



Home Safe Home

A report on children who migrate to Australia for kinship care

Siobhan Kavanagh ~ 2013



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Glossary

alternative care	a care arrangement for a child deprived of parental care. Alternative care may be: (i) <i>Informal care</i> : any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body; (ii) <i>Formal care</i> : all care provided in a family environment which has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures. ¹
carer	in this report, a ‘carer’ is a person with legal or customary responsibility for a child.
child	any person under the age of 18, unless under the (national) law applicable to the child, majority is attained earlier. ² The term ‘child’ is generally used in this report unless information specifically relates to older children or young people, in which case the term ‘young person’ is used.
international kinship care	a kinship care arrangement that involves a child migrating to another country. See ‘kinship care.’
kinship care	family-based care within the child’s extended family or with close friends of the family known to the child, whether formal or informal in nature. ³
kinship carer	an adult who is providing care for a relative child
non-statutory care	another term for ‘informal care’ - see ‘alternative care’
orphan	a child whose parents are known to be dead. In some countries, a child who has lost one parent may be called an orphan. ⁴
Orphan Relative child	in this report, the term ‘Orphan Relative child’ is used to denote a child who has migrated to Australia on an Orphan Relative visa (subclass 117 or 837). Orphan Relative children are ‘separated children’ as per the definition in this glossary.
separated child	a child who is separated from both parents, or from their previous legal or customary primary care giver, but not necessarily from other relatives. ⁵
sponsor	the sponsor is generally the Australian relative who undertakes sponsorship obligations. For permanent visa applicants, the sponsor generally undertakes to provide support to the applicant and any accompanying family members during their first two years of residence in Australia, including accommodation and financial assistance to meet living costs, as required. ⁶
statutory care	another term for ‘formal care’ – see ‘alternative care.’
unaccompanied child	a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so. ⁷
UAM	UAM (Unaccompanied Minor) is a term used in the Australian context to describe a person aged 0-18 years who arrives in Australia by plane or by boat, with a temporary visa or no visa. A UAM is seeking asylum and has lodged a claim for an onshore permanent protection visa.
UHM	UHM (Unaccompanied Humanitarian Minor) is a term used in the Australian context to describe a person aged 0-18 years who arrives in Australia on an offshore permanent protection visa through the Humanitarian Program, or who has received an onshore permanent protection visa after seeking asylum as a UAM.
young person	for the purposes of this report, ‘young person’ can refer to people aged approximately 12-25 years. The term ‘child’ is generally used in this report in reference to anyone aged under 18 years, unless information specifically relates to older children or young people over the age of 18, in which case the term ‘young person’ is used.

¹ UN General Assembly (2010)

² UN General Assembly (1989, Article 1)

³ UN General Assembly (2010)

⁴ International Committee of the Red Cross et al (2006, 13)

⁵ International Committee of the Red Cross et al (2006, 13)

⁶ DIAC: www.immi.gov.au/migrants/family/definitions.htm#index_s

⁷ International Committee of the Red Cross et al (2006, 13)

Executive Summary



The findings... **suggest that the majority of children and young people who migrate on Orphan Relative visas to Victoria...** do so without statutory involvement from their country.

Purpose of the research

The purpose of this research is to develop a greater understanding of the issues experienced by children, young people and carers in international kinship care arrangements in Victoria, with a focus on those arrangements that do not involve assessments of carer suitability or post placement support.

Methodology

This research was conducted through desk based research and consultations with a small number of professionals with proximity to children who migrate to Australia for kinship care and their carers.

Findings

The findings of this research suggest that the majority of children and young people who migrate on Orphan Relative visas to Victoria, and to Australia more broadly, do so without statutory involvement from their country. This means that comprehensive assessments of the best interests of the child and the suitability of the carer do not occur. These children and their carers may have particular vulnerabilities related to their pre-migration experiences and their transition to a new country and culture. In addition, their status in a kinship care arrangement may not be well recognised in the community services sector and families themselves may not seek out specific kinship care support. In contrast, children who migrate from a country with a functioning child welfare system, and their carers, are likely to receive pre-placement assessments, transition planning and post-placement support through the collaboration between statutory authorities of the respective countries.

Recommendations

Five recommendations are proposed for consideration, relating to:

- 1) amendments to the visa application process
- 2) improved data collection by the child protection system
- 3) collaboration between kinship care services and the refugee and migrant settlement sector
- 4) possible collaboration between International Social Service (ISS) Australia in partnership with the ISS international network and other international non-government organisations to facilitate international kinship care cases and
- 5) further research required to better understand and respond to the needs of this target group.

Originality and value

This report presents the first specific discussion of issues related to children who migrate to Australia to be cared for by a relative, a subject that is largely unexamined in academic and non-academic publications to date. This report is of value to state and federal policy makers, state/territory child protection services and community service organisations with an interest in the welfare of children who migrate to Australia.

1. Introduction

1.1 International Social Service Australia

International Social Service (ISS) Australia is an Australian non-government organisation with over 50 years' experience in defending children and connecting families across the world through the provision of professional intercountry social work and legal services.

ISS Australia provides intercountry child welfare services including intercountry kinship placement assessments, social work and legal support for international parental child abduction cases, intercountry family mediation and intercountry post-adoption and general family tracing, counselling and family reunification.

ISS Australia is part of the worldwide International Social Service network which works to protect and support children and families in cross-border situations.

1.2 'Support Me, Support My New Home' pilot project

The Barr Family Foundation has generously provided ISS Australia with funds to undertake a project of approximately three years' duration entitled 'Support Me, Support My New Home: Protection and Support for Unaccompanied Minors (Victorian Pilot Project).'

The focus of the pilot project is the needs of children and young people without parental care in their home country, who migrate to Australia to be cared for by a relative. This arrangement is known as an international kinship care placement, and a child in this situation can be termed a 'separated child.'⁸ ISS Australia is interested in researching this issue as it relates to the organisation's commitment to ensuring the best interests of all children and families affected by cross border movements.

ISS Australia has been approached by several Australian state and territory child protection authorities who have expressed concern about the number of children entering Australia without appropriate assessment of their kinship carers and subsequently coming to the authorities' attention for protective matters. The aim of this pilot project is to support the physical, psychological and social needs of children who migrate to Australia to be cared for by a relative, and their carers, through increased, timely access to, and use of, quality support services. It is intended that the findings of this research and the recommendations of this report will inform the subsequent stages of the pilot project, including the provision of specialised services to the target group.

The primary beneficiaries of the pilot project will be children (aged 0-18 years) in international kinship care placements in Victoria and their carers. Secondary beneficiaries may be services that support these children and carers, such as refugee and migrant settlement services, kinship care services and child protection authorities. Children and carers in other states and territories may benefit from this pilot project in the future, dependent on the outcomes achieved in Victoria.

i. Research aim

The aim of this research is to develop a greater understanding of the issues experienced by children and carers in international kinship care arrangements in Victoria, with a focus on informal arrangements that do not involve assessments of carer suitability or post placement support.

In order to understand these issues, the research questions have explored:

- the nature and prevalence of issues affecting these children and their carers
- the differences in processes depending on the child's country of residence, and the consequences of these differences
- how these carers and children are being supported by existing systems, policies and services and
- the value of carer assessments, post placement support and monitoring for all international kinship care placements in Victoria.

ii. Scope

This research relates specifically to children who migrate alone to Australia for the purpose of receiving care from a relative in a kinship care arrangement. The following groups of children are out of scope:

- children in domestic kinship care
- children from overseas who are formally adopted by an Australian
- children from New Zealand who are cared for by an Australian relative⁹
- Child Visa holders who have parental care
- children who migrate to Australia as a dependent of a Humanitarian, Family, Skilled or Student visa holder¹⁰
- Unaccompanied humanitarian minors (UHMs) who arrive under the Humanitarian Program or are granted a protection visa after seeking asylum¹¹ and
- Unaccompanied minors (UAMs) who arrive by plane or boat and are seeking asylum.¹²

A relatively small number of professionals were consulted for this research due to the small scale and short duration of the study. Approximately 35 individuals or organisations were contacted regarding the research, of which 16 provided relevant information. No interviews were conducted with the target group due to the time limitations. All views regarding the experiences of the target group belong to the professionals consulted and to the project consultant.

iii. Methodology

This was a small scale, qualitative research project undertaken over November and December 2012. The project consultant conducted desk based research and field consultations to develop this report.

The desk based research entailed identifying relevant, publicly available information, conducting a literature review and analysing data from the Australian Department of Immigration and Citizenship (DIAC) Settlement Database. The consultant liaised with the DIAC Settlement Information Support Team to obtain relevant statistics on visa grants, age at time of arrival, gender and top countries of birth.

The field consultations were with a non-random sample of professionals with proximity to issues concerning children who migrate to Australia alone to be cared for by a relative. Interviewees were sourced through the consultant's professional networks and through contacting organisations thought to have experience with these issues. There were no formal questionnaires or data collection tools for this research and the consultations were informal and exploratory in nature. A number of case studies were gathered from the consultations.

