

Schedule 1

[sections 16 (1) (a), 18 (1) (b) and (d), 23 (1) (a) and 69 (1) (a) (i)]

EFFECTIVE CONSENT

1. Information and counselling before consent

A person whose consent is required for a child's adoption must not sign a form of consent to the adoption unless the person —

- (a) has received oral and written information on —
 - (i) the alternatives to adoption;
 - (ii) the community supports available whether or not the child is relinquished for adoption;
 - (iii) the social implications of adoption for the parties to an adoption;
 - (iv) the legal process of adoption, including consent, revocation of consent, the selection procedure, adoption plans, the role of the Court and review and appeals procedures; and
 - (v) the rights and responsibilities of the parties to an adoption including access to information about, or contact with, the other parties to the adoption,in a manner that the person who provides the information or counselling thinks will be understood by the first-mentioned person;
- (b) has been offered counselling on the matters referred to in paragraph (a); and
- (c) if counselling on the matters referred to in paragraph (a) has been requested, has received the counselling.

2. Witnesses

- (1) Subject to subclauses (2) and (3), the signing of a form of consent to adoption is to be witnessed by one of the following persons —
 - (a) a Justice of the Peace;
 - (b) the chief executive officer or deputy chief executive officer of a local government;
 - (c) an Electoral Registrar under the *Electoral Act 1907* or the *Electoral Act 1918* of the Commonwealth;
 - (d) a person engaged under the *Australian Postal Corporation Act 1989* of the Commonwealth to be in charge of an Australia Post office;
 - (e) an officer under the *Public Service Act 1978* or the *Public Service Act 1922* of the Commonwealth;

- (f) a person employed as a member of the teaching staff within the meaning of the *School Education Act 1999* or as a teacher of a non-government school within the meaning of that Act;
 - (g) a lawyer;
 - (h) a medical practitioner;
 - (i) a police officer;
 - (j) a Commissioner for Declarations under the *Declarations and Attestations Act 1913* or the *Statutory Declarations Act 1959* of the Commonwealth;
 - (k) a member of Parliament or a member of the Commonwealth House of Representatives or Senate; or
 - (l) such other persons as are prescribed by regulation.
- (2) A person who provides information or counselling under clause 1 is not to witness the signing of a form of consent by the person who was informed or counselled by the first-mentioned person.
- (3) The signing of a form of consent is not to be witnessed under subclause (1) —
- (a) where a lawyer prepares the form of consent or acts for an applicant for an adoption order in relation to the child who is the subject of the consent, by the lawyer or the lawyer's partner, employee or agent; or
 - (b) where the Director-General is conducting adoption services in relation to the child who is the subject of the consent, by an officer or employee of the Department, or a delegate of the Director-General.

3. Certificate of witness

A person referred to in clause 2 (1) is not to witness the signing of a form of consent to adoption unless the person certifies, in a form approved by the Minister, that he or she has seen affidavit evidence sworn by or on behalf of the person who provided the information or counselling under clause 1 to the effect that the person who has signed the form of consent —

- (a) has been provided with written and oral information on the matters referred to in clause 1 (a);
- (b) has been offered counselling under clause 1 (b); and
- (c) if that counselling under clause 1 (b) has been requested, has received the counselling.

[Schedule 1 amended by No. 14 of 1996 s.4; No. 36 of 1999 s.247.]

Schedule 2

[sections 46 (5), 50 (3) (a), 55 (2), 68 (2) (d) (i), 70 (2) and 76 (4) (b)]

RIGHTS AND RESPONSIBILITIES TO BE BALANCED IN ADOPTION PLANS

1. **Infancy**

- (1) A significant feature of the infancy stage is that the child needs to be able to trust others to care for and nurture the child. The child has the right —
 - (a) to be cared for and nurtured; and
 - (b) to develop attachment to the adoptive family without undue disruption by the birth parents.
- (2) Before consenting to the child's adoption, the child's birth parents have the right to make an informed and unpressured decision about the child's future. After consenting to the child's adoption, the child's birth parents have the right to negotiate as to the provision of information and the extent of any contact between the parties.
- (3) There is no right to adopt a child. The adoptive or prospective adoptive parent with whom the child is placed with a view to the child's adoption has the right to bond to the child.

