



Department for Child Protection

**POLICY
FOR THE ADOPTION OF CHILDREN**

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POLICY STATEMENT

The Department for Child Protection (the Department) is responsible for the provision of adoption services in Western Australia and has obligations under domestic and international law to safeguard and protect children. The Department is committed to working in partnership with birth families, prospective adoptive families, and the range of organisations supporting the adoption community, towards a shared goal of providing families for children who cannot remain with their birth parents or extended family. Information, services and supports are also provided to those affected by past adoptions.

This policy, which provides a framework for service provision, is based upon the principles of the *Adoption Act 1994* (the Act) in which the paramount considerations in the provision of adoption services are –

1. (a) the welfare and best interests of a child;
 (b) the principle that adoption is a service for a child; and
 (c) the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child.
2. It is acknowledged that adoption is not part of Aboriginal or Torres Strait Islander culture and that therefore the adoption of a child who is an Aboriginal person or a Torres Strait Islander should occur only in circumstances where there is no other appropriate alternative for that child, and in accordance with the Aboriginal child placement principles.

The Department recognises that a child's development is best supported by skilled and nurturing parents in a secure environment free from abuse, exploitation, and harm. In a small number of cases when children cannot remain safely with their birth family or kin in the long term, the Department provides a range of out-of-home care options including adoption.

Placement decisions acknowledge that birth family attachments are of primary importance to all children who are unable to live with their family. The Department's policy is to select carers or prospective adoptive families who demonstrate a capacity and willingness to maintain and further the birth family links and cultural heritage of the adopted child in the spirit of open adoption¹ where this is possible and appropriate.

PURPOSE OF THE POLICY

The purpose of this policy is to provide a framework for practice that reflects the principles and provisions of the Act and the Department's obligations under the *Hague Convention on the Protection of Children and Co-operation in Respect to Intercountry Adoption 1995*. The policy also highlights changes in adoption law, policy and practices both nationally and internationally.

LEGISLATIVE MANDATE AND PRINCIPLES

The Department is responsible for the provision of adoption services in Western Australia, and the Department's adoptions unit within Family Information and Adoption Services (FIAS) is the only agency that can arrange an adoption in this state.

The Act is the principal legislation that governs both local and intercountry adoptions and the provision of past adoption services in Western Australia, along with the *Adoption Rules 1995* and the *Adoption Regulations 1995*. The Department also has a mandate to contribute to the care and protection of children and to support young people, families and communities in accordance with the *Children and Community Services Act 2004*.

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

Intercountry adoption occurs under bilateral arrangements and gives effect to *the Hague Convention on the Protection of Children and Co-operation in Respect to Intercountry Adoption*. The Minister for Child Protection is the Western Australian Central Authority for intercountry adoption under the Hague Convention.

Throughout the world, different legislative frameworks exist to govern the adoption of children. Over 190 countries including Australia have ratified their agreement to the *United Nations Convention on the Rights of the Child* and the vast majority of jurisdictions arrange adoptions within a highly regulated framework to ensure that the best interests of children are met. Australia has an obligation under these agreements to ensure that safeguards are established to prevent the abduction, sale, and trafficking of children.

BACKGROUND

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

Current adoption legislation, policy and practices are guided by a substantial body of research on matters relating to child development, attachment, separation, grief and loss and the effects of past adoption practices. This research has shown that many mothers who relinquished their children for adoption spent the rest of their lives wondering what happened to their children and grieving for their loss; adoptive families often lived under the strain of feeling compelled to keep the child's past a secret; and adopted people wanted to know about their original family heritage. Further, it was found that if the adoptee discovered that they were adopted after many years of secrecy, they often felt betrayed, losing their trust in the adoptive parents and their sense of 'belonging' to the family.

In response to this research, the Western Australian *Adoption Act 1994* was formulated to promote open adoption where, ideally, the three main parties to an adoption; the child, the birth parents and adoptive parents are aware of each other's identity and the child remains connected to his or her cultural origins. Open adoption provides for the exchange of information about the development of the child and contact between parties to an adoption. Ideally, open communication about adoption should start at the beginning of the adoption process and continue throughout the adoptee's life, to the extent that this is possible and appropriate.

Another change endorsed by the Act is that relinquishing parents and children, if sufficiently mature, are now involved in decisions about adoptive care. An adoption does not occur unless informed consent is freely given by the child's parents or the Family Court dispenses with the need for consent due to issues of competency or availability. Consents to adoption are only given after sufficient time has elapsed for the parent to reflect following the provision of information and counselling, and not before the child's birth or soon afterwards.