The professionals consulted for this research have qualifications in social work, migration law and practice, welfare studies, youth work, mediation and psychology. Their work experience includes migration advice, refugee and migrant settlement support, child protection, out of home care support, organisational management, consulting and research. They had come into contact with children on Orphan Relative visas and/or their carers for migration advice, settlement support, youth activities and assistance with homelessness.

“The aim of this research is to develop a greater understanding of the issues experienced by children and carers in international kinship care arrangements in Victoria...”

⁸ International Committee of the Red Cross et al (2006, 13)

⁹ The Protocol for the Transfer of Child Protection Orders and Proceedings and Interstate Assistance (1999) states that kinship care arrangements between Australia and New Zealand are subject to the same oversight as Australian interstate kinship care placements (DHS 2012).

¹⁰ Children on Remaining Relative visas (part of the Family stream) are outside this scope. Children on Remaining Relative visas would arrive as a dependant of their parent, who is sponsored by an Australian relative. While siblings can sponsor siblings on the Remaining Relative visa, if a child is under 18 and their sibling has parental responsibility, it is assumed that the Orphan Relative visa would be used instead.

¹¹ See 'Fact Sheet 69 – Caring for Unaccompanied Minors' (DIAC 2011b) for information on care arrangements for UHMs

¹² See 'Fact Sheet 83a – Community Detention' (DIAC 2012c) for information on care arrangements for UAMs.



2. Background

Kinship care can be defined as the 'care provided by relatives or a member of a child's social network when a child cannot live with their parents' (Department of Human Services 2008, 6). This is different to foster care, which is the care provided to such a child by a foster carer, by the state or by an accredited non-government institution.

Relatives care for children for a variety of reasons – death of parents, separation from parents during disaster or conflict, children being neglected or abused, parents being incarcerated, parents being physically or mentally incapacitated, or due to parents migrating for work. The norms of kinship care may vary according to culture, traditions, concepts of family, religion and the socio-economic status of families involved. Additionally, the nature of the care arrangement will differ depending on whether it is informal (a non-statutory arrangement, without the involvement of state child protection authorities) or formal (as a statutory arrangement, with involvement of state child protection authorities and courts).

It is difficult to quantify kinship care arrangements due to their often informal nature. UNICEF report that although evidence is fragmented, a broad study involving households in 51 countries indicated that at least 90% of orphans live with relatives (2011, 14). UNICEF reviewed a range of studies on the prevalence of kinship care in different countries and found that grandparents are often carers and the death of parents from AIDS was a dominant factor leading to kinship care arrangements.

2.1 Kinship care in Australia

A large percentage of out of home care in Australia is kinship care, and the use of kinship care in Australia exceeds that of most comparable countries (Tilbury and Thoburn 2008, 5). Recent statistics indicate that in 2011 there were 37,648 children in out of home care in Australia. Of these, 93% were in home-based care, and of these, 46% were kinship care arrangements (Australian Institute of Health Welfare 2012).

At a federal level, the National Standards for Out of Home Care (Department of Families, Housing, Community Services and Indigenous Affairs 2010) focus on the outcomes and experiences of young people in out of home care in relation to health, education, care planning, connection to family, culture and community, transition from care, training and support for carers, belonging and identity and safety, stability and security. Each state/territory has its own child protection system and network of community service organisations which govern statutory kinship care placements and provision of kinship carer assessments, support and monitoring. The Victorian Children, Youth and Families Act 2005 (CYFA) outlines the best interests of the child principles to be considered when placing a child in out of home care and states that kinship care is to be 'considered and investigated before any other placement option is considered' (s.10 (3)(h), CYFA 2005).

Domestic statutory kinship carers receive financial and other support, including caregiving payments, respite care and child care. Some kinship care support organisations may provide support to non-statutory kinship care arrangements, in the event that the carer seeks this support. However, non-statutory kinship care arrangements are not subject to the same assessment, support, financial assistance, monitoring or standards as statutory arrangements as they are not within the mandate of the child protection system. If a child in a non-statutory kinship care arrangement comes to the attention of child protection authorities, the placement then becomes statutory (DHS 2012).

2.2 International kinship care

International kinship care is a kinship care arrangement where a child migrates to another country to be cared for by a relative. International kinship care placements may occur in a neighbouring country, in the same region, or on the other side of the world. Consequently, a child may remain in a similar cultural and linguistic environment, or experience a radical shift to a foreign language and an unfamiliar culture. As with domestic kinship care arrangements, international kinship care can be statutory or non-statutory, although UNICEF/International Social Service (2004) note that most of these arrangements are informal and therefore difficult to quantify.

Conflict, disaster, child abuse and neglect, voluntary migration and forced migration can create situations where families are separated across borders and children may be in the care of relatives in another country. The visibility of these children depends greatly on the situations of the countries involved and the capacity of their respective child protection authorities and social service sectors. An international kinship care placement between two developed countries with functioning child protection systems is likely to be subject to greater oversight than a placement involving a country with few resources to dedicate to such matters.

The process for children to migrate to Australia to receive kinship care is governed by the Migration Act (1958) and associated DIAC requirements. As discussed, kinship care in Australia can be statutory or non-statutory, with each type of arrangement attracting different support, oversight and standards. This is also true of international kinship care placements, resulting in different processes and requirements depending on the case. The nature and implications of these different requirements will be explored in the Research Findings and Discussion sections of this paper.

2.3 Literature review

A variety of Australian and international publications and resources were reviewed for this literature review, including academic literature, international legal and policy instruments, state and federal government policy documents, and less formal documents related to community sector research and advocacy.

The scope of the literature review covers the informal care of children (domestic and international); regulations and statutory oversight of such placements; children without parental care who migrate and issues related to children with Orphan Relative visas and their carers.

A literature review for a previous paper on international kinship care found that most research to date on kinship care focuses on comparisons between kinship and non-kinship care in the same country, often the USA or the UK (ISS Australia, 2011). While studies have looked at kinship care practices in different countries, there is very little literature on practices between countries for a cross border placement of a child (Oien 2006). Nonetheless, this literature review identified that a range of issues related to the situation of children without parental care and children who migrate alone have been researched, covering themes of integration and support for children without parental care [Lummert (2012) 'Assisting unaccompanied youth to integrate'], cultural concepts of informal care [Colton et al (2008) 'The Recruitment and Retention of Family Foster-Carers: An International and Cross-Cultural Analysis'], the impact of immigration policies on family configurations [Wilmsen (2001) 'Family Separation: The Policies, Procedures, and Consequences for Refugee Background Families'], and unaccompanied and separated children in migration situations [Macdonald (2009) 'Protection Responses to Unaccompanied and Separated Refugee Children in Mixed Migration Situations'; UNICEF (2011) 'Children in informal alternative care - Discussion Paper'; and International Social Service & International Reference Centre (2009) 'Special Series on Unaccompanied Minors']. International literature makes distinctions between a 'separated child' and an 'unaccompanied child.' A separated child has been separated from parents but not necessarily from other relatives, while an 'unaccompanied child' has been separated from both parents and other relatives, and is not in the care of a legally or customarily responsible adult (International Committee of the Red Cross et al (2006,13).

UNICEF describes the informal care of children as 'a very large yet often invisible system laden with many complexities' (2011, 41). Due to its unregulated nature, its interactions with social and legal systems may occur haphazardly, as compared with a formal care arrangement that is subject to statutory oversight. Most international kinship care is informal, often from a developing country to a developed country, and there is a view that it may be less beneficial to the child than domestic kinship care due to the loss of community, language barriers, unfamiliarity with systems, and possible unfamiliarity with the relative carer (UNICEF/ International Social Service 2004, 6). UNICEF highlights the lack of knowledge on informal care, strongly recommending that more research be done as '[m]uch of the outcome may depend on the age and sex of the child, the degree of relatedness between the child and caregiver, the local culture regarding non-parental care,

the relative wealth or poverty of the caregiver, the circumstances under which the child is being brought into the family and many other factors we do not yet know' (2011, 16).

The findings of Colton et al (2008) provide a useful summary of common characteristics of kinship care across a number of countries. It was found that:

- kinship carers are often grandparents, who, compared with non-kin carers, live in less adequate accommodation and are less financially secure
- children of culturally and linguistically diverse (CALD) backgrounds are over-represented in kinship care
- assessment, training and support services for kinship carers is inadequate
- kinship carers may struggle to cope with the behaviours of their relative children and
- kinship carers want more social and financial support, but service providers may lack capacity to support informal kinship care arrangements.



2. Background continued

'Children in informal alternative care - Discussion Paper' (UNICEF 2011) highlights benefits and risks of informal care placements, including kinship care placements. Preserving contact with family, maintaining identity and the possibility of children and carers providing mutual support over time were seen to be benefits of kinship care. However the lack of support and oversight allows for a number of risks to children and shortcomings in support to carers, who may not have adequate parenting skills to care for a child who has been deprived of their parents. It was found that kinship carers exhibit high levels of emotional stress, and are more likely to be female, older, poor and without a partner. Carers living in poverty may overextend the resources of the household, resulting in basic needs being inadequately met.