2. **Childhood**

- (1) A significant feature of the childhood stage is the development of autonomy and initiative. The child has the right —
 - (a) to belong to a secure family system, extending to friends, schooling and neighbourhood activities; and
 - (b) to know about the adoption in a manner appropriate to the child and the child's stage of development.
- (2) The birth parents have a responsibility during this stage to respect the privacy of the child's adoptive family.
- (3) The adoptive parent has the right —
 - (a) to rear the child without undue disruption by the birth parents; and
 - (b) to family privacy,and a responsibility to inform the child of the adoption.

3. **Adolescence**

- (1) A significant feature of adolescence is the development of the child's sense of identity. The child has the right to resolve identity issues and is to be responsible for the effects of his or her actions on others if access to information is made available.

- (2) The birth parents have a responsibility to be aware of the child's needs when responding to requests for information about the child's origins.
- (3) The adoptive parent has the right —
 - (a) to rear the child without undue disruption by the birth parents;
and
 - (b) to family privacy,and has a responsibility to support the child during any identity crisis and be responsive to the child's needs.

4. Adulthood

- (1) A significant feature of adulthood is forming and consolidating relationships. The child's right to information about the birth parents increases in importance as the child approaches adulthood.
- (2) The birth parents' right to information about the child increases in importance as the child approaches adulthood.
- (3) The adoptive parent's right to control the exchange of information and any contact between the child and the birth parents lessens as the child approaches adulthood.

Schedule 2a — Presumptions of Paternity

[section 4A]

Division 1 — General

1. Presumptions of paternity set out in Division 2 apply to children and adoptees

For the purposes of this Act, a man is to be treated as —

- (a) the father of a person who is a prospective adoptee; or
- (b) a birth parent of a person who is an adoptee (whether or not the adoptee is 18 or more years of age),

if the man is presumed to be the person's father because of a presumption of paternity set out in Division 2.

2. Paternity may be proved by other evidence

Nothing in clause 1 prevents a man from being proved to be the father of a child or adoptee even though clause 4, 5, 6 or 8 of Division 2 might not apply to him.

3. Transitional

If —

- (a) a child's father's consent to the adoption of the child is required under this Act;
- (b) before this Act was amended by the *Acts Amendment and Repeal (Family Court) Act 1997*, a man to whom section 4 (3) applied had given effective consent to the adoption; and
- (c) the consent had not been revoked by the day on which the *Acts Amendment and Repeal (Family Court) Act 1997* came into operation,

then the effective consent is to be treated as having been given by a man presumed under this Schedule to be the child's father.

Division 2 — Presumptions of paternity and rebuttal of presumptions

4. Presumptions of paternity arising from marriage

- (1) If a child is born to a woman while she is married then the woman's husband is presumed to be the child's father.
- (2) If —
 - (a) at a particular time —
 - (i) a marriage to which a woman is a party is ended by death; or

- (ii) a purported marriage to which a woman is a party is annulled;

and

- (b) a child is born to the woman within 44 weeks after that time,

then the woman's husband or purported husband is presumed to be the child's father.

- (3) If —

- (a) the parties to a marriage separated at any time;
- (b) after the separation, they resumed cohabitation on one occasion;
- (c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart; and
- (d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the dissolution of the marriage,

then the woman's husband is presumed to be the child's father.

5. Presumption of paternity arising from cohabitation

If —

- (a) a child is born to a woman; and
- (b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she was not married,

then the man is presumed to be the child's father.

6. Presumption of paternity arising from registration of birth

If a man's name is entered as the father of a child in a register of births or parentage information kept under a law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction then the man is presumed to be the child's father.

7. Presumptions of paternity arising from findings of courts

- (1) If —

- (a) during the lifetime of a particular man, a court has —
 - (i) found expressly that the man is the father of a particular child; or
 - (ii) made a finding that it could not have made unless the man was the father of a particular child;

and

- (b) the finding has not been altered, set aside or reversed,

then the man is conclusively presumed to be the child's father.

- (2) If —
- (a) after the death of a particular man, a court has —
 - (i) found expressly that the man was the father of a particular child; or
 - (ii) made a finding that it could not have made unless the man was the father of a particular child;and
 - (b) the finding has not been altered, set aside or reversed,
- then the man is presumed to have been the child's father.
- (3) For the purposes of this clause —
- “court”** means a federal court, a court of a State or a Territory or a court of a prescribed overseas jurisdiction.

8. Presumption of paternity arising from acknowledgments

If a man acknowledges in a statutory declaration that he is the father of a particular child and the mother of the child endorses the acknowledgment in a statutory declaration then the man is presumed to be the child's father.

