

Inter country Adoption in Australia

By Damon Martin – NSW Service Coordinator – ISS Australia (NSW Office)

Australian Federation

It is important to begin by explaining the nature of the Australian Federation and how that affects agreements made with overseas countries in relation to adoption.

First of all, Australia is a federation consisting of the Federal Government (i.e. the Australian Government which is based in our capital city, Canberra), it also known as the Commonwealth Government. There are also the governments of the six States (New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania) and the governments of two territories (Australian Capital Territory and Northern Territory). There is legislation at the Federal and State/Territory levels relating to adoption. While the adoption laws in each of the States and Territories are fairly similar, they are not identical.

1. Situation of Intercountry Adoption in Australia

Agreements with Overseas Countries

In the past intercountry adoption programs were established and managed by the various State or Territory Governments. Usually a state like Victoria or New South Wales would then take the lead on being responsible for the management of that program.

Nowadays the Commonwealth Central Authority has now taken on the full responsibility of the management and establishment of Australia's intercountry adoption programs. Therefore the Federal Government enters an agreement with another overseas Government on behalf of itself and each of the State and Territory Governments within Australia. It is important to note that the Commonwealth Central Authority will always consult with the States and Territories prior to establishing any new agreement with an overseas country. Also the States and Territories oversee all operational matters with the overseas program.

If an individual State or Territory has a program with an overseas country that no other States or Territories has, then this is due to an agreement being made in the past between that State and the overseas country being made prior to the Commonwealth Central Authority having full responsibility of the establishment of intercountry adoption programs.

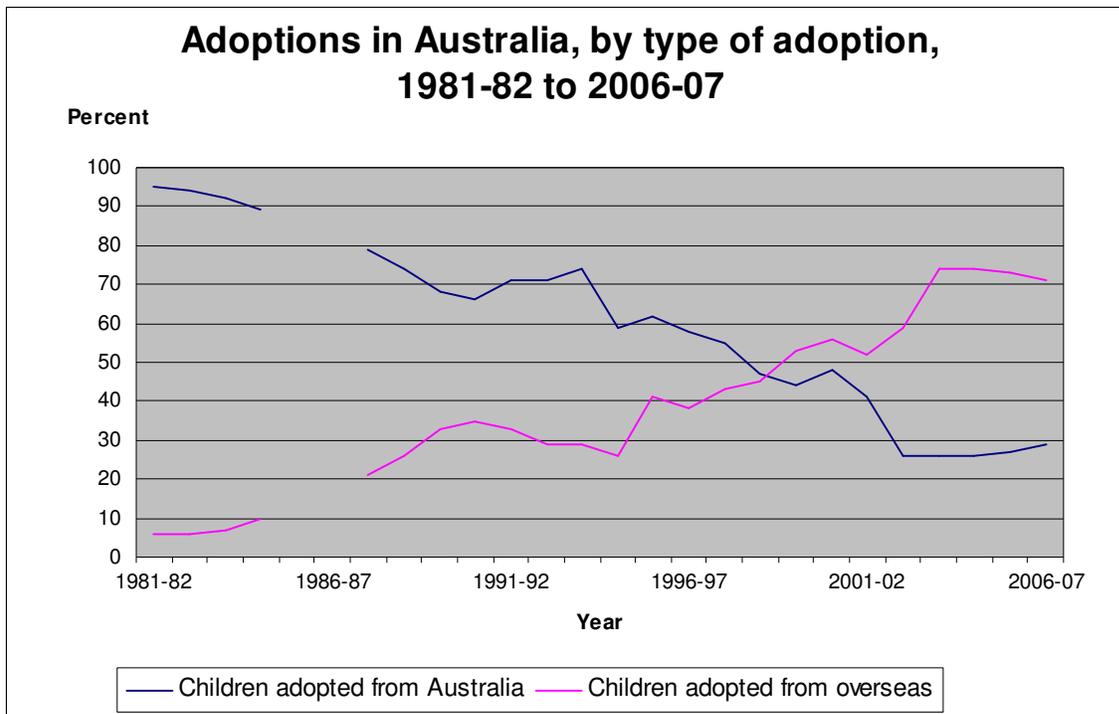
History of Intercountry Adoption in Australia

