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OVERVIEW

There are a number of provisions for adopted children to become Australian citizens. The following table sets out the different adoptions processes and how they relate to the acquisition of citizenship.

STATE AND TERRITORY (BILATERAL) ADOPTION ARRANGEMENTS (STAA)	HAGUE CONVENTION AUSTRALIAN ADOPTION AUTHORITIES ARE USUALLY INVOLVED		OTHER ADOPTIONS
<p>Child arrives in Australia on a subclass 102 Adoption visa, and the adoption is finalised in Australia after a period of supervision.</p> <p>Most new STAA programs are 'simple' adoptions under the Hague Convention. (see Hague Convention – Onshore Simple)</p> <p>There are also legacy bilateral arrangements with "non-Hague" countries. They include Ethiopia, Korea, Taiwan.</p> <p>Australian citizenship is automatically acquired under <i>section 13 Citizenship by adoption</i> when the adoption is finalised under Australian law, if the child is present in Australia as a permanent resident and at least one adoptive parent is an Australian citizen.</p>	<p>Generally Offshore (Full and Permanent)</p> <p>Child is adopted by Australian citizens under the Hague Convention's 'full and permanent' adoption arrangements for Intercountry adoptions. The adoption is finalised overseas with the issue of an "adoption compliance certificate".</p> <p>The adoption is recognised under Australian law. Refer <i>Family Law (Hague Convention on Intercountry Adoption) Regulations 1998</i>. Regulations 16 & 17.</p> <p>Application may be made for Australian citizenship under <i>Subdivision AA – Citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption</i>. Section 19C sets out the application and eligibility requirements.</p>	<p>Onshore (Simple)</p> <p>Some Hague Convention countries (such as India, Philippines, Thailand) do not have 'full and permanent' adoption arrangements (ie, do not issue "adoption compliance certificates").</p> <p>These adoptions are not recognised under Australian law unless and until they have been finalised in Australia.</p> <p>The child requires a visa to enter Australia, usually a subclass 102 Adoption visa.</p> <p>Australian citizenship is automatically acquired under <i>section 13 Citizenship by adoption</i> when the adoption is finalised under Australian law, if the child is present in Australia as a permanent resident, and at least one adoptive parent is an Australian citizen.</p>	<p>EXPATRIATE ADOPTIONS Generally Offshore</p> <p>Child adopted overseas by Australians residing overseas, with no involvement by Australian adoption authorities. These adoptions are not recognised under Australian law.</p> <p>The child requires a visa to enter Australia, usually a subclass 102 Adoption visa.</p> <p>Application may be made for Australian citizenship by conferral (ss21(5)). Policy is that the child hold a permanent visa (usually subclass 102 Adoption Visa).</p> <p>DOMESTIC ADOPTIONS Onshore</p> <p>Child is adopted by Australian citizens resident in Australia with the involvement of Australian adoption authorities and under Australian law.</p> <p>Policy is that the child hold a permanent visa.</p> <p>Australian citizenship is automatically acquired under <i>section 13 Citizenship by adoption</i> when the adoption is finalised under Australian law and the child is present in Australia as a permanent resident..</p>

Automatic Acquisition of Australian Citizenship by adoption

Citizenship by adoption Section 13

“A person is an Australian citizen if the person is:

- (a) adopted under a law in force in a State or Territory; and*
- (b) adopted by a person who is an Australian citizen at the time of the adoption or by 2 persons jointly at least one of whom is an Australian citizen at that time; and*
- (c) present in Australia as a permanent resident at that time.”*

Section 13 is an operation of law provision. Although there is no decision to be made to approve or refuse citizenship, a finding of fact can be made on whether a person satisfies the requirements of Section 13 (see Chapter 9 - Evidence).

The adoption may be a domestic adoption (i.e. child born and adopted in Australia) or an intercountry adoption (i.e. child born outside Australia, but adoption finalised in Australia).

Section 13 would apply in the case of a ***domestic adoption*** where an Australian citizen adopts a permanent resident child. For example, a child born to a temporary resident is made available for adoption, acquires permanent residence, and is adopted by an Australian citizen under a law in force in a State or Territory.