9. Rebuttal of presumptions etc.

- (1) A presumption arising under this Division is rebuttable by proof on a balance of probabilities.
- (2) Where —
- (a) 2 or more presumptions arising under this Division are relevant in any proceedings under this Act; and
 - (b) those presumptions, or some of those presumptions, conflict with each other and are not rebutted in the proceedings,
- the presumption that appears to the Court to be the more or most likely to be correct prevails.
- (3) This clause does not apply to a presumption arising under clause 7 (1).
- [Schedule 2A inserted by No. 41 of 1997 s.27.]*

Schedule 2B — The Hague Convention

[s. 4(1)]

CONVENTION ON PROTECTION OF CHILDREN AND COOPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions —

CHAPTER I — SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are —

a to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;

b to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

c to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

1 The Convention shall apply where a child habitually resident in one Contracting State (‘the State of origin’) has been, is being, or is to be moved to another Contracting State (‘the receiving State’) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State,

or for the purposes of such an adoption in the receiving State or in the State of origin.

2 The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

CHAPTER II — REQUIREMENTS FOR INTERCOUNTRY
ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin —

- a* have established that the child is adoptable;
- b* have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is the in the child's best interests;
- c* have ensured that
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- d* have ensured, having regard to the age and degree of maturity of the child, that
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the convention shall take place only if the competent authorities of the receiving State —

- a* have determined that the prospective adoptive parents are eligible and suited to adopt;
- b* have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c* have determined that the child is or will be authorised to enter and reside permanently in that State.

CHAPTER III — CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

- 1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
- 2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

- 1 Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
- 2 They shall take directly all appropriate measures to —
 - a* provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
 - b* keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to —

- a* collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

- b* facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- c* promote the development of adoption counselling and post-adoption services in their States;
- d* provide each other with general evaluation reports about experience with intercountry adoption;
- e* reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall —

- a* pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b* be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c* be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

Article 13

The designation of the Central Authorities and where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV — PROCEDURAL REQUIREMENTS IN
INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

1 If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to

undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

2 It shall transmit the report to the Central Authority of the State of origin.

Article 16

1 If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall —

- a* prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- b* give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- c* ensure that consents have been obtained in accordance with Article 4; and
- d* determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

2 It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if —

- a* the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b* the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c* the Central Authorities of both States have agreed that the adoption may proceed; and
- d* it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

1 The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

2 The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

3 If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

1 Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular —

a to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

b in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

c as a last resort, to arrange the return of the child, if his or her interests so require.

2 Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

1 The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or person who —

a meet the requirements of integrity, professional competence, experience and accountability of that State; and

b are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3 A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on

Private International Law informed of the names and addresses of these bodies and persons.

4 Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

5 Notwithstanding any declaration made under paragraph 2, the reports provide for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V — RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

1 An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph *c*, were given.

2 Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

1 The recognition of an adoption includes recognition of

a the legal parent-child relationship between the child and his or her adoptive parents;

b parental responsibility of the adoptive parents for the child;

c the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

2 In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and

in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.

3 The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

Article 27

1 Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect —

- a* if the law of the receiving State so permits; and
- b* if the consent referred to in Article 4, sub-paragraphs *c* and *d*, have been or are given for the purpose of such an adoption.

2 Article 23 applies to the decision converting the adoption.

CHAPTER VI — GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a* to *c*, and Article 5, sub-paragraph *a*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

1 The competent Authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

2 They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

1 No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

2 Only costs and expenses, including reasonable professional fees of person involved in the adoption, may be charged or paid.

3 The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units —

a any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;

c any reference to the competent authorities or to be public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;

d any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of person, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

1 The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII — FINAL CLAUSES

Article 43

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matter dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

2 Thereafter the Convention shall enter into force —

a for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following —

a the signatures, ratifications, acceptances and approvals referred to in Article 43;

b the accessions and objections raised to accessions referred to in Article 44;

c the date on which the Convention enters into force in accordance with Article 46;

d the declarations and designations referred to in Articles 22, 23, 25 and 45;

- e* the agreements referred to in Article 39;
- f* the denunciations referred to in Article 47.

In whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the twenty-ninth day of May 1993 in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

[Schedule 2B inserted by No. 7 of 1999 s.19.]

