



Australian Government
Attorney-General's Department

DONATIONS AND PRE-PLACEMENT CONTACT BY PROSPECTIVE ADOPTIVE PARENTS

EXECUTIVE SUMMARY

This paper outlines the Australian Central Authority's position on donations in the context of intercountry adoption and pre-placement contact and travel prior to the finalisation of the adoption.

Donations

It is fundamentally important that Australia's intercountry adoption programs are Hague compliant and have the necessary safeguards to protect against unethical and illegal practices. Accordingly, payments of monies in the course of intercountry adoption should always be appropriate, transparent, accountable and not for improper purposes.

(a) *Upfront fees for services provided:* Adoptive parents should be confident as to the fees for services which will need to be provided in the course of the intercountry adoption process including application fees, visa and passport fees, legal fees and fees contributing to the care of the child prior to the adoption being finalised.

(b) *Upfront fees for child protection services:* It is appropriate that adoptive parents make contributions for broader child protection services. Contributions should be transparent and accountable.

(c) *Ad hoc donations prior to final adoption order:* Where ad hoc donations are sought in circumstances where adoptive parents feel that the provision of money would be inappropriate or improper, adoptive parents should notify their State or Territory Central Authority as soon as practicable.

(d) *Ad hoc donations after the adoption has been finalised:* Where adoptive parents choose to make ongoing contributions to the orphanage, extended biological family or another overseas body after the adoption has been finalised, they must be conscious of the possible consequences of creating a situation of dependency and raised expectations. They should also be mindful of restrictions on post-adoption donations that may apply in specific country programs (e.g. Ethiopia).

The Australian Central Authority strongly recommends that parents and IASOs exercise judgement and caution when making donations and, if in doubt, contact their relevant Central Authority for advice.

Pre-placement contact

The Hague Convention prohibits contact between prospective adoption parents and a child's biological parents or any other person who has care of the child until all required consents to the adoption have been provided, unless there are specific circumstances. This includes other persons acting on behalf of prospective adoptive parents.



Australian Government

Attorney-General's Department

The Australian Central Authority strongly recommends that prospective adoptive parents do not make contact with or travel to countries of origin (aside from unrelated travel) until the country of origin *and* the relevant State or Territory Central Authority have confirmed that such contact is appropriate.

INTRODUCTION

The *Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption* (the Hague Convention) is centred around the concept of protecting the best interests of the child. The preamble and objects of the Convention specifically state that safeguards must be in place to prevent the abduction, sale of, or the traffic in children.

The Australian Government is committed to legally and ethically sound intercountry adoption programs that protect children and their families.

This paper addresses two primary issues: donations in the course of intercountry adoption and pre-placement contact and travel prior to the finalisation of an adoption. If not addressed, there is a risk that some intercountry adoption processes will not occur in the best interests of the child and result in unintended consequences including the sale or trafficking of children.

The purpose of this paper is to outline the Government's position on these issues and provide families with some best practices given the inherent complexities that arise during the intercountry adoption process.

DONATIONS

There are always costs involved when adopting a child from overseas. Some will be appropriate but others may not.

The Hague Convention expressly prohibits the provision of money for improper purposes in the course of intercountry adoption and states that consents by the required persons, institutions or authorities must not have been induced by payment or compensation of any kind.¹ The Hague Permanent Bureau has developed a Guide to Good Practice to assist countries with the practical implementation of the Convention. The Guide defines 'improper inducement' as any form of compensation or payment used to influence or bring about a decision to relinquish a child for adoption.²

Article 32 provides that no one shall derive improper financial or other gain from an activity related to an intercountry adoption. It goes further to state that only costs and expenses, including reasonable professional fees of a person involved in the adoption, may be charged or paid.

