



Western Australia

Adoption Amendment Act 1999

No. 7 of 1999

An Act to amend the *Adoption Act 1994* to provide for the recognition of adoptions under bilateral arrangements and to give effect to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

[Assented to 13 April 1999]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Adoption Amendment Act 1999*.

2. Commencement

- (1) Part 2 of this Act comes into operation on the day on which the Act receives the Royal Assent.
- (2) Part 3 of this Act comes into operation on such day, not being earlier than the day on which the Hague Convention enters into force in respect of Australia or the day referred to in subsection (1), as is fixed by proclamation.

3. The Act amended

The amendments in this Act are to the *Adoption Act 1994**.

[* *Act No. 9 of 1994*.

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 4.]

Part 2 — Bilateral arrangements

4. Section 4 amended

Section 4(1) is amended by inserting, in the appropriate alphabetical positions, the following definitions —

“

“adoption authority” means a person, body or office in an overseas jurisdiction responsible for approving the adoption of children;

“adoption certificate”, in relation to an adoption, means a certificate or other document issued by an adoption authority in the overseas jurisdiction in which the child to whom the certificate relates was habitually resident before being adopted, stating that —

- (a) the adoption took place in accordance with the laws of that overseas jurisdiction; and
- (b) the Director-General, or a person or a delegate of a person whose functions in another State or a Territory correspond with those of the Director-General under this Act, agreed that the adoption may proceed;

“overseas jurisdiction” means a country prescribed as an overseas jurisdiction;

“parental responsibility” means, in relation to a child, all the powers, responsibilities and authority which, by law, parents have in relation to children;

”

s. 5

5. Section 38 amended

Section 38(1) is amended by inserting after “child” —
“ under this Act or in an overseas jurisdiction ”.

6. Section 138 amended

Section 138(1) is amended by deleting “An” and inserting
instead —
“ Subject to sections 138A and 138B, an ”.

7. Sections 138A to 138D inserted

After section 138 the following sections are inserted —

“

**138A. Recognition in Western Australia of an adoption in
an overseas jurisdiction of a child from that
jurisdiction**

- (1) An adoption in an overseas jurisdiction —
- (a) of a child who is habitually resident in the overseas jurisdiction;
 - (b) by a person who is habitually resident in Australia,
- is recognized if —
- (c) the adoption is granted in accordance with the laws of that overseas jurisdiction; and
 - (d) an adoption certificate is in force in relation to the adoption.

- (2) An adoption that is recognized under subsection (1) is effective on and from the date that the adoption takes effect in the overseas jurisdiction.

138B. Effect of recognition of adoption

- (1) If the adoption of a child is recognized under section 138A, for the purposes of the laws of the State —
 - (a) the relationship between the child and each of the child's adoptive parents is to be treated as being that of child and parent;
 - (b) each adoptive parent of the child has parental responsibility for the child;
 - (c) if the laws of the overseas jurisdiction in which the adoption was granted do not have the effect of treating the relationship between the child and the persons who were, immediately before the adoption, the child's parents, as not being that of child and parent, that relationship is to be treated as not being that of child and parent and the adoption of the child terminates the legal relationship between the child and the individuals who were, immediately before the adoption, the child's parents;
 - (d) if the child had been previously adopted, whether under the law of this State or otherwise, the previous adoption does not have effect and the relationship between the child and the individuals who adopted the child under the previous adoption is to be treated as not being that of child and parent;

s. 7

- (e) the child has the same rights as a child who is adopted under this Act;
 - (f) the relationship of all persons to the child, the person who adopted the child and the birth parent or previous adoptive parent are to be determined in accordance with this section; and
 - (g) an appointment, in a deed or will existing at the time an adoption is effective, of a person as the guardian of the child, ceases to have effect.
- (2) Despite subsection (1), for the purposes of the law of this State relating to sexual offences, being law for the purposes of which the relationship between persons is relevant, the recognition of the adoption of a child in an overseas jurisdiction does not cause the cessation of any relationship that would have existed if the adoption had not occurred, and any such relationship is to be treated as existing in addition to any relationship that exists by virtue of the application of this section in relation to the recognition of an adoption.
- (3) In this section a reference to a “**child**” includes a reference to a person who is 18 or more years of age.
- (4) Nothing in this section affects the jurisdiction of a court of the State or of the Commonwealth to entertain proceedings, make an order, or take any other action in relation to a child whose adoption is recognized under section 138A.

