



Department for  
Community Development

## **Policy for the adoption of children**

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## **1. Introduction**

Adoption transfers legal parental responsibility from birth parents to adopting parents and offers the advantage of a permanent family to a child.

This policy sets out the Department for Community Development's approach to planning for placing and supporting children in adoptive care. It outlines the principles and philosophy which underpin the Department's actions where it is determined that:

- children proposed to be adopted are unable to remain with their family or kin either in Australia or their country of origin
- children proposed to be adopted are legally available for adoption
- adoption is the best option for the child.

The policy also recognises at all times the best interests of the child are paramount. The Department endeavours in all cases to select prospective adoptive parents who demonstrate a commitment to acting in the best interests of the child.

## **2. Statement of policy**

The Department recognises that a child's development is best supported by skilled and nurturing parents in a secure environment free from abuse, exploitation and harm. Programs are available to support and help birth parents in caring for and bringing up their children.

In the small number of cases when children cannot remain safely with birth family or kin in the long term, or a child is relinquished for adoption, the Department provides a range of stable out of home care options including pre adoptive care placements.

Placement decisions acknowledge that birth family attachments<sup>1</sup> are of primary importance to all children in temporary and pre adoptive care. The Department selects temporary carers or prospective adoptive families who demonstrate a capacity and willingness to maintain and further birth family links and cultural heritage of the adopted child, where this is possible and appropriate.

The best interests of the child remain paramount in considering adoption, whether the child is born in Australia or an overseas country. The Department's aim is to involve relinquishing parents, and children if sufficiently mature, in decisions about adoptive care. While this is not directly possible when negotiating overseas adoptions, the Hague Convention and bi-lateral arrangements provide a mechanism to safeguard children against

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<sup>1</sup> *Report 81 (1997) - Review of the Adoption of Children Act 1965 (NSW)*, Chapter 8 'Cultural Heritage', Law Reform Commission Publications.

exploitation. The Department aims to work cooperatively with countries that have in place appropriate child welfare standards and procedures to prevent the trafficking of children.

The Department acknowledges the valuable contribution and lifetime commitment adoptive families make to children. The Department works in partnership with adoptees, birth families, prospective adopters and the range of organisations supporting the adoption community to achieve the shared goal of the best interests of the adopted child.

### **3. Aim of the policy**

The aim of the policy is to promote ways of working with adoptees, birth families, prospective adoptive families and adoption support agencies through an open adoption process.

The Department has responsibilities to ensure its adoption services promote the child's best interests by:

- providing advice and counselling on the range of care and parenting options<sup>2</sup>
- involving parents, kin or guardians in the decision to place a child for adoption, as appropriate
- confirming a child's eligibility for and need of adoptive care
- continuing an adopted child's ethnic, religious or educational arrangements where possible and appropriate
- assisting a child to develop a knowledge of their cultural heritage
- minimising the time and number of placements children spend in pre adoptive care
- sponsoring greater openness in adoption and access to identifying information
- planning and coordinating adoptive care to meet the needs of the child
- providing post placement supervision support and counselling
- providing quality standards of practice.

Provisions in the *Adoption Act 1994* govern the release of information from adoption records and information about an adoption can be accessed through the Department's Past Adoption Service.

### **4. Legislative mandate**

The State Department for Community Development is responsible for adoption services in Western Australia. Currently, the Adoption Service of the Department for Community Development is the only agency that can arrange an adoption. The Department also has a mandate to contribute to the care

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<sup>2</sup> See Schedule 1 of the *Adoption Act 1994* in the case of local adoption.

and protection of children and to support young people, families and communities in accordance with the following legislation:

- *Adoption Act 1994*
- *Child Welfare Act 1947*
- *Community Services Act 1972.*

The *Adoption Act 1994* is the principal legislation in Western Australia providing adoption services. The *Adoption Act* provides for adoption under bilateral arrangements and gives effect to the *Hague Convention on the Protection of Children and Cooperation in Respect to Intercountry Adoption*. The Minister for Community Development is the Western Australian Central Authority for intercountry adoption under this Convention.