Schedule 3

[section 144 (2)]

TRANSITIONAL AND SAVINGS

1. Interpretation

In this Schedule —

“**commencement**” means the commencement of Part 3 of this Act;

“**order of adoption**” means an order of adoption within the meaning of and made under the repealed Act —

- (a) subsisting immediately before commencement; or
- (b) made after commencement under clause 4 or 5;

“**repealed Act**” means the *Adoption of Children Act 1896*.

2. Interpretation Act 1984 not affected

The provisions of this Schedule do not prejudice or affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 144 (1).

3. Further savings

Section 8 of the repealed Act continues to apply to the dispositions of property mentioned in section 8 (1) (a) and (b) of the repealed Act and the agreements and instruments mentioned in section 8 (2) of the repealed Act as if the repealed Act had not been repealed.

4. Application for order of adoption

Subject to clause 8, an application for an order of adoption filed before commencement continues to be governed by the repealed Act, despite the repeal of that Act.

5. Child placed with a view to adoption under repealed Act

Subject to clause 8, where immediately before commencement, a child had been placed in a person’s care under the repealed Act for or towards or with a view to the child’s adoption by the person, an application for the child’s adoption continues to be governed by the repealed Act, despite the repeal of that Act.

6. Consent given but child not placed under repealed Act

Where a person has consented to a child’s adoption under the repealed Act, but before commencement the child had not been placed in a person’s care under the repealed Act for or towards or with a view to the child’s adoption, the person’s consent is to be treated as a consent for the purposes of section 18 (1) of this Act but otherwise, the child’s adoption is to be governed by this Act.

7. Waiting lists under repealed Act of prospective adoptive parents

On commencement, a list maintained by the Director-General for the purposes of the repealed Act, and in existence immediately before commencement, of the persons who are candidates for assessment for adoptive parenthood or candidates accepted for assessment, is to be treated as being a register of names under section 44 (1) of this Act.

8. Some provisions of this Act to apply to adoptions under repealed Act

- (1) Subject to clause 9, sections 75 and 77 and Parts 4 to 7 of this Act apply in relation to —

- (a) an order of adoption; and
- (b) a party to an adoption under an order of adoption,

and for the purposes of this Act, an order of adoption is to be treated as an adoption order under this Act, and a party to an adoption under an order of adoption is to be treated as a party to an adoption under this Act.

- (2) A reference in Parts 4 to 7 of this Act to a party to an adoption includes a reference to a father, within the meaning of section 4 (3), of an adoptee under an order of adoption, even where the father's consent to the adoption was not required under the repealed Act.
- (3) Where an order of adoption is made after commencement under clause 4 or 5, section 78 applies to the order of adoption as if it were an adoption order under this Act.

9. Some provisions of this Act as to access to information not apply to adoptions under repealed Act

- (1) Paragraphs (a) and (b) of section 84 (1) do not apply in relation to an adoptee or a birth parent of an adoptee under an order of adoption, and in that case, the following paragraphs apply in substitution for those paragraphs —

“

- (a) the adoptee, if he or she is —
 - (i) 18 or more years of age; or
 - (ii) less than 18 years of age and an adoptive parent or guardian of the adoptee, and each of the adoptee's birth parents who consented to the adoption, consent to the adoptee having access to the information;
- (b) a birth parent of the adoptee, if —
 - (i) the adoptee is 18 or more years of age; or
 - (ii) the adoptee is less than 18 years of age and an adoptive parent or guardian of the adoptee consents to the birth parent having

access to the information, after having due regard to the wishes of the adoptee;

”.

- (1) Paragraph (c) of section 84 (1) does not apply in relation to an adoptive parent under an order of adoption, and in that case, the following paragraph applies in substitution for that paragraph —

“

- (c) an adoptive parent of the adoptee, if —
- (i) the adoptee is 18 or more years of age; or
 - (ii) the adoptee is less than 18 years of age and each of the adoptee’s birth parents who consented to the adoption, consent to the adoptive parent having access to the information; and

”.

- (2) Section 84 (3) does not apply in relation to an adoptive parent under an order of adoption, and in that case, the following subsection applies in substitution for that subsection —

“

- (3) Nothing in subsection (1) prevents an adoptive parent from obtaining a record of the order of adoption.

”.