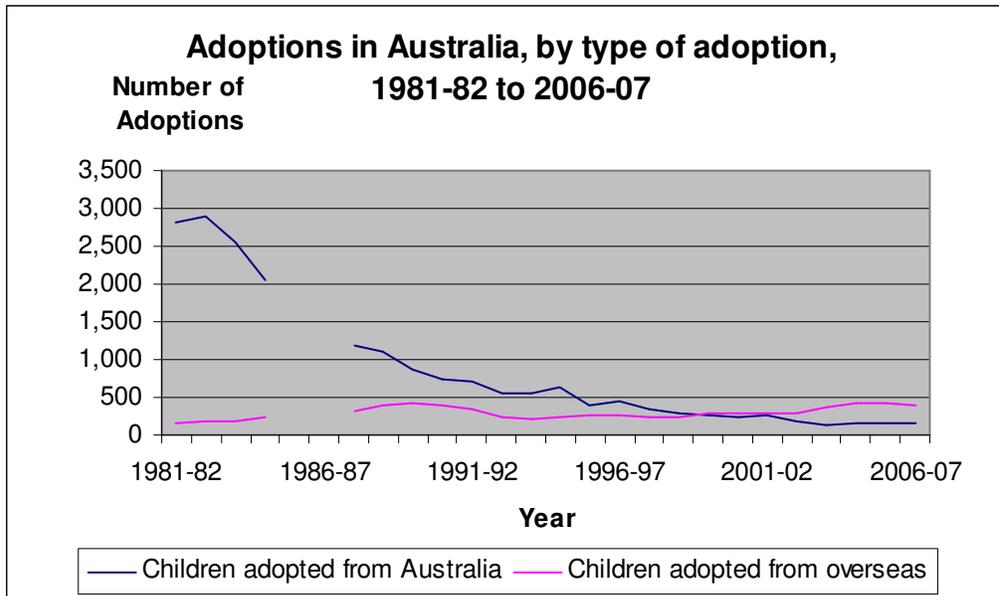
Intercountry adoption programs commenced in Australia in the 1960s as part of a humanitarian response to children of countries afflicted by war, poverty and social and political disruption. At the close of the Vietnam War (1975), the Vietnamese Government agreed to allow a number of infants to leave the country for the purposes of intercountry adoption. Subsequently, 292 children entered Australia as part of 'Operation Babylift'.

Ever since then, intercountry adoption in Australia has become more widely practiced and the number of intercountry adoptions has substantially increased over the past three decades. It is important to acknowledge that while intercountry adoptions have increased since the early 1980's and numbers have remained stable since 2002, local adoptions (i.e. Australian children adopted within Australia) have dropped significantly since the early 1970's and 80's. In fact in the early 1970's the number of local adoptions per annum was over 8,000, compared to average of 150 per annum from 2002 – 2007. The significant decrease is attributed to a number of reasons, some of these are:-

- the increased social acceptance of raising children outside marriage
- the increased levels of support available to lone parents
- the accessibility of contraception and abortion have also impacted in reducing the number of unplanned and unwanted pregnancies

An example of how the trends between local and intercountry adoptions have changed significantly can be seen in the following graphs:-





* Note – there was no intercountry adoption data collected in 1985-86 and 1986-87.

An important milestone for intercountry adoption in Australia came in 1998 when Australia ratified the 1993 Hague Convention on Intercountry Adoption¹, which I will discuss this in more detail later in the presentation.

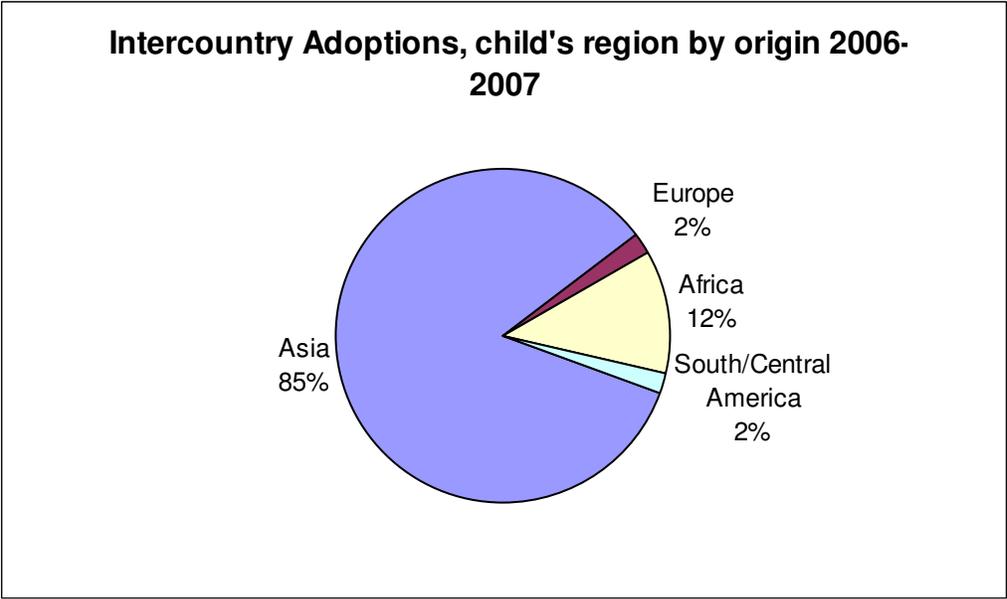
Overseas Countries with which Australia has an intercountry adoption program