Sadly, neglect, abuse and various forms of exploitation may be experienced by children in kinship care and due to the unregulated nature of most of these arrangements, such maltreatment may not be visible beyond the family home. International Social Service & International Reference Centre highlighted this risk in their 'Global Policy for the Protection of Children Deprived of Parental Care', stating that '[t]he lack of pre-placement evaluation, as well as monitoring during the placement, particularly when kinship care is informal, may also limit the prevention of abusive or neglectful treatment.' In light of this risk, it was recommended that child welfare services 'develop and implement preparation, support and supervision systems attuned to the specific characteristics of kinship care' (International Social Service & International Reference Centre 2005, 7).

The nature and extent of child abuse in these situations is not well understood. Domestic servitude is cited as a common risk to children in informal kinship care. Children may be sent to live with a relative for care and to receive an education and may have disproportionate responsibilities in the household as compared with biological children of the carer or be required to work to earn their keep. Studies on this issue in South Africa, Haiti, Vietnam, Cambodia, Côte d'Ivoire and several South American countries indicate that the practice is prevalent and quite entrenched in cultural and socioeconomic norms (UNICEF 2011). UNICEF/ International Social Service (2004) cite an extreme example of abuse, the horrific case of Victoria Climbié, as a warning against any laissez-faire approach to informal care across borders. Victoria was a young girl from Cote d'Ivoire who was in an informal international kinship care arrangement with her aunt in France and then the UK. Over several months, she suffered appalling neglect, torture and abuse at the hands of her aunt and her aunt's partner, from which she ultimately died. A UK public inquiry into her death resulted in major changes to the English child protection system.

Only two academic articles were found that specifically relate to international kinship care. While these articles provide insight into the specific contexts of Angola, Portugal, USA and Mexico,

the findings may also resonate with international kinship care placements involving other countries. In 'Transnational networks of care: Angolan children in fosterage in Portugal', Oien (2006) looked at the kinship care of Angolan children in Portugal, focusing on issues of social capital, cultural norms of child rearing, domestic servitude and exposure to risk. In keeping with Angolan culture, children may have a part-apprentice, part-servant role in the house and carers may not view the child as being subject to the country's laws around school attendance - practices which are challenging to Portuguese norms of family and child rearing. The risk of child abuse, neglect and exploitation was noted, along with the likelihood for such treatment to go unnoticed. 'What happens when family resources are across international boundaries? An exploratory study on kinship placement in Mexican immigrant families' by Cardoso (2009) et al examined kinship care placements from the USA to Mexico. The study found that although the two countries share a protocol on managing such arrangements, US social workers were reluctant to consider this as a viable option for a range of reasons, including doubt about the capacity of Mexican authorities to supervise the placement, logistical issues, language barriers and a fear of the unknown. Mexican families in the USA also lacked sufficient information to consider kinship care in Mexico as an option.

Specific literature on children migrating to Australia for kinship care is lacking, however through the literature review, broader themes of children in alternative care and in cross border situations were identified. 'Finding a Home in Victoria' (Centre for Multicultural Youth 2010) reviews homelessness in migrant and refugee young people, and found that the refugee experience, multiple transitions, family breakdown and disrupted and reconfigured family compositions were contributing factors. Notably, it found that '[s]ome young people who have been sponsored through the orphaned relative migration category may have had no prior contact with the relative or carer they come to live with' and that these young people may have difficulty forming bonds with their carer. The family may be affected by grief, loss and trauma, which, when unsupported, could contribute to family conflict, family breakdown and homelessness for young people (Centre for Multicultural Youth 2010, 19).

'The Impact of Visa Restrictions and Entitlements for Young People who come to live in Victoria' (Centre for Multicultural Youth, 2011) examined the experiences of refugee and migrant young people according to the conditions of their particular visa, including the Orphan Relative visa. It is stated that many children on this visa have refugee-like experiences, their carers may be refugees and the waiting periods for social security benefits (as a visa condition) created particular financial stressors for the family.¹³ The young person may be pressured to work rather than receive an education, leading to conflict and a risk of homelessness (2011, 16).

While UHMs and UAMs are not within the scope of this research, a recent paper called 'Unaccompanied Humanitarian Minors in Australia: an overview of national support arrangements and key emerging issues' (MYAN 2012) raises issues that are relevant to other children migrating without parental care. Prospective carers of UHMs must be assessed by the state/territory government; however concerns have been raised about the methods of sourcing carers, the suitability of these arrangements and the capacity of the carer to provide appropriate support to these young people. These themes are common to children who migrate to receive kinship care.

Finally, the literature review identified recent documents related to child welfare and child protection in Australian CALD communities, issues which can affect international kinship care families. In a report called 'Cultural diversity and child protection - A review of the Australian research on the needs of culturally and linguistically diverse (CALD) and refugee children and families', Kaur (2012) found, amongst other things, that refugee and CALD families face particular challenges that may lead to child protection involvement and that these families may benefit from education on Australian parenting norms and the role of child protection authorities. Importantly, the research found that due to a lack of specific data collection, the prevalence of child abuse and neglect in refugee and CALD families is unknown, as are the specific needs of these children in alternative care.

'The Report of the Protecting Victoria's Vulnerable Children Inquiry' (Department of Premier and Cabinet 2012) includes a chapter on the needs of CALD communities in relation to child protection. It acknowledges the same issue identified by Kaur, finding '[t]here is a lack of data about culturally and linguistically diverse children and young people and their interaction with Victoria's system for protecting children,' (2012, 312). Recommendation 37 advocates that the Department of Human Services should 'collect data to record and track children and young people of culturally and linguistically diverse backgrounds who are involved with the child protection system, and the family services sector' and that the Department of Education and Early Childhood Development should 'include data on the experiences of vulnerable children and young people of culturally and linguistically diverse backgrounds (including in Victoria's system for protection of children) in *The State of Victoria's Children* report (Department of Premier and Cabinet 2012, 317).' Culturally appropriate education and support is also recommended to assist parents to understand Australian law, culture and norms in relation to gender equality, child rearing and parenting.

The results of this literature review suggest that the specific issue of children who migrate to be cared for by a relative in Australia is not well researched or documented, although relevant information can be found in a variety of research on informal care, child welfare and child migration. It is intended that this report will build on the existing literature to form a picture of international kinship care in Australia today.



¹³ Young people on these visas may be subject to a two year waiting period for their own social security payments, such as Youth Allowance. Their carer may be eligible to receive Family Tax Benefit, Double Orphan Benefit and Child Care Benefit, although if the child turns 16 within the first two years of arrival, and is not in full time study, the carer's payments will decline significantly.

3. Research findings

3.1 Overview of child migration to Australia

i. Visa types and eligibility criteria

There are a variety of Australian visas which permit a child to lawfully enter Australia, temporarily or permanently, under the Family, Skilled, Student or Humanitarian streams. Children generally migrate at the same time as their family, as a dependant of the primary visa holder, thereby holding the same visa category. If the child migrates separately, after their family has already migrated, they will be the primary applicant of a Child visa, Adoption visa, or Dependent Child visa. Children who arrive in Australia by plane or boat to seek asylum, alone or with family, hold a temporary visa or no visa on arrival.

The specific focus of this research is on relatives who sponsor a child to migrate to Australia to be in their care. These are formal or informal international kinship care arrangements, not international adoptions. The Orphan Relative visa is granted to a child in international kinship care arrangements, whether formal or informal. There are two subclasses of this visa - subclass 117 for offshore applications (where the child is in another country), and subclass 837 for onshore applications (where the child is already in Australia on a substantive visa). The Orphan Relative visa is uncapped, meaning that DIAC does not set any limit on the number of these visas that can be granted per year.

To be eligible for the Orphan Relative visa, the child and carer must meet the following criteria:¹⁴

The child must be:

- without parental care because their parents are deceased, permanently incapacitated or of unknown whereabouts
- the brother, sister, grandchild, niece, nephew (or step equivalent) of their sponsor
- aged under 18 years of age when the application is lodged and
- single.

The sponsor must be:

- an Australian citizen, permanent resident or an eligible New Zealand citizen
- the child's brother or sister, grandparent, aunt or uncle, or niece or nephew (or step equivalent)
- lawfully resident in Australia for a reasonable period (usually two years) and
- at least 18 years of age

If they are under 18 years of age, their cohabitating partner over the age of 18 years may act as sponsor, as long as they meet the same residence requirements. DIAC stipulates that the sponsor must provide support to the child, including accommodation and

financial support, during the child's first two years in Australia. The child will not be able to access social security benefits in this time, although the carer may be eligible for some payments to support the cost of raising the child. If DIAC deems that the child is likely to become a high user of the social security system, they may impose a discretionary Assurance of Support (AoS) whereby an Australian citizen or permanent resident undertakes to repay any social security benefits paid during those first two years (Commonwealth of Australia 2010). The sponsor must also provide information and advice to help the child settle in Australia, and provide support to enable the child to attend any required English language classes.

ii. Orphan Relative children and young people in Australia

The DIAC Settlement Information Support Team assisted in the provision of data on Orphan Relative children and young people who arrived in Australia over the ten year period from 2002 to 2012. The data is Australia-wide unless otherwise stated as Victoria-specific.

