

**COMMONWEALTH–STATE AGREEMENT
FOR THE CONTINUED OPERATION OF AUSTRALIA’S
INTERCOUNTRY ADOPTION PROGRAM**

This Agreement (to be known as the *Commonwealth–State Agreement for the Continued Operation of Australia’s Intercountry Adoption Program*) is made between -

THE AUSTRALIAN GOVERNMENT (the Commonwealth Government)

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY, and

THE NORTHERN TERRITORY.

- (A) The Commonwealth Government ratified the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (the Hague Convention) on 25 August 1998. The Convention entered into force for Australia on 1 December 1998.
- (B) Prior to the ratification of the Hague Convention, relevant State and Territory Ministers had agreed that the ratification was in Australia’s interests.
- (C) In order to enable the Commonwealth Government to fulfil its obligations pursuant to the Hague Convention, the *Commonwealth–State Agreement for the Implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* was signed in 1998.
- (D) In 2008, Ministers signed the *Commonwealth–State Agreement for the Continued Operation of Australia’s Intercountry Adoption Program*. This Agreement reflected an increased role for the Commonwealth Government in the establishment and management of intercountry adoption programs with other countries.
- (E) Ministers agree that the existing standards applicable to intercountry adoption, found in the legislation and administrative procedures of each of the States, continue to comply with the standards and procedures of the Hague Convention.

- (F) These standards are shaped by Australia's National Principles in Adoption. These are intended to underpin adoption laws, policies and practices in Australia. They are high level aspirational statements intended to guide ethical decision-making for domestic and intercountry adoption. These principles acknowledge that adoption is one of a range of options that can provide for the best interests of a child. They reflect principles and obligations arising under domestic and international law to safeguard and protect children, the *United Nations Convention on the Rights of the Child*, the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* and the *Aboriginal Child Placement Principle*.
- (G) Ministers agree that the Commonwealth and the States will work cooperatively to ensure that intercountry adoption practice is focused on the best interests of the child, is fair and transparent, and promotes best practice in intercountry adoption. These principles will be reflected in the way the Commonwealth and the States deliver services and deal with each other, overseas country programs, children, birth parents, adoptive families, adult adoptees, adoptive parents and other key stakeholders.
- (H) Ministers agree that the Commonwealth and the States shall use their best endeavours, either through direct services or through accredited bodies, to facilitate intercountry adoptions, in compliance with the Hague Convention and relevant international obligations, including the *United Nations Convention on the Rights of the Child*. It is noted that the legal and administrative processes in the child's country of origin are not within the control of the Commonwealth or the States.
- (I) Ministers support the work of countries of origin to encourage family preservation and the placement of children in their country of origin. Ministers recognise the changing global context of intercountry adoptions, including changes in the numbers and characteristics of children referred for intercountry adoption.
- (J) Ministers recognise the commitment of the Commonwealth and the States to the prevention of the abduction, sale of or traffic in children in the context of intercountry adoption.
- (K) Ministers recognise the value of continued engagement with adopted children and adults, birth parents, adoptive parents, prospective adoptive parents, and other key stakeholders and representative groups and other members of the Australian community with an interest in intercountry adoption.

PART I – INTERPRETATION

1. In this Agreement, unless the contrary intention appears:

Commonwealth Central Authority has the meaning given by the regulations made pursuant to section 111C of the *Family Law Act 1975*

Hague Convention means the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* concluded at The Hague on 29 May 1993

Ministers means the relevant Commonwealth Ministers, and the State Ministers responsible for the administration of the laws of the State relating to the adoption of

children, and any Minister who is for the time being acting for or on behalf of such Minister

State includes the Australian Capital Territory and the Northern Territory

State Central Authority has the meaning given by the regulations made pursuant to section 111C of the *Family Law Act 1975* and

Children and Families Secretaries Group refers to the group of senior officials from relevant government departments with responsibility for identified national priorities regarding child and family issues requiring action or commitment by jurisdictions. This includes any subgroups under the group.

PART II – OBJECTIVES OF THIS AGREEMENT

2. This Agreement provides a framework for the continued implementation of the Hague Convention by the Commonwealth and the States. It does so by requiring that Commonwealth and State legislation and administrative procedures relating to intercountry adoption comply with the obligations of the Hague Convention.
3. This Agreement provides a cooperative scheme for intercountry adoption in Australia. It does so by requiring that questions of policy which affect the implementation of the Hague Convention, the operation and administration of intercountry adoption in Australia, will be the subject of consultation led by the Commonwealth.
4. This Agreement does not guide arrangements for the adoption of children outside of Australia without the involvement of a State Central Authority, children born overseas through surrogacy or the adoption of children born in Australia.