Throughout the world different legislative frameworks exist to govern the adoption of children. Over 190 countries, including Australia, have ratified their agreement to the *United Nations Convention on the Rights of the Child* and the vast majority of jurisdictions arrange adoptions within a highly regulated framework to ensure that the best interests of children are met.

Australia has an obligation to ensure intercountry adoptions are in the best interests of children and safeguards are established to prevent the abduction, sale and trafficking of children.

Intercountry adoption is viewed as the best option where solutions for the care and protection of children in their country of birth have been exhausted. Intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in the country of origin. If adoption is considered the best alternative the Department focuses on:

- the welfare and best interests of the child
- selecting adoptive families who clearly show appropriate understanding of the importance of a child's family links and cultural identity.

## **5. Philosophy underpinning the policy**

The *Adoption Act 1994* endorses open adoption to recognise a child's birth parentage and cultural origins. It provides for the exchange of information about the child's development and contact between parties to an adoption. Open communication about adoption starts at the beginning of the adoption process and ideally continues throughout the adoptee's life.

Through planned communication<sup>3</sup>, adoption parties and agencies clarify their respective roles and expectations to benefit the adopted child<sup>4</sup> appropriate to the child's age, development and ethnicity.

## **6. Guiding principles**

1. The paramount consideration in adoption is the welfare and best interests of the child or children.
2. It is generally in the best interests of children to be raised by their birth parents, kin or community and/or in their country of birth.
3. The interests of children are best promoted in stable and secure families.
4. Adoption should be considered where there is no appropriate alternative for the child.
5. A child is placed with the prospective adoptive family as soon as possible once adoption has been assessed as being in the child's best interests and all parties agree.
6. Adoption is an open and planned arrangement between adoption parties which:
  - offers counselling about the meaning and implications of adoption to the prospective relinquishing birth parent in a respectful and non coercive manner
  - provides relinquishing parents with an opportunity to contribute to the choice of adoptive families for their birth children
  - allows parties to share identifying information and have contact according to adoption plans
  - enables adopting parents to raise their children without disruption
  - aims to preserve and protect the rights of adoption parties.
7. Adopted children are entitled to information about their families of origin and cultural heritage and to cultural and/or ethnic continuity where possible and appropriate.
8. Open adoption is based on the principle that sharing information and possibly contact is of ongoing benefit to all parties.
9. Adoption processes are based on national and international child welfare standards to protect children from exploitation.

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<sup>3</sup> *Adoption Act 1994* Negotiation of adoption plans sections 46, 47, 48, 49, 50, 54, 70, 72 and 73. Also Schedule 2.

<sup>4</sup> Gritter, J.L. (1997) The Spirit of Open Adoption, Child Welfare League of America, Inc., Washington, DC, USA.

## **7. Special matters**

### **7.1 Step parent and relative adoption**

In general a child already cared for by a birth parent is not considered to be in need of adoption. Usually the child's needs for security, preservation of ties with the non custodial parent and recognition of the step parent's legal role can be adequately met through a Family Court order. Therefore while a step parent adoption is possible, the Department encourages step parents to consider a parenting order in preference to an adoption order. The Family Court makes a determination whether adoption is preferable to a parenting order.

Adoption by relatives is not permissible as it distorts the biological relationship within a family. It is recognised that relatives should be able to care for relative children in particular circumstances supported by a parenting order through the Family Court. In the case of relative children from overseas their entry into Australia is primarily an immigration matter.

### **7.2 Adoption of children from an overseas country**

The Department:

- supports and facilitates applications for the adoption of a child from an overseas country
- responds to requests from overseas countries when the appropriate authority in the particular country has decided a child is available for adoption
- approves or rejects the offer of the placement of a child with the nominated prospective adoptive family.

Each proposed placement is considered on its own merits and this usually involves consideration of the child's capacity to adjust to and form new attachments as well as the prospective adoptive family's capacity to handle the child's care needs. The Department seeks to satisfy itself that there are reasonable prospects for a successful adoption before endorsing the particular allocation of a child.