405 intercountry adoptions occurred in Australia in the 2006-2007 Financial Year (i.e. 1 July 2006 to 30 June 2007). That represented 71% of all the adoptions in Australia in 2006-2007.

2006-2007 Intercountry adoption numbers had declined slightly from the 2004-2005 and 2005-2006 period. This was due to a decrease in the number of adoptions from Ethiopia and South Korea.

In 2006-2007, 85% of intercountry adoptions in Australia were of children from Asia, and 12% were from Africa. An example of the breakdown of intercountry adoptions, by child's region of origin in 2006-2007 can be seen in the following pie chart:-

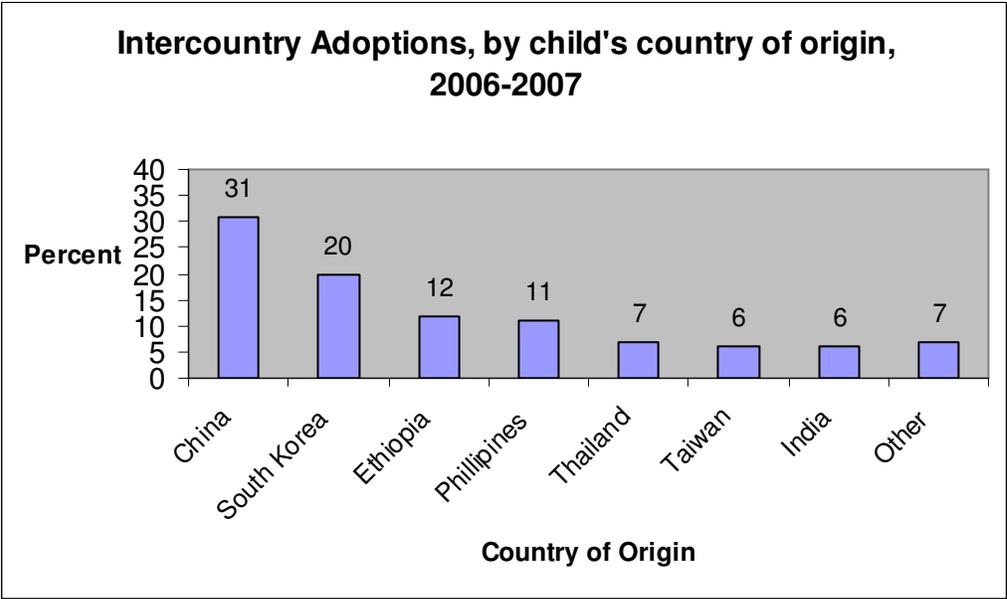
¹ *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*, 1993.



In 2006-2007, intercountry adoptions occurred with children from the following countries;-

- China (31%)
- South Korea (20%)
- Ethiopia (12%)
- Philippines (11%)
- Thailand (7%)
- Taiwan (6%)
- India (6%)
- India (6%)

The following table indicates the percentage of intercountry adoptions, by child's country of origin:-



Of the other 7% of countries in which intercountry adoptions occurred within Australia, the highest proportion were from the following countries:-

- Bolivia
- Columbia
- Guatemala
- Hong Kong
- Lithuania
- Poland
- Sri Lanka

Australia has current open intercountry adoption programs with the following countries:-