PART III – ROLES AND RESPONSIBILITIES

5. The roles and responsibilities that the Commonwealth has in relation to intercountry adoption include:
 - (a) in consultation with the States, establishing and managing Australia's programs with other countries including:
 - (i) establishing, managing and reviewing bilateral arrangements between Australia and other countries
 - (ii) monitoring and reviewing Australia's intercountry adoption programs and their ongoing compliance with the Hague Convention
 - (iii) determining the status of Australia's intercountry adoption programs, with other countries, including decisions to suspend, close or re-open programs
 - (iv) investigating where a State has advised the Commonwealth that there are concerns about a country program, and working with the States to resolve any identified issues, and
 - (v) where appropriate and agreed with a State, arranging for overseas persons or entities to assist in relation to an intercountry adoption program
 - (b) guardianship of non-citizen children whose adoptions are yet to be recognised under Australian law, as provided under the *Immigration (Guardianship of Children) Act 1946*

- (c) in consultation with the States, providing support services for people undergoing (or who have undergone) an intercountry adoption
- (d) cooperating with Central Authorities outside Australia on matters relating to the administration and implementation of the Hague Convention
- (e) for Article 12 of the Hague Convention, authorising a body that has been accredited by a State to act in a Convention country. The Commonwealth will seek agreement of the State Central Authority in that State prior to authorising that body
- (f) notifying the Permanent Bureau in the Hague of any changes to the designation of the Commonwealth or State Central Authorities (and any accredited bodies)
- (g) in cooperation with the States, ensuring that appropriate measures are taken to ensure Australia meets its obligations under the Hague Convention
- (h) in consultation with the States, maintaining and reviewing a **National Action Plan** for the future development and management of Australia's intercountry adoption program. The **National Action Plan** will be reviewed every two years. The Commonwealth will maintain responsibility for the review of the **National Action Plan**, in consultation with the States and seek endorsement by the Children and Families Secretaries Group
- (i) maintaining **National Practice Agreements** that describe an agreed approach to an issue that impacts on Australia's intercountry adoption program. The Commonwealth will maintain responsibility for review of these through the Children and Families Secretaries Group
- (j) consulting with States regarding decisions or proposals that may impact intercountry adoption and seeking endorsement from the Children and Families Secretaries Group
- (k) chairing and providing the secretariat support to meetings of the Commonwealth and the State Central Authorities for intercountry adoption. It is expected that a minimum of one meeting will be held face-to-face each year. These meetings will:
 - (vi) contribute to the strategic direction of Australia's intercountry adoption program
 - (vii) provide for the exchange of information on operational issues
 - (viii) work to the National Action Plan
 - (ix) review and develop new National Practice Agreements for the consideration of the Children and Families Secretaries Group, and
 - (x) report (as appropriate) to the Children and Families Secretaries Group on issues arising from these meetings
- (l) identifying a representative list of stakeholders to provide input to the Commonwealth and States.
- (m) working with States to ensure regular review and development of relevant intercountry adoption policy positions, and
- (n) actively monitoring the fulfilment of intercountry adoption program quotas where they exist.

6. The roles and responsibilities that the States have in relation to intercountry adoption include:
- (a) undertaking, or accrediting bodies to undertake, intercountry adoption services and activities in accordance with relevant State legislation and the Hague Convention, including:
 - (xi) education, assessment and preparation of prospective adoptive parents for the placement and adoption of a child
 - (xii) determining the eligibility and suitability of people seeking to adopt a child from overseas
 - (xiii) day-to-day case management involved in a particular adoption
 - (xiv) preparing and lodging adoption applications with the country of origin and the ongoing monitoring of the prospective adoptive parents' eligibility and suitability to adopt
 - (xv) giving approval to the adoption of a child
 - (xvi) where required, assisting with arrangements for the finalisation of an adoption, and
 - (xvii) post placement support, supervision and reporting
 - (b) acting as IGOC delegate for non-citizen children whose adoptions are yet to be recognised under Australian law, as provided under the *Immigration (Guardianship of Children) Act 1946*, where agreed with the Commonwealth
 - (c) actively monitoring the fulfilment of intercountry adoption program quotas where they exist
 - (d) all functions from the receipt of an expression of interest from a potential applicant for adoption of a child to the completion of mandatory post placement support, supervision and reporting will be reserved for the State or State Central Authority or a body accredited by the State
 - (e) supporting processes consistent with Australia's responsibilities under the Hague Convention including:
 - (i) where required, issuing an adoption compliance certificate for Article 23 of the Hague Convention
 - (ii) providing information and advice to the Commonwealth about State legislation and administrative procedure relating to intercountry adoption matters, to the extent necessary to ensure Australia meets its obligations under the Hague Convention, and
 - (iii) advising the Commonwealth that:
 - (a) a provision of the Hague Convention has not been complied with, or
 - (b) there is a serious risk that a provision of the Hague Convention may not be complied with
 - (f) informing the Commonwealth Central Authority of any appointments, or changes to appointments, to State Central Authorities or accredited bodies
 - (g) consulting with the Commonwealth Central Authority about authorising an accredited body to act in a Convention country, and
 - (h) participating, where practical, in Australian delegations to countries of origin.