An ***intercountry adoption*** will usually involve a child brought to Australia on an adoption visa. After a period of time, usually 12 months after arrival in Australia, the adoptive parents apply to the relevant State or Territory Court for an adoption order. The date on which an Australian adoption order is made by the Court is the date the child acquires Australian citizenship.

Intercountry adoption arrangements may include arrangements known as ‘bilateral agreements’ or ‘simple’ Hague Convention adoption arrangements.

A 'simple' Hague Convention adoption occurs when a Convention country, although a signatory to the Hague convention, does not issue an "adoption compliance certificate", certifying that the legal ties between an adopted child and their birth parents have been severed. The Convention country agrees that the child is allowed to be moved to Australia where the adoption can be finalised under Australian law. India, Philippines and Thailand are three countries which are known to provide 'simple' adoptions.

Section 13 does not apply to:

- people adopted in Australia before 22 November 1984; (these people may apply for conferral of Australian citizenship);
- children adopted overseas, unless they are also legally adopted in Australia or that adoption is recognised under Australian law;
- children adopted overseas where the overseas adoption is merely validated or recognised in an Australian court.

Guardianship of Adopted Child (until Citizenship or other Significant Event)

Children who enter Australia holding an Adoption visa where the adoption is to be finalised in Australia under a State and Territory (Bilateral) Adoption Arrangements (STAA), or a simple Hague Adoption, are officially under the guardianship of the Minister for Immigration and Citizenship. This guardianship is delegated to State and Territory welfare authorities.

This arrangement is set down in the *Immigration (Guardianship of Children) Act 1946* (the IGOC Act). The IGOC Act provides a framework for State and Territory governments to supervise the adoption process in Australia and ensure that arrangements are in the best interests of the children.

The adoptive parent(s) and the adoption/welfare authorities in the State or Territory in which the family usually resides are advised when a decision is made on the child's permanent visa application as to whether the child falls within these guardianship provisions.

The guardianship arrangements cease to apply once the child obtains Australian citizenship; when the child reaches the age of 18 years; if the child leaves Australia permanently; or when orders are made that the IGOC Act ceases to apply (usually when an Australian adoption order is made for the child).

Acquisition of Australian citizenship by application

Subdivision AA - Citizenship for persons adopted in accordance with the Hague Convention on Intercountry Adoption

Overview – Full and permanent Hague adoption

Citizenship for people adopted in accordance with the Hague Convention on Intercountry Adoption can be referred to as “Citizenship by full and permanent Hague adoption”.

The Hague Convention on Intercountry Adoption commenced operation in Australia on 1 December 1998. Citizenship by full and permanent Hague adoption is therefore only available for children adopted under the Hague Convention on or after 1 December 1998.

Hague Convention adoptions which are considered “full and permanent” means that all legal ties between the adopted child and their birth parents have been severed. An “adoption compliance certificate” issued in accordance with the Hague Convention by the adoption authorities of the other Convention country, usually the child’s birth country, is evidence of a full and permanent adoption. Once the certificate has been issued, the adoption is recognised in Australia under the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (regulations 16 and 17 refer). There is no need for the adoptive parents to seek further recognition of the adoption under Australian law.

Some countries signatory to the Hague convention do not issue an “adoption compliance certificate”. These adoptions are known as ‘simple’ Hague adoptions. Children adopted under these arrangements may automatically become Australian citizens following the completion of the adoption process in Australia. See Chapter 2 – Automatic – citizenship by adoption.

An Australian citizen who resides in, or who is also a citizen of, a Hague Convention country other than Australia, may adopt a child from a third country that is also a signatory to the Hague Convention on Intercountry Adoption. This is known as a “Hague Convention Third Country” adoption. If an “adoption compliance certificate” has been issued and at least one of the Australian citizen adoptive parents has met the residence requirement of this section, the adopted child can apply for Australian citizenship by full and permanent Hague adoption. Otherwise, the adopted child must apply for citizenship by conferral (see below).