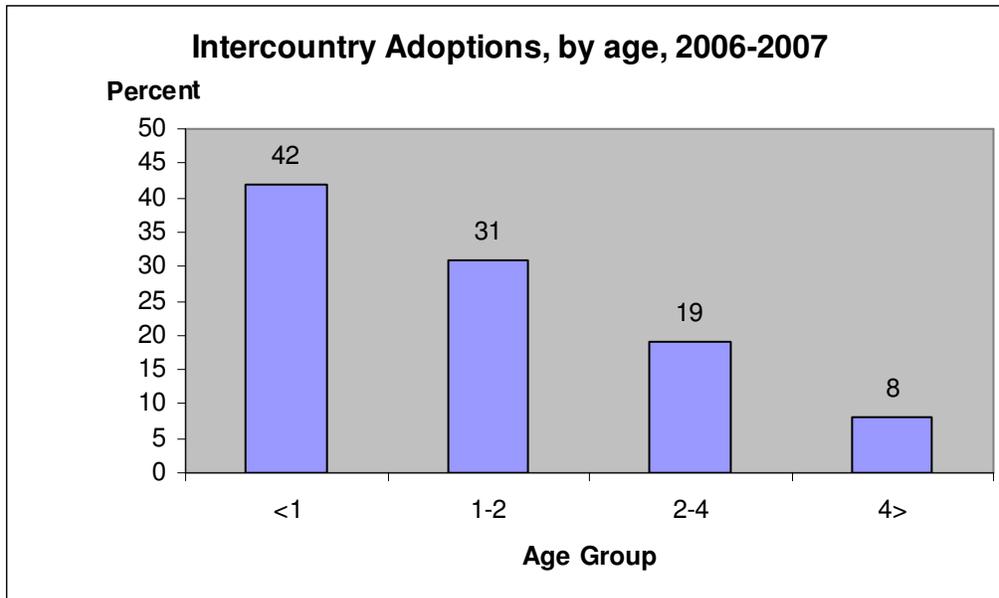
- Bolivia (1993 Hague Convention Contracting State)
- Chile (Contracting State)
- China (Contracting State)
- Colombia (Contracting State)
- Ethiopia (not a Contracting State)
- Fiji (not a Contracting State)
- Hong Kong (Contracting State)
- India (Contracting State)
- Lithuania (Contracting State)
- Philippines (Contracting State)
- South Korea (not a Contracting State)
- Sri Lanka (Contracting State)
- Taiwan (not a Contracting State)
- Thailand (Contracting State)

Historically, Australia has entered into some intercountry adoption programs which have then closed for a number of reasons. Countries with whom adoption programs have closed include Costa Rica, Guatemala, Mexico and Romania.

In 2006-2007, the characteristics of intercountry adopted children in Australia are:-

- 91% of the children were under 5 years old
- 42% of the children were under 1 years old
- 31% of the children were between 1 and 2 years old
- 19% of the children were between the ages of 2 and 4 years old

The following table indicates the percentages of intercountry adoptions by age group:-



A higher proportion of females than males were adopted in 2006-2007:

- 60% Females
- 40% Males

2. Merits of the Ratification of the 1993 Hague Convention

How Australia came to sign and ratify the 1993 Hague Convention

The Australian Government supports and has an interest in the three main Hague Conventions relating to children² as well as various conventions relating to the international recovery of maintenance. Australia also has competent child protection systems in each State and Territory and prides itself on ensuring the best interests of children are met. The principles of the 1993 Hague Convention³ aim to protect children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. The Hague Convention also focuses on the need for countries to work to prevent the abduction, sale, or trafficking of children. These are key principles the Australian Government wanted to support and believed that being a party to the Convention they could continue to improve the safeguards for children in the context of intercountry adoption.

The Australian Government ratified the 1993 Hague Convention on 25 August 1998 and it came into force in Australia on 1 December 1998. It is implemented in Australia through the Family Law Act 1975 (Section 111C) and accompanying regulations called the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998, which detail the roles and responsibilities of the Commonwealth, States, Territories and the processes required for intercountry adoptions between Contracting States.

² 1980 Hague Convention on international child abduction; 1993 Hague Convention on intercountry adoption; 1996 Hague Convention on child protection and parental responsibility.

³ [Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.](#)

To enable ratification, the Commonwealth, States and Territories negotiated the 1998 Commonwealth-State Agreement for the Implementation of the Hague Convention on Intercountry Adoption. The Attorney-General's Department, as the Commonwealth Central Authority under the 1993 Hague Convention, became responsible for ensuring that Australia meets its obligations under the Convention. As adoption was not part of the Commonwealth Government's jurisdiction, the agreement between the Commonwealth and the States and Territories gave the Commonwealth Government the authority to oversee the overseas adoption programs.

