dramatic change in the rate of adoptions.

**Immediate options for reform**

The Interdepartmental Committee considers that there are some immediate actions that the Commonwealth could undertake to improve and streamline the delivery of intercountry adoption to Australians. These include:

- reinvigorating Australia’s efforts to establish new country programmes
- improving integration of existing Commonwealth funded family services programmes with existing post adoption support services provided by the States and Territories
- removing legal distinctions between adoptions from countries that are parties to the 1993 *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* and those that are not, that are carried out under the auspices of State/Territory supervision; and
• making reforms to immigration and citizenship requirements to make that aspect of the adoption process easier and faster and to address the negative perception of the visa health requirement.¹

These reforms in and of themselves are unlikely to see a significant change in the numbers of intercountry adoptions (particularly as the overall world outlook for the number of intercountry adoptions is unlikely to increase significantly in the coming years and countries of origin are unlikely to reduce eligibility criteria or waiting times). However, they may assist in reducing some of the frustrations that are experienced within Australia.

The Interdepartmental Committee notes that on 4 March 2014, you announced amendments to the Family Law (Bilateral Arrangements-Intercountry Adoption) Regulations 1998 that will automatically recognise adoptions through the Taiwan and South Korea programmes. The amendments will also affect adoptions from Ethiopia that have not yet been finalised in Australia.

**Longer term options for reform**

During consultations, the issue arose as to whether the current approach of State and Territory agencies delivering the significant proportion of adoption related services is viable, particularly for the smaller states, in light of the very small number of intercountry adoptions each year. Prospective adoptive parents also raised frustrations with the quality of service and the lack of national consistency in regulating intercountry adoption in Australia.

One option that has been considered in the past (and that is used by many other countries across the world) is the use of appropriately accredited non-government organisations to deliver intercountry adoption services to Australians.

It would address the concerns raised by many submissions about the lack of support for prospective adoptive parents, provided the NGO was funded adequately to provide case-management support. A Commonwealth agency could also undertake this work in the event that it was more effective or an appropriate NGO is not able to be found. Further work on this approach should be undertaken by the relevant ministers for consideration by the Government.

The Interdepartmental Committee considers that the Commonwealth should raise these issues with the States and Territories at the Council of Australian Governments meeting on 2 May 2014.

**Concerns with past adoption practices**

A number of submissions to the Interdepartmental Committee expressed concern that removing impediments to intercountry adoption does not serve the best interests of the child. In particular, they expressed concern that there is a significant risk that current practices and approaches in intercountry adoption will replicate the forced adoption practices that occurred in the past in Australia. Forced adoption practices in Australia have left a lasting impact on all people affected. Trauma and mental health problems are common, as are impacts of grief and loss, and identity and attachment issues: and all these issues persist today.

¹ See ‘Health requirements associated with adoption visas’ on page 50, below.
The Interdepartmental Committee notes that Australia is committed to ensuring that all parties to intercountry adoption arrangements are protected from exploitation and abuses. These vulnerable parties clearly include children and birth families (where a child has been relinquished) and the prospective adoptive parents. The interests of these parties are not necessarily in conflict.

Greater efficiency in the process, so long as it does not come at the expense of thoroughness, may remove some of the frustrations experienced by prospective adoptive parents, while also reducing the amount of time spent by children in institutions. Australia’s approach to adoption recognises that children who cannot be brought up with their family are entitled to grow up in a permanent, secure and loving family environment. A more efficient intercountry adoption system would be better able to provide children with this environment in a timely fashion.

Recommendations

**RECOMMENDATION 1**

That you ask the Attorney-General to:

(i) open a new programme with South Africa immediately, and
(ii) instruct the Attorney-General’s Department to work with the Department of Foreign Affairs and Trade to open discussions with the following countries to determine the viability of Australia opening new adoption programmes in Kenya, Bulgaria, Latvia, Poland, the USA, Cambodia and Vietnam, with a report on outcomes and next steps by those Departments by November 2014.

**RECOMMENDATION 2**

That you ask the Minister for Immigration and Border Protection to introduce amendments to the *Australian Citizenship Act 2007* in the Winter 2014 parliamentary sittings to enable children from non-Hague countries that issue final adoption orders, with which Australia has a bilateral arrangement, to obtain Australian citizenship in their country of origin where one or both of the adoptive parents is an Australian citizen.

**RECOMMENDATION 3**

That you ask the Minister for Immigration and Border Protection in consultation with the Ministers for Social Services, Health, Education, and Human Services, to provide you as soon as possible with a Budget neutral proposal for removing all child category visas from the Migration Programme.
RECOMMENDATION 4

That the Attorney-General’s Department, in consultation with the Department of Foreign Affairs and Trade and the Department of Immigration and Border Protection, develops a communications strategy by the end of 2014 to address misconceptions about intercountry adoption, including about the Adoption visa health requirement being an impediment to intercountry adoption.

RECOMMENDATION 5

That the Department of Social Services undertake work with existing family services it funds, to improve knowledge of intercountry adoption and improve linkages and collaboration with other services, particularly for children with special needs.

RECOMMENDATION 6

That you agree in principle to a Commonwealth regulated model for providing a nationally consistent service for the whole of Australia, from the beginning of the intercountry adoption process through to the provision of an enhanced level of post adoption support services, either using a Commonwealth accredited NGO or NGOs or a Commonwealth agency.

RECOMMENDATION 7

That you agree to the Commonwealth agenda paper on intercountry adoption for the meeting of the Council of Australian Governments on 2 May 2014, presenting a Commonwealth regulated model for consideration.

RECOMMENDATION 8

That subject to the outcome of the Council of Australian Governments’ consideration of the Commonwealth agenda paper on intercountry adoption on 2 May 2014, you ask the Attorney-General and the Minister for Social Services to bring forward in the first half of 2014 a fully costed joint proposal for a Commonwealth regulated model, involving the delivery of services via either a Commonwealth accredited NGO or NGOs or a Commonwealth agency, for consideration by Government.
Australia and intercountry adoption

1. Intercountry adoption – the practice of legally adopting a child from another country – was first practised widely by the United States as a humanitarian response to the situation of European children from Germany, Italy and Greece orphaned by the Second World War. In the late 1940s these children were adopted by families in the US, and to a lesser extent, Canada and Western Europe. In the 1950s, children orphaned or abandoned during the Korean War, particularly those fathered by US servicemen, were adopted by families in the US and Europe. Intercountry adoption extended to Vietnam in the 1960s following the US led intervention in the Vietnam War.2

2. Efforts were made by Australian families to adopt children from overseas in the years following the Second World War, but it was not until the Vietnam War that intercountry adoption was practiced in significant numbers. From the late 1960s, a small number of Vietnamese children were adopted by Australian families, facilitated by a small group of Australians with links to volunteer groups working in Vietnam. The numbers of children adopted from Vietnam and Cambodia increased steadily throughout the early 1970s with the growth of parent based groups in Australia that facilitated adoptions on behalf of Australian families.

3. In the final days of the Vietnam War in April 1975, the Australian Government authorised two dramatic airlifts of about 280 children from orphanages in Saigon to be adopted by Australian families. This was part of the US led initiative that would become known as ‘Operation Babylift’ that saw over 2,500 Vietnamese children airlifted to the US to be adopted by families in the US and Canada.3

4. Following Operation Babylift, adoptive parent groups that were established during the Vietnam War began to extend their operations to other Asian countries (such as Sri Lanka and Bangladesh) as interest in intercountry adoption increased.

5. In 1975, the Commonwealth Government established an interdepartmental committee to investigate intercountry adoption in Australia and in the late 1970s joint Commonwealth and State delegations visited eight South East Asian countries to investigate possible new partner countries with which Australia could establish intercountry adoption programmes.4 Throughout the 1980s the number of intercountry adoptions continued to grow to 420 adoptions in 1989-90, before dropping to a constant figure of around 250 throughout the 1990s.5 In 1998 Australia ratified the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

6. In the early 2000s, the number of intercountry adoptions increased to a peak of 434 in 2004-05, due largely to an increase in adoptions from China.6 In 2005, the House of Representatives Standing Committee on Family and Human Services tabled their report Overseas Adoption in Australia: Report on the inquiry into adoption of children from overseas with an aim to streamline and improve the system for adoptive parents.

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References:

6 AIHW, Adoptions Australia 2012/13.
Following a recommendation in the report, the Australian Attorney-General’s Department assumed responsibility for managing Australia’s intercountry adoption programmes.

7. Historically and also currently, the number of adoptions by Australians by comparison with other developed countries is one of the lowest and the proportion of children with special needs (older children, sibling groups or children with disabilities or medical conditions) that Australia adopts from overseas is exceptionally low.

Australia’s current regulatory approach

International law and the principles informing the regulation of intercountry adoption

8. The international principles guiding intercountry adoption are set out in the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

9. The fundamental principles in the Convention are:
   - the best interests principle: the best interests of the child are the paramount consideration in all Convention intercountry adoptions (ICAs);
   - the subsidiarity principle: adoption is subsidiary to care by family, and intercountry adoption is subsidiary to domestic adoption;
   - the safeguards principle: safeguards must be developed to prevent the abduction, sale of, and traffic in children;
   - the co-operation principle: authorities must establish and maintain effective co-operation to ensure that these safeguards are effectively maintained; and
   - the competent authorities principle: only competent authorities, appointed in each country, should be permitted to authorise intercountry adoptions.7

10. For the purposes of the Hague Convention, the Commonwealth Attorney-General’s Department is the Australian Central Authority for intercountry adoption. The States and Territories are also Central Authorities under the Hague Convention.