Not all Hague Convention signatory countries are involved in full and permanent Hague adoption arrangements. Each member country must have signed up for the arrangements. As at 1 January 2007, the following countries were involved in full and permanent Hague adoptions:

- Bolivia
- Chile
- People’s Republic of China
- Colombia
- Lithuania
- Sri Lanka

It is not necessarily the case that all of these countries had signed on to full and permanent Hague arrangements at the time that Australia became involved in them in 1998. Additionally, not all adoptions from these countries after the sign on date are necessarily full and permanent Hague adoptions.

For example, the People’s Republic of China (PRC) joined full and permanent Hague arrangements on 1 January 2006. Therefore, only children whose dossiers were received by the PRC after 1 January 2006 may be eligible to apply for citizenship by full and permanent Hague adoption. Children adopted from the PRC whose dossiers were received by the PRC prior to 1 January 2006, **or** those adopted to whom an ***adoption compliance***

certificate was not issued (as defined under the Intercountry Adoption Regulations) should apply for citizenship by conferral (subsection 21(5)).

Children adopted by Australian citizens from a country that is not a signatory to the Hague Convention on Intercountry Adoption may apply for citizenship by conferral once they are the holders of a permanent visa.

ELIGIBILITY***Application and eligibility for citizenship Section 19C***

“(1) A person may make an application to the Minister to become an Australian citizen.

Note: Section 46 sets out application requirements (which may include the payment of a fee).

*(2) A person (the **applicant**) is eligible to become an Australian citizen if:*

- a) the applicant is adopted in a Convention country by:

 - i) a person (the **adopter**) who is an Australian citizen at time of the adoption; or*
 - ii) 2 persons jointly, only one of whom (the **adopter**) is an Australian citizen at the time of the adoption; or*
 - iii) 2 persons jointly, both of whom (the **adopters**) are Australian citizens at the time of the adoption; and**
- b) an adoption compliance certificate issued in that country is in force for the adoption and*
- c) under the Intercountry Adoption regulations, the adoption is recognised and effective for the laws of the Commonwealth and each State and Territory; and*
- d) the legal relationship between the applicant and the individuals who were, immediately before the adoption, the applicant’s parents has been terminated; and;*
- e) if subparagraph (a)(i) or (ii) applies and the adopter is an Australian citizen under Subdivision A or this Subdivision at the time of the adoption—the adopter satisfies subsection (3); and*
- f) if subparagraph (a)(iii) applies and each adopter is an Australian citizen under Subdivision A or this Subdivision at the time of the adoption—either or both of the adopters satisfy subsection (3); and*
- g) if the applicant is aged 18 or over at the time the applicant made the application - the Minister is satisfied that the applicant is of good character at the time of the Minister’s decision on the application.*

(3) An adopter satisfies this subsection if the adopter has been present in Australia (except as an unlawful non-citizen) for a total period of at least 2 years at any time before the applicant made the application.

Definitions

(4) *In this section:*

adoption compliance certificate has the same meaning as in the *Intercountry Adoption regulations*.

Convention country has the same meaning as in the *Intercountry Adoption regulations*.

Intercountry Adoption regulations means the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.”

Other requirements are that:

- the decision maker is satisfied of the identity of the person (ss 19D(4) – see Chapter 11 – Personal identifiers);
- the person has not been assessed by ASIO as a risk to national security (ss 19D (5) – see Chapter 12 – National security);
- if the person is stateless and was born in Australia, the person has not been convicted of a national security offence or an offence for which the person has been sentenced to a period of imprisonment of at least five years (ss 19D (6)(a));
- if the person is stateless and was born outside Australia to a parent who was an Australian citizen at the time of the person’s birth, the person has not been convicted of a national security offence (ss 19D(6)(b)).

Policy is that applicants aged 16 years and over and under 18 years also be of good character.

Policy also provides that if the applicant is under 16 years of age a responsible parent must sign the application form. Responsible parent is defined in section 6 of the Act (see Chapter 1 – Preliminary and definitions).

Applicants aged 18 years or over are eligible only if their adoption was agreed to by the adoption authorities of the two Convention countries before the person turned 18 years of age. The age limit is specified in Article 3 of the Hague Convention.