Over the ten year period from 01/07/2002 to 30/06/2012, a total of 2,483 children and young people were granted an Orphan Relative visa – 1,114 females (45%) and 1369 males (55%). Of the total number of children and young people who have arrived in Australia on this visa, available records indicate that 941 children and young people (38%) currently reside in Victoria.¹⁵ As indicated below, the vast majority (96%) of children and young people were granted offshore Orphan Relative visas, meaning that they were in another country at the time of the visa application and then migrated to Australia upon visa grant. Just 4% of children and young people were granted an onshore Orphan Relative visa after they had entered Australia on another visa subclass.

Table 1:
Number of Orphan Relative children and young people

	Number of children and young people who arrived in Australia 2002-2012	Number of children and young people resident in Victoria in 2012
Orphan Relative: offshore (subclass 117)	2383	913
Orphan Relative: onshore (subclass 837)	100	28
Total	2483	941

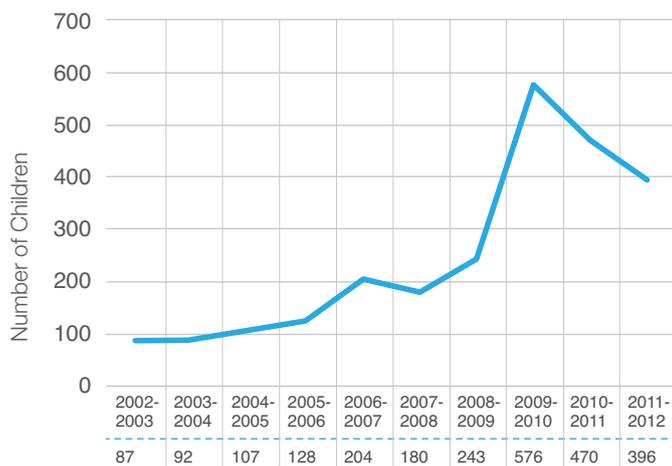
Source: DIAC Settlement Database (2012)

¹⁴ See DIAC website: www.immi.gov.au/migrants/family/child/117

¹⁵ The Settlement Reporting Facility includes only the settler's latest known residential (or intended residential) address. Address information is only updated if DIAC is notified. Some settlers have no address details recorded (Caveat provided by DIAC Settlement Information Support Team, November 2012).

The number of children and young people arriving on this visa rose dramatically during this period. From 2002-2003, when 87 children and young people arrived, this number has steadily increased to a peak in 2009-2010 when 576 children and young people arrived. Numbers have remained high since then, at 470 in 2010-2011 and 396 in 2011-2012. 126 children and young people have arrived in the 2012-2013 financial year to date (as at 04/12/2012).

Chart 1:
Number of children and young people arriving on Orphan Relative visas per year

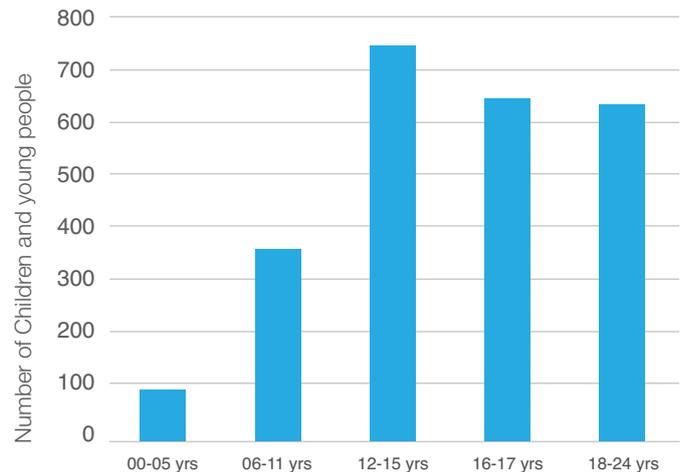


Source: DIAC Settlement Database (2012)

Young people aged 12-15 years on arrival form the largest cohort at 30% of all Orphan Relative children and young people, followed closely by 16-17 year olds and 18-24 year olds at 26% and 25% respectively. Children aged 6-11 years constitute 15% of the cohort while children aged 0-5 are the smallest group at 4% of the cohort.

It is assumed that young people in the 18-24 year old age bracket are highly likely to be aged between 18 and 20 years old on arrival. The visa application must be lodged before the applicant turns 18 and while visa processing times vary, it would be unlikely to exceed two years as processing of child visas is prioritised by DIAC (DIAC 2012b).

Chart 2:
Age of Orphan Relative children and young people on arrival ~ 1/07/2002 - 30/06/2012



Source: DIAC Settlement Reporting Facility (2012)

The top ten countries of birth of children and young people granted an Orphan Relative visa between 2002 and 2012 are Afghanistan, Ethiopia, Sudan, Somalia, Philippines, Vietnam, Cambodia, United Kingdom, Zimbabwe and Democratic Republic of Congo. Table 2 displays the number of Orphan Relative children and young people who were born in these particular countries.

Table 2:
Top ten countries of birth of Orphan Relative children and young people, 2002-2012

Country of birth	Number of children and young people who arrived in Australia
Afghanistan	698
Ethiopia	345
Sudan	214
Somalia	160
Philippines	120
Vietnam	97
Cambodia	63
United Kingdom	51
Zimbabwe	49
Democratic Republic of Congo	37

Source: DIAC Settlement Reporting Facility (2012)

“Over the ten year period, a total of 2,483 children and young people were granted an Orphan Relative visa...”

3. Research findings continued

Based on this data, it can be said that the majority of the top countries of birth of Orphan Relative children have experienced recent or ongoing conflict or unrest. Afghanistan, Ethiopia, Sudan, Somalia, Zimbabwe, and Democratic Republic of Congo have experienced more recent conflict, while Vietnam and Cambodia experienced conflict and displacement in the second half of the 20th century, leading to the establishment of these migrant communities in Australia. There is indeed a close correlation between the top countries of birth of Orphan Relative children and the top countries of birth of recent refugee entrants; Afghanistan, Democratic Republic of Congo, Ethiopia, Sudan and Somalia are represented in the top ten countries of birth of Humanitarian Program entrants in 2010-2011 (DIAC 2011a). Clearly, many carers of Orphan Relative children arrive in Australia as refugees or humanitarian entrants.

It is important to note that country of birth is not necessarily the child's current country of residence at the time of visa grant. It is likely that many children born in countries affected by war and conflict have been displaced to a neighbouring country, which may have been their country of residence at the time of migration to Australia. These children may have experienced multiple displacements and transits in their life prior to their journey to Australia.

United Kingdom and Philippines are also represented in the top ten countries of birth of Orphan Relative children, and a correlation can likewise be seen with broader migration trends. UK and Philippines were the third and fourth largest source countries for the general Migration Program in 2011-2012, with 25,274 and 12,933 citizens entering Australia respectively. It is interesting to note that the top two countries of birth of migrants in the general Migration Program in 2011-2012 were India (29,018 entrants) and China (25,509 entrants), yet these countries do not, at this stage, feature in the top countries of birth of Orphan Relative children (DIAC 2012a).

iii. Safeguards in the visa application process

The sponsor's application form for the Orphan Relative visa (*40CH Sponsorship for a Child to Migrate to Australia*) requires the sponsor to provide information on the nature of the relationship to the child, the circumstances resulting in the child being without parental care, their employment situation and information about their household size and composition. The sponsor must also satisfy a number of criteria in relation to parental responsibility, best interests of the child and registrable criminal offences.

If any other person (parent, relative, or other formal or informal guardian) can legally determine where the child should live, the sponsor must obtain permission from them for the child to migrate, via a statutory declaration, a valid court order from the child's country or a *Form 1229 - Consent to grant an Australian visa to a child under the age of 18 years*. The Child Migration

information booklet (DIAC 2012b) specifies that the best interests of the child must be met in order for the sponsorship to be approved, however the only criteria mentioned regarding this is a satisfactory Australian Federal Police (AFP) National Police Check and any relevant foreign police checks. There is no further detail provided on what constitutes the best interests of the child, and how this is to be assessed.

If the sponsor or their partner has a conviction or outstanding charge for a registrable criminal offence against a child, a sponsorship cannot be approved (except 'in extremely limited circumstances', which is not further defined). A registrable offence is generally a sexual or violent offence against a child, which would lead to registration on the Australian National Child Offender Register.¹⁶ Convictions or outstanding charges for non-registrable criminal offences may also result in the refusal of a sponsorship, if the nature of the offence is deemed to put the child at risk. DIAC states that these measures are in place to 'ensure that children seeking to enter Australia under partner and child visas are protected from being sponsored by people with convictions for child sex offences or other serious offences indicating that they might pose a significant risk to a child in their care' (DIAC 2012b).

iv. Liaison with the child's country

As discussed, most international kinship care placements are informal, meaning that child protection authorities in either country are not involved. This may be because the child is not known to the child protection system in their country, or there simply may not be a functioning child protection system. If an Australian relative applies to sponsor a child from such a country, there is likely to be little or no oversight of the process by the authorities of the child's country. On the Australian side, beyond a clear national police check, the sponsor is not required by DIAC to demonstrate their suitability as a carer.