7. A State may give any or all of the functions in clause 6 to its State Central Authority.
8. The functions that a State may give to its State Central Authority do not include any functions of the Commonwealth Central Authority in the regulations made pursuant to section 111C of the *Family Law Act 1975* or clause 5.
9. If a State determines it should exercise the function of accrediting a body for the purposes of Article 9 of the Hague Convention, the State shall do so having regard to the Guidelines attached to this Agreement and, in particular, shall only accredit a body that satisfies as a minimum, the Accreditation Criteria set out in Part II of those Guidelines. If a State proposes to revoke the accreditation of a body, the State agrees to ensure that it will do so after having regard to the Accreditation Criteria set out in Part II of the Guidelines attached to this Agreement and applicable Commonwealth or State law.
10. The Commonwealth and States agree to follow the guidance set out in the *National Practice Agreements*.

PART IV – COMPLIANCE WITH THE HAGUE CONVENTION

11. The Commonwealth will ensure that regulations made pursuant to section 111C of the *Family Law Act 1975* are reviewed and maintained to ensure that Australia is able to fulfil its obligations under the Hague Convention.
12. The States will ensure that legislation and administrative procedures of the State relating to intercountry adoption matters are reviewed and maintained to ensure that Australia is able to fulfil its obligations under the Hague Convention.
13. The Commonwealth and the States agree not to introduce amendments to legislation or change administrative procedures in relation to intercountry adoption in such a way that may adversely affect Australia's ability to comply with the Hague Convention.
14. The Commonwealth and the States agree to notify the other parties to this Agreement, in writing, if it becomes apparent that there is a deficiency in its legislation or administrative procedures such that it does not comply with the requirements of the Hague Convention, and:
 - (a) the Commonwealth or the State may amend its legislation or administrative procedures to ensure compliance with the Hague Convention, or
 - (b) the State may request the Commonwealth to enact such legislation to the extent necessary to ensure compliance, or
 - (c) if, within a period of time determined by the Ministers, not exceeding twelve months from the deficiency coming to notice, a State does not amend its legislation or administrative procedures in accordance with paragraph (a) or make a request of the kind referred to in paragraph (b), the Commonwealth will, if necessary and in consultation with the State, enact such legislation as is required to ensure compliance with the Hague Convention.

15. The Commonwealth will only establish new intercountry adoption programs with countries that comply with the principles and standards of the Hague Convention and relevant international obligations, including the *United Nations Convention on the Rights of the Child*. For a country that is not a party to the Hague Convention, any proposals for a new or revised program shall be negotiated by the Commonwealth. This negotiation will be subject to Australia being satisfied that the non-Convention Country demonstrates compliance with the Hague Convention.
16. The Commonwealth will provide States with a statement on each partner country that outlines its ongoing compliance with the requirements of the Hague Convention. The reports will be provided to States at least every two years.

PART V – CONSULTATION

17. If the Commonwealth proposes to make regulations that will amend regulations made for section 111C of the *Family Law Act 1975*, the Commonwealth will write to State Ministers outlining their proposed amendments and allow for sufficient consideration by the States prior to any amendment being made.
18. If the Commonwealth proposes to make changes to its legislation or administrative practices in a way that might impact on the responsibilities of the States, or vice versa, each party agrees to consult with and consider comments from each other in writing about the proposal before any amendments are introduced into Parliament or any administrative practices implemented.
19. The Commonwealth will consult with the States in the development of a ***National Action Plan***, to provide priority actions regarding the future development and management of Australia's intercountry adoption program.
20. The Commonwealth will consult with the States prior to opening, suspending, closing or re-opening country programs, allowing adequate time for State consideration and feedback.
21. The Commonwealth will explore the establishment of new country programs that have been agreed to and included in the ***National Action Plan***.
22. Prior to opening a program in a new country, the Commonwealth will allow at least three months for State consultation. During this time the Commonwealth will provide States with information relating to: the program's compliance with the Hague Convention, details of the legislation and practices of the country with respect to intercountry adoption, and information relating to the number and profile of children available for adoption through the program.
23. Prior to State participation in a program, agreement must be explicitly provided by each State to the Commonwealth. States retain the right not to participate in new country programs if it is deemed that the practices of the program do not align with the legal and policy frameworks of the State.