- (3) Paragraphs (a) and (c) of section 85 (1) do not apply to the original registration under the *Registration of Births, Deaths and Marriages Act 1961* of an adoptee under an order of adoption, and in that case, the following paragraphs apply in substitution for those paragraphs —

“

- (a) the adoptee, if he or she is —
- (i) 18 or more years of age; or
 - (ii) less than 18 years of age and an adoptive parent or guardian of the adoptee, and each of the adoptee’s birth parents who consented to the adoption, consent to the adoptee having access to the information;

”.

and

“

- (c) an adoptive parent of the adoptee, if —
- (i) the adoptee is 18 or more years of age; or
 - (ii) the adoptee is less than 18 years of age and each of the adoptee’s birth parents who

consented to the adoption, consent to the adoptive parent having access to the information.

”.

- (5) Paragraph (b) of section 85 (1) does not apply to —
- (a) the re-registration under section 12A of the repealed Act of the birth of an adoptee under an order of adoption; or
 - (b) the registration under section 13A of the repealed Act of the birth of an adoptee under an order of adoption,

and in those cases, the following paragraph applies in substitution of that paragraph —

“

- (b) a birth parent of the adoptee, if —
 - (i) the adoptee is 18 or more years of age; or
 - (ii) the adoptee is less than 18 years of age and an adoptive parent or guardian of the adoptee consents to the birth parent having access to the information, after having due regard to the wishes of the adoptee; and

”.

- (6) Paragraph (a) of section 88 does not apply to an adoptee under an order of adoption and in that case, the following paragraph applies in substitution for that paragraph —

“

- (a) the adoptee, if he or she is —
 - (i) 18 or more years of age; or
 - (ii) less than 18 years of age and an adoptive parent or guardian of the adoptee consents to the adoptee having access to the information;

”.

- (7) Section 97 does not apply to parties to an adoption under an order of adoption and in that case, the following section applies in substitution for that section —

“

97. (1) A person who is a party to an adoption may lodge with the Director-General a request that the Director-General not give his or her authority under section 82 (2) for another person to have access to information to which that other person would otherwise have been entitled to have access under section 84 (1), 85 (1), 89 or 90 in respect of the party.

- (2) Where a party referred to in subsection (1) —

- (a) is less than 18 years of age; or
- (b) is 18 or more years of age and has a guardian who has been appointed under the *Guardianship and Administration Act 1990* in respect of matters referred to in that subsection,

any request under subsection (1) by or on behalf of the party is to be lodged by the party's guardian, or if there is more than one guardian, all the party's guardians.

”.

- (8) Section 98 (2) does not apply to parties to an adoption under an order of adoption and in that case, the following subsection applies in substitution for that subsection —

“

- (2) A request under section 97 (1) is to be in a form approved by the Director-General and is not to be registered by the Director-General unless —
 - (a) he or she is satisfied as to the identity of the applicant; and
 - (b) the applicant has received counselling on the effect of information vetoes, and the possible benefits of information exchange.

”.

- (9) Section 101 does not apply to parties to an adoption under an order of adoption and in that case, the following section applies in substitution for that section —

“

101. (1) An information veto is of effect —

(a) in the case of a request lodged in respect of the lodging party —

- (i) for the period stated by the person who lodged the request;
- (ii) until the person who lodged the request dies; or
- (iii) until cancelled by the person who lodged the request,

whichever occurs first; and

(b) in the case of a request lodged on behalf of an adoptee before he or she had attained 18 years of age —

- (i) for the period stated by the person or persons who lodged the request;
- (ii) until the adoptee attains 18 years of age;

- (iii) if the adoptee dies before attaining the age of 18 years, until the adoptee dies; or
 - (iv) until cancelled by the person or persons who lodged the request,
- whichever occurs first.

(2) The person or persons who lodged the request may vary the period referred to in paragraphs (a) (i) and (b) (i) of subsection (1).

(3) Where —

- (a) a birth parent requests access to information that would identify an adoptee who is then 18 or more years of age; and
 - (b) an information veto has been requested by an adoptive parent of the adoptee (whether or not the veto still has effect),
- if practicable, the Director-General is to inform the adoptive parent of the birth parent's request.

(4) If —

- (a) the Director-General has informed the adoptive parent under subsection (3); and
- (b) the adoptee has not requested an information veto within 3 months after the day on which the Director-General informed the adoptive parent,

the Director-General is not to give his or her authority under section 82 (2) until he or she has ascertained that the adoptee is aware of the birth parent's request and has had the opportunity of lodging a request for an information veto.

”.

10. Consent not required if person to consent is deceased

A person's consent in relation to access to information under this Act, as affected by clause 9, is required only if the person is living, and lack of consent because of the person being deceased is not to prevent access to the information where it would otherwise be available under this Act.