However a small number of Orphan Relative cases are managed differently due to stipulations of the child's country. A formal international kinship care process can take place when the child's country has a functioning child protection system, the child is known to that system, and a relative overseas has indicated that they are willing to care for the child. As per the DIAC requirements, the potential carer in Australia will need to prove that they have parental responsibility for the child in order for the Orphan Relative visa to be granted. The child protection authorities in the child's country will liaise with Australian authorities to facilitate assessment of the potential carer, to determine and transfer parental responsibility and to plan the child's transition to the new care arrangement overseas.

ISS Australia provides an international kinship care service for both children who migrate to Australia to be cared for by a relative, and children in Australia who emigrate to be cared for overseas. This work is carried out in partnership with international

ISS colleagues and child protection authorities in the relevant country. A potential carer may approach ISS Australia for assistance with managing the international kinship care process, in which case ISS Australia will contact the partner ISS and/or child protection authorities in the child's country to initiate the process. Conversely, ISS or child protection authorities in the child's country will approach ISS Australia to request that contact be made with the potential carer for an assessment to take place.

When conducting an assessment of a potential kinship carer, ISS Australia will conduct at least two interviews: at least one at the carer's home and at least one at the office of ISS Australia and/or via telephone. The carer will be asked about their family history, childhood and adulthood, relationships with close and extended family, housing, employment, income, physical and mental health and social and community networks. They will also be asked about their motivation to care for the child and their understanding of the child's developmental and emotional needs, health, education, identity and relationship with other family members. The practical and emotional aspects of the child's relocation and transition are discussed in depth. ISS Australia makes a recommendation about the potential carer's parenting capacity and suitability to the child protection authority in the child's country, who decides whether to support the recommendation based on their knowledge of the child's needs and best interests. The local Court will in turn make a decision regarding the child's long term plans. Ideally, both ISS offices (ISS Australia and the international ISS partner) will work together with the child protection authority, current foster carers and prospective carers. Very occasionally, post-placement support will be requested and funded by the child protection authorities however ISS Australia does not have funding itself to provide this important support.

The majority of cases that ISS Australia manages involve the UK, other European countries, Canada and USA – countries where there is a partner ISS and/or a functioning child protection authority. However a review of ISS Australia's 33 new kinship care cases and enquiries in 2011-2012 indicates contact with a diverse range of countries for both incoming and outgoing cases: UK, USA, Thailand, Timor Leste, Switzerland, Jamaica, Cambodia, France, Kazakhstan, Hong Kong, Ethiopia, Sri Lanka, Canada, Samoa, Bangladesh, South Africa and Belgium.¹⁷ Not all of these countries have a functioning child protection system or an ISS office, so ISS Australia's capacity to manage these cases would vary. This is not to say that these children were not granted Orphan Relative visas, just that ISS Australia may not have been able to offer the same support to some children as can be offered to others.

While any sponsorship application for an Orphan Relative visa will be subject to the same DIAC requirements, it is clear that in fact two types of Orphan Relative cases exist – those with the involvement and support of relevant authorities in their country

and in Australia, and those without. The following case studies, based on real situations, provide examples of how children and carers in essentially similar situations may experience international kinship care quite differently.

“The majority of cases that ISS Australia manages involve the UK, other European countries, Canada and USA...”

¹⁶ Further information on what constitutes a registrable offence can be found on the DIAC website - www.immi.gov.au/migrants/family/protection-of-children.htm

¹⁷ Source: ISS Australia (2012) Casework statistics

3. Research findings continued

Case Study 1:

Katie - Formal international kinship care

Katie*, a 5 year old Canadian girl, was living in Canada with her parents until she came to the attention of child protection authorities when her father was incarcerated on drug charges, and her mother passed away shortly after. Katie was without parental care, and as she had no family in Canada to care for her, she was placed in a number of foster care arrangements by the child protection authorities.

Katie's paternal aunt Cassandra in Australia learned of her situation and contacted ISS Australia to enquire about the possibility of bringing Katie to Australia to be in her care. ISS Australia advised Cassandra to initiate the case with ISS Canada, who liaised with the Canadian child protection authorities and referred the case to ISS Australia.

ISS Australia conducted two detailed assessments with Cassandra and her partner Tim, covering their living arrangements, financial situation, motivation to care for Katie and their capacity to care for a child who has experienced trauma. The ISS Australia report recommended that a kinship care placement with Cassandra and Tim was a viable option and in the best interests of the child. This recommendation was supported by the Canadian child protection authorities and the Canadian courts, who transferred parental responsibility to Cassandra, thereby allowing her to apply for an Orphan Relative visa for Katie.

Several months later, the visa was granted and Cassandra and Tim travelled to Canada to bring Katie back to Australia with them. ISS Australia provided support to Katie, Cassandra and Tim during the resettlement process and provided comprehensive updates to Canadian authorities on the progress of the placement.

* Names changed.

Source: : ISS Australia (2012)

Case Study 2:

Richard – Informal international kinship care

Richard* was born in the Democratic Republic of Congo. When he was 8 years old, his village was attacked and his father was killed in conflict. Richard was separated from his mother and two younger siblings, Alphonsine and Emmanuel, when they fled in separate directions. Richard made his way to a refugee camp in Tanzania, where he and other unaccompanied children were cared for by older children and adults of the same ethnic group. 10 years later, at age 18, he was granted a permanent refugee visa under Australia's Humanitarian Program, and arrived on his own in Melbourne in 2009.

Through the Red Cross tracing program, his siblings Alphonsine (now 15) and Emmanuel (now 13) were located in another Tanzanian refugee camp. Richard learned that his mother had died, and that he had a 5 year old half-brother, Espoire. His siblings did not know the whereabouts of Espoire's father. Alphonsine was 7 months pregnant after being raped in the refugee camp.

Richard approached a Migrant Resource Centre for assistance to bring his relatives to Australia. He was assisted to apply for an Orphan Relative visa, and a cousin who had cared for his siblings for several months provided consent for them to migrate. A Congolese community member agreed to be an Assuror when DIAC requested an Assurance of Support for the children.

There was no assessment conducted of Richard's capacity to care for his three young siblings, one of which he had never met, and his sister's new baby. Tanzanian authorities were not involved as the children were not Tanzanian citizens or permanent residents, nor were Congolese authorities involved. After several months, the Orphan Relative visa was granted and the 4 children migrated from Tanzania to Australia to be in Richard's care.

* Names changed.

Source: : Refugee and settlement support service (2012)

3.2 Issues identified

Through field consultations and desk based research, the following issues regarding informal international kinship care arrangements have been identified.

i. Motivations for providing care

According to interviewees, carers are generally motivated by cultural norms of caring, a sense of obligation and the importance of extended family when sponsoring relative children. There is a strong desire to protect the child from harm in their country and to provide them with opportunities for education and employment. Given the prevalence of Orphan Relative children from war and conflict affected countries, it is not surprising that safety is seen by carers as a primary benefit of international kinship care, whether that be safety from conflict and displacement, or safety from abuse or neglect in alternative care settings. Interviewees felt that the Orphan Relative visa provides an opportunity for vulnerable children to live in a safe and secure environment where their basic needs can be met.

The arrival of the child in Australia may be a continuation of support provided by the carer for some time. An interviewee advised that it is very common for Somali-Australian families to financially support orphan relative children in Somalia or in 'host countries' such as Malaysia, Kenya, and Ethiopia, where children are sent for safety, improved communication, infrastructure and education. The Australian relative sends regular financial support to the child and they may pay for a member of the local Somali community in the host country to care for the child. The Australian relative will visit the child once or twice a year if possible. It is not uncommon for the care arrangement in the host country to break down, or for the paid carer to misuse the financial assistance being provided, in which case the Australian carer may then decide to bring the child to Australia to be in their direct care. According to the interviewee, this relocation of the child can also help the whole family in Australia to settle, as it reduces the burden of travelling frequently and negotiating care arrangements with strangers who may exploit the situation.

ii. Vulnerabilities of children and young people

Children arriving on Orphan Relative visas have experienced a range of difficult life events such as neglect or abuse, the death of parents, forms of alternative care in their country and a transition to a new language and culture. Children from war-affected countries may have been subject to violence, discrimination and displacement in addition to the loss of parental care. Interviewees discussed the multiple and complex vulnerabilities of these children, as well as their immense resilience.

It was thought that many children had spent considerable time in different forms of alternative care overseas. With only 4% of Orphan Relative children aged under 5 years, it is plausible that many children have indeed been without parental care for

a large part of their life. One interviewee stated that Orphan Relative children can seem 'lost' and require a lot of nurturing in order to settle. The interviewees knew of cases in which the child had never met the carer prior to migrating to Australia and understandably had difficulties bonding with them.