PART VI – GOVERNANCE AND FUTURE DIRECTIONS

24. Ministers agree that the Children and Families Secretaries Group will monitor the implementation of this Agreement and will report to relevant Ministers as necessary.
25. Ministers agree that should a national Ministerial Council be re-established, this would be the appropriate forum for governance oversight.
26. The Children and Families Secretaries Group will consider the following:
 - (a) matters of a strategic nature to inform nationally coordinated approaches to intercountry adoption, including the development of, and agreement to, a *National Action Plan*
 - (b) proposals for new or changed *National Practice Agreements* developed by the Central Authorities and
 - (c) significant issues relating to the operation of intercountry adoption programs and the effective cooperation between the Commonwealth and the States.
27. Commonwealth and State Central Authorities will meet face to face at least once every twelve months through the Central Authorities meetings to share information, discuss operational matters and where relevant work towards the implementation of actions under the *National Action Plan*.
28. The Commonwealth and the States agree to work together to identify and respond to any issues as they arise to support the continued effective cooperation between governments in delivering intercountry adoption services.

PART VII – OPERATION OF THE AGREEMENT

29. This Agreement shall commence operation and shall have effect on and from the date on which the Agreement is signed by all the parties to the Agreement.
30. The Commonwealth will inform the States in writing once the Agreement is signed by all parties and has become operational.
31. Unless otherwise determined by the Children and Families Secretaries Group this Agreement will be reviewed after five years of it coming into force. The Children and Families Secretaries Group will coordinate review of the Agreement, which will be provided to Ministers for endorsement. The Commonwealth will ensure that the review of the Agreement will be included in the Children and Families Secretaries Group agenda.
32. If this Agreement is required to be reviewed, the Commonwealth Secretary with responsibility for children's policy will write to the relevant Secretaries within other states and territories within two months of the review being triggered, outlining a process for reviewing the Agreement.

33. This Agreement may be amended by the parties to it with the Agreement of all Ministers. Any amendment shall be in writing and agreed to by all parties to the Agreement.
34. In the event that the Children and Families Secretaries Group ceases, this Agreement will be reviewed.
35. If a State no longer wishes to be a party to this Agreement, it may give a notice to that effect to all other Ministers. The State will cease to be a party to this Agreement six months after the State gives the notice unless the State withdraws the notice before the expiration of those six months.
36. If a State ceases to be a party to this Agreement under clause 34 and the State wishes to again be a party to this Agreement, the State may give a notice to that effect to all Ministers. If Ministers are satisfied that at the time of giving the notice the State complied with the requirements of this Agreement, the State will again become a party to this Agreement three months after giving the notice.
37. This Agreement does not give rise to any legally enforceable right, privilege, obligation or liability in respect of:
- (a) anything done under this Agreement, or
 - (b) anything omitted to be done under this Agreement.

Signed by the Hon Paul Fletcher MP
On the 2nd day of October 2018



.....
Minister for Families and Social
Services,
Australian Government
(Commonwealth)

Signed by the Hon Pru Goward MP
On the 20th day of December 2018



.....
Minister for Family and Community
Services,
(New South Wales)

Signed by the Hon Jenny Mikakos MLC
On the _____ day of _____ 2018

.....
Minister for Families and Children,
Minister for Early Childhood Education,
and Minister for Youth Affairs,
(Victoria)

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 - (a) anything done under this Agreement, or
 - (b) anything omitted to be done under this Agreement.