Regulations and responsibilities of intercountry adoption in Australia

Commonwealth-State Agreement


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12. The Commonwealth’s responsibilities are to:
   a. enable the performance of Australia’s responsibilities under the Hague Convention on Intercountry Adoption and function as the Australian Central Authority;
   b. provide national policy leadership and coordination;
   c. manage and review existing overseas adoption programmes; and
   d. establish any new overseas adoption programmes where appropriate.

13. The States’ and Territories’ responsibilities are to:
   a. prepare and support prospective adoptive parents for intercountry adoptions;
   b. assess adoption applications;
   c. provide advice and assistance about procedural aspects of programmes;
   d. provide post-placement support and supervision; and
   e. function as State and Territory Central Authorities under the Hague Convention.

14. The Agreement also provides that the States and Territories are responsible for accrediting bodies to undertake intercountry adoption functions. The Australian Capital Territory, New South Wales, Tasmania, Victoria, South Australia and Western Australia have provisions in their intercountry adoption legislation to accredit bodies; however there are currently no bodies accredited to perform intercountry adoption functions in Australia.

15. Currently, in all jurisdictions, State and Territory government departments responsible for child welfare are the State and Territory Central Authorities for the purposes of the Convention. These departments are also responsible for domestic adoptions, foster care, child protection or family welfare matters.

*Commonwealth legislation*


17. In addition to the Family Law Act and Regulations referred to above, Commonwealth legislation also governs the immigration and citizenship requirements and processes for adoptive families. To adopt in Australia an applicant must be an Australian resident and, as per the Convention, must apply to the Central Authority (ie a Government agency) in the country in which they are habitually resident.

18. Adopted children enter Australia either on a visa or through acquisition of Australian citizenship, which occurs in accordance with the *Migration Act 1958* and *Migration Regulations 1994* in relation to visas and the *Australian Citizenship Act 2007* in relation to citizenship.

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State legislation

19. State and Territory legislation governs the processes and administration of intercountry adoptions in Australia. This legislation sets out the processes and criteria for determining the eligibility and suitability of prospective adoptive parents.

20. Despite initiatives to improve the consistency of State and Territory intercountry adoption legislation (in particular the Intercountry Adoption Harmonisation Working Group), there remain significant discrepancies between procedures, participation in country programmes, eligibility criteria and fees involved in the intercountry adoption process in each State.9 With the exception of citizenship and residency requirements, all of the eligibility criteria vary between States.

21. Furthermore, while some States impose most of the eligibility criteria through strict legislative provisions, others have legislation that provides for discretion, with criteria being guided largely by policy considerations. For example, Victorian adoption legislation generally does not impose strict requirements for prospective adoptive parents, but there are a number of factors which the regulations identify as being relevant factors in the assessment process.10

22. Attachment A provides a list of the relevant legislation in the Commonwealth, States and Territories.

23. It is notable that in addition to State and Territory requirements, each country of origin has its own eligibility criteria, meaning that some of these jurisdictional differences have no real effect on intercountry adoptions. The impact of these criteria is considered further in the impediments section of this paper.

Previous attempts at harmonising State and Territory requirements

24. Recommendation 3 of the 2005 House of Representatives Standing Committee on Family and Human Services report entitled Overseas Adoption in Australia was that, in renegotiating the Commonwealth–State Agreement, the Commonwealth should ensure greater harmonisation of laws, fees and assessment practices.

25. Under the 2008 renegotiated Agreement, the Intercountry Adoption Harmonisation Working Group was established to progress the harmonisation of intercountry adoption legislation, fees and administrative procedures, to achieve best practice and not to achieve uniformity as an end in itself.

26. The Harmonisation Working Group is chaired by the Commonwealth Attorney-General’s Department and is made up of members of all State and Territory intercountry adoption central authorities. The group held its first meeting in November 2008. Since 2012, the harmonisation working group has been held in conjunction with the biannual meetings of the Australian Central Authorities.

27. To maximise the effectiveness of the Harmonisation Working Group, in October 2009 the then Attorney-General agreed to separating more readily resolved practical/operational issues from complex issues requiring legislative change or ministerial agreement (such as criteria for assessing eligibility and suitability of prospective adoptive parents).

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9 Attorney-General’s Department (2013), above n30.
10 See Adoption Act 1984 (Vic) and Adoption Regulations 2008 (Vic), in particular Regulation 35.
28. Subsequently, the Harmonisation Working Group focussed on the harmonisation of operational issues and was successful in completing a range of key projects, including:

- developing Nationally Consistent Core Curriculum for education and training for adoptive parents
- standardised templates for State and Territory Central Authorities’ adoption assessment and post placement reports
- training modules for professionals working in intercountry adoption; and
- developing a national policy on sending gifts and care packages.

29. The Harmonisation Working Group continues to work on a number of operational projects, including:

- developing a public fact sheet on state and territory laws relating to referring to adopted children in the media
- developing a fact sheet for adoptive families considering undertaking DNA testing; and
- developing a resource for adoptive parents regarding retaining the names of their adopted children.

30. More complex issues requiring ministerial approval and legislative change (including criteria for assessing eligibility and suitability of prospective adoptive parents) were considered within a project to develop an Intercountry Adoption Harmonisation Good Practice Report. The Attorney-General’s Department worked on this project to the extent possible, but noted the highly specialised subject matter fell outside the Attorney-General’s Department’s core expertise and applied equally to domestic adoption and childcare arrangements.

31. In 2011, the Harmonisation Working Group agreed that as this work fell outside the Attorney-General’s Department’s responsibility it would be better progressed by a working group chaired by State and Territory child welfare authorities, such as the former Enhancing Adoption as a Service for Children Working Group (established by the Community and Disability Services Ministers’ Advisory Council).

32. Due to a lack of political impetus from the Commonwealth, States and Territories, and the complexity of amending State and Territory legislation that relates to both intercountry and domestic adoption, this work has not been progressed.

33. As noted above, significant differences in State and Territory legislation still exist in regards to eligibility criteria, recognition of overseas adoptions, issuing of Australian birth certificates to adoptees whose adoptions are finalised overseas and accreditation of non-government intercountry adoption service providers.

34. There is no guarantee that harmonisation would necessarily result in the provision of better (rather than simply more consistent) intercountry adoption procedures.

35. Furthermore, harmonisation would not address costing pressures and viability issues faced by State and Territory governments, in particular facing those States with very few intercountry adoptions per year.
36. For these reasons, and in light of the fact that previous attempts to achieve harmonisation have failed, the Interdepartmental Committee does not consider that harmonisation is an option for improving the way intercountry adoption services are delivered in Australia.

Key steps in the Australian Intercountry Adoption Process

37. Different processes are used in each of the States and Territories for administering intercountry adoption. The typical steps involved in the States’ and Territories’ administration of intercountry adoption in Australia are summarised below. The table relates only to the States’ and Territories’ administration of intercountry adoption and does not illustrate the Commonwealth’s role in regulating intercountry adoption in Australia.

<table>
<thead>
<tr>
<th>Responsibility</th>
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<tbody>
<tr>
<td>State or Territory Central Authority</td>
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<tr>
<td>Prospective Adoptive Parents</td>
</tr>
<tr>
<td>Overseas central authority</td>
</tr>
</tbody>
</table>

Outline of the Intercountry Adoption Process in Australia*

PROSPECTIVE ADOPTIVE PARENTS (PAPs) CONTACT THEIR LOCAL STATE OR TERRITORY CENTRAL AUTHORITY (CA)

→

CAs PROVIDE EDUCATION SEMINARS TO PROSPECTIVE ADOPTIVE PARENTS (S/T CAs)

→

PROSPECTIVE ADOPTIVE PARENTS COMPLETE FORMAL APPLICATION (PAPs)

→

CA COMPLETES AN ADOPTION ASSESSMENT (S/T CAs)

→

CA ASSESSES THE APPLICATION (S/T CAs)

→

CA Prepares to Send Application to Overseas CA (S/T CAs)

→

OVERSEAS CA MATCHES A CHILD WITH THE PROSPECTIVE ADOPTIVE PARENTS (OS CA)

→

OVERSEAS CA FORWARDS PLACEMENT PROPOSAL TO AUSTRALIAN STATE OR TERRITORY CA (OS CA)

→

STATE OR TERRITORY CA PRESENTS PROSPECTIVE ADOPTIVE PARENTS WITH PROPOSAL (S/T CAs)
Australia’s Current Partner Countries

38. Australia has intercountry adoption programmes with Hague Convention countries and has bilateral arrangements with non-Hague convention countries.