Since 1980 the Australian Institute of Health and Welfare has been producing an Annual Report on Australian adoptions from data collected from each State and Territory Department responsible for adoptions. Following the release of the 2003-2004 Annual Report, the House of Representatives Standing Committee on Family and Human Services conducted an inquiry into the adoption of children from overseas.

The Standing Committee's report, [*Overseas Adoption in Australia*](#)⁴, contained 27 recommendations designed to improve the system of intercountry adoption in Australia. A key recommendation of this report was that the Federal Attorney General needed to renegotiate the Commonwealth-State Agreement for the implementation of the Hague Convention on Intercountry Adoption with the States and Territories. The *Commonwealth-State Agreement for the Continued Operation of Australia's Intercountry Adoption Program*⁵ has now been signed by relevant Commonwealth, State and Territory Ministers. This agreement provides an excellent framework for the Commonwealth Government to work in collaboration with the States and Territories to manage and improve intercountry adoption in Australia. It also ensured that both Federal and State/Territory legislation complies with all the obligations of the Hague Convention.

Other recommendations of the Standing Committee's report included creating an Intercountry Adoption Branch of the Attorney-General's Department to manage all Australia's overseas adoption programs, effectively to become the Commonwealth Central Authority. Another was to establish the National Peak Overseas Adoption Support Group which provides a national voice to Government and to ensure that the intercountry adoption community in Australia is well represented.

How did the ratification of the Hague Convention improve the intercountry adoption situation in Australia?

It does so by establishing principles for countries to follow that focus on the need for intercountry adoptions to occur only where it is in the best interests of the child and with respect for his or her fundamental rights. The 1993 Convention also focuses on the need for countries to work to prevent the abduction, sale, or trafficking of children.

The Australian Government believes that being party to the 1993 Hague Convention, it provides a good mechanism to ensure that all adoption programs meet the standards and principles of the Hague Convention. Although Australia has intercountry adoption programs with countries that have not signed or ratified the Hague Convention, the Australian Government and the State and Territory authorities continue to work with these countries (through bi-lateral agreements) to ensure that they continue to meet the standards of the Hague Convention.

For a diagram illustrating the inter-country adoption process in Australia under the Hague Convention, see Appendix 1.

⁴ Available for download at www.aph.gov.au/house/committee/fhs/adoption/report.htm

⁵ Available for download at http://www.ag.gov.au/www/agd/agd.nsf/page/Intercountry_Adoption

3. Enactment of new laws and the changes made in the domestic laws to implement the structure stipulated by the 1993 Hague Convention

In general the Australian Government believed their legislation, both at Federal and State/Territory level mostly reflected and was consistent to the standards and principles of the 1993 Hague Convention. There was however some administrative amendments to be made. Also in order to implement the Hague Convention, the Australian Family Law Act 1975 had to be amended. This resulted in the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998⁶ coming into force.

The key matters covered by the regulations are:

- Designation of Commonwealth and State/Territory Central Authorities
- Roles and responsibilities of Commonwealth and State/Territory Central Authorities
- Court Order and recognition of adoptions between Contracting States
- Accreditation of other bodies by State/Territory Central Authority
- Jurisdiction of courts
- Pro-forma documents relating to inter-country adoption orders

4. Role of Central Authority

Commonwealth Central Authority

As mentioned earlier, Australia is a federation with governments at the Federal and State/Territory levels. For this reason the Australian Government is the principal Central Authority for the Convention. The Australian Central Authority is located in the Commonwealth Attorney-General's Department. Although the Australian Central Authority is not involved in the processing of any individual adoption applications, its key responsibilities are to:

- Provide policy oversight for intercountry adoption in Australia
- Manage existing adoption programs
- Hold responsibility for consideration and establishment of new programs
- Coordinate communication between countries of origin and all Australian Central Authorities
- Hold general responsibility for Australia's obligations under the Hague Convention.

State and Territory Central Authorities

Each State and Territory has a Central Authority located within their Child Welfare Department.⁷ The State and Territory Central Authorities are responsible for:

- Educating and informing prospective adoptive parents about intercountry adoption
- Assessing prospective adoptive parents suitability to adopt a child from a specific overseas country. Please note the following:
 - a) The State or Territory Central Authorities may contract private psychologists or social workers to complete the assessments of prospective adoptors
 - b) The eligibility criteria and assessment processes are generally similar from State to State, however there are some slight differences, for example in Queensland single applicants cannot apply as prospective adoptors.

⁶ Available for download at <http://www.comlaw.gov.au/comlaw/comlaw.nsf/sh/homepage>

⁷ For contact details, see Appendix 2.

