

Short questionnaire

Therefore, States are respectfully requested to provide responses to the following questions which relate to the recognition in one State of a domestic adoption granted in another State:

Name of State:	New Zealand
<u>Information for follow-up purposes</u>	
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A. RECOGNITION IN YOUR STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN OTHER STATES

The law and procedure in your State

1. Please briefly outline the **law** (legislation or other rules) in your State concerning the recognition of a domestic adoption granted previously in another State.

Where the Convention does not apply, an adoption made in an overseas country may be deemed to be an adoption as if it were made in New Zealand so long as it complies with the criteria in section 17 of the Adoption Act 1955 (<http://legislation.govt.nz/act/public/1955/0093/latest/DLM293196.html>). Criteria in that section includes that the adoption is legally valid in the country it was made, that the adoptive parents have superior rights for day-to-day care of the child, and either the adoption was made in a Commonwealth country, the USA or other recognised country, or the adoptive parents have a superior right to any property should the adopted person die intestate.

In particular, please specify whether your State applies different rules to the recognition of domestic adoptions made in certain States or regions and, if so, why.

Section 17 of the Adoption Act 1955 applies different rules to the recognition of domestic adoptions made in a Commonwealth country, the USA or other recognised country (as prescribed by an Order in Council). If the other criteria in section 17 is met, an adoption made in a specified country will be recognised without being required to prove superior property rights.

Where an adoption is made in a country not mentioned in that section, the adoptive parents must prove that the effect of the domestic adoption gives them a superior right to any property should the adopted person die intestate.

2. Please briefly outline the **procedure** which must be followed in your State by persons seeking the recognition of a domestic adoption granted previously in another State.

In cases where the Convention does not apply, section 17 of the Adoption Act 1955 may apply. This section provides that an overseas adoption can be deemed to have the same effect as if it were made in New Zealand if the relevant criteria are complied with (see question 1).

The adoptive parents may apply to have the adoption registered in New Zealand (like New Zealand domestic adoptions) under section 25 of the Births, Deaths, Marriages, and Relationships Registration Act 1995 (BDMRR) (<http://legislation.govt.nz/act/public/1995/0016/latest/DLM359369.html>). Applications are made to the Registrar-General of Births, Deaths and Marriages. The Registrar-General needs to be satisfied that section 17(1) of the Adoption Act 1955 applies, and must be satisfied the particulars provided are correct. The Registrar-General can then direct that the overseas adoption be treated as if it were an adoption order made under the Adoption Act 1955.

However, if overseas documentation does not meet our requirements, or the Registrar-

General declines to register the overseas adoption, the adoptive parents may seek a declaration under the Declaratory Judgments Act 1908 that the adoption order made overseas has the same effect as if made in New Zealand. A declaration made by the court may state that the court is satisfied that the overseas adoption complies with the requirements of section 17 of the Adoption Act 1955. The adoptive parents can then apply to have the adoption registered in New Zealand under section 25 of the BDMRR.

Production of a document that is an original or certified copy of an order or record of adoption is usually sufficient evidence that the adoption was made in accordance with the law of that country (section 17(2A)).

In particular, please specify what legal or administrative steps are required for recognition.

The appropriate application form and documentation must be provided to the Registrar-General of Births, Deaths and Marriages. Documentation includes pre- and post-adoptive birth certificates (if available), and the final adoption order. Under New Zealand law, such an adoption order is, in the absence of any proof to the contrary, sufficient evidence that the adoption was made and that it is legally valid.

If recognition requires a declaratory judgment under the Declaratory Judgments Act 1908 additional evidence may be required.

3. What is the competent authority in your State for such matters?

For registration of adoptions in New Zealand, the Registrar-General of Births, Deaths and Marriages, Department of Internal Affairs is the competent authority.

For declaratory judgments to confirm that an adoption order made overseas has the same effect as if it were made in New Zealand and complies with section 17 of the Adoption Act 1955, the Ministry of Justice is the competent authority.

For intercountry and domestic adoptions, the Ministry of Justice and the Ministry of Social Development are the competent authorities.

Cases which have arisen in your State

4. Has your State been asked to recognise domestic adoptions granted previously in other States? If so:

(a) How many such cases have arisen in the past year?

765

Past three years?

1778

(b) In such cases, why was recognition of the domestic adoption sought?

Recognition of an overseas adoption is often sought for immigration purposes, so that the adoptee can gain New Zealand citizenship by descent where one or both adoptive parents are New Zealand citizens.

The High Court of New Zealand has recognised that "it is not uncommon for a recent immigrant to seek a declaration that s 17(1) applies, generally to guard against any unexpected immigration or citizenship issues that might arise."

(c) What type of document was presented for recognition?

Generally a final adoption order will be presented for recognition. Section 17(2A) of the Adoption Act provides that "the production of a document purporting to be the original or a certified copy of an order or record of adoption made by a court or a judicial or public authority outside New Zealand shall, in the absence of proof to the contrary, be sufficient evidence that the adoption was made and that it is legally valid according to the law of that place".

If a declaratory judgment is required to confirm that the adoption complies with section 17 of the Adoption Act 1955 the record of adoption, as well as any additional documentation, will be required. For example, in one case an adoption order made in Korea was presented, whereas in another a title of deed from Pakistan was presented for recognition. In that case other evidence, in addition to the title of deed, was relied upon to recognise the adoption as there are no official laws on adoption in Pakistan.

- (d) Was recognition permitted?

Recognition was permitted in 715 cases in the last year.