39. Australia requires that all programmes are ethical and meet the standards and principles set by the Convention.

40. Australia has 13 intercountry adoption programmes with the following countries (three of the programmes are on hold): ¹¹

Table 1: Australia’s Intercountry Adoption Programmes

<table>
<thead>
<tr>
<th>Country Programme</th>
<th>Hague Convention</th>
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<tbody>
<tr>
<td>Bolivia*</td>
<td>Y</td>
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<tr>
<td>Chile</td>
<td>Y</td>
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<tr>
<td>China</td>
<td>Y</td>
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<td>Colombia</td>
<td>Y</td>
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<tr>
<td>Fiji*</td>
<td>Y</td>
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<tr>
<td>Hong Kong</td>
<td>Y</td>
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<tr>
<td>India*</td>
<td>Y</td>
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<td>Lithuania</td>
<td>Y</td>
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<td>Philippines</td>
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<tr>
<td>South Korea</td>
<td>N</td>
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<td>Sri Lanka</td>
<td>Y</td>
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<tr>
<td>Taiwan</td>
<td>N</td>
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<tr>
<td>Thailand</td>
<td>Y</td>
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</table>

(a) on hold at the request of the Bolivian Government while they review internal intercountry arrangements.

(b) on hold at the request of the Fijian Government while they implement the Hague Convention framework.

(c) on hold, suspended by the Australian Government in 2010 due to trafficking allegations, with a hold also by Indian authorities on receiving applications from persons of non-Indian descent (except where applications are for children with special needs).

41. All of the current country programmes were established by different State and Territory governments in the 1980s and 1990s. Since the Commonwealth Attorney-General’s Department became the Australian Central Authority in 2006 no new programmes have been established (although the Department is close to finalising arrangements to open a new country programme with South Africa). The Attorney-General’s Department has also successfully worked to expand the Taiwan programme which is now Australia’s largest programme, expand the Colombia programme and open the special needs programme with China.

42. In light of trafficking concerns, requests from overseas governments or viability concerns, programmes with Ethiopia, India, Bolivia and Fiji have been closed or suspended at different times.

43. The Attorney-General’s Department regularly reviews a range of countries to determine whether it would be viable to establish an intercountry adoption programme. In its most recent review it assessed 41 countries.

44. A traffic light system has been introduced for assessing and categorising risk for possible new partner countries, given there are always inherent risks in intercountry
adoption (Appendix B). The Attorney-General’s Department has identified significant ethical and viability issues with many of the 41 countries assessed.

45. Many countries perceived as having children in need of intercountry adoption, lack adequate intercountry adoption legislation, infrastructure or safeguards against inappropriate practices associated with adoption.

46. The Attorney-General’s Department notes that Australian Governments have followed a conservative and cautious approach to establishing and managing intercountry adoption programmes, to ensure Australia meets its international obligations under the Convention. The importance of this approach was highlighted by the then Attorney-General in September 2008 in a statement to Parliament related to child trafficking in India and the subsequent adoption of those children to Australia. The statement emphasised that the allegations clearly demonstrated why Australia must continue to insist upon rigorous procedural safeguards for all intercountry adoption programmes. Given the potential for corruption, exploitation and abuse in the intercountry adoption process, including the abduction, sale of, or traffic in children, Australia’s approach was adopted to mitigate some of these risks and ensure that the best interests of the child were protected in all matters relating to intercountry adoption in Australia.

International Context

47. Since 2004, the world has experienced a substantial decline in intercountry adoption and numbers of intercountry adoptions to Australia have similarly declined.

48. Historically Australia’s level of intercountry adoption is one of the lowest in the world and the proportion of children with special needs that Australia adopts from overseas is exceptionally low by comparison with other countries around the world.

49. In 2012-13, there were only 129 intercountry adoptions to Australia.

Intercountry adoption is declining around the world

50. Globally, the numbers of intercountry adopted children have been in rapid decline since the peak levels of 2004. The number of children adopted by 23 major receiving countries declined by 57% between 2004 and 2012, a trend experienced consistently across most countries (excluding Italy and Canada).12

51. This decline was also experienced in Australia, where intercountry adoptions fell by 60% during that period, from 434 in 2004 to 222 in 2010 (see table 2).13 This is comparable with the decrease in intercountry adoption levels in Norway (65%)14 and the United States (62%).15

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13 AIHW (2013), above n1, 51.


52. This decline has continued in Australia, with only 129 intercountry adoptions in 2012-13. The decline has been experienced across almost all of the States and Territories (see table 3).

53. In many countries of origin there are fewer children in need of adoption due to changing economic and social factors (such as a lessening of the stigma against single mothers), and there is now a greater capacity to provide domestic care solutions for many of those children who are in need of adoption, in particular for healthy young children. The countries that continue to have children in need of intercountry adoption are also developing, with the result that the characteristics of children in need of intercountry adoption are changing from healthy babies to children with special needs.

54. Though the global decline may be partially responsible for the difficulty of adopting from overseas in Australia, it should be noted that Australia’s rate of intercountry adoption per capita was one of the lowest in the world even before the decline: in 2004, it was 1.9 per 100,000 population, compared with 15.4 in Norway, 13.0 in Spain and 12.3 in Sweden, 9.8 in Denmark and Ireland and 8.8 in New Zealand.

55. Australia is also experiencing a decline in the number of intercountry adoptions in comparison with domestic adoptions. Between 1999-00 and 2010-11, there were more intercountry adoptions in Australia each year than adoptions of Australian children.

56. In 2003-04, 74% of all adoptions in Australia were from overseas. Since that time, however, the proportion has decreased, down to 38% in 2012-13.

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16 Attorney General’s Department, Australia’s Intercountry Adoption System, paper prepared by the Attorney General’s Department.
18 AIHW (2013), above n1, 41.
19 Ibid.
20 Ibid.
Table 2 – The global decline of intercountry adoption: 2004-2010 intercountry adoption to top seven receiving countries (and Australia)\textsuperscript{21}

<table>
<thead>
<tr>
<th>Country</th>
<th>2004</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>22,884</td>
<td>20,679</td>
<td>19,613</td>
<td>17,438</td>
<td>12,753</td>
<td>12,149</td>
</tr>
<tr>
<td>Spain</td>
<td>5,541</td>
<td>4,472</td>
<td>3,648</td>
<td>3,156</td>
<td>3,006</td>
<td>2,891</td>
</tr>
<tr>
<td>France</td>
<td>4,079</td>
<td>3,977</td>
<td>3,162</td>
<td>3,271</td>
<td>3,017</td>
<td>3,504</td>
</tr>
<tr>
<td>Italy</td>
<td>3,402</td>
<td>3,188</td>
<td>3,420</td>
<td>3,977</td>
<td>3,964</td>
<td>4,130</td>
</tr>
<tr>
<td>Canada</td>
<td>1,955</td>
<td>1,535</td>
<td>1,712</td>
<td>1,916</td>
<td>2,129</td>
<td>1,946</td>
</tr>
<tr>
<td>Netherlands</td>
<td>1,307</td>
<td>816</td>
<td>778</td>
<td>767</td>
<td>682</td>
<td>697</td>
</tr>
<tr>
<td>Sweden</td>
<td>1,109</td>
<td>879</td>
<td>800</td>
<td>793</td>
<td>912</td>
<td>655</td>
</tr>
<tr>
<td>Australia</td>
<td>434</td>
<td>421</td>
<td>405</td>
<td>270</td>
<td>269</td>
<td>222</td>
</tr>
<tr>
<td>TOTAL</td>
<td>45,298</td>
<td>39,469</td>
<td>37,249</td>
<td>34,785</td>
<td>29,867</td>
<td>29,005</td>
</tr>
</tbody>
</table>

\textsuperscript{21} Selman, (2012), above n1.
Table 3 – Finalised Intercountry Adoptions per year

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
<th>Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009-10</td>
<td>78</td>
<td>54</td>
<td>38</td>
<td>18</td>
<td>21</td>
<td>6</td>
<td>6</td>
<td>1</td>
<td>222</td>
</tr>
<tr>
<td>2010-11</td>
<td>70</td>
<td>56</td>
<td>35</td>
<td>8</td>
<td>26</td>
<td>12</td>
<td>7</td>
<td>1</td>
<td>215</td>
</tr>
<tr>
<td>2011-12</td>
<td>46</td>
<td>36</td>
<td>20</td>
<td>5</td>
<td>23</td>
<td>4</td>
<td>6</td>
<td>9</td>
<td>149</td>
</tr>
<tr>
<td>2012-13</td>
<td>33</td>
<td>23</td>
<td>23</td>
<td>10</td>
<td>18</td>
<td>8</td>
<td>4</td>
<td>10</td>
<td>129</td>
</tr>
</tbody>
</table>

The countries of origin of children in need of intercountry adoption are changing

57. Asia has been the main continent of origin globally, with children from Asian countries constituting more than half of all intercountry adoptions.\textsuperscript{23} However, the number of intercountry adoptions from Asia has decreased over the last decade, largely due to significant declines in the level of intercountry adoptions from China and South Korea (see table 4).\textsuperscript{24}

58. The most notable change in countries of origin globally is the growth in adoptions from African countries. In 2003 Africa accounted for only 5% of intercountry adoptions, but by 2009-10 this number had risen to 22%.\textsuperscript{25} Africa is the only continent of origin where intercountry adoptions have increased progressively since 2004.\textsuperscript{26}

59. In Australia, Asia remains by far the dominant continent of origin for intercountry adoption, accounting for 84% of intercountry adoptions in 2012-13. In the same year, 13% of intercountry adoptions in Australia were from Africa;\textsuperscript{27} notably, all were from Ethiopia, with which Australia no longer has an intercountry adoption programme.