138C. Evidential value of adoption certificate

An adoption certificate is evidence, for the laws of the State, that the adoption to which the certificate relates was carried out in accordance with the laws of the overseas jurisdiction whose adoption authority issued the certificate.

138D. Report on person who wishes to adopt a child in an overseas jurisdiction

If a person —

- (a) wishes to adopt a child in an overseas jurisdiction; and
- (b) is on the register of the names of persons who are approved by an adoption applications committee,

the Director-General may send an assessment report on the person to the adoption authority of the overseas jurisdiction.

”

Part 3 — Hague Convention

8. Section 4 amended

Section 4 is amended as follows:

- (a) in subsection (1), in the definition of “adoption order”, after paragraph (a) by deleting “or” and after paragraph (b) by inserting —

“

or

- (c) a child under section 78A(2);

”.

- (b) in subsection (1) by inserting, in the appropriate alphabetical positions, the following definitions —

“

“adoption compliance certificate” means a certificate that is referred to in Article 23 of the Hague Convention;

“Central Authority” means an authority designated under Article 6 of the Hague Convention for a Convention country;

“Commonwealth Central Authority” has the same meaning as it has in the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* of the Commonwealth;

“competent authority” means an authority of a Convention country that has power to issue an adoption compliance certificate and that has been notified to the depository of the Hague Convention under Article 23.2 of the Convention;

“Hague Convention” means the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption signed at The Hague on 29 May 1993, a copy of the English text of which is set out in Schedule 2B;

“State Central Authority” means the person appointed under section 134A to be the Central Authority for the State of Western Australia for the purpose of Article 6.2 of the Hague Convention;

”.

- (c) after subsection (2) the following subsection is inserted —

“

- (3) A reference in this Act to a Convention country is, subject to Article 45 of the Hague Convention, a reference to —
- (a) a country specified in column 2 in Schedule 2 to the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* of the Commonwealth;
 - (b) any other country for which the Hague Convention has entered into force, other than —
 - (i) Australia; and
 - (ii) a country in respect of which Australia has raised an objection under Article 44 of the Hague Convention.

”.

s. 9

9. Section 38 amended

Section 38(1), as amended by section 5, is amended by deleting “or in an overseas jurisdiction” and inserting instead —
“ , in a Convention country or in an overseas jurisdiction ”.

10. Section 39 amended

Section 39(1)(c) is amended by inserting after “State” —
“
or, if applying to adopt a child in a Convention country,
is habitually resident in this State
”.

11. Section 61 amended

Section 61(2)(a) is amended by inserting after “and (2)” —
“ or section 78A(2) ”.

12. Section 68 amended

Section 68 is amended as follows:

- (a) in subsection (1), by deleting “An” and inserting instead —
“ Subject to section 78A, an ”;
- (b) after subsection (1)(e) by deleting “and”;
- (c) after subsection (1)(f) by deleting the full stop and inserting —
“
; and
(g) if the child is habitually resident in a
Convention country —
(i) the arrangements for the adoption of the
child have been made in accordance

- with the requirements of the Hague Convention;
- (ii) the arrangements for the adoption of the child are in accordance with the laws of the Convention country;
 - (iii) the Central Authority of the Convention country has agreed to the adoption of the child; and
 - (iv) the State Central Authority has agreed to the adoption of the child.

”.