Australia has become an increasingly multicultural society, which means that local children who require adoptive families may come from a variety of different ethnic and cultural backgrounds. It is departmental policy that, wherever possible, a child will be placed into an ethnically and culturally appropriate family. When this is not achievable, a family who can demonstrate that they recognise the importance of respecting and valuing the child's racial and cultural heritage and helping the child maintain a connection to it will be sought.

Recent evidence on early brain development demonstrates the importance of attachment and stability for children's physical health, emotional wellbeing, psychosocial development and learning. Children need specific, consistent and

available parents to provide the love and structure necessary to engender feelings of safety, belonging and wellbeing. Neuroscientific research shows that positive nurturing stimulates the growth of neural pathways in the developing brain, which underpin emotional regulation, cognition, perception, and language.² On the other hand, neglectful care can result in withdrawal or disorganisation. What is important in the context of adoption is that there is evidence that insecure attachments and the negative patterns associated with them can be repaired when positive emotional relationships are formed with other attachment figures. Generally, the younger the child is when placed in a secure and loving environment, the better the outcome.

There has been a steady decline in the number of young babies placed for local adoption in Australia. This has led to a greater interest by people seeking to adopt a baby or child from an overseas country. The Department recognises that adopting children from an overseas country is a legitimate way of providing permanent care for children who cannot be cared for in their country of birth.

ADOPTION OF CHILDREN FROM AN OVERSEAS COUNTRY

In the formulation of the policy on the adoption of children from an overseas country, it is important to acknowledge that the demand to adopt a child is much greater than the number of children available. Because there are large numbers of children in overseas orphanages, there is a widespread belief that they are all available for adoption³. This is not the case. Children may be placed in orphanages and institutions for a number of reasons to do with temporary crisis or hardship within a family; therefore, it the Department's policy to accept that the overseas country's adoption authority has the right to determine if placement in a child's country of origin is possible or whether intercountry adoption is in that child's best interests.

A number of sending countries maintain younger children in institutions awaiting local adoption and, if not adopted, they eventually seek intercountry adoption when the children are older, some with particular difficulties and disabilities⁴. Many countries set a minimum age at which a child may be adopted, particularly internationally, to ensure parents relinquishing their child have the opportunity to reconsider their consent to adoption and continue to care for the child. Where it exists, this age may be as high as seven years⁵. There is evidence that those children who remain in poor quality institutions beyond the age of two years tend to have increased incidence of attachment problems and atypical behaviours such as inattention, impulsivity and quasi-autism⁶. It is the Department's policy to make prospective adopting parents of older children aware of the greater commitment and resources necessary to rear these children⁷.

It is the Department's policy to consider each proposed placement on its own merits. This usually involves consideration of the child's capacity to adjust to and form new attachments as well as the prospective adoptive family's capacity to handle all of the child's care needs. The Department seeks to satisfy itself that there are reasonable prospects for a successful adoption before endorsing that particular placement for a child. If the prospective parents are assessed as not having the capacity to meet the child's needs, the Department may decline to accept the proposed placement. However, most adoptions are successful, which is a tribute to the people who, despite the challenges, choose to adopt from overseas.

² Gillian Schofield and John Simmonds Eds (2009), *The Child Placement Handbook: Research, policy and practice*, British Association for Adoption and Fostering, London, UK

³ Tolfree, D. (1995). *Roofs and Roots: The Care of Separated children in the Developing World*. Arena, Aldershot, UK.

⁴ Tolfree, D. (1995). *Roofs and Roots: The Care of Separated children in the Developing World*. Arena, Aldershot, UK.

⁵ Mr Nigel Cantwell, Senior Project Officer, UNICEF Italy

⁶ Rutter, M., O'Connor, T., Beckett, C., Castle, J., Croft, C., Dunn, J., Groothues, C. and Kreppner, J. (2000). "Recovery and deficit following profound early deprivation" in P. Selman (ed) *Intercountry Adoption: Developments, trends and perspectives*. British Agencies for Adoption and Fostering (BAAF), London, UK. A study of Romanian children adopted to the United Kingdom.

⁷ Hjern, A., Lindblad, F. and Vinnerljung, B. (2002). "Suicide, psychiatric illness, and social maladjustment in intercountry adoptees in Sweden: a cohort study". *The Lancet*, Vol 360, 10 August.

STEP-PARENT AND RELATIVE ADOPTION

In general a child already cared for by a birth parent is not considered to be in need of adoption and this view informs the Department's policy in relation to these adoptions. Usually the child's needs for security, preservation of ties with the non-custodial parent and recognition of the stepparent's legal role can be adequately met through a Family Court Order. Therefore, while a stepparent adoption is possible, the policy of the Department is to encourage stepparents to consider other options such as a parenting order in preference to an Adoption Order. The Family Court makes a determination on whether adoption is preferable to any other order.