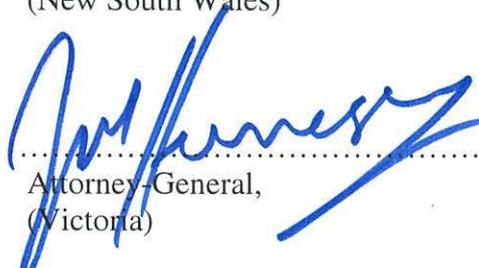
Signed by the Hon Paul Fletcher MP
 On the day of 2018

.....
 Minister for Families and Social
 Services,
 Australian Government
 (Commonwealth)

Signed by the Hon Pru Goward MP
 On the day of 2018

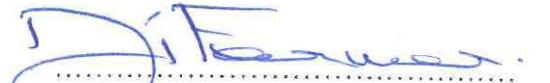
.....
 Minister for Family and Community
 Services,
 (New South Wales)

Signed by the Hon Jill Hennessy MP
 On the 25 day of October 2019



 Attorney-General,
 (Victoria)

Signed by the Hon Di Farmer MP ⁹
On the 23RD day of MARCH 2018


.....
Minister for Child Safety, Youth and
Women, Minister for the Prevention of
Domestic and Family Violence,
(Queensland)

Signed by the Hon Simone McGurk MLA
On the day of 2018

.....
Minister for Child Protection, Women's
Interests, Prevention of Family and
Domestic Violence and Community
Services,
(Western Australia)

Signed by the Hon Roger Jaensch MP
On the day of 2018

.....
Minister for Human Services,
(Tasmania)

Signed by the Hon Rachel Sanderson MP
On the day of 2018

.....
Minister for Child Protection,
(South Australia)

Signed by Ms Rachel Stephen-Smith MLA
On the day of 2018

.....
Minister for Community Services and
Social Inclusion, Disability, Children
and Youth, Aboriginal and Torres Strait
Islander Affairs, Multicultural Affairs
and Workplace Safety and Industrial
Relations,
(Australian Capital Territory)

Signed by the Hon Dale Wakefield MLA
On the day of 2018

.....
Minister for Territory Families,
Renewables and Essential Services,
(Northern Territory)

Signed by the Hon Di Farmer MP
On the day of 2018

.....
Minister for Child Safety, Youth and
Women, Minister for the Prevention of
Domestic and Family Violence,
(Queensland)

Signed by the Hon Simone McGurk MLA
On the 26 day of October 2018


.....
Minister for Child Protection, Women's
Interests, Prevention of Family and
Domestic Violence and Community
Services,
(Western Australia)

Signed by the Hon Roger Jaensch MP
On the day of 2018

.....
Minister for Human Services,
(Tasmania)

Signed by the Hon Rachel Sanderson MP
On the day of 2018

.....
Minister for Child Protection,
(South Australia)

Signed by Ms Rachel Stephen-Smith MLA
On the day of 2018

.....
Minister for Community Services and
Social Inclusion, Disability, Children
and Youth, Aboriginal and Torres Strait
Islander Affairs, Multicultural Affairs
and Workplace Safety and Industrial
Relations,
(Australian Capital Territory)

Signed by the Hon Dale Wakefield MLA
On the day of 2018

.....
Minister for Territory Families,
Renewables and Essential Services,
(Northern Territory)

Signed by the Hon Di Farmer MP
On the day of 2018

.....
Minister for Child Safety, Youth and
Women, Minister for the Prevention of
Domestic and Family Violence,
(Queensland)

Signed by the Hon Simone McGurk MLA
On the day of 2018

.....
Minister for Child Protection, Women's
Interests, Prevention of Family and
Domestic Violence and Community
Services,
(Western Australia)

Signed by the Hon Roger Jaensch MP
On the *31* day of *October* 2018

.....
Minister for Human Services,
(Tasmania)

Signed by the Hon Rachel Sanderson MP
On the day of 2018

.....
Minister for Child Protection,
(South Australia)

Signed by Ms Rachel Stephen-Smith MLA
On the day of 2018

.....
Minister for Community Services and
Social Inclusion, Disability, Children
and Youth, Aboriginal and Torres Strait
Islander Affairs, Multicultural Affairs
and Workplace Safety and Industrial
Relations,
(Australian Capital Territory)

Signed by the Hon Dale Wakefield MLA
On the day of 2018

.....
Minister for Territory Families,
Renewables and Essential Services,
(Northern Territory)

Signed by the Hon Di Farmer MP
On the day of 2018

.....
Minister for Child Safety, Youth and
Women, Minister for the Prevention of
Domestic and Family Violence,
(Queensland)

Signed by the Hon Simone McGurk MLA
On the day of 2018

.....
Minister for Child Protection, Women's
Interests, Prevention of Family and
Domestic Violence and Community
Services,
(Western Australia)

Signed by the Hon Roger Jaensch MP
On the day of 2018

.....
Minister for Human Services,
(Tasmania)