APPLICATION REQUIREMENTS

Application requirements Section 46

“(1) An application under a provision of this Act must:

- (a) be on the relevant form approved by the Minister for the purposes of that provision; and*
- (b) contain the information required by the form; and*
- (c) be accompanied by any other information or documents prescribed by the regulations; and*
- (d) be accompanied by the fee (if any) prescribed by the regulations.*

Children aged under 16

(2A) An application under a provision of this Act by a child aged under 16 must be set out:

- (a) on a form that contains no other application; or*
- (b) on a form that also contains an application by 1 responsible parent of the child.*

Remission, refund or waiver of fees

(3) The regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph (1)(d).”

Applications must be on the form approved by the Minister, contain the information required by the form, be accompanied by any other information prescribed by the regulations and be accompanied by a fee (if any) prescribed by the regulations.

The approved form for applications for citizenship by full and permanent Hague adoption is the Form 1272 “Application for Australian citizenship adopted full and permanent Hague Convention arrangements”.

Policy provides that if an applicant is under 16 years of age a responsible parent is to sign the application form. Responsible parent is defined in section 6 of the Act (see Chapter 1 – Preliminary and definitions).

The application must be made in the current legal name of the applicant. The following documents should support the application:

- the applicant's full birth certificate;
- an *adoption compliance certificate* relating to the adoption of the applicant;
- official evidence of any change of name by the applicant;
- evidence that an adoptive parent was an Australian citizen at the time of the adoption;
- the Australian citizen parent's full birth certificate;
- official evidence of any change of name by the Australian citizen parent.

An original *adoption compliance certificate* MUST be provided before the child can be registered as an Australian by full and permanent Hague adoption:

- An *adoption compliance certificate* is generally issued by the adoption authorities of the other Convention country after the final adoption is made but before the child and the adoptive parents leave the country of origin to travel to Australia. This certificate means that all legal ties between the adopted child and their birth parents have been severed. ***It should indicate when and by which Convention country authorities have agreed that the adoption may proceed*** (that is, it should indicate which Australian "State and Territory Adoption Agency" (STAA) and which origin country agency was involved).

Applications made on behalf of a child under 16 years of age need to be supported by:

- an endorsed passport size photograph of the child;
- the child's passport, if any;
- identification documents for the responsible parent which include a signature, photograph and current address (eg. passport bio page, driving licence and credit card/utilities bill).

Information, documents and fees to accompany applications **Regulation 12**

"(1) For paragraph 46(1)(c) of the Act, if an application for citizenship is accompanied by information or a document or documents that are not originally in English, the information and documents must be

accompanied by certified English translations.

(2) For paragraph 46(1)(d) of the Act, an application of the kind mentioned in an item in Schedule 3 must be accompanied by the fee mentioned in the item.”

Documents not in English must be accompanied by an official translation. In Australia, translations should be done by National Accreditation Authority of Translators and Interpreters (NAATI) accredited translators.

“Fees to accompany applications Schedule 3

(subregulation 12(2))

Item	Application	Fee
3	<i>Applications made at the same time under section 19C by 2 or more siblings</i>	<i>\$110 for the application by the first sibling, and \$85 for the applications made by the second and subsequent siblings</i>
4	<i>An application under section 19C, other than an application mentioned in item 3”</i>	<i>\$110</i>

If two or more siblings make applications at the same time, the fee for the first sibling is \$110 and the fee for second and subsequent siblings is \$85. The fee for all other applications is \$110.

Refund of fees (Act subs 46 (3)) Regulation 13

“(1) The Minister may refund the whole or part of a fee that is payable under sections 16, 19C, 21 and 29 of the Act:

- (a) if a person has previously lodged an application under the same section and a decision on that application has not been made; or*
- (b) if a person has lodged the application as a result of incorrect advice given by the Department; or*
- (c) if a person is an Australian citizen; or*
- (d) if a person has paid an incorrect fee with the original application.*

DECISION MAKING

Minister's decision Section 19D

- “(1) If a person makes an application under section 19C, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.*
- (2) The Minister must not approve the person becoming an Australian citizen unless the person is eligible to become an Australian citizen under subsection 19C(2).*
- (3) The Minister may refuse to approve the person becoming an Australian citizen despite the person being eligible to become an Australian citizen under subsection 19C(2).”*

An application must be approved or refused.