- c) Approved adoptive parents can only apply to one country at a time to adopt a child
- Handling the day to day matters relating to adoption applications
- Transmitting files from approved adoptive parents to overseas countries in accordance with Australia's arrangements with that country
- Monitoring progress of individual applications with the relevant agency or body in the overseas country
- Providing post-placement supervision and support (again this may be contracted out to a psychologist or social worker)
- Supporting parents and adoptees (again this may be contracted out to a psychologist or social worker)

Description of the Adoption Process in Australia

Although each State and Territory has their own adoption procedures, they generally follow this process:-

- a) Prospective parents lodge an adoption application with medical reports, referee checks, criminal and child protection checks and identification certificates.
- b) Applicants attend an education program.
- c) A suitability assessment is conducted by a professional social worker or psychologist of the prospective parents.
- d) The assessment is reviewed by the State/Territory Central Authority to determine whether the application can be approved.
- e) An application file is compiled and sent to the chosen overseas Central Authority or adoption agency.
- f) The overseas country matches a child with the prospective adoptive parents.
- g) A placement proposal is sent to the State/Territory Central Authority who inform the prospective adoptive parents.
- h) Prospective adoptive parents attend to visa requirements with the Australian Department of Immigration for the child.
- i) Prospective parents travel to overseas country to take custody of the child and return to Australia (note each country has their own specific requirements as to how long the prospective adoptive parents will need to stay in their country for the transition of the child into their care)
- j) Supervision period begins and continues for approximately one year from the child's arrival in Australia, this involves post-placement visits.
- k) Final adoption order is sought through the relevant State/Territory Court (this is when the adoption order has not been granted overseas).
- l) Parents apply for birth certificate and Australian citizenship for the child.

Adoption Order Procedures

When Intercountry Adoptions occur with children whose country of origin is a Contracting State to the 1993 Hague Convention, then the full Adoption Order can be made in the country of origin and is recognized by Australian Government and Department of Immigration.

For children whose adoption orders are not finalized overseas (whether in a Contracting State or not), the Federal Minister for Immigration and Citizenship assumes guardianship of the child for immigration purposes until an Adoption Order is made. The Federal Minister delegates such guardianship to the relevant State/Territory Minister or department head, thereby allowing for the minister or departmental head to give consent to the adoption so an Adoption Order can be finalized in the relevant State/Territory Court.

Issues related to the Central Authorities

As mentioned earlier, the Commonwealth-State Agreement was formed in 1998 and renegotiated in 2005. The agreement not only provides an excellent framework for the Commonwealth Government to work in collaboration with the States and Territories to manage and improve intercountry adoption in Australia, but also assists in greater harmonization of intercountry adoption laws, fees and assessment practices with all the States and Territories.