Types of donations

The Guide to Good Practice differentiates between contributions and donations as follows:

¹ *Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption*, Article 4(c)(3)

² Hague Permanent Bureau, Guide to Good Practice, Guide No 1, 2008, paragraph 83



Australian Government
Attorney-General's Department

The term 'contribution' refers to an amount of money that is required by a country of origin when the application for adoption is made. The contribution may be a fixed amount, paid directly to authorities. It is usually a compulsory contribution which is intended to support the development of child protection or adoption services. It is transparent.³

The term 'donation' is used to mean an amount that may be offered by or sought from parents before or after the adoption takes place. It may be offered or sought privately and the amount is not known to others. It may be required in order to 'facilitate' the adoption, is not transparent and recorded and therefore improper.⁴

The types of financial contributions that may be made during the course of intercountry adoption can be categorised in four ways: up front fees for services provided, up front fees for broader child protection services, ad hoc donations prior to the final adoption order and ad hoc donations after the adoption has been finalised. Each of these is discussed below.

Up front fees for services provided

There are generally upfront fees for services provided in the intercountry adoption process in the receiving country and the country of origin. Prospective adoptive parents are generally notified of these fees from the beginning of the process. Such fees may include application fees, visa and passport processing fees, legal costs, care of the specific child prior to the adoption, medical assessments and general administrative fees for services provided. This type of fee recovery is open, transparent and accountable.

The 2005 Special Commission recommended that prospective adoptive parents should be provided in advance with an itemised list of the costs and expenses likely to arise from the adoption process itself.⁵

Up front fees for child protection services

The Guide to Good Practice also examines contributions to support child protection services. The 2000 Special Commission recommended that:

Receiving countries are encouraged to support efforts in countries of origin to improve national child protection services, including programmes for the prevention of abandonment. However, this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, or creates a dependency on income derived from intercountry adoption. In addition, decisions concerning the placement of children for intercountry adoption should not be influenced by levels of payment or contribution. These should have no bearing on

³ Ibid, paragraph 223

⁴ Ibid, paragraph 224

⁵ Conclusions and Recommendations of the second meeting of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, 17-23 September 2005, Recommendation 5 (which reaffirmed Recommendations 7 and 8 of the 2000 Special Commission)



Australian Government

Attorney-General's Department

the possibility of a child being made available, nor the age, health or any characteristic of the child to be adopted.⁶

Some countries, like the Philippines, impose a compulsory donation fee as part of their fee for services. This money goes towards internal childcare fees for orphanages and other care providers. The Guide to Good Practice uses four phrases to define internal childcare and protection systems: child's entry into care, family preservation and reunification, temporary child care or institutionalisation and national adoption.⁷

The Guide to Good Practice lists safeguards that should be put in place to preserve the integrity of the intercountry adoption process when these contributions are made. These include:

- (a) the amount of the contribution should be a fixed amount, publicly known and notified in advance to the prospective adopters;
- (b) the intended use to which the contribution is to be put should be made clear;
- (c) contributions should always be made by a transaction which is recorded and accounted for;
- (d) detailed accounts should be maintained of income derived from contributions of this kind and of the uses to which such income is put;
- (e) contributions (rather than donations) could be given to the Central Authority or other government body instead of individual orphanages;
- (f) the contribution should be used for the national child protection system or adoption system. It should not be used solely for institutions involved in intercountry adoption.⁸

Ad hoc donations prior to final adoption order

On some occasions, adoptive parents have been exposed to pressure to make donations that were not initially envisaged. While there is nothing to prevent parents from making donations, it is important that these donations are made in an appropriate, transparent and accountable way.

The Guide to Good Practice refers to 'unofficial' adoption fees that are demanded to move the required paperwork through the adoption process and that some accredited bodies and approved persons may find that their clients do not receive child assignments without paying incentives to officials or orphanage directors who make placement decisions.⁹

⁶ Conclusions and Recommendations of the second meeting of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, 28 November – 1 December 2000, Recommendation 10.

⁷ Guide to Good Practice, paragraph 252

⁸ Guide to Good Practice, paragraph 243

⁹ Ibid, paragraphs 236 and 237



Australian Government
Attorney-General's Department

The 2000 Special Commission recommended that pre-adoption donations should be prohibited.¹⁰ The Guide to Good Practice makes a number of recommendations for Central Authorities to implement safeguards when it comes to donations:

- donations should not be in cash
- the relevant Central Authorities should be notified, and
- bodies that receive donations should have clear and transparent accounting and reporting mechanisms in place.¹¹

There have been cases where prospective adoptive parents have been asked to make a donation, at times in situations where they are made to feel that the adoption will not be finalised if they refuse. In some situations, parents feel that they have no choice but to submit to the pressure and make the payment. If a prospective adoptive parent encounters such a situation, they are to notify the Central Authority in their own country and the country of origin to ensure that the relevant agency is dealt with promptly and that other parents are not subjected to the same duress.