A person must not be approved unless the person is eligible for citizenship under the full and permanent Hague adoption provisions. A person may be refused even if the person is eligible.

Registration Section 19E

“If the Minister approves the person becoming an Australian citizen, the Minister must register the person in the manner prescribed by the regulations.”

If the person is approved to be an Australian citizen by full and permanent Hague adoption their details must be registered in the department's data storage system in accordance with the regulations.

Registration under section 19E of the Act Regulation 6

“For section 19E of the Act, a person’s name is registered by the Minister or an authorised officer:

- (a) making a record of the fact that the person is an Australian citizen by adoption in accordance with the Hague Convention on Intercountry Adoption; and*
- (b) including the record on a data storage system kept by the Department.”*

Day citizenship begins Section 19F

“A person becomes an Australian citizen under this Subdivision on the day on which the Minister approves the person becoming an Australian citizen.”

A person becomes an Australian citizen by full and permanent Hague adoption on the day the application is approved.

Notification of Decision Section 47

“(1) If the Minister makes a decision under this Act in relation to a person, the Minister must give the person notice of the decision.

Child

- (2) If the person is a child, the Minister satisfies the requirement in subsection (1) if the Minister gives a parent of the child notice of the decision.*

Reasons for adverse decision

- (3) If the decision is an adverse decision, the notice must include the reasons for the decision.*

Form of notice

(4) The Minister must give the notice in the manner prescribed by the regulations (which includes electronic form).

Procedural defect does not affect validity of decision

(5) A failure to comply with subsection (3) or (4) does not affect the validity of the decision.”

A person must be given notice of the decision on their application. If the decision is a refusal, the notice must include the reasons for the decision. Policy is that notification include information on any review right.

Review of decisions Section 52

“(1) An application may be made to the Administrative Appeals Tribunal for review of the following decisions:

(aa) a decision under section 19D to refuse to approve a person becoming an Australian citizen; “

A decision to refuse an application to become an Australian citizen by full and permanent Hague adoption can be reviewed by the Administrative Appeals Tribunal (AAT).

Revocation by Minister Section 34

“Citizenship by descent or for persons adopted in accordance with the Hague Convention on Intercountry Adoption

(1) The Minister may, by writing, revoke a person’s Australian citizenship if:

(a) the person is an Australian citizen under Subdivision A or AA of Division 2 (including because of the operation of section 32); and

(b) either of the following apply:

- i) the person has been convicted of an offence against section 50 of this Act, or section 137.1 or 137.2 of the Criminal Code, in relation to the person's application to become an Australian citizen;*
- ii) the person obtained the Minister's approval to become an Australian citizen as a result of third-party fraud within the meaning of subsection (8); and*

(c) the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen."

See Chapter 8 - Cessation.

Acquisition of Australian citizenship by application

Subdivision B - Citizenship by Conferral

Overview – Adoptees

The most common circumstances in which an adopted child applies for citizenship by conferral will be where children have been adopted overseas Australian citizens (expatriate adoptions) under arrangements that do not involve Australian adoption authorities. If the adoption has been arranged outside the Hague Convention arrangements or no adoption compliance certificate has been issued, the adopted child will need to apply for citizenship by conferral.

Citizenship by conferral provisions are set out in Subdivision B-Citizenship by conferral. Subsection 21(5) provides for citizenship for people under the age of 18 years, as follows:

“A person is eligible to become an Australian citizen if the Minister is satisfied that the person is aged under 18 at the time the person made the application.”

Policy is that children should be permanent residents to be eligible for citizenship, or at least hold a permanent visa.

Applications for citizenship by conferral must be on either Form 1290 “*Application for Australian citizenship by conferral – Other Situations*” or Form 1300t “*Application for Australian citizenship by conferral – General Eligibility*”.

For all other details on application requirements and relevant law, policy and procedures please see Chapter 5 on Conferral.