Orphan Relative children had come to the attention of community service organisations due to neglect, abuse, and homelessness. Older children had a sense of 'owing' their carer for sponsoring them, or feeling pressured to work and send money home to other family members that the carer has had to support. Concerns were raised about the lack of opportunities for social interaction in some communities; for example, it was reported that youth workers have had to arrange to see some Orphan Relative children (mainly girls) at school because their carers won't allow them to be in contact with the service or attend activities. Interviewees speculated that forced labour (of varying degrees) could occur in these situations and highlighted that there are markedly different views across cultures regarding the domestic work of children. An interviewee stated that a client had asked for her assistance to sponsor her partner's young niece from overseas to do the housework, and the interviewee declined to work on the case and explained that such treatment of a child is not acceptable in Australia. The potential for forced and servile child marriage was also raised, given that Orphan Relative children may come from countries or cultures where such practices are accepted¹⁶. Interviewees who had observed the isolation of Orphan Relative children, in particular girls, noted that the lack of visibility of these children could facilitate such practices occurring undetected.

The case study below demonstrates some of the vulnerabilities experienced by children on Orphan Relative visas.

¹⁶ Attorney-General's Department's 'Discussion paper on Forced and Servile Marriage' states: '[t]here is little information regarding the extent of forced and servile marriage in Australia. To date, the Australian Federal Police has received three separate reports of forced and servile marriage in 2010 and there have been two cases heard by the Courts and reported in the media recently (2011, 6).'

3. Research findings continued

Case Study 3:

Hawa- Informal international kinship care

Hawa*, a 16 year old Somali girl, and her two brothers aged 14 and 17 were orphaned due to conflict in Somalia. They received some care from their aunt, a widow who was already struggling to care for her own children and younger orphan relatives. Hawa's grandfather Abdi, who had migrated to Australia as a refugee 15 years ago and had never met her, successfully sponsored Hawa and her brothers on an Orphan Relative visa. Soon after they arrived in Australia, Abdi passed away.

Hawa's uncle felt obliged to take the siblings in and they lived with him in a small flat with his wife and young child. There was conflict between Hawa and her brothers and they physically abused her on several occasions. The brothers soon moved out of the uncle's home and Hawa lost contact with them.

When Hawa turned 16, her uncle asked her to leave the house. As there were no protective orders in place, Hawa was ineligible for foster care. She was unable to secure private rental on her own, and so she was placed in a youth refuge while a migrant and refugee youth organisation assisted her to apply for transitional housing. Hawa was determined to continue attending English language school, however found this increasingly difficult given her homelessness and lack of family support, and ceased attending until her housing situation could be resolved.

* Names changed.

Source: : Migrant and refugee youth organisation (2012)

Colton (2008, 875) states

“There is no basis to the supposition that kin carers are less needy with regard to training and support than other carers...”

(Waterhouse and Brocklesbury, 1999)

iii. Experiences of carers

Colton (2008, 875) states '[t]here is no basis to the supposition that kin carers are less needy with regard to training and support than other carers (Waterhouse and Brocklesby, 1999),' and in fact carers of Orphan Relative children may have additional needs related to their own migration experiences and their settlement stage, which may impact on their capacity to care for a relative child.

Interviewees stated that the carers they knew of were generally female, with children of their own in Australia. Some had a sense of divided loyalty to the children abroad and the children at home, with one interviewee describing a case in which a carer felt her own children had suffered because she spent so much time ensuring the care of the relative children overseas. Some were grandparents, and felt conflicted between their sense of obligation to sponsor the child and their concerns about their age and energy levels. Other carers were quite young, for example an older sibling of a group of younger siblings. According to interviewees, carers have high hopes for the child's education and employment opportunities, and may be disappointed by the child's progress in this area, as they may be unfairly compared with children raised in Australia. In some cultures there was an expectation that the child should demonstrate gratitude and obedience to the carer, and if the child rejects them and their rules, carers are very emotionally affected by the perceived failure of the care arrangement.

Interviewees observed that carers may not be well informed of the obligations they enter into regarding financial support of the child. There were concerns about the impact of an Assurance

of Support (AoS) on some carers, and strains on relationships if a community member agrees to be an Assuror. Several interviewees advocated that any AoS requirement should be removed from the Orphan Relative visa category, as has been done recently for Spouse visas.

iv. Family dynamics

A range of complex issues related to family dynamics was raised by interviewees. It was noted that in some cases, the child had little or no prior relationship with the carer and that the first meeting was on arrival in Australia. In other cases, carers had frequent phone contact and visited the child when possible before migration. The nature of the relationship between the carer and child was seen to be a primary factor in the success of the placement. The child's pre-migration family composition needs to be considered. While the child may be without parental care, they may have been in the care of other family or community members for some time, and the migration will cause a separation from these known carers. The Australian carers may have to break up a unit of children who live together, as they can only sponsor certain relatives under the Orphan Relative visa. For example, an interviewee discussed a case where a carer was financially supporting a group of relative orphans, including nephews, nieces and cousins. Due to the eligibility criteria of the Orphan Relative visa, the carer was only able to bring his nieces and nephews to Australia, leaving the cousins behind.

It was also noted that groups of siblings who migrate together already have their own structure and hierarchy and may not view the carer as a legitimate authority figure. Orphan Relative children may be expected to care for younger children in the house or do more housework than others in return for their sponsorship, which can cause resentment. It was noted that older children often leave the household and assume that a social worker will assist them to get their own house, only to find that this is more difficult than expected. Conflict with the carer's own children can occur. The carer's own children may have been born in Australia and therefore not subject to the same experiences of war and displacement, or the same cultural upbringing, and there may be language barriers between the existing children and the new arrivals.

Lastly, interviewees raised concerns about cases where an Orphan Relative child locates their parent or parents who were missing or thought to be dead. As well as being a complex migration situation, the implications of the parent migrating to Australia or the child returning to their home country can be a source of anxiety and conflict for the carer, the child and the family.

v. Capacity of the child's country

Countries experiencing conflict or suffering from the effects of past conflict may also be affected by high levels of poverty

and limited infrastructure, including lack of a functioning child protection system. Non-citizen children who are displaced in such a country are particularly vulnerable. As evidenced by the common countries of birth of Orphan Relative children, many of these children have refugee-like experiences and their carers may have themselves arrived through the Humanitarian Program (Centre for Multicultural Youth 2011, 14). Consultations for this research indicated that Orphan Relative children and carers from Somalia, Ethiopia, Sudan, South Sudan and Eritrea were known to those in the migrant and refugee sector, and it was noted that the lack of record keeping and documentation in these countries can result in a lower threshold of evidence being accepted regarding the child's situation. One interviewee described a case in which a potential carer sponsored two orphan relatives from Eritrea, who were living with their mother, who was reported to have an unspecified mental illness. A very brief and informal looking doctor's letter was provided to support this and, using this and a signed *Form 1229 Consent to grant an Australian visa to a child under the age of 18 years*, the potential carer was able to demonstrate their parental responsibility for the children and a visa was granted. This is not to suggest that this was not in the best interests of the children, rather it highlights the potential for fairly informal or inadequate evidence to be used to determine significant matters of child welfare and child migration. Without a child protection authority to adequately oversee such cases, the potential carer may be able to demonstrate their parental responsibility with less evidence than would otherwise be accepted.

vi. Carer assessments

As discussed, carer assessments are not part of the Orphan Relative visa application requirements, although authorities in the child's country may request this. An interviewee advised that in one recent case, the Australian Embassy in Kenya (which handles applications for Somali children) requested the sponsor to provide additional information on the size of their house. Beyond this, interviewees knew of no requests for additional information or evidence from carers.

DIAC's lack of requirement for carer assessments is a significant issue of concern. All interviewees agreed that the requirement of a national police check was essential to prevent people known to have committed an offence against a child from sponsoring a child. However it was also agreed that without any further investigation of the carer's suitability, a police check alone is insufficient. It was noted that family violence issues will not be evident through a police check (unless an intervention order was breached), and that this alone constitutes a serious risk to children entering a care situation where they may not personally know their carer, the carer's partner, or other members of the household. An interviewee related her sense of unease about assisting a woman to sponsor her orphan niece from Africa, as the woman had presented on multiple occasions after

3. Research findings continued

experiencing violence from her partner, who had expressed his disapproval of the sponsorship. The partner's national police check was clear and the interviewee believed that a visa was granted in this case.

Interviewees agreed that DIAC should review the current requirements and implement changes to improve the protection of children. Views on how this should occur varied. Some advocated for carer assessments to take place before the child arrives, and that the potential carer should be required to provide evidence of assessment from an accredited professional as part of the visa application process. Others recommended that as long as the carer met the current requirements, an assessment could occur after the child arrives. It was thought that some potential carers of refugee background may not meet the standards of a rigorous carer assessment, for issues that may present less risk of harm to the child (ie. an overcrowded house) than the dangerous situation the child may be living in overseas.

It was suggested that the Orphan Relative visa application process could include an undertaking that the carer will contact a specified community service organisation upon arrival of the child, for an assessment to occur and referrals to be made if required. This could be similar to the DIAC health undertaking required for migrants who have health conditions of concern, such as tuberculosis. The health undertaking is an agreement between the applicant and the Australian Government, in which the applicant is obliged to contact the Health Undertaking Service within four weeks of arrival, attend a medical appointment and follow any course of treatment prescribed.