11. If adoptee incapable of giving consent

If an adoptee's consent for access to information is required by this Act, as affected by clause 9, but the adoptee is mentally incapable of understanding the nature and effect of the consent required, the consent may be given by the adoptee's guardian appointed under the *Guardianship and Administration Act 1990*, or if such a guardian has not been appointed and where relevant, the adoptee's parent or guardian.

12. If adoptive or birth parents incapable of giving consent

If the consent of an adoptive or birth parent is required by this Act, as affected by clause 9, for another person's access to information but the adoptive or birth parent is mentally incapable of understanding the nature and effect of the consent required, in that case the consent of the adoptive or birth parent to the access to the information is not required.

13. Adoptee under 18 who cannot obtain all required consents

- (1) Where an adoptee under an order of adoption is less than 18 years of age and wishes to have access to information which requires the consent of a person who has not given consent under section 84, 85 or 88 as affected by clause 9 the adoptee may apply to the Director-General to give his or her authority under section 82 (2) for the adoptee to have access to the information.
- (2) On an application under subclause (1) the Director-General may give his or her authority for the adoptee to have access to the information if the Director-General is satisfied that —
 - (a) an adoptive parent or guardian of the adoptee is unreasonably withholding consent, or cannot be found or contacted after reasonable enquiries; or
 - (b) there has been a breakdown in the adoption relationship and attempts to resolve the matter have not been successful,

and the adoptee is mature enough to receive the information.

14. Record of Court proceedings under repealed Act

A reference in this Act to the record of proceedings in a court, includes a reference, where the proceedings were under the repealed Act, to the record kept by the registrar of the Court, whether the proceedings were in the Court or the Supreme Court and whether before or after commencement, and includes a certified copy or a memorandum of an order of adoption mentioned in section 13A (2) of the repealed Act.

15. Original and re-registrations of birth under repealed Act

A reference in this Act to the registration of the birth of an adoptee under an order of adoption, includes a reference, where the order of adoption was made before commencement, unless the contrary intention appears, to —

- (a) the registration of the adoptee's birth under the *Registration of Births, Deaths and Marriages Act 1961*;
- (b) the re-registration of the adoptee's birth under section 12A of the repealed Act; or
- (c) the registration of the adoptee's birth under section 13A of the repealed Act,

or more than one of those, as is relevant to the individual case.

Schedule 4

[section 145]

CONSEQUENTIAL AMENDMENTS

1. *Constitution Acts Amendment Act 1899* Part 3 of Schedule V is amended by inserting after the item relating to the Aboriginal Cultural Material Committee, the following —
“ Any adoption applications committee appointed under the *Adoption Act 1994*. ”.
2. *Parliamentary Commissioner Act 1971* The Schedule is amended by inserting after the item relating to the *Abattoirs Act 1909*, the following —
“ Any adoption applications committee appointed by the Director-General under the *Adoption Act 1994*. ”
3. *Registration of Births, Deaths and Marriages Act 1961* Section 68 is repealed and the following section is substituted —
“ 68. **Entries as to registration of births of adopted persons**
(1) Where the Registrar General is required under section 78 (2) or (4) of the *Adoption Act 1994* to endorse a registration of birth or to register a birth and endorse the registration, the endorsement or registration and endorsement (as the case may be) shall be made in a manner and form approved by the Registrar General.
(2) Where the Registrar General is required under section 86 of the *Adoption Act 1994* to issue a certified copy of that portion of the registration of an adoptee’s birth that does not refer to the adoptee’s adoption or birth parents, the certified copy shall be in a form approved by the Registrar General.
(3) The Registrar General shall amend the index of the register kept in the Registrar General’s office and is to cause the index of the register kept in the office of the district registrar to be amended, so as to refer to any endorsement or registration and endorsement effected under section 78 (2) or (4) of the *Adoption Act 1994*. ”.
4. *Spent Convictions Act 1988* Schedule 3 is amended in the table to clause 2 (1) —
(a) by inserting in the first column, the following item —
“ 7. A person applying under section 38 (1) of the *Adoption Act 1994* to be assessed for suitability for adoptive parenthood ”;
and
(b) by inserting in the second column in a position that corresponds to the item inserted

under paragraph (a), the following —

“ Division 4 ”.

5. *Child Welfare Act 1947* Section 47D is repealed.