Signed by the Hon Rachel Sanderson MP
On the 3rd day of November 2018


.....
Minister for Child Protection,
(South Australia)

Signed by Ms Rachel Stephen-Smith MLA
On the day of 2018

.....
Minister for Community Services and
Social Inclusion, Disability, Children
and Youth, Aboriginal and Torres Strait
Islander Affairs, Multicultural Affairs
and Workplace Safety and Industrial
Relations,
(Australian Capital Territory)

Signed by the Hon Dale Wakefield MLA
On the day of 2018

.....
Minister for Territory Families,
Renewables and Essential Services,
(Northern Territory)

Signed by the Hon Di Farmer MP
On the day of 2018

.....
Minister for Child Safety, Youth and
Women, Minister for the Prevention of
Domestic and Family Violence,
(Queensland)

Signed by the Hon Simone McGurk MLA
On the day of 2018

.....
Minister for Child Protection, Women's
Interests, Prevention of Family and
Domestic Violence and Community
Services,
(Western Australia)

Signed by the Hon Roger Jaensch MP
On the day of 2018

.....
Minister for Human Services,
(Tasmania)

Signed by the Hon Rachel Sanderson MP
On the day of 2018

.....
Minister for Child Protection,
(South Australia)

Signed by Ms Rachel Stephen-Smith MLA
On the 30th day of March 2019


.....
Minister for Community Services and
Social Inclusion, Disability, Children
and Youth, Aboriginal and Torres Strait
Islander Affairs, Multicultural Affairs
and Workplace Safety and Industrial
Relations,
(Australian Capital Territory)

Signed by the Hon Dale Wakefield MLA
On the day of 2018

.....
Minister for Territory Families,
Renewables and Essential Services,
(Northern Territory)

Signed by the Hon Di Farmer MP
On the day of 2018

.....
Minister for Child Safety, Youth and
Women, Minister for the Prevention of
Domestic and Family Violence,
(Queensland)

Signed by the Hon Simone McGurk MLA
On the day of 2018

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Minister for Child Protection, Women's
Interests, Prevention of Family and
Domestic Violence and Community
Services,
(Western Australia)

Signed by the Hon Roger Jaensch MP
On the day of 2018

.....
Minister for Human Services,
(Tasmania)

Signed by the Hon Rachel Sanderson MP
On the day of 2018

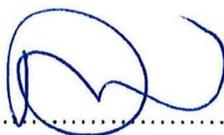
.....
Minister for Child Protection,
(South Australia)

Signed by Ms Rachel Stephen-Smith MLA
On the day of 2018

.....
Minister for Community Services and
Social Inclusion, Disability, Children
and Youth, Aboriginal and Torres Strait
Islander Affairs, Multicultural Affairs
and Workplace Safety and Industrial
Relations,
(Australian Capital Territory)

Signed by the Hon Dale Wakefield MLA
On the 7th day of 2018

December


.....
Minister for Territory Families,
Renewables and Essential Services,
(Northern Territory)

SCHEDULE

GUIDELINES IN RELATION TO THE ACCREDITATION OF BODIES UNDER THE *HAGUE CONVENTION ON PROTECTION OF CHILDREN AND CO- OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION*

PART I – BACKGROUND

1. The States may enter into arrangements with a body for the accreditation of that body to provide State intercountry adoption services or across border services consistent with the terms of accreditation.
2. Accreditation of a body must be subject to periodic review by the State that accredited the body and in accordance with the requirements of that State.
3. A State that accredits a body or revokes the accreditation of a body is required to provide notice within seven days after the day of that accreditation or revocation to the Commonwealth Central Authority who will advise the Permanent Bureau in the Hague of the accreditation or revocation.

PART II – ACCREDITATION CRITERIA

Eligibility

4. The body must be an incorporated, non-profit body.
5. The body must not be, and must not be likely to be, a party to negotiations or an agreement for the establishment of adoption arrangements with overseas countries.
6. The body must give an undertaking that during any period of accreditation the body will not enter into negotiations for the establishment of an adoption agreement with an overseas country.
7. A person must not, in relation to an application for accreditation or renewal of accreditation, provide information in written or oral form that the person knows to be:
 - (a) false or misleading, or
 - (b) likely to deceive.

The body

8. The body must employ a principal officer with appropriate qualifications and/or experience in adoption, substitute care or family services to supervise the services provided by the body.
9. The body must ensure that the body's staff and approved sub-contractors comply with the requirements of these Guidelines.
10. The body must be financially viable.