Regardless of views on whether assessment should occur pre or post placement, interviewees agreed that the assessment should not be as comprehensive as, for example, an adoption case. Rather, it should focus on ensuring firstly that the needs of the child will be met, and secondly on providing the carer with referral information about the supports available to them and the child. A health undertaking type process was seen to be a practical way of ensuring that carers and children received this support in a consistent manner.

vii. Access to services

It is difficult to determine what kind of support Orphan Relative children and their carers are receiving from community service organisations in Victoria, however some preliminary information was obtained from interviewees. While support is available for particular issues, there is no holistic approach to ensure that the best interests of these children are met, and that the carers are equipped to support the child's needs. Interviewees noted that it takes a long time to establish trust and rapport in order to effectively assist such families, and the single focus and time limited nature of available services – ie. housing or English language – means that complex issues may escalate until crisis intervention is required.

English language schools:

Children who arrive on Orphan Relative visas and do not speak English are entitled to attend English language schools, and will move into the mainstream school system when appropriate. Interviewees stated that attending English language school was sometimes the only opportunity for some children to socially interact with others outside the family, and therefore staff from the schools were likely to notice issues first. An interviewee from a migrant and refugee youth organisation said that the organisation had close links to English language schools and received referrals from them in regard to neglect, isolation, homelessness and other issues affecting Orphan Relative children.

Refugee and migrant settlement services:

The DIAC funded Settlement Grants Program provides settlement services to all Humanitarian entrants and some Family/Skilled migrants with low English, for their first 5 years in Australia¹⁹. Carers of Orphan Relative children are often in receipt of settlement services, where they may receive support from caseworkers and non-fee charging migration agents to prepare the visa application and to liaise with DIAC. Interviewees stated that these services are sometimes accessed by the Orphan Relative child, but more frequently by the carer only. Some settlement services have family and youth specific services, however it was not known how widely these are accessed by this group.

One interviewee expressed concerns that the focus on practical settlement tasks could mean that issues related to trauma, kinship care and family dynamics may not be adequately addressed through settlement support services, and that some families would require referral to the DIAC funded Complex Case Support Program, which is designed to assist newly arrived Humanitarian entrants presenting with complex needs that cannot be managed by settlement services²⁰. This program is also limited to those who have been in Australia for less than 5 years, however flexibility may be given in exceptional circumstances. It was noted that the 5 year eligibility period could prevent a number of families who from receiving settlement services or Complex Case Support services, requiring them to seek assistance from other services that may not be experienced in assisting families affected by migration and international kinship care.

Refugee and migrant youth services:

Migrant and refugee-specific youth services predominantly came into contact with Orphan Relative children referred by English language schools, for issues related to homelessness and family conflict. The short term nature of some programs offered meant that long term, holistic engagement with families was not possible and this was seen to be a significant barrier in addressing the underlying complex family issues.

Housing services:

Due to the incidence of homelessness affecting older Orphan Relative children, some housing services are aware of this group. A lack of English language, networks and resources affect the ability of these children to secure private rental on their own. A case was described of four Orphan Relative teenagers who had become homeless due to overcrowding and conflict at their carer’s Office of Housing property. They had been unable to secure private rental due to their low income and lack of rental history, and a housing service was able to place them in transitional housing while they searched for longer term options. The eldest sibling was now the carer for the three younger siblings.

Centrelink and Department of Human Services (DHS):

Older Orphan Relative children experiencing issues with homelessness or family conflict may be in contact with Centrelink regarding obtaining their own social security benefits. If an AoS is in place, any benefits accessed would become a debt for the Assuror. Centrelink has the right to waive an AoS, however the waiver application could require advocacy and assistance from a worker.

In terms of interaction with DHS, this was thought to be limited. Orphan Relative visa holders are not eligible for the DHS Refugee Minor Program as they do not arrive under the Humanitarian Program, although they may essentially have the same background and experiences as a child who is eligible for the program. Interviewees knew of a few cases where Orphan Relative children had come to the attention of DHS for child protection concerns and this has also been relayed to ISS Australia from various state/territory child protection services in recent times.

Kinship care services:

DHS funds community based kinship care services which aim to improve the supports available to children in both formal and informal kinship care arrangements in Victoria. The kinship care services provide information and advice, family support services (for all kinship carers), and intensive support services for the most vulnerable children placed in kinship care as a result of child protection involvement.²¹ There is no comparable government funded service for international kinship care in Victoria. ISS Australia can provide post placement support for international kinship care cases it has handled when funded to do so by the child protection authorities in the child’s country but these cases do not reflect the vast majority of cases of children arriving on Orphan Relative visas.

During this research, three DHS funded kinship care service providers confirmed that although their primary client group was domestic kinship carers, they have had contact with a small number of carers and potential carers of an Orphan Relative child. One kinship care service worked with several potential carers of

UK children, who had contacted the service directly to receive group support and training around child trauma and attachment. Other kinship care services indicated that the carers they knew of were from more newly arrived communities, and had been referred to the service by local family services.

It is likely that carers who go through a formal international kinship care process may be aware of the kinship care services provided by DHS or ISS Australia, due to the more bureaucratic process they must engage in to sponsor an Orphan Relative child. On the other hand, informal international kinship carers may not be aware that such services exist, or that they are eligible for them. Additionally, professionals who come into contact with Orphan Relative children and their carers may not necessarily equate the situation of the family with that of a kinship care family that is eligible for such support.



¹⁹ See DIAC website: www.immi.gov.au/living-in-australia/delivering-assistance/settlement-grants/

²⁰ See DIAC website: www.immi.gov.au/living-in-australia/delivering-assistance/government-programs/settlement-programs/ccs.htm

²¹ See DHS website: www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/kinship-foster-and-other-care/kinship-care

4. Discussion

The findings of this research have raised a number of issues about international kinship care in Australia, namely the experiences of children and carers, their access to services and concerns with the visa requirements. This discussion seeks to situate these issues as matters of child rights, child welfare and cultural competency.

4.1 Child rights perspective

Children who migrate to be cared for by a relative are entitled, naturally, to all the rights enshrined in the UN Convention on the Rights of the Child (1989). However their vulnerable status of being without parental care, being in alternative care, and being a migrant (potentially with refugee experiences) creates a complex socio-legal situation in which their rights may be compromised.

It is imperative that children are treated as a child before being considered a migrant, a refugee or any other classification based on their legal status in a country (Macdonald 2009; Save the Children Australia 2012). Issues related to immigration policy can easily overshadow the fundamental premise that Orphan Relative children are children deprived of parental care, and as such they are entitled to particular attention and care to ensure that they enjoy the same degree of protection as other children (UNICEF 2011, 41). The lack of requirement for potential carers to be assessed for Orphan Relative sponsorships is an obvious example of how this right to protection is being compromised.

There are a number of international protocols and guidelines that make mention of children who require cross-border care, however there are no universally binding legal instruments or standards which govern this specific type of alternative care. The 'Hague Convention on Jurisdiction, Applicable for the Protection of Children' (1996) could serve as the most effective tool in upholding the rights of children in international kinship care, as it calls on States to work together on determining the placement of the child in accordance with best interests principles:

The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children of 1996

Article 33:

- (1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala*²² or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.
- (2) The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

However as there are currently only 39 Contracting States to the Convention, further ratification and accession is required before it can be utilised effectively.²³

The following international guidelines also refer to children without parental care in cross border situations, highlighting that consideration must be given to what specific protections are required by these children:

UN Committee on the Rights of the Child, General Comment No. 6 (2005) Treatment of unaccompanied and separated children outside their country of origin

(c) Care and accommodation arrangements (arts. 20 and 22)

40. Mechanisms established under national law in order to ensure alternative care for such children in accordance with article 22 of the Convention, shall also cover unaccompanied or separated children outside their country of origin. A wide range of options for care and accommodation arrangements exist and are explicitly acknowledged in article 20 (3) as follows: "... inter alia, foster placement, *kafalah* of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children". When selecting from these options, the particular vulnerabilities of such a child, not only having lost connection with his or her family environment, but further finding him or herself outside of his or her country of origin, as well as the child's age and gender, should be taken into account.

– Irrespective of the care arrangements made for unaccompanied or separated children, regular supervision and assessment ought to be maintained by qualified persons in order to ensure the child's physical and psychosocial health, protection against domestic violence or exploitation, and access to educational and vocational skills and opportunities.

The UN Guidelines for the Alternative Care of Children (2010)**VII. Provision of alternative care**

A. Policies

1. Informal care

79. States should devise special and appropriate measures designed to protect children in informal care from abuse, neglect, child labour and all other forms of exploitation, with particular attention to informal care provided by non-relatives, or by relatives previously unknown to the children or living far from the children's habitual place of residence.

VIII. Care provision for children outside their country of habitual residence

A. Placement of a child for care abroad

138. States concerned should ensure that a designated body has responsibility for determining specific standards to be met regarding, in particular, the criteria for selecting carers in the host country and the quality of care, as well as for supervising and monitoring the operation of such schemes.