If after considering all information available about the child's history and assessing the prospective adoptive parent's capacity to meet the child's care needs, the Department is not satisfied the placement would have reasonable prospects of success, the Department would decline to accept the proposed placement.

A number of sending countries maintain younger children in institutions awaiting local adoption and if not adopted seek intercountry adoption for

older children, some with particular difficulties and disabilities<sup>5</sup>. Many countries set a minimum age at which a child may be adopted, particularly internationally, to ensure parents relinquishing their child have the opportunity to reconsider their consent to adoption and continue to care for the child. Where it exists, this age may be as high as seven years<sup>6</sup>.

The Department considers the best interests of the child in placing a child for adoption.

### **7.3 Aboriginal and Torres Strait Islander children**

A particular principle applies when considering placement of Aboriginal and Torres Strait Islander children for adoption.<sup>7, 8, 9</sup>

The objective of this principle is to maintain a connection with family and culture for Aboriginal and Torres Strait Islander children who are to be placed with a view to adoption by a person or persons.

If there is no appropriate alternative to adoption for the child the placement of the child for adoption is to be considered in the following order of priority:

1. the child is placed with a person who is an Aboriginal or a Torres Strait Islander in the child's community in accordance with local customary practice
2. the child is placed with a person who is an Aboriginal or a Torres Strait Islander
3. the child is placed with a person who is not an Aboriginal or a Torres Strait Islander but who is sensitive to the needs of the child and capable of promoting the child's ongoing affiliation with the child's culture, and where possible, family.

The Department will consult with an approved Aboriginal or Torres Strait Islander agency regarding the prospective adoption of a child and an Aboriginal or Torres Strait Islander Department officer is to be involved at all relevant times.

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<sup>5</sup> Tolfree, D. (1995). Roofs and Roots: The Care of Separated children in the Developing World. Arena, Aldershot, UK.

<sup>6</sup> Mr Nigel Cantwell, Senior Project Officer, UNICEF Italy.

<sup>7</sup> 'Bringing them home' Report. (1997). The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. Sterling Press Pty. Ltd.

<sup>8</sup> Schedule 2A *Adoption Amendment Act (No 2) 2003*.

<sup>9</sup> Schedule 2A *ibid* see footnote 9.



## **7.4 Post placement supervision and support**

Fixed periods of supervision of children in adoption placements are mandatory.

The purpose of supervision is to provide support to adopting families, to monitor the placement of the child to be adopted and:

- provide support to parents
- assist with the integration of the child into the family
- link the family to appropriate community services
- monitor the child's progress
- enable reports on the child's progress to be prepared for the country of origin
- assist with the preparation of reports to the Family Court including for the granting of an adoption order.

Adoptive families would benefit from accessing the wide range of community based services designed to support families in their parenting role. Maintaining support linkages and identifying and resolving problems early are important to avoid adoption disruption or breakdown. Non government services provide an important and valuable role in supporting adoptees, birth parents and adoptive parents.

The Department takes into account the special needs of children when an adoption has broken down and alternative care arrangements may involve a second adoption placement for the child.

## Background to the policy

For most of the 20th century adoption services in Western Australia were conducted in accordance with the *Adoption of Children Act 1896*. Adoption was an open arrangement until 1921 when the Act was amended to restrict access to the records of adopted children. This was done in the belief that it was in the interests of the child, the birth mother and the adopting parents for the child's origins to be kept secret.

The idea of open communication about adoption issues has significantly changed adoption law both nationally and internationally. Western Australia's *Adoption Act 1994* endorses open adoption in recognition of a child's birth parentage and cultural origins. It promotes the notion that adoption should no longer be a secretive process and provides for exchange of information about the development of the child and contact between parties to an adoption. Ideally, open communication about adoption should start at the beginning of the adoption process and continue throughout the adoptee's life.

There are very few young babies placed for local adoption in Australia. This has led to a greater interest by people seeking to adopt a baby or child from an overseas country.

The Department recognises that adopting children from an overseas country is a legitimate way of providing permanent care for children who cannot be cared for in their country of birth. The Department recognises the desire of childless people unable to have a birth child to adopt from overseas.