11. The body must employ professional staff with appropriate qualifications and/or experience to undertake the proposed services.
12. The body must have accommodation available for its use that:
 - (a) is suitable for the conduct of the proposed services (for example, assessment, interviews, training and support to adoption arrangements), and
 - (b) does not form part of and is not adjacent to, accommodation that is used by an organisation that represents adoptive parents.

Conduct of the body

13. The body must comply with:
 - (a) the laws of the Commonwealth and the State in which it is seeking accreditation
 - (b) the requirements of the Hague Convention, and
 - (c) the practice that applies in the State in which it is seeking accreditation, in relation to the approval or contracting of bodies to undertake arrangements to facilitate the adoption of a child.
14. In the event of any inconsistency between this Schedule and the laws of the Commonwealth or the State in which the body is seeking accreditation, the laws of the Commonwealth or State will prevail.
15. The body must:
 - (a) provide services, the primary focus of which, is the best interests of the child
 - (b) not be associated with, and must not be likely to be associated with:
 - (i) the collection and disbursement of aid to an overseas country which is related to the intercountry adoption referral process and is inconsistent with the requirements of the Guide to Good Practice to the Hague Convention, or
 - (ii) the provision of other activities or services for profit that might be associated with overseas adoption.
16. The body must give an undertaking that during any period of accreditation the body:
 - (a) will only undertake the functions approved within the jurisdiction or jurisdictions and countries of origin so approved at the time of accreditation
 - (b) will only offer adoption services in respect of the countries specified in its accreditation
 - (c) will keep full and accurate records of its activities and will not destroy any records maintained by the body, and
 - (d) will not issue publications promoting adoption, or offer preparation courses for adoption applicants, unless the content of the publication or the course had been approved by the State to which the body has applied for accreditation.
17. The body must comply with any undertakings given for the purpose of accreditation.

18. The body must obtain the approval of the Commonwealth Central Authority if representatives of the body intend to travel overseas on official business or invite official overseas guests to visit. The Commonwealth Central Authority may give directions or guidance or impose conditions as to the nature and content of the activities in consultation with the State that accredited the body.
19. The body must submit to the supervision of the State that accredited the body, and must provide the State with access to the records and reports of the body in accordance with the requirements of the State that accredited the body.
20. The body must provide reports, including data about services delivered, client usage, outputs, performance measures and indicators, to the State as required in the accreditation of the body.
21. The body must comply with, and must ensure that its staff members and approved sub-contractors comply with, the Code of Conduct for bodies accredited to conduct adoption arrangements set out in Part V of these Guidelines.

PART III – MANAGEMENT OF RECORDS

22. The body must have suitable facilities for the confidential storage of records and must give an undertaking to maintain those records according to the standards required in the State in which the body is accredited.
23. The body must give an undertaking that on its winding up it will lodge any records that it has maintained during any period of accreditation, with the State that accredited the body.

PART IV – FUNCTIONS OF AN ACCREDITED BODY

24. A body may be accredited by a State to undertake any of the following functions in relation to the adoption process:
 - (a) initial enquiries – respond to initial enquiries about intercountry adoption
 - (b) information sessions – conduct regular information sessions to inform potential applicants about intercountry adoption
 - (c) expressions of interest – receive and process expressions of interest in intercountry adoption
 - (d) applications – receive and process adoption applications (Article 14 of the Hague Convention)
 - (e) assessments – undertake assessments of eligibility and suitability of prospective adoptive parents
 - (f) education and preparation – educate and prepare prospective adoptive parents for the placement and adoption of a child
 - (g) decision making – make decisions to approve or not approve applicants as prospective adoptive parents

- (h) forwarding of file – forward all relevant information required to the country of origin (Article 15 of the Hague Convention)
 - (i) receive the offer of the proposed placement of a child or children – confirm suitability of proposed placement of the child with the applicants (Article 17b of the Hague Convention), advise applicants and place the child
 - (j) supervision of placement – monitor placement and provide support to the child and prospective adoptive parents
 - (k) placement disruption – advise the State that accredited the body that placement disruption has occurred and collaborate on an intervention plan with the State body
 - (l) placement breakdown – in case of placement breakdown prior to adoption orders being made, consult with the State that accredited the body regarding appropriate arrangements, but the body is not to make decisions on alternative arrangements without the approval of the State that accredited the body
 - (m) adoption information – collect and preserve relevant information about the child and the applicants (Article 9a of the Hague Convention), and respond to requests for adoption information
 - (n) reports – prepare reports required by the State (Article 9d of the Hague Convention) and other information requested by the relevant Central Authorities
 - (o) post adoption services – provide a referral and support service post granting of the adoption order, and
 - (p) administrative arrangements – undertake approved administrative arrangements.
25. A body must be authorised by the Commonwealth Central Authority to act in an overseas country, in accordance with Article 12 of the Hague Convention.