\textsuperscript{23} AIHW (2013), above n1.
\textsuperscript{24} Selman (2012), above n1.
\textsuperscript{25} Ibid
\textsuperscript{26} Ibid.
\textsuperscript{28} AIHW (2013), above n 1.
Table 4 - Top Five Asian Countries of Origin – Number of Children Sent to 23 Key Receiving Countries 2003-2010\textsuperscript{28}

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>11,228</td>
<td>13,404</td>
<td>14,496</td>
<td>8,750</td>
<td>5,085</td>
<td>5,471</td>
</tr>
<tr>
<td>Korea</td>
<td>2,309</td>
<td>2,238</td>
<td>2,086</td>
<td>1,223</td>
<td>1,421</td>
<td>1,154</td>
</tr>
<tr>
<td>Vietnam</td>
<td>935</td>
<td>483</td>
<td>1,195</td>
<td>1,695</td>
<td>1,506</td>
<td>1,242</td>
</tr>
<tr>
<td>India</td>
<td>1,172</td>
<td>1,083</td>
<td>873</td>
<td>1,003</td>
<td>725</td>
<td>613</td>
</tr>
<tr>
<td>Philippines</td>
<td>406</td>
<td>414</td>
<td>503</td>
<td>574</td>
<td>600</td>
<td>515</td>
</tr>
<tr>
<td>Total Asia</td>
<td>16,508</td>
<td>18,504</td>
<td>20,192</td>
<td>14,673</td>
<td>10,413</td>
<td>10,048</td>
</tr>
</tbody>
</table>

The characteristics of the children in need of intercountry adoption are also changing

60. The characteristics of the children being adopted have also changed significantly and consistently across the world. Specifically, children with special needs including older children, children with illness or impairment and children who are part of sibling groups constitute an increasing proportion of those adopted from overseas.\textsuperscript{29}

61. A number of countries, including a majority of those countries with which Australia has intercountry adoption programmes, are increasingly focussing their intercountry adoption policies on children with special needs. For example China, India and the Philippines have separate programmes for special needs adoptions and are more flexible when assessing prospective adoptive parents against the standard eligibility criteria.\textsuperscript{30} The increasing focus on children with special needs can be seen in China.

\textsuperscript{28} Peter Selman, "Global Trends in Intercountry Adoption:2001-2010", (2012a) 22 Adoption Advocate.
\textsuperscript{29} Selman (2012) above n1.
\textsuperscript{30} AIHW (2013), above n1, 9.
where the proportion of children adopted overseas with special needs has risen considerably since 2005 (see table 5).31

62. Due to the decreasing number of healthy young children in need of intercountry adoption, many countries of origin have imposed stringent eligibility criteria, quotas, and freezes on applications for non-special needs children to assist in managing the number of applications they receive. Examples of this include Colombia which currently will only accept applications to adopt children with special needs and children over six years of age, and not applications for healthy young children. In Thailand and the Philippines an annual quota applies to the number of applications Australia and other countries can send to adopt a healthy child. Such a quota does not apply to an application to adopt a special needs child.

63. In this area, Australia has not followed the global trend, as children with special needs still constitute a relatively small proportion of children adopted in Australia from overseas.32 This can once again be seen through the example of China: in between 2005 and 2009, the proportion of children with special needs adopted in Australia from China rose from 1% to 5%, considerably less than, for example, Sweden (6% to 69%), the Netherlands (13% to 66%) the USA (14% to 61%) and Canada (2% to 40%) (see table 5).33 Australian Central Authorities have experienced significant difficulties in placing special needs children from China due to the inconsistent and uncertain information provided by China on the specific needs of children. As a result, only three jurisdictions participate in the China special needs programme. The Commonwealth is currently working with the States and Territories and authorities in China to improve the special needs adoption process.

64. Although the number of older children adopted from overseas by Australian families has increased recently, it has generally been below the global average (see table 6).34 As one submission to the Interdepartmental Committee noted, some State authorities restrict the adoption of older children through age limits on the adopted child and requirements that the adopted child must be the youngest child in the family. 35

65. It is notable that in Italy, the only country to have experienced consistently rising numbers of intercountry adoptions since 2004, more than half of the children adopted were over 5 years of age, and 15% had special needs.36

66. The reasons for Australia’s low level of intercountry adoption of children with special needs are not clear. There are suggestions that prospective adoptive parents in Australia are less willing than prospective adoptive parents in other countries to adopt children with special needs. There are also suggestions that after expressing an interest in special needs adoptions, some prospective adoptive parents may decide not to proceed with the adoption once they are educated about the challenges associated with adopting a child with special needs. Another view is that State authorities discourage prospective adoptive parents from adopting children with special needs due to limited resources for the more intensive post-adoption services required for children with special needs.

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31 Selman (2012a), above n17.
32 Ibid.
33 Ibid.
35 submission
67. There is also a perception from both prospective adoptive parents and countries of origin that immigration health requirements restrict prospective adoptive parents from adopting children with special needs.

**Table 5 - Children with Special Needs adopted from China to key receiving states**

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sweden</td>
<td>6%</td>
<td>25%</td>
<td>69%</td>
</tr>
<tr>
<td>Netherlands</td>
<td>13%</td>
<td>42%</td>
<td>66%</td>
</tr>
<tr>
<td>USA</td>
<td>14%</td>
<td>42%</td>
<td>61%</td>
</tr>
<tr>
<td>Canada</td>
<td>2%</td>
<td>14%</td>
<td>40%</td>
</tr>
<tr>
<td>France</td>
<td>6%</td>
<td>13%</td>
<td>34%</td>
</tr>
<tr>
<td>Spain</td>
<td>0.1%</td>
<td>4%</td>
<td>9%</td>
</tr>
<tr>
<td>Australia</td>
<td>1%</td>
<td>0%</td>
<td>5%</td>
</tr>
<tr>
<td>All States</td>
<td>9%</td>
<td>30%</td>
<td>49%</td>
</tr>
</tbody>
</table>

---

57 Selman (2012a), above n 17.
Table 6 - Percentage of Children adopted from overseas who were over 5 in key receiving states (Hague)\textsuperscript{38}

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2007</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>47%</td>
<td>50%</td>
<td>58%</td>
</tr>
<tr>
<td>France</td>
<td>24%</td>
<td>33%</td>
<td>34%</td>
</tr>
<tr>
<td>Iceland</td>
<td>6%</td>
<td>11%</td>
<td>29%</td>
</tr>
<tr>
<td>USA</td>
<td>16%</td>
<td>18%</td>
<td>25%</td>
</tr>
<tr>
<td>Australia</td>
<td>8%</td>
<td>8%</td>
<td>9%   (In 2012-13: 22%)</td>
</tr>
</tbody>
</table>

\textsuperscript{38} Selman (2010) above n 24.
68. The main impediments to intercountry adoption raised by submissions to the Interdepartmental Committee are:

- Australia’s small number of country programmes and its approach to establishing new programmes;
- the cost, waiting time and uncertainty of the process (not only overseas but also within Australia);
- the quality of States’ and Territories’ administration of intercountry adoption;
- prescriptive State and Territory requirements; and
- the standard of post-adoption support services.

69. In addition to the impediments raised in the submissions, it is important to recognise that intercountry adoptions will always be limited by the number of children in need of intercountry adoption and impacted by wait times experienced overseas, which changes in Australia will not have a substantial impact on.

70. Whilst the reforms can endeavour to address all the impediments to some extent, there should be an increased focus on better support for prospective adoptive parents throughout the process of adoption even if it is not possible to substantially impact the rate of adoption.

71. A further criticism raised by the submissions related to the current Commonwealth-State model of regulating intercountry adoption and the lack of nationally consistent laws, policies and procedures in Australia. Reforms in this area could improve the experience of prospective adoptive parents.

Australia’s approach to selecting intercountry adoption partner countries

72. The issue of Australia’s number of country programmes was raised in numerous submissions, some suggesting that Australia’s programme with Ethiopia should be reopened.39

73. As mentioned above, a number of submissions criticised the limited number of countries of origin with which Australia has intercountry adoption programmes, and the Commonwealth Government’s approach to establishing and managing intercountry adoption programmes.

74. It is notable that the Commonwealth Government’s approach is only one factor as to why establishing new country programmes is difficult. Australia requires that all programmes are ethical and meet the standards and principles set by the Convention, so as to uphold Australia’s high ethical standards and ensure that Australia meets its international obligations under the Convention. There are only a limited number of countries which are able to meet these standards, which is another factor complicating the establishment of new programmes.