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

CARER ADOPTION

Carer adoption is adoption by a person or couple with whom the child has lived and been cared for over at least three consecutive years at the time of applying to adopt. This type of adoption is only considered when the Department has placed the child with the carer(s) or when the Department approves of the placement. As with all the adoptions the policy is to ensure that the adoption is in the child's best interests. To this end a full assessment is undertaken and, in many cases, a child representative is appointed.

ADULT ADOPTION

Adult adoption is the adoption of an adult by a person who was their carer or stepparent immediately before they became 18 years of age. Family Information and Adoption Services have limited involvement in this type of adoption other than providing written and oral information as prescribed by legislation. After all parties have been given information about their rights and responsibilities, the legal processes involved in adoption, and a list of specialised, independent adoption counselling services, all parties are directed to the Family Court.

ABORIGINAL & TORRES STRAIT CHILDREN

The primary principle of the policy on the placement of Aboriginal and Torres Strait Islander children is maintaining family and cultural connections.^{8,9} If there is no appropriate alternative to adoption for a child, the placement of the child is to be considered in the following order of priority:

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

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

⁸ 'Bringing them home' Report. (1997). The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. Sterling Press Pty. Ltd.

⁹ Schedule 2A *Adoption Amendment Act (No 2) 2003*.

POST-PLACEMENT SUPERVISION AND SUPPORT

Post-placement supervision policy prescribes mandatory fixed periods of supervision of children in adoption placements.

The purpose of supervision is to:

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

Maintaining support linkages and identifying and resolving problems early are important to avoid adoption disruption or breakdown. Should an adoption arrangement break down, it is the Department's policy to seek an alternate care arrangement for the child.

PAST ADOPTIONS

In response to research into past adoption practices and the impact of secrecy on child development, attachment, separation, and grief and loss, access to past adoption information has improved, particularly for adopted people and birth parents. The policy and practices in relation to past adoptions are now framed in accordance with the open adoption philosophy embedded in the Act. However, the amount of information about a past adoption can vary depending upon when the adoption occurred, the information recorded at the time, and whether the records still exist.

Past adoption policy and the provision of past adoption services are complex as the Act is wide-ranging and prescriptive in relation to the type of information that can be released and to whom; the provision of support services to parties wanting to make contact and receiving information; the mediation of disputes between parties to an adoption; the provision of a message box service; the collation, preservation and access to documents held on past adoptions; the variation of adoption plans; and the notification of the death of an adoptee or birth parents. There are also sections of the Act that inform policy around access to court records, birth records and adoption agency records.

Two types of information can be obtained by people affected by adoption; identifying and non-identifying information. The type of information provided will depend upon who is applying for the information and whether the adopted child is over 18 years of age or was placed with the adoptive parents before or after 1 January 1995. In order to obtain adoption information, a signed and witnessed application form must be submitted. Proof of identity needs to be shown when the form is signed. Proof of relationship is also required in the case of an application by a relative of a party to an adoption.

Identifying information is information which may identify a person who was part of an adoption. It consists of the adoption court documents from the Family Court of WA (e.g. Consent, Application, and Adoption Order) and the original birth certificate containing the adoption details from the Registry of Birth, Deaths and Marriages. Identifying information may contain the names, addresses, ages or dates of birth and occupations of the people involved in the adoption when it took place.

The Department will also provide copies of a person's own information from any of its adoption files or records. People wishing to access information about other people on the adoption files and records held by the Department, must firstly obtain the written permission of all persons to whom the information relates.

Non-identifying information comes from adoption records and files, provides details about a person who is part of an adoption but does not identify that person. Information may include medical details, a physical description, hobbies or interests, and education.

People affected by adoption can search for and make contact with the other parties to their adoption unless there is a 'Contact Veto' placed against them. They cannot use a friend or anyone else to act on their behalf unless that person is a current contact and mediation licensee in accordance with the Act. Prior to 1 June 2003, parties to an adoption may have registered an information and/or contact veto to prevent the release of the identifying information about the adoption. No new information and/or contact vetoes can be placed after that date. Information vetoes ceased to be effective from 1 June 2005

A person who is part of an adoption can apply for a Court Order from the Family Court of Western Australia to prevent the release of adoption information, if the Court is satisfied that releasing the information is likely to place the applicant, their partner, or children at serious risk.

RELATED POLICIES AND DOCUMENTS

The Australian National Minimum Principles in Adoption 2010 (currently in draft)
Department for Child Protection, Permanency Planning Policy, July 2010
Aboriginal Services Framework

EFFECTIVE DATE

March 2011

REVIEW DATE

March 2012

OWNER

Executive Director, Accommodation & Care Services