Ad hoc donations after the adoption has been finalised

This category refers to adoptive parents donating to people and organisations in overseas countries after the adoption occurs. The donation may be to the orphanage where their child lived prior to the adoption and the money is intended to provide for other children's ongoing care. The donation may be made to the extended family of the adopted child to provide support to impoverished communities. While these types of donations are nearly always given with the best of intentions, there are some risks that adoptive parents must be aware of.

The primary risk is that a situation of dependence is created where these orphanages or communities rely on the donations to survive. This, in turn, creates an expectation that all adoptive parents are able to provide substantial financial contributions. This expectation can spiral into a belief that by making a child available for adoption, a source of income can be created for the future. It is imperative that donations do not result in a direct correlation of referrals of children for adoption. This is not in the best interests of the child and creates a real risk of child trafficking.

Parents are asked to be cautious when making such donations and to avoid situations where an income is provided in return for the child.

Some country programs have specific restrictions on donations. For example, in the Ethiopia program, pre- and post-adoptive parents are requested to not make ad hoc donations to program orphanages. This is due to concerns about a possible link being created between referrals of children to the program and donations from Australian families. Parents are asked to be mindful of, and adhere to, any donation guidelines or restrictions that may exist in relation to specific country programs.

¹⁰ Special Commission 2000, Recommendation 9

¹¹ Guide to Good Practice, paragraph 246



Australian Government

Attorney-General's Department

Conclusion

It is fundamentally important that Australia's intercountry adoption programs are Hague compliant and have the necessary safeguards to protect against unethical and illegal practices. It is also important that staff and carers in overseas agencies, and prospective adoptive parents, are protected against allegations of (real or perceived) unethical or illegal practices.

Accordingly, payments of monies in the course of intercountry adoption should always be appropriate, transparent, accountable and not for improper purposes. Prospective adoptive parents should always use their judgement about donations, noting that donations made prior to placement are never appropriate.

Where there is a set, itemised fee for the provision of services in the course of the intercountry adoption process, parents can be confident that this payment is appropriate.

Where there is a request for a contribution or donation for child protection services, parents should use their best judgement to determine whether the fee is appropriate and accountable. If in doubt, prospective adoptive parents should contact their Central Authority for guidance.

Where a donation is sought for a purpose that appears improper, such as expediting an application, ensuring that a child with particular characteristics is allocated or ensuring that an allocation is actually made, parents should politely decline making the donation and report the request to their Central Authority as soon as possible. Making such donations risks the integrity of the intercountry adoption process, risk the cancellation of the allocation due to improper behaviour and puts at risk Australia's reputation as a receiving country. These donations are never in the best interests of the child.

Where contributions are provided to orphanages or a child's birth family after the adoption has been finalised, adoptive parents must be mindful of the requirements of specific country programs, and must be careful not to create a situation of dependence or an expectation that by referring a child for adoption, there will be a steady source of ongoing income.



Australian Government
Attorney-General's Department

PRE-PLACEMENT CONTACT

Pre-placement contact occurs when prospective adoptive parents make contact with the child, the child's carer or authorities involved in the child's adoption, prior to confirmation from the country of origin *and* the relevant State or Territory Central Authority that such contact is appropriate. This also includes travel to the country of origin prior to that confirmation, in the hope that presence in the country will expedite the process. Such contact is concerning for a number of reasons but especially because it opens prospective adoptive parents to the possibility that donations and contributions may be sought in return for expediting the application or that their actions may be seen as inappropriate. It also risks Australia's international standing if its citizens are seen to be applying inappropriate pressure on other country's governments and agencies.¹²

Article 29 of the Hague Convention prohibits contact between prospective adoptive parents and the child's parents or any other person who has care of the child until all required consents to the adoption have been provided.¹³ The Explanatory Report explains that the prohibition contained in Article 29 is intended to prevent circumstances where improper payment or compensation for consents is most likely to occur.¹⁴