39 submission.
75. Australia has suspended and closed programmes that fail to meet these standards. For example, in 2012, the Australian Government announced the closure of Australia's intercountry adoption programme with Ethiopia. Due to the unpredictable and complex adoption environment in Ethiopia, the Commonwealth Government could not be confident that the programme would continue to operate in the best interests of Ethiopian children, and so the decision was made to close the programme.40

76. The Attorney-General’s Department does not recommend reopening the programme with Ethiopia, because of ongoing concerns about the financial viability and future ethical conduct of the programme.

77. In October 2010 the then Attorney-General placed a hold on sending new applications to India in response to investigations into illegal adoptions in that country. That hold remains in place.

78. The small number of countries Australia has programmes with can give the impression that intercountry adoption is limited and difficult. Together with other factors outlined below, the number of programmes and the approach to new programmes can be an impediment.

Cost

79. A number of submissions identify prohibitive costs as an impediment to intercountry adoption in Australia. Participants in qualitative, interview-based studies of intercountry adoption conducted in 2012 by Alexandra Young, Giuliana Fuscaldo and Sarah Russell, also suggested that the cost may be a deterrent to other prospective adoptive parents”.41

80. The fees vary from State to State, ranging from $2,706 in Western Australia to $10,503 in South Australia (see Table 1).42 The average fee charged by States and Territories is $6,368.44. Fees are cost recovery only, and so these variations depend largely on the level of cost recovery undertaken in each State. Other costs and charges are also payable.


Table 7 – Comparison of Total State Fees for a First Adoption Application

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Total Fees (1st application)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>$9,700</td>
</tr>
<tr>
<td>Vic</td>
<td>$7,649.50</td>
</tr>
<tr>
<td>Qld</td>
<td>$5,693.30</td>
</tr>
<tr>
<td>WA</td>
<td>$2,706</td>
</tr>
<tr>
<td>SA</td>
<td>$10,503</td>
</tr>
<tr>
<td>Tas</td>
<td>$3,372.48</td>
</tr>
<tr>
<td>ACT</td>
<td>$5,290.76</td>
</tr>
<tr>
<td>NT</td>
<td>$5,600-6,465</td>
</tr>
</tbody>
</table>

Table 8 – Comparison of Total State Fees for a First Adoption Application

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43 Ibid.
81. These costs are not limited to those charged by State and Territory central authorities for adoption services or the Commonwealth Government for visa and citizenship fees. Fees are also imposed by overseas countries. There are also other costs that prospective adoptive parents will meet such as translation, legal costs, travel and accommodation overseas, and medical appointments.

82. It is notable that the fees charged by Australia’s partner countries also vary widely, from $670 in Hong Kong to $21,773 in South Korea (see table 7). According to the 2005 Overseas Adoption in Australia Report, the total cost of intercountry adoption for Australian families was approximately $30,000.

Table 8: Fees charged by Australia’s partner countries

<table>
<thead>
<tr>
<th>Country Programme</th>
<th>Fees (local currency)</th>
<th>Fees ($AUD - approximate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>China</td>
<td>US$6,000 + RMB 35,000 (orphanage donation)</td>
<td>$6,686 + $6,445 (donation to orphanage)</td>
</tr>
<tr>
<td>Colombia</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>US$600</td>
<td>$670</td>
</tr>
<tr>
<td>Lithuania</td>
<td>US$9,000</td>
<td>$10,050</td>
</tr>
<tr>
<td>Philippines</td>
<td>US$3,500</td>
<td>$3,908</td>
</tr>
<tr>
<td>South Korea</td>
<td>US$19,500</td>
<td>$21,773</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>US$2,000-$2,500</td>
<td>$2,233-$2,791</td>
</tr>
<tr>
<td>Taiwan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CSS</td>
<td>US$14,000</td>
<td>$15,632</td>
</tr>
<tr>
<td>CWLF</td>
<td>US$9,000</td>
<td>$8,933</td>
</tr>
<tr>
<td>Chung Yi</td>
<td>US$7,000-$11,000</td>
<td>$7816 – $12,282</td>
</tr>
<tr>
<td>Thailand</td>
<td>AUD$1,000 + THB 2000 (payable to social worker)</td>
<td>$1,000 + $68 (payable to social worker)</td>
</tr>
</tbody>
</table>
### Table 9: Comparison between Australian application fees and overseas application fees

<table>
<thead>
<tr>
<th>Country</th>
<th>Australian application fees (average)</th>
<th>Overseas application fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thailand</td>
<td>5000</td>
<td>20000</td>
</tr>
<tr>
<td>South Korea</td>
<td>10000</td>
<td>25000</td>
</tr>
<tr>
<td>China</td>
<td>15000</td>
<td>22000</td>
</tr>
<tr>
<td>Philippines</td>
<td>10000</td>
<td>20000</td>
</tr>
<tr>
<td>Taiwan</td>
<td>15000</td>
<td>25000</td>
</tr>
</tbody>
</table>

#### Notes:

83. The visa application charge by the Australian Government for an adoption visa is $2,370 per child. States and Territories raised an issue in relation to a recent change in policy on application fees for adoption visas for sibling groups. As of 1 July 2013, siblings who apply for adoption visas must lodge separate visa application forms and must each pay the fee in their own right. Previously, adopted sibling groups would pay a single visa application fee. This change increases the cost of the adoption process by $2,370 per child for prospective adoptive parents adopting sibling groups. This increase is particularly significant given that sibling groups comprise an increasingly larger proportion of children in need of intercountry adoption.

84. The visa pricing changes introduced a user-pays approach to the visa system, where the cost is recovered from the individual who engages in and directly benefits from the service, rather than the taxpayer at large.

85. The changes replaced a system that had been in place since 1994 and brought Australia in line with countries that have similar migration programmes, including the UK, Canada and New Zealand.

86. A child adopted under the Hague Convention may apply immediately for Australian citizenship if one of the persons who adopted the child was an Australian citizen at the time of adoption. In that case, the child does not require a visa to enter Australia. The citizenship application fee is $120 for the first sibling and $95 for the second and any subsequent siblings.

87. Submissions proposed that there should be some tax deduction or tax rebate on costs related to adoption and/or fee waivers.
88. Some States do offer financial assistance to prospective adoptive parents:
   
   • New South Wales has a hardship policy; applicants whose income falls below a certain level are eligible for a fee reduction.
   
   • In Queensland, applicants can request, on a case by case basis, that certain fees be waived.
   
   • South Australia’s legislation provides for its minister to enter into a financial assistance arrangement with families where the adopted child has a physical or mental disability or requires special care.
   
   • The Australian Capital Territory can provide financial assistance on request to families, in the form of funded services available before and/or after the adoption.

89. Whether or not refunds of fees paid to a State or Territory Central Authority are available also varies between States.

Waiting times

90. A number of participants in studies by Fuscaldo and Russell were critical of the long waiting times and delays involved in the process.44 Again, this message also came through strongly in submissions to the Interdepartmental Committee and letters to the Prime Minister.

91. People report waiting as long as 10 years to adopt a child from overseas, though acknowledge that the majority of that time is due to overseas rather than Australian processes.

92. According to the Australian Institute of Health and Welfare, the median processing time from when an applicant becomes an official client to when their application is approved and their file is sent overseas, is 12 months. A number of submissions have suggested that 12 months would be the ideal processing time within Australia.

93. The median processing time (from approval of an applicant in Australia to placement of a child) has increased from 37 months (about three years) in 2007-08 to 61 months (about five years) in 2012-13. This is despite the fact that Central Authorities in Australia have either maintained or improved the time taken to complete the relevant processes in Australia. The longer waiting time comes from significant increases in processing times in countries of origin. A majority of the overall processing time takes place overseas (see table 9). The countries of origin timeframe between receipt of an adoption application and placement of a child are extensive and not within Australia’s control.

94. It is notable, however, that these statistics commence at the point of becoming an “official client” of State Authorities. The point at which a person becomes an “official client” differs in each jurisdiction, though it is generally at the point of making an application. This means there is an unrecorded waiting time prior to application from the point of initial inquiry and participation in an information session through to application.

44 Fuscaldo and Russell (2012), 12, 21; Young (2012), 496.
In response to the decline in intercountry adoptions, information sessions are held less regularly. Several submissions have indicated that this unrecorded waiting time can extend beyond 12 months. States and Territories have noted that there are serious limitations on collecting the statistical information regarding this unrecorded waiting time.

In late 2005, after reviewing process and eligibility requirements, we contacted the relevant WA Government department to register our interest to attend an introductory session, only to be informed...they ran once per year, that the March 2006 session was booked out and we would have to wait until March 2007...We attended the session before moving to Canberra...On arrival in Canberra...we were advised that although we had attended the information session in Perth, we would have to attend another one relevant to Canberra...but before being able to register we had to demonstrate we were long term residents of the ACT by waiting six months...In that time we missed a session and had to wait until May 2008 to start in the ACT’s assessment process...”