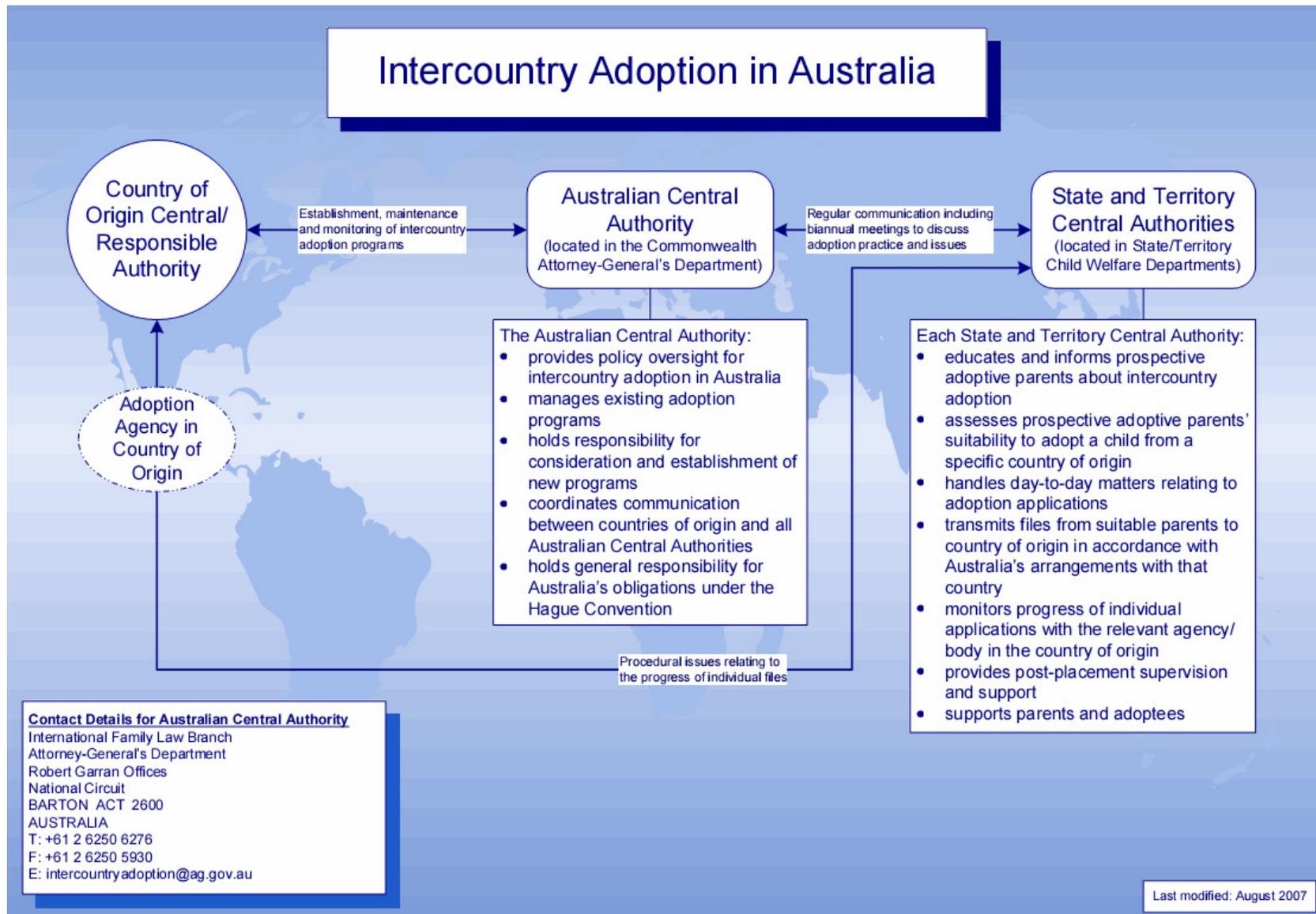
The Australian Central Authority needs to consult and coordinate programs with the 8 different States and Territories, and due to mass geographical size of Australia this in itself does present some challenges. To ensure that consultation and coordination is effective, the Australian Central Authority organizes biannual Central Authorities Meetings. These meetings address issues affecting Australia's intercountry adoption programs and are mandatory for all State and Territory Central Authority Directors. The New Zealand Central Authority is a usual attendee at this meeting as well, due to the uniquely close relationship between Australia and New Zealand.

A Community and Disability Services Ministers Conference are also held once a year in which the Australian Central Authority attends to report on issues relating to intercountry adoption. In attendance are all Australian and New Zealand Ministers with direct responsibility for family, community, disability, youth, children, ageing and social welfare. The conference provides a forum for Ministers across the States and Territories to discuss matters of mutual interest and promote consistent approaches to policy development and program implementation. There is also a Community and Disability Services Ministers Council comprising of the Head (plus one other senior officer) of each of the Federal, State and Territory Governments of Australia and the New Zealand Government Departments with responsibility for community, family, disability, youth, children, ageing and social welfare matters. The Australian Central Authority reports to this council on issues relating to intercountry adoption, and in fact it was a subcommittee of this council that renegotiated the Commonwealth-State Agreement for Intercountry Adoption.

The Director of Intercountry Adoption at the Attorney General's Department (i.e. the Australian Central Authority) speaks on the telephone to all the Directors of the State and Territories Central Authorities, if not on a weekly basis then fortnightly.

5. Issues encountered in the case of intercountry adoption with the non-signing/ratifying countries

When Australia ratified the Hague Convention in 1998 it didn't obligate it to only have intercountry programs with Hague countries. In fact approximately 40% of Australia's intercountry adoptions come from non-contracting States, specifically South Korea, Ethiopia and Taiwan. Due to these countries not being a party to the Hague Convention, the Australian Government ensures that they are proactive in reviewing the bilateral agreements they have with these countries and ensuring that the standards of the Hague Convention are always met.