The Convention and its extrinsic materials create some uncertainty in the context of pre-placement contact and travel. If read literally, Article 29 does not prohibit contact with the child prior to consent, nor does it prohibit contact with authorities that do not have care of the child (for example Central Authorities rather than orphanages). The Convention and other materials are also silent on exactly when contact may be appropriate – whether it be prior to an allocation being made to eligible parents or prior to the adoption being finalised in the country of origin.¹⁵

The Guide to Good Practice is, however, clear that matching should not be done by the prospective adoptive parents, either by selecting a child in person (for example by visiting an orphanage) or through a photo listing.¹⁶

It is also important to note that Article 4(c)(3) refers to consents being withdrawn and there are occasions where a biological parent may withdraw consent prior to the adoption being finalised in the country of origin. The Explanatory Report notes that the adoption is 'finalised' when the adoption order is made and it is at this time that a biological parent's right to revoke consent can no longer occur.¹⁷ Prospective adoptive parents should be aware that their pre-placement contact may affect or be seen to affect the biological parent's consent.

¹² The Guide to Good Practice clearly states that countries of origin should not be under pressure from prospective adoptive parents to give priority to their request, see paragraph 315.

¹³ The requirements of Articles 4 and 5 of the Hague Convention are that the child is adoptable and placement in the country of origin has been considered; the relevant authorities have provided informed and free consent; the birth mother has consented; and the competent authorities in the receiving State have determined that the prospective adoptive parents are eligible and suited to adopt.

¹⁴ As required by Article 4(c) of the Hague Convention.

¹⁵ Note that in most countries, the final adoption order is a judicial decision.

¹⁶ Guide to Good Practice, paragraph 65.

¹⁷ Explanatory Report to the *Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption*, 31 December 1993, paragraph 149.



Australian Government

Attorney-General's Department

It is strongly recommended that prospective adoptive parents do not make contact with or travel to countries of origin prior to a request from the overseas authority *and* their State or Territory Central Authority that they do so.

Travel

Whilst individuals and families may be travelling for reasons entirely unrelated to the adoption process such as travelling to gain a greater understanding of a country from which they seek to adopt (which is always encouraged), it is important that Australia's intercountry adoption programs maintain the transparency required by the Convention. If individuals and families do travel to a country while they have a current adoption application, it is important that they do not have any kind of contact with people who have care of children that may in turn be placed with an Australian family for intercountry adoption. In some countries it will also be inappropriate to contact the Central Authority so it is always best practice to first seek advice from the relevant State or Territory Central Authority.

Article 29 attempts to restrict the prospective adoptive parents' contact in or travel to the country of origin, before certain safeguards are in place.¹⁸ It is the country of origin's responsibility to provide clear guidelines about when travel may be appropriate. Unfortunately, this is not always the case.

It is strongly recommended that prospective adoptive parents do not travel to the country of origin until the overseas authority *and* the State or Territory Central Authority advises that travel is appropriate. Generally, once the adoption is approved by the relevant country of origin authority, there are immigration requirements that must be met including the provision of a passport and visa so that the child can travel to Australia. The time to obtain these documents varies and sometimes delays occur which could result in parents remaining in the country of origin for longer than intended. It also puts unnecessary pressure on the authority arranging the documents.

What happens where the other country has different rules?

Some countries have different rules when it comes to pre-placement contact and travel. The Guide to Good Practice notes that some countries of origin may want to interview prospective adoptive parents before making a final decision on a proposed match, or require at least one parent to meet with the child after the referral has been proposed.¹⁹ Other countries allow prospective adoptive parents to foster the child in the country of origin for a period prior to the final adoption order being made.

Where the other country has different processes and procedures, it is important for prospective adoptive parents to exercise caution and always consult their Central Authority about the best practice.

¹⁸ Guide to Good Practice, paragraph 433.

¹⁹ Ibid, paragraph 433.



Australian Government
Attorney-General's Department

Conclusion

All contact between prospective adoptive parents and overseas adoption authorities (and persons with care of children) should occur through State or Territory Central Authorities, until such time as families are approved to travel to meet their child. The specific process as to when families are able to travel varies between country programs and if contact is requested by the country of origin, prospective adoptive parents should contact their State or Territory Central Authority for further advice.