“...Over twelve months ago, I made an enquiry regarding intercountry adoption. FACS would not even accepts an expression of interest for 12 months...Finally 3 months ago, they accepted it and said that I would be eligible to adopt but that I would need to wait for a pre-adoption seminar to run before I could lodge a formal application...still no news. According to FACS officers they haven’t had enough people interested in adoption to make it worthwhile running a seminar...In the meantime I have become ineligible for the Colombia program...and it is likely that we will time-out of eligibility for the India program...”
Table 9: Median length of time (in months) for the intercountry adoptions process, by country of origin, for children placed in 2012-13(a)

<table>
<thead>
<tr>
<th>Country of origin</th>
<th>Australia</th>
<th>Overseas</th>
<th>Total length of process(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>From when the applicant(s) became official clients of the department to when an approval decision was made</td>
<td>From when an approval decision was made to when the file was sent overseas</td>
<td>From when the file was sent overseas to when the child was allocated</td>
</tr>
<tr>
<td>China</td>
<td>9 months</td>
<td>2 months</td>
<td>75 months</td>
</tr>
<tr>
<td>Thailand</td>
<td>10 months</td>
<td>3 months</td>
<td>54 months</td>
</tr>
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<td>Philippines</td>
<td>10 months</td>
<td>4 months</td>
<td>39 months</td>
</tr>
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<td>South Korea</td>
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<td>7 months</td>
<td>6 months</td>
</tr>
<tr>
<td>Taiwan</td>
<td>8 months</td>
<td>2 months</td>
<td>8 months</td>
</tr>
<tr>
<td>Other (c)</td>
<td>9 months</td>
<td>5 months</td>
<td>16 months</td>
</tr>
<tr>
<td>All countries</td>
<td>9 months</td>
<td>3 months</td>
<td>37 months</td>
</tr>
</tbody>
</table>

(a) This table includes all children who were placed with their adoptive families during 2012-13. It examines the length of time from when applicants became official clients of the department to when a child was placed with them.

(b) Total process is the overall median length of time from when the applicant(s) became official clients of the department to when the child was placed. It may not equal the sum of the preceding processes due to rounding to the nearest whole month and because of the nature of median calculations.

(c) 'Other' includes Bolivia, Colombia, Hong Kong and India. Each of these countries had less than 4 placements in 2012-13, making it unsuitable to report a median measure for these countries individually.

Source: AIHW Adoptions Australia data collection.

Uncertainty of outcomes

96. People going through the intercountry adoption process feel anxiety about the uncertainty at each stage of the process.

97. Correspondents writing to the Prime Minister about their personal experience of intercountry adoption say they have experienced anxiety about whether, as prospective adoptive parents, they will qualify to adopt a child from overseas; whether a child will be available from a particular country or countries; if the child has special needs, whether the nature of the child’s special needs affect the child’s prospects of obtaining a visa to enter Australia; whether enough help is available for parents who adopt a child with profound special needs; and how long the whole process might take.
98. Intercountry adoption programmes will always be subject to change and uncertainty. Changes can include increases in fees, lengthening time frames for an allocation of a child, changing criteria that families may have to meet and changes to a programme’s status, both in relation to the overseas country or within Australia. Such changes are often due to circumstances in the country of origin, beyond Australia’s control. In countries of origin the number of children in need of intercountry adoption is decreasing, the costs of intercountry adoption are increasing, and new laws, policies and practices are being introduced, all of which impacts on Australia’s intercountry adoption programmes. In this context, there can never be a guarantee of a successful adoption.

Post-adoption support services, including for families adopting children with special needs

99. The submissions raise concerns about the quality of post-adoption support services, in particular, services for children with special needs (noting that the majority of children in need of intercountry adoption are children with special needs).

100. Many participants in the above-mentioned studies were also critical of post-adoption services and support. It was commented in one study that the post-placement process felt more like assessment rather than support. Many participants were critical of the lack of information provided about problems which may arise post-adoption and where to access relevant post-adoption support services. Participants in one study noted particular difficulties in finding services tailored to the needs of adopted older children.

101. The Victorian Adoption Network for Information and Self-Help notes that those who use its services experience painful and sometimes traumatic symptoms of loss and separation and struggle with questions of identity. The 2012 Australian Institute of Family Studies, Past Adoption Experiences, National Research Study on the Service Response to Past Adoption Practices surveyed 1,528 members of the adoption community and found that adopted people experienced a significantly higher degree of psychological and social issues than the broader community. This clearly highlights the need for extensive post-adoption support services.

102. Post-adoption services come in different forms; on the one hand, there is the ongoing support needed by adoptive families, both parents and children, while on the other there are the supervision requirements imposed by countries of origin. The need to provide both of these services, along with variable and increasingly onerous supervision requirements from some countries of origin, as well as greater demand for access to records and return visits to countries of origin, all make the provision of post-adoption services particularly resource-intensive for State authorities.

103. Following the post-placement supervision period (generally 12 months), there is limited government support specifically targeted at adoptive parents and adoptees. Families can be unaware of, and have difficulty accessing, existing government and NGO support services. There are particular difficulties for adopted children during adolescence, but little professional support is provided for that period.

45 Alessia and Roufeil (2012), 165-166; Fuscaldo and Russell (2012), 17.
46 Fuscaldo and Russell (2012), 17.
47 Alessia and Roufeil (2012), 165-166.
48 Alessia and Roufeil (2012), 166.
104. Current services are seen to be inadequate in terms of quality, availability, suitability and consistency across jurisdictions. Support services should address the needs of adopting families, particularly those adopting special needs children. A national model of post adoption support for overseas adoption would help improve the consistency and availability of services.

105. The current service delivery model has three elements which are delivered by each provider. They are:

- intensive, long-term, early intervention support, based on a Family Action Plan, specifically for children and young people, and their families\(^{49}\);
- short-term information, referral and assistance for families\(^{50}\); and
- community outreach and group work.\(^ {51}\)

106. Providing they meet the eligibility criteria, children with disabilities, could link to Helping Children with Autism (HCWA) package and the Better Start for Children with Disability (Better Start) initiative. HCWA and Better Start include the following components:

- an Autism Advisor Service for the HCWA package and a Registration and Information Service (RIS, managed by Carers Australia) for the Better Start initiative, to facilitate access to the early intervention funding and provide information about the programmes;
- access to early intervention funding of up to $12,000 (up to a maximum of $6,000 in any one financial year) to assist with the cost of early intervention services;
- a one-off access payment of $2,000 for eligible families living in outer regional or remote areas to assist with therapy related expenses, such as travel and home visits (the Access payment);
- accessible website information about the initiative, eligible services and the Panels; and
- Medicare rebates for a range of eligible treatment plans and allied health services.

\(^{49}\) These interventions over 6–12 months are based on a Family Action Plan and can include targeted and therapeutic group work.

\(^{50}\) Short-term assistance can involve up to a handful of sessions, no more than six, and will tend to be less complex and not require a Family Action Plan.

\(^{51}\) This community work can include general group work for children, young people and families.
107. Further, it is likely some of the special needs children will be able to become a participant of the National Disability Insurance Scheme and access individualised planning and package of assistance to support them to achieve their goals.

108. Some families, particularly those adopting special needs children, will require more intensive and longer term support. Any reforms that aim to increase the number of adoptions will also need to be matched with funding to ensure families are connected to appropriate support services early. There is a risk that this will create inequities with post adoption support for domestic adoptions, which is also currently seen as inadequate. States and Territories should be encouraged to increase funding for post adoption support to ensure families who adopt domestically also have access to adequate support.

Quality of State and Territory service delivery

109. In a number of qualitative, interview-based studies of intercountry adoption in New South Wales and in Victoria, adoptive parents and prospective adoptive parents criticised the administrative processes as “bureaucratic”, “arduous”, “frustrating” and “inefficient”.52

110. They also suggested that the relevant State authorities were under-resourced, citing delays in processing of paperwork and responding to phone enquiries as evidence.53 A related criticism related to the infrequency of communication and delays in responding to queries.54

111. Participants in these studies were also critical of the level of staff turnover and subsequent lack of continuity in service. They noted that the process was “impersonal” and that some staff were “dismissive” and “disrespectful”.55

112. Some participants believed that the State authorities used the information and education sessions to discourage people from applying to adopt.56 This message also came through strongly in submissions to the Interdepartmental Committee and letters to the Prime Minister. The States and Territories have commented that there is a need to be realistic about the challenges of intercountry adoption with applicants in information sessions, which may appear to be discouraging to them.

113. The Attorney-General’s Department advises that many States and Territories have difficulty providing services due to declining numbers, more complicated cases, longer waiting times and competing domestic priorities. Each intercountry adoption application is increasingly resource intensive with the forecasted 2012-13 national average cost for government per adoption estimated at approximately $50,000 based on the current trajectory of declining adoption numbers (in most jurisdictions fees paid do not represent full adoption costs). The Attorney-General’s Department advises that the forecast is indicative only and does not reflect current actual costs.


53 Fuscaldo and Russell (2012), 12-13, 21; submission; submission.


56 Fuscaldo and Russell (2012), 16.
114. The number of intercountry adoptions of children with special needs is low and States and Territories differ in their attitudes to promoting special needs programmes. New South Wales has noted difficulties identifying suitable prospective adoptive parents for children with special needs both in Australia and overseas. Submissions indicate that this is not the case, but rather that information sessions dissuade prospective parents from pursuing special needs adoption and indicate that New South Wales will not accept applications for some special needs programmes.