Appendix 2

Central Authorities in Australia

COMMONWEALTH

Assistant Secretary
Intercountry Adoption Branch
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600
Australia
Tel: +61 2 6250 6276
Fax: +61 2 6250 5930

Contact persons:

- Ms Kathleen Falko
Assistant Secretary
Tel: +61 2 6250 6262
Fax: +61 2 6250 5930
E-mail: kathleen.falko@ag.gov.au
- Mr Chris Collett
Director
Tel: +61 2 6250 6823
Fax: +61 2 6250 5930
E-mail: chris.collett@ag.gov.au
- Ms Samantha Patterson
Principal Legal Officer
Tel: +61 2 6250 6426
Fax: +61 2 6250 5930
E-mail: samantha.patterson@ag.gov.au

NEW SOUTH WALES

Director
Adoption and Permanent Care Services
NSW Department of Community Services
Locked Bag 4028
ASHFIELD NSW 2131
Australia
Tel: +61 2 9716 3000
Fax: +61 2 9716 3001
Web: www.community.nsw.gov.au

Contact persons:

- Mary Griffin
Director
Telephone: +61 2 9716 3458
E-mail: mary.griffin@community.nsw.gov.au
- Suzanne Cavallo
Manager Casework
Tel: +61 2 9716 3407
E-mail: suzanne.cavallo@community.nsw.gov.au

QUEENSLAND

The Manager
Adoption Services Queensland
Department of Child Safety
GPO Box 806
BRISBANE QLD 4001
Australia
Tel: +61 7 3224 7415
Fax: +61 7 3210 0350
Email:
intercountryadopt@childsafty.qld.gov.au
Web: www.childsafty.qld.gov.au/adoption

Contact person:

- Sonja Gilchrist (Manager)
Telephone: +617 3404 3120
E-mail: sonja.gilchrist@childsafty.qld.gov.au

SOUTH AUSTRALIA

The Manager
Adoption and Family Information Service
Department for Families and Communities
GPO Box 292
ADELAIDE SA 5001
Australia
Tel: +61 8 8207 0060
Fax: +61 8 8207 0066
Internet: www.adoptions.sa.gov.au

Contact persons:

- Cynthia Beare
Manager
Tel: +61 8 8207 0060
E-mail: cynthia.beare@dfc.sa.gov.au
- Rod Squires
Director
Tel: +61 8 8124 4300
E-mail: rod.squires@dfc.sa.gov.au

TASMANIA

The Manager
Adoption and Information Service
Department of Health and Human Services
GPO Box 538
HOBART TAS 7001
Australia
Tel: +61 3 6222 7373
Fax: +61 3 6223 1343
E-mail: adoption.services@tas.gov.au
Web: www.dhhs.tas.gov.au

Contact person:

- Una Hobday
Tasmania
Tel: +61 3 6222 7397
E-mail: una.hobday@dhhs.tas.gov.au

VICTORIA

The Manager
Family Records & Intercountry Services
Department of Human Services
PO Box 588, Collins Street West
MELBOURNE VIC 8007
Australia
Tel: +61 3 8608 5700 / 1300 769 926
Fax: +61 3 8608 5770
Web: <http://www.office-for-children.vic.gov.au/intercountry-adoption>

Contact persons:

- Sam Cavarra
Manager
Tel: +61 3 8608 5741 (direct line)
E-mail: sam.cavarra@dhs.vic.gov.au

AUSTRALIAN CAPITAL TERRITORY

The Manager
Adoptions Unit
Office for Children, Youth and Family
Support
Disability, Housing and Community
Services
GPO Box 158
CANBERRA ACT 2601
Australia
Tel: +61 2 6207 1335
Fax: +61 2 6207 8888

Contact persons:

- Jenny Kitchen
Director
Service and Sector Development
Tel: +61 2 6205 5832
E-mail: jenny.kitchen@act.gov.au
- Satnam Singh
Senior Manager
Client Services
Tel: +61 2 6207 6957
E-mail: satnam.singh@act.gov.au

NORTHERN TERRITORY

Senior Manager
Family and Children's Services (FACS) Darwin
Northern Territory Family and Children's Services
PO Box 40596
CASUARINA NT 0811
Australia
Tel: +61 (8) 8922 7460
Fax: +61 (8) 8922 7480
Web:
http://www.nt.gov.au/health/comm_svs/facs/adoption.shtml

Contact persons:

- Jenny Abdilla
Manager Adoption Unit
Tel: +61 8 8922 7046
Fax: +61 8 8922 7480
E-mail: jenny.abdilla@nt.gov.au
- Gary Sherman
Senior Policy Officer
Tel: +61 8 8999 2890
E-mail: gary.sherman@nt.gov.au