PART V – REVOCATION

26. The body must continue to satisfy the criteria set out in Part II of these Guidelines and any conditions set out in the instrument of accreditation. If the accreditation of a body does not continue to satisfy such criteria or conditions, the accreditation may be revoked. The process of revocation will be in accordance with the requirements of the State in which the body is accredited. This shall include requirements for the provision of natural justice (for example, the giving of notice to the body of the alleged non-compliance).

Code of Conduct

[NOTE: This code exists to recognise and give effect to the right of the public to expect that accredited intercountry adoption bodies are of the highest integrity and competence and treat all children, birth families, guardians, adoptive applicants and adoptive parents' fairly and reasonably and are accountable to the State that accredited the body. The rights of the child must be the paramount consideration. This is in accordance with the Hague Convention, the Convention on the Rights of the Child and Commonwealth, State and Territory legislation.]

27. The directors, administrators and employees of the body must:
 - (a) comply with the highest ethical standards of conduct, and
 - (b) maintain appropriate relationships with clients, representatives of overseas adoption authorities and other stakeholders.
28. No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
29. The directors, administrators and employees of bodies involved in the conduct of the body shall not receive remuneration which is unreasonably high in relation to services rendered.
30. Only costs and expenses, including reasonable professional fees of persons involved in conduct of the body, may be charged or paid. A 'fee schedule' may be agreed between the accredited body and the State that accredited the body.
31. If the State that accredited the body allows such bodies to set its own fees, the body will submit for approval to that State the fees it proposes to charge for the provision of services, prior to commencing services and at any time the fees are revised.

Conflict of interest

[NOTE: Conflicts of interest may arise from expressed personal values or beliefs, professional ethics, personal or professional relationships, or financial or proprietary interests.]

32. A member of staff or an approved sub-contractor of an accredited body must not hold any financial or other interest, and must not give an undertaking, that could directly or indirectly compromise the performance of his or her functions.
33. Real or perceived conflicts of interest must be assessed by taking into account, amongst other things, the likelihood that a member of staff or an approved sub-contractor of an accredited body possessing a particular interest could be influenced, or might appear to be influenced, in the performance of his or her responsibilities on a particular matter.
34. A member of staff or an approved sub-contractor of an accredited body must notify the State that accredited the body if a potential or actual conflict of interest arises.

Gifts or benefits

35. An accredited body or member of staff or approved sub-contractor of an accredited body must not give or accept a gift, donation or benefit if it could be perceived as intended or likely to cause the recipient of the gift to undertake his or her responsibilities in a particular way, or deviate from the proper course of action.
36. It is recognised that from time to time modest gifts of appreciation may be given or received. If given or accepted, gifts should be recorded in a Gift Register to be maintained by the accredited body and available for inspection by the State that accredited the body.

Personal and professional behaviour

37. A member of staff or an approved sub-contractor of an accredited body must perform any duties associated with his or her position diligently, impartially and conscientiously, to the best of his or her ability.
38. In the performance of duties, a member of staff or an approved sub-contractor of an accredited body:
 - (a) must keep up to date with any changes in practice and procedure relating to intercountry adoption
 - (b) must comply with the laws, and any relevant administrative requirements, of the Commonwealth and the State that accredited the body
 - (c) must maintain and preserve record information systems in accordance with the requirements of the State that accredited the body
 - (d) must treat all children, birth families, adoptive applicants and adoptive parents with courtesy, sensitivity and in-confidence, and in accordance with the accredited body's policies and procedures for working with these parties and meeting their rights
 - (e) must not take any improper advantage of any information gained in the carrying out of his or her duties
 - (f) must report to the State that accredited the body any unethical behaviour or wrong doing by other members of staff of which he or she is aware, and
 - (g) must exercise due skill and judgement at all times in accordance with applicable professional ethics, principles and standards.

Fairness and equity

39. The manner in which an accredited body deals with issues or clients must be consistent, prompt and fair. This includes:
 - (a) dealing with matters in accordance with approved procedures
 - (b) dealing with matters in a prompt and professional manner, respectful of the rights and dignity of all parties, and
 - (c) providing appropriate review and appeal mechanisms.