115. A considerable number of applicants to adopt a child with special needs withdraw their application, sometimes after the child is selected. This trend has also been observed in other States. Given that healthy infants can now be more readily cared for in their country of birth, it is children with special needs who are most in need of an overseas family.

116. In a study of parents who have adopted an older child from overseas, participants commented that the pre-adoption information sessions and post-adoption services were focussed on the adoption of infants, and did not sufficiently address issues specific to the adoption of older children.\(^\text{57}\) Participants also noted the high cost of providing for an older child post-adoption.

117. Submissions also suggested that there was a need to improve the information available about the special needs programme and the spectrum of needs children may have.

\[\ldots\text{We applied for Intercountry Adoption at the beginning 2012... we were never contacted by the Department...so Feb 2014 came and our Expression of Interest expired...We contacted the Department again and this time we were told that the reason for not being assessed is that we were not prepared to adopt a 'special needs' child... We live on a cattle property in rural QLD and we thought 'special needs' means severely handicapped or a child with complex medical issues. We did not feel confident adopting a really sick child into a rural setting. We were not aware that this term could mean a child that has been institutionalised, has only minor treatable medical issues or simply could mean a sibling group...So we believe it to be of benefit to simplify language... as it only leads to confusion.}\]

The Commonwealth State model and lack of nationally consistent regulation and administration

118. The Interdepartmental Committee is aware of a perception both internationally and domestically, that Australia is a difficult country with which to deal on intercountry adoption, because of the lack of nationally consistent regulation of intercountry adoption in Australia.

119. For intercountry adoption partner countries, that means not being able to deal with ‘Australia’, rather needing to deal with the States and Territories, and with the different legal and procedural requirements in each of the States and Territories.

120. For Australians who want to pursue intercountry adoption, the lack of nationally consistent regulation is a major source of frustration, resulting in different experiences, options (different States deal with different intercountry adoption partner countries) and outcomes for prospective adoptive parents (eligibility criteria vary from State to State), depending on their State or Territory of residence.

\(^\text{57}\) Alessia and Roufail (2012), 166.
121. Despite initiatives to improve the consistency of State and Territory intercountry adoption legislation (in particular the Intercountry Adoption Harmonisation Working Group, noted above), there remain significant discrepancies between procedures, participation in country programmes, eligibility criteria and fees involved in the intercountry adoption process in each State. 58 Submissions pointed to the inconsistency of state requirements as an impediment to intercountry adoption.

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58 Attorney-General’s Department (2013), above n30.
Table 10: State and Territory Requirements

<table>
<thead>
<tr>
<th></th>
<th>Age</th>
<th>Age of Child</th>
<th>Civil Status</th>
<th>Criminal background</th>
<th>Infertility treatment or pregnancy (during process)</th>
<th>Residency / Citizenship</th>
<th>Physical/ Mental/ Emotional Health</th>
<th>Family Requirements</th>
<th>Review</th>
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<td></td>
</tr>
</tbody>
</table>

Legend:
- Within age bracket
- Other requirements
- Years older then child
- Age of Child
- Youngest child in family by 2 years
- Married
- Single
- De facto relationship
- Same-sex couples not eligible
- Criminal record check
- Criminal history limitation
- Australian citizen
- Reside in state or territory
- Good health
- Support requirements
- Restrictions on amount of children
- Review
122. The table on page 30 provides an overview of eligibility criteria. In summary, with the exception of citizenship and residency requirements, all of the eligibility criteria vary from State to State. Some criteria are legislative, while other are policy and practice-based. This varies from criterion to criterion and from State to State. The criteria can relate to the age of prospective adoptive parents, the age of the prospective adoptive child, the relationship status and family circumstances of the prospective adoptive parent, and whether the prospective adoptive parent is receiving treatment for infertility. Criteria relating to criminal records of prospective adoptive parents also vary from State to State.

123. While inconsistency is not an impediment in and of itself, there are issues relating to equality of access to services, and problems when applicants move between states during the process. Differing eligibility requirements mean that a person who is ineligible to adopt in one state because of, for example, their age, will be eligible to adopt in another state. The procedural discrepancies between states also create difficulties if applicants move interstate. If a family has already been assessed, then they may need to have an update assessment to ensure they meet the requirements in the new state. How such cases are dealt with depends on the stage of the process the family has reached.

"...My husband is a member of the Royal Australian Air Force, as such we frequently move between states ...four moves since our initial approval...we are forced to be 're-assessed' as fit parents for adoption every time we move...we were initially approved through NSW and as such our file/application with China was registered with the NSW Department...but the Northern Territory Office was managing our adoption application...our referral document had been in Australia for three weeks, sitting uncollected at an incorrect address in Parramatta...".

Country of origin eligibility requirements

124. Eligibility criteria imposed by jurisdictions sit alongside very strict eligibility requirements specified by each country of origin. In short, some of the jurisdictional differences have no real effect on intercountry adoptions. For example, none of Australia’s current partner countries allow same-sex couples to adopt. Similarly, most countries of origin do not allow single applicants to adopt, although there is greater leniency for single applicants in the case of children with special needs. Restrictions on same-sex couples adopting was raised by several submissions as a problem with the current intercountry adoption system. Similar concerns were raised in submissions about some States restricting single applicants from adopting and the issue of maximum age limits.

125. It seems that changes to these criteria would probably have limited impact on intercountry adoption given the country of origins’ criteria. A summary of country of origin requirements is below.
### Table 11: Country of Origin Requirements

<table>
<thead>
<tr>
<th>Country</th>
<th>Age</th>
<th>Civil Status</th>
<th>Nationality</th>
<th>Health</th>
<th>Other</th>
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<td>25-50</td>
<td>Single</td>
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<tr>
<td>(on hold)</td>
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<td></td>
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<td>Chile</td>
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<td>+20</td>
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<tr>
<td>China (General)</td>
<td>30-50</td>
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<tr>
<td>China (Special needs program)</td>
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**Notes:**
- Within age bracket
- Other requirements
- Years older then child
- Married
- Single
- De facto relationship
- Same-sex couples not eligible
- Australian citizen
- Preference given
- Complex health requirements
- Good health
### Table 12: Country of Origin Requirements continued

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<thead>
<tr>
<th>Country</th>
<th>Religion</th>
<th>Education</th>
<th>Criminal Record</th>
<th>Infertility</th>
<th>Finances</th>
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<td>China (Special needs program)</td>
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<td>Fiji (on hold)</td>
<td><img src="image1.png" alt="Icon" /></td>
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<td>Taiwan (Chun Yi)</td>
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**Icons:**
- Person: Educational requirements
- Person with a book: Other requirements
- Person with a criminal record: Criminal history limitation
- Person holding a document: Criminal record
- Person holding a money bag: Income requirements
- Person holding a house: Assets value requirements
- Person holding a clipboard: Support requirements
- Person with a star: Tertiar education
- Person with a key: Criminal record check
- Person with a map: Religious requirements
- Person with a house: Family situation
- Person with a heart: Infertility
- Person with a hammer: Criminal record accepted
- Person with a dollar sign: Finances
- Person with a pencil: Senior high school
- Person with a pencil and a book: Vocational skills
- Person with a pencil and a notebook: Other education
- Person with a hammer and a dollar sign: Restrictions on amount of children
- Person with a hammer and a house: No set limit on number of children
- Person with a hammer and a heart: Childless priority

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33 | Report on Intercountry Adoption
Differing requirements applying to Hague Convention and non-Hague Convention countries

126. There are differing Australian immigration and citizenship pathways and procedures depending on whether children come from Hague Convention countries or from non-Hague Convention countries.

Recognition of adoption orders made overseas

127. For Hague Convention countries, Australia recognises the adoption compliance certificate issued under Article 23 of the Convention. This means that, provided the certificate has been issued for a full adoption (which severs the legal tie between a child and his or her biological family), children from Hague Convention countries are not required to apply for a further, final adoption order from an Australian court. In the case of a simple adoption (which does not sever the legal tie between a child and his or her biological family), from a Hague Convention country, regardless of whether the certificate is issued, the adoption requires conversion in Australia to a full adoption. This conversion is achieved through application to a State or Territory court, at which point a new Article 23 certificate is issued by Australia. By comparison, until recent regulation changes that came into effect on 4 March 2014, Australia did not recognise full adoption orders made in non-Hague Convention countries with which it has bilateral arrangements. This meant that children from non-Hague Convention countries were required to go through the process of applying for an additional, final adoption order from an Australian court.

128. This difference in the processes between adoption from Hague Convention and non-Hague Convention countries was difficult to justify, in an environment in which the Attorney-General’s Department only makes bilateral arrangements with non-Hague Convention countries if the Attorney-General’s Department is satisfied that the countries meet Hague Convention standards for Australia’s purposes.

129. The new laws streamline the finalisation process for Australian families adopting through the Taiwan and South Korea programmes. Families will also be able to immediately apply for citizenship for their child on arrival in Australia. Although the Ethiopian intercountry adoption programme is closed, there was a small number of families who were awaiting the finalisation of their adoption in Australia. These new laws also allow these adoptions to be automatically recognised in Australia.
Immigration and citizenship requirements

Requirements for obtaining Australian citizenship from overseas

130. The route by which an adopted child obtains Australian citizenship varies depending on whether the country of origin was a Hague country, and what type of adoption order the overseas country issued. This could be construed as an impediment.