There is widespread belief that because there are large numbers of children in overseas orphanages they are available for adoption<sup>10, 11</sup>. This is not the case. Children may be placed in orphanages and institutions for a number of reasons to do with temporary crisis or hardship within a family. The overseas country's adoption authority determines if placement in a child's country of origin is possible or whether intercountry adoption is in that child's best interests. It is important to acknowledge that the demand to adopt a child is greater than the number of children available for adoption either locally or from overseas.

Many overseas children available for adoption are toddlers and older children<sup>12</sup> who may have been affected by relinquishment, abandonment or are unable to be cared for because of poverty, war trauma, the stigma of illegitimacy, social policies and environmental conditions. Most have

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<sup>10</sup> Tolfree, D. (1995). Roofs and Roots: The Care of Separated children in the Developing World. Arena, Aldershot, UK.

<sup>11</sup> "Intercountry Adoption" – *ibid* Innocenti Digest 4 – see footnote 6.

<sup>12</sup> *Report 81 (1997) - Review of the Adoption of Children Act 1965 (NSW)*, Chapter 10 Intercountry Adoption, Law Reform Commission Publications.

experienced extensive periods of time in institutional care. These factors significantly increase the likelihood of adoptees developing anxiety difficulties and problem behaviours exacerbated by intercountry adoption.

It is a tribute to people who adopt that so many adoptions are successful. It is important to appreciate that some of the children adopted from overseas experience continuing psychological and social difficulties particularly those who suffered psychological privation for long periods. These children who remain in poor quality institutions beyond the age of two years tend to have increased incidence of attachment problems of atypical behaviours such as inattention, impulsivity and quasi-autism<sup>13</sup>. Each month a child spends in an orphanage contributes to lower intellectual ability and more behaviour problems and authorities should aim to place the youngest children for adoption<sup>14</sup>. Prospective adopting parents of older children for adoption should be aware of the greater commitment and resources necessary to rear these children<sup>15</sup>.

After the age of twenty-four months there is a gradual increase of risk for later maladjustment and this risk increases with age at placement<sup>16</sup>. There is also a higher risk of maladjustment of children adopted after their fourth birthday<sup>17</sup>.

When an intercountry adoption breaks down the child goes into temporary foster care or another adoption placement. The Department is committed to educating and informing prospective adoptive parents of the care needs they may face in bringing up an overseas child.

The Department aims to arrange adoptions that will have positive outcomes for children and parents and offers support and advice to adoptive parents so that the experience and feedback may benefit all families in the adoption community.

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<sup>13</sup> Rutter, M., O'Connor, T., Beckett, C., Castle, J., Croft, C., Dunn, J., Groothues, C. and Kreppner, J. (2000). "Recovery and deficit following profound early deprivation" in P. Selman (ed) Intercountry Adoption: Developments, trends and perspectives. British Agencies for Adoption and Fostering (BAAF), London, UK. A study of Romanian children adopted to the United Kingdom.

<sup>14</sup> Ames, E.W. and Fraser, S. (1997) "The Development of Romanian Orphanage Children Adopted to Canada". Burnaby University, Canada.

<sup>15</sup> Hjern, A., Lindblad, F. and Vinnerljung, B. (2002). "Suicide, psychiatric illness, and social maladjustment in intercountry adoptees in Sweden: a cohort study". *The Lancet*, Vol 360, 10 August.

<sup>16</sup> Verhulst, F.C. (2000). "The development of internationally adopted children" in P. Selman (ed) Intercountry Adoption Development, trends and perspectives. British Agencies for Adoption and Fostering (BAAF), London, UK.

<sup>17</sup> Hjern, A., Lindblad, F. and Vinnerljung, B. (2002). "Suicide, psychiatric illness, and social maladjustment in intercountry adoptees in Sweden: a cohort study". *The Lancet*, Vol 360, 10 August. This study supports adoption agencies informing prospective adoptive parents honestly about raised risks of compromised long-term development in adopted children compared with peers in the general population.

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