- (e) In cases where recognition was refused, what were the reasons?

Recognition was refused because either the appropriate documentation could not be provided or the effect of the adoption did not meet the requirements of section 17 of the Adoption Act 1955. For example, recognition of an adoption order was refused in one case on the grounds that the deed of adoption made in Ghana was not valid. Therefore the order could not be recognised under the requirements of section 17.

Section 17 cannot be used to recognise an overseas adoption if the Convention applies (see section 17(5) of the Adoption Act 1955). Recognition has been refused in cases where an adoption is within the scope of the Hague Convention on Protection on Intercountry Adoption but the requirements of the Convention have not been complied with (*U (CA38/12) v Attorney General* [2012] NZCA 616, [2013] 2 NZLR 115, [2013] NZFLR 193).

In particular, have there been any cases in which recognition was refused by your State on the basis that jurisdiction had been inappropriately assumed by the foreign authority?

There has been at least one case. In *U (CA38/12) v Attorney General* [2012] NZCA 616, [2013] 2 NZLR 115, [2013] NZFLR 193 it was held that the adoption should have been an inter-country adoption and should have complied with the Convention processes. Instead an adoption order was granted in Indonesia that U then applied to have recognised in New Zealand. Recognition was subsequently refused.

- (f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

In cases where the Convention applied and the Registrar-General, Births, Deaths and Marriages has refused recognition of an adoption, the Ministry of Social Development works with the overseas Central Authority to apply a retrospective application of the Convention. This is generally because there has been no application of the processes of the Convention under Articles 15, 16, 17, or 23. The suitability of the adopters is assessed and a home study report developed, forwarded to the overseas Central Authority and a child study report is sought in order to make a determination under Article 17.

- (g) Has there been any cross-border co-operation / communication between your State and any State(s) which granted the adoption(s) in these cases?

New Zealand has had positive experience of cooperation from other Central Authorities with retrospective application of the Convention. For example with Thailand, Vietnam, the Philippines, Bulgaria, and Georgia.

Outside of the Convention, co-operation and communication has also occurred with (Western) Samoa when adoptions granted in a Samoan court are assessed.

5. In your State's experience, do (some or many) families with an adopted child move to your State without having the child's adoption formally recognised in your State?

We are aware of at least one case where an adoption order was granted by the New Zealand Family Court in favour of the child's step-father two years after they moved to New

Zealand. The child's birth mother had died before the step-father had made an application to adopt the child. An adoption application was made and granted a year after the mother's death.

Does this create any problems for the family?

Some issues may arise for the family but these will be case dependent. Issues could relate to, for example, a child's right to remain in New Zealand, citizenship, or the child's entitlements, e.g. healthcare, schooling.

B. RECOGNITION IN ANOTHER STATE OF DOMESTIC ADOPTIONS GRANTED PREVIOUSLY IN YOUR STATE

The law and procedure in your State

6. In relation to the granting of domestic adoptions in your State:

- (a) Are any special rules or procedures followed when a case involving a domestic adoption has an international element (*e.g.*, it involves a foreign national child and / or foreign national prospective adoptive parents, despite the fact that they are all habitually resident in your State)?

Foreign nationality does not affect the ability to adopt in New Zealand. However, the Family Court has discretion to make an order and may be reluctant to do so where the sole or principal purpose of the application is to gain New Zealand immigration status (see *Re Adoption A1-2/290 (1991) 7 FRNZ 569*).

If an adoption application is lodged directly in the New Zealand Family Court for a foreign national identified child who is not from a contracting State to the Convention, then there is still a requirement to obtain independent information from the child's country of origin. This is to understand the child's background circumstances and need for adoption in New Zealand.

Where there is no government agency to provide a report the Ministry of Social Development will endeavour to obtain a child study report from a non-government organisation that has a women and child welfare focus or through International Social Services.

- (b) What type of document is issued for domestic adoptions granted in your State?

An adoption order is issued by the Family Court.

7. Are there any special rules or procedures which are followed when your State is made aware that another State has been requested to recognise a domestic adoption originating from your State?

When requested by another State for confirmation that a domestic adoption has been finalised in New Zealand the Ministry of Justice can confirm that an adoption order has been made.

Cases which have arisen involving your State

8. Are you aware of situations in which recognition has been sought in other States of domestic adoptions granted in your State?

The Ministry of Social Development is aware of two inquiries seeking confirmation that an adoption of one of the foreign citizen children had been granted in the New Zealand.

If so:

- (a) How many such cases have arisen in the past year of which you are aware?

One

Past three years?

One

- (b) Which competent authorities were addressed in your State? And in the other State(s)?

The Ministry of Social Development in New Zealand and the competent authority in the other country.

- (c) In such cases, why was recognition of the domestic adoption sought?

Recognition was sought so that the child could be granted citizenship in the country of the adopter and to amend birth records in the country of origin of the child.

- (d) Was recognition permitted by the other State(s)?

Not known.

- (e) In cases where recognition was refused, what were the reasons?

Not known.

Have you ever had a case where the grounds upon which your State assumed jurisdiction to grant the domestic adoption were challenged by the foreign State?

Not known.

- (f) Where recognition was refused, what actions, if any, were taken with respect to the status of the child?

Not known.

- (g) Has there been any cross-border co-operation / communication between your State and any State(s) being asked to recognise the adoption in these cases?

Not known.

C. PRACTICAL PROBLEMS REQUIRING ACTION

9. In light of the information you have provided in both sections above, overall, are there, in your State's experience, practical problems in this area that need resolving at the international level?

None identified.