131. Children adopted from a Hague country where a full and final adoption order is issued (China, Bolivia, Chile, Colombia, Sri Lanka, Lithuania and India) can obtain Australian citizenship overseas and enter Australia on an Australian passport (section 19C of the Australian Citizenship Act 2007) provided one or both of the adoptive parents is an Australian citizen.59 This route is only available if the country issues an adoption compliance certificate under the Hague Convention prior to the child travelling. If this course is followed, the child does not need to go through the process of obtaining an adoption visa to enter Australia (see below). In some cases, adoptive families may still choose to follow the adoption visa and not the citizenship pathway. For example, in Chile and Colombia children are required to exit the country on a Chilean/Colombian passport even though they have Australian citizenship and an Australian passport. This means the child must obtain two passports if following the citizenship route, whereas the adoption visa route only requires a Chilean/Colombian passport.

132. Children adopted from an overseas country (whether or not the country is Hague), where only a simple adoption order or guardianship order is issued (Thailand, Hong Kong, Philippines), cannot apply for Australian citizenship prior to arrival in Australia. These adoptions are converted into full adoptions by State and Territory courts, at which time citizenship is automatically acquired (section 13 of the Australian Citizenship Act 2007). The Attorney-General’s Department has advised that this approach is appropriate, as Australian law is primarily designed to support full adoptions, which sever the legal tie between a child and their biological family.

133. Children adopted from a country with which Australia has a bilateral arrangement on intercountry adoption where a full and final adoption order is issued (Taiwan and South Korea) are required to go through the process of obtaining an adoption visa to enter Australia, and are not able to obtain Australian citizenship overseas and enter Australia on an Australian passport.

134. While factors in each country of origin and personal circumstances of the adoptive family will influence the immigration pathway chosen for the child, there are clear benefits to having a streamlined approach irrespective of whether a child is adopted from a Hague or non-Hague country.

Planning level for child category visas (including adoption visas)

135. The 2012-13 planning level for Family Stream visas in 2012-13 is 60,885 or around one third of the total Migration Programme places. 3,850 places, or around 2 per cent of the programme, have been allocated to child category visas. Around 230 adoption visas on average, a subcategory of the child category visas, are granted each year.

136. Child visas are technically ‘uncapped’ under the *Migration Act 1958*\(^{60}\) however the number of grants each year is restricted by the planning levels set by Government. The demand for child category visas currently exceeds the planning level and is a key contributing factor to delays in processing child category visas.

137. The Department of Immigration and Border Protection advises that the processing time for adoption visas can exceed 12 months depending on the location of the applicant and the complexity of the case.

138. 75% of adoption visas are finalised within 7 months from time of visa application compared with 10 months for all child category visas applications (including Child, Adoption, Orphan Relative and Dependent Child subclasses).

139. Applications from children adopted under intercountry adoption arrangements are finalised more quickly (75% within 5½ months of visa applications and one third within 2 months).

140. Factors which influence the processing time for adoption visas include:

- the limited number of child category places available each year in the annual Migration Programme
- delays attributable to the authorities in the adoptive child’s home country (e.g. in issuing a final adoption order or documents giving permission for the child to depart the country)
- incomplete visa application provided by the prospective adoptive parents requiring follow-up by visa processing officers; and
- integrity checks on adoption documentation.

141. After being granted an Adoption visa, a final adoption order is made in relation to the child by the relevant Australian State or Territory. If one of the adoptive parents is an Australian citizen, section 13 of the *Australian Citizenship Act 2007* has the effect that the child acquires Australian citizenship automatically.

142. The regulation changes to the finalisation process for Taiwan and South Korea, that came into effect on 4 March 2014, will also alter how these children obtain citizenship. Once the amendments commence, children adopted from Taiwan and South Korea will need to apply for citizenship by conferral, upon arrival in Australia on an adoption visa. They will no longer automatically acquire citizenship because they are not required to obtain an Australian adoption order.

**Visas for sibling groups**

143. As discussed previously States and Territories have raised an issue in relation to changes introduced on 1 July 2013 that require siblings to lodge separate visa application forms and pay the $2,370 fee in regard to each application. Previously, adopted sibling groups would pay a single visa application fee.

144. As mentioned above, the visa pricing changes introduced a user-pays approach to the visa system, where the cost is recovered from the individual who engages in and

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\(^{60}\) *Migration Act 1958* s 87
directly benefits from the service, rather than the taxpayer at large. The changes
took place in 1994 and brought Australia in line with
other countries that have similar migration programmes, including the UK, Canada and New
Zealand.

Health requirements associated with adoption visas

145. As mentioned above, children adopted from countries where the Australian citizenship
migration pathway is not available, must, as part of applying for an Adoption (subclass 102) visa, undertake a medical examination and meet the health requirement for entry
into Australia.

146. In determining if a child meets the health requirement, a Medical Officer of the
Commonwealth (MOC) must consider the health care costs and community services
likely to be required by a ‘hypothetical person’ with a condition of the same level and
severity as the applicant. This includes the need for pharmaceutical and community
services, including assisted accommodation; home and community care; special
educational needs; and early intervention services. In forming their opinion, a MOC
must presume that the hypothetical person will fully utilise all entitlements to public
health care and community services.

147. If the child does not meet the health requirement for entry into Australia, the
Department of Immigration and Border Protection can exercise a health waiver, except
in cases in which the child has a condition that is a public health threat. The only public
health threat prescribed in the Migration Regulations 1994 is tuberculosis.61

148. The Department of Immigration and Border Protection considers a range of factors in
determining whether to exercise a health waiver, including the ability of the applicant
and or sponsor to mitigate costs over the significant cost threshold (currently $40,000)
and any compassionate and compelling circumstances, such as any links to Australia,
for example family, and the effects of a decision not to exercise the health waiver
including on any existing Australian citizen or other family relationships (for example
an Australian sibling).

149. Once a completed medical examination from an approved doctor is provided, the
Department of Immigration and Border Protection advises that consideration by a
MOC and health waiver, if relevant, is quick, taking on average less than a week.

150. The Department of Immigration and Border Protection is able to provide data on
health waivers dating from 2008-09 to 2012-13.62 Health waivers were exercised in
100% of cases during that period (waivers were sought in 1.4% or 22 of the 1,590
applications made for adoption visas during that period). Thus, the majority, over 98%,
of adoption visa applicants met the health requirement and the Department of
Immigration and Border Protection did not need to consider a health waiver.

151. During this period health waivers were exercised for a variety of conditions. The
Department of Immigration and Border Protection has provided data on the estimated
costs of visa health waivers by year and by condition for Adoption (subclass 102) visas.
Because the Adoption visa is a permanent visa, the estimates include the lifetime costs
for a hypothetical child with the same condition and level of severity as the applicant.
This information is contained in Tables 13 and 14 below.

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61 Ibid; Public Interest Criteria 4007, Schedule 4 Migration Regulations 1994.
62 Department of Immigration and Border Protection is not able to provide data from before 2008-09 due to reporting limitations in
their systems.
The year where the highest total estimated lifetime costs for all health waivers exercised was 2010-11 at $6,045,500. The highest individual waiver cost in the period 2008-09 to 2012-13 was $2,887,500. The average cost per year across this period was $2,291,100.63.

We are aware that a perception exists both from prospective adoptive parents and from overseas countries that the adoption visa health requirement is an impediment to intercountry adoption of children with special needs, and that the process is invasive and unnecessary.

On the basis of the data available, we consider the perception that the health requirement associated with obtaining an adoption visa is an impediment to intercountry adoption, is erroneous.

However, we note that the perception is possibly an impediment to intercountry adoption in the minds of some applicants, in particular because of a perception that the outcome is not certain. Some of Australia’s partner countries may share this perception. This in itself may be an impediment, as some partner countries may consciously choose not to consider Australian prospective adoptive parents when matching a particular child with a family, because of concerns that the child will not meet Australia’s visa health requirements.

Further, the ratio of children with medical conditions may increase if countries of origin overcome this perception, or if changes are made to streamline the health requirement.

States and Territories emphasise that there are crucial benefits to having a health requirement. They note that there may be benefits for prospective adoptive parents from the child undertaking a medical examination to inform them of the extent of the child’s health conditions and likely costs and services needed across the life of a child with special needs. However, the primary purpose of the health requirement is to identify potential public health risks to Australia to enable these to be mitigated and managed. This is particularly important as many Adoption visa applicants are from countries considered as higher risk for tuberculosis.

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63 Department of Immigration and Border Protection is not able to provide details of health conditions and special needs of applicants, for privacy reasons.
Table 13: Adoption (s/c 102) visa waivers by year

*Cases shown above are for the period 2008/09 to 2012/13 for waivers exercised. The MOC estimates cover lifetime costs for the child as this is a permanent visa.
Table 14: Adoption (s/c 102) visa waiver costs by condition

*Cases shown above are for the period 2008/09 to 2012/13, for waivers exercised. The MOC estimates include lifetime costs for the child as this is a permanent visa.*