While these international conventions, principles and guidelines do not provide a binding framework for managing international kinship care arrangements, they identify some of the rights and needs of children without parental care who are outside their home country, regardless of whether the arrangement is statutory or non-statutory. Broadly, there is a consensus that children without parental care who are outside their home country:

- have vulnerabilities due to their particular circumstances
- must have their best interests, personal views, and characteristics considered by relevant States when determining placement options
- must be protected from harm, neglect and exploitation in the placement
- must have opportunities for education and employment
- should be placed with carers who have been appropriately assessed and
- should be placed in care arrangements that are supervised and monitored.

How these principles are upheld in international kinship care depends greatly on the two countries involved – their domestic laws regarding child welfare, parental responsibility and migration, their ratification or recognition of international legal instruments and their practical application through domestic law and policy. It is evident from this research that many children arriving on Orphan Relative visas come from countries that may be ill-equipped to attend to these matters. Rather than accepting this deficit, Australian authorities must consider how to ensure that the rights of children who migrate for kinship care are protected without reliance on the involvement of equivalent authorities in the child's country of residence or origin.

²² Kafala or kafalah refers to Islamic rules governing adoption.

²³ Status Table last updated 03/12/2012, www.hcch.net/index_en.php?act=conventions.status&cid=70

4.2 Child welfare considerations

It is assumed that carers of Orphan Relative children have the best intentions for the child they bring to Australia. As discussed, a driving motivation of carers is to provide the child with safety, stability and the care of family. However with no provision for carer assessments in the visa application process and no guarantee of post placement support, the welfare of already vulnerable children may be at risk and carers who require support may not receive it.

It is concerning that a lack of a serious criminal conviction against the carer is considered a sufficient test of the carer's suitability. Likewise, the criteria on which the best interests of the child are assessed by DIAC are unclear, although the lack of said criminal conviction is mentioned as a factor. These requirements evidently fail to take into account the carer's capacity to provide physical, emotional, psychological and financial support for a child, particularly a child who may have experienced significant grief, loss and trauma overseas. In addition, the Orphan Relative visa application does not provide for the views of the child to be considered, or for an assessment of their physical, social and psychological needs. The views of their current carer, beyond consent being granted for the child to migrate, are also not heard.

Whether these risks to child welfare are resulting in actual harm is difficult to ascertain. The prevalence of Orphan Relative children coming to the attention of child protection authorities is unknown, although ISS Australia has spoken to child protection authorities in several states/territories who report concerns about the number of such children entering the system, and interviewees for this research discussed situations that certainly raise concerns about child welfare. As discussed in the literature review, there is a lack of information in general about the prevalence of CALD children in the child protection system, which in turn makes it difficult to understand the issues affecting particular communities and to formulate effective service delivery

4. Discussion continued

(Kaur 2012). Given that the recent ‘Report of the Protecting Victoria’s Vulnerable Children Inquiry’ (Department of Premier and Cabinet, 2012) acknowledged that there is a need to address issues facing CALD families in the child protection and alternative care system, it is timely to consider that children who migrate for kinship may also be among Victoria’s vulnerable children, and equally deserving of support and protection.

4.3 Cultural competency

Cultural competency can be defined as ‘a set of congruent behaviours, attitudes and policies that come together in a system, agency or among professionals and enable that system, agency or those professionals to work effectively in cross cultural situations’ (Cross et al. 1989 in Ethnic Communities’ Council of Victoria 2006, 2). Cultural competency also entails being aware of one’s own cultural norms and how this influences our engagement with people from other cultures. This is an important consideration in the context of supporting children and families in international kinship care.

Bowie (2004 in Oien 2006, 1105) argues that ‘[i]t is so self-evident to most people in Euro-American society that children should be raised by their “natural” parents that it might come as a surprise to learn that this is not always and everywhere the same’. In some cultures it may be a common occurrence for children to be cared for by someone other than their parent, for a range of reasons, and this may not be viewed as any lesser kind of care. For Australian community service organisations supporting carers and Orphan Relative children, it is imperative to understand their cultural norms of caring for non-biological children in order to provide meaningful and appropriate support.

If assessments of carers and post placement support are to be beneficial, they should be provided by culturally competent professionals who are skilled in navigating the sometimes fraught relationship between Australian norms and laws about children and those of other cultures. Some assessment standards may need to be modified to be relevant to CALD communities; for example, what may be considered an overcrowded home in Anglo-Australian culture is unlikely to be considered that way by CALD families who may have always lived in large family groups. A culturally competent assessment would be able to recognise that a degree of overcrowding is not tantamount to mistreatment. In terms of post placement support, culturally competent parental education could be beneficial, so that views on the rights of children, what constitutes neglect and abuse, and physical discipline can be discussed in the context of Australia’s norms and laws and carers can understand the role of family support services and the child protection system.

The family’s migration experiences, culture, religion and norms of parenting could provide both protective and risk factors for an Orphan Relative child and culturally competent services must be able to assist in a way that protects the rights and welfare of the child while providing support that is consistent with the family’s culture, beliefs and values.

“ In some cultures it may be a common occurrence for children to be cared for by someone other than their parent...”

5. Conclusion

Of the countless children deprived of parental care around the world, a relatively small number have a relative in Australia who is willing to care for them and the Orphan Relative visa provides a way for this international kinship care placement to occur. This research has found that many of these children are from countries affected by, or recovering from, war, conflict and displacement and that carers themselves may have arrived in Australia as a refugee due to such experiences. While these children form a relatively small proportion of Australia's overall migration program, their unique needs and those of their carers require specific attention, understanding and support.

While there is a uniform visa application process requiring certain criteria to be met, the onus to initiate a more comprehensive assessment of the child and carer falls on the child's country. There are critical differences in the capacity of different countries to be involved in this process, and it is a great concern that due to circumstances beyond their control, some children relocate to Australia without an assessment of their best interests and the suitability of their potential carer.

It is possible that the low visibility of these children and carers in the community services sector is due to their comparatively small numbers, and a lack of 'fit' with a broader sector, such as domestic kinship care services or refugee and migrant settlement services. Unfortunately, in some cases it may be the child protection system that is ultimately involved. An opportunity is being missed for skilled, culturally competent kinship care services to support families so that the child can flourish in their new home.

The universal ratification of the 1996 Hague Convention could go some way to addressing the inconsistencies of practice across countries in this area of child welfare and significant improvements in the capacity of conflict affected countries would also need to occur in order for the Convention to be fully operational. Orphan Relative children will continue to arrive in Australia for years to come while these obstacles are addressed. Therefore it is timely to consider what further measures Australian authorities can and should take in the meantime, as a matter of best practice, to ensure that all international kinship care placements in Australia are suitable, sustainable and supported and that the rights and best interests of all children, regardless of their origin, migration status or other factors, are protected and upheld as required by international human rights and other instruments to which Australia is a party.



Of the **countless children deprived** of parental care around the world, a relatively small number have a relative in Australia who is willing to care for them and the Orphan Relative visa provides a way for this international kinship care placement to occur.

6. Recommendations

Drawing on the findings of this research, the following recommendations are offered for consideration by state and federal policy makers, state/territory child protection services and community service organisations:

Recommendation 1:

As a complement to the current DIAC requirements regarding parental responsibility and the best interests of the child, the Orphan Relative visa application should:

- Require a mandatory assessment of the potential carer's suitability by a qualified, culturally competent professional, after the preliminary visa requirements have been met. The child protection authorities in a child's country should fund this assessment. If a child's country lacks a functioning child protection system, it is suggested that an existing DIAC program (for example, Settlement Grants Program or Complex Case Support Program) be extended to fund this assessment.
- Require a signed undertaking, similar to the Health Undertaking, that the carer will contact an appropriate community service organisation upon the child's arrival to facilitate a home visit, follow up support and referrals as required
- Require a professional psychosocial report from the child's country on the needs of the child (where possible) and
- Be exempt from an Assurance of Support.

Recommendation 2:

ISS Australia, in partnership with the ISS international network, should consider forming relationships with relevant international non-government organisations (for example, UNICEF, Red Cross, SOS Children's Villages International, Save the Children) that operate in countries where the ISS network does not have a presence. Such partnerships should seek to facilitate assessments of children who are being sponsored to migrate to Australia on an Orphan Relative visa.

Recommendation 3:

Child protection authorities in all Australian states and territories should maintain data collection on the visa subclass and country of birth of children who come to the attention of the child protection system.

Recommendation 4:

Strong links between kinship care services (including ISS Australia) and the refugee and migrant settlement sector should be developed, to encourage cross referrals and to enhance the support available to Orphan Relative children and their carers.

Recommendation 5:

Further research should be undertaken to better understand the prevalence of Orphan Relative children in the child protection system and the subjective experiences of children and carers in international kinship care in Australia.

The Orphan Relative visa application should:

“Require a mandatory assessment of the potential carer's suitability by a qualified, culturally competent professional, after the preliminary visa requirements have been met.”

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