13. Division 11 inserted in Part 3

After section 78 the following Division is inserted —

“

Division 11 — Adoption of a child in Western Australia who is to live in a Convention country

78A. Arrangements for adoption

- (1) Despite section 39(1)(a) and (c) and (2), a person who is habitually resident in a Convention country who wishes to adopt a child who is habitually resident in Western Australia may make an application to the Court for an adoption order.
- (2) Despite any other provision in this Part to the contrary, the Court may make an adoption order on an application under subsection (1) if the Court is satisfied that —
 - (a) the child is in Western Australia;

s. 13

- (b) the child is not prevented from leaving Australia —
 - (i) under a law of the Commonwealth, a State or a Territory; or
 - (ii) because of an order of a court of the Commonwealth, a State or a Territory;
- (c) the arrangements for the adoption of the child are in accordance with the requirements of the Hague Convention;
- (d) the Central Authority of the Convention country has agreed to the adoption of the child;
- (e) the State Central Authority has agreed to the adoption of the child; and
- (f) the application for the adoption complies with such of the provisions of section 68(1) or (2) as are relevant to the circumstances of or the arrangements for the adoption.

78B. Issue of adoption compliance certificate

If the Court has made an adoption order in relation to a child under section 78A(2), the State Central Authority may, in relation to the child, issue an adoption compliance certificate for the purpose of Article 23 of the Hague Convention.

”.

14. Section 130A inserted

After section 130 the following section is inserted —

“

130A. Delegation by State Central Authority

The State Central Authority may delegate for the purposes of this Act, either generally or as otherwise provided by the instrument of delegation, by writing signed by the State Central Authority, to an officer of the Department any of the State Central Authority's functions under this Act or the Hague Convention, other than this power of delegation.

”

15. Sections 134A and 134B inserted

After section 134, the following heading and sections are inserted —

“

Division 2A — State Central Authority

134A. State Central Authority

- (1) The Minister is appointed to be the Central Authority for the State of Western Australia for the purpose of Article 6.2 of the Hague Convention.
- (2) The Minister is to advise the Commonwealth Central Authority that the Minister is the State Central Authority and the address and functions of the State Central Authority.

s. 16

- (3) As soon as practicable after a change to the address or functions of the State Central Authority, the Minister is to advise the Commonwealth Central Authority of the change.

134B. Functions of the State Central Authority

The State Central Authority, in this State —

- (a) has all the duties of a Central Authority under the Hague Convention; and
- (b) may exercise all of the powers of a Central Authority under the Hague Convention.

”

16. Sections 136A to 136H inserted

After section 136 the following sections are inserted —

“

136A. Recognition in Western Australia of an adoption in a Convention country of a child from that country

- (1) Subject to section 136F, an adoption in a Convention country (whether before or after the commencement of this section) —
- (a) of a child who is habitually resident in a Convention country;
- (b) by a person who is habitually resident in Australia,

is recognized if an adoption compliance certificate issued by a competent authority of that country is in force in relation to the adoption.

- (2) An adoption that is recognized under subsection (1) is effective on and from the day the adoption compliance certificate becomes effective.
- (3) In any proceedings it is to be presumed, unless the contrary appears, that an adoption of a child that was made in a Convention country complies with subsection (1).

136B. Order of termination of relationship of child and parent in relation to a simple adoption

- (1) If—
 - (a) a child who was or is habitually resident in a Convention country was adopted in a Convention country;
 - (b) the adoption was by a person who is habitually resident in this State; and
 - (c) the laws of that country do not provide that the adoption has the effect of treating the relationship between the child and the persons who were, immediately before the adoption, the child's parents, as not being that of child and parent,

any of the parties to the adoption may apply to the Court for an order that the relationship between the child and the persons who were, immediately before the adoption, the child's parents, is to be treated as not being that of child and parent.

s. 16

- (2) If the Court is satisfied that —
- (a) an adoption compliance certificate issued by a competent authority of the Convention country is in force in relation to the adoption; and
 - (b) the child is permitted —
 - (i) to enter Australia; and
 - (ii) to reside permanently in Australia,

the Court may make an order that the relationship between the child and the persons who were, immediately before the adoption, the child's parents, is to be treated as not being that of child and parent.

136C. Recognition in Western Australia of an adoption of a child from a Convention country to another Convention country

Subject to section 136F, if —

- (a) a child who is habitually resident in a Convention country is adopted by a person who is habitually resident in another Convention country; and
- (b) an adoption compliance certificate issued by a competent authority of the Convention country in which the adoption was made or granted is in force in relation to the adoption,

the adoption is recognized and effective for the laws of the State on and from the day the certificate becomes effective.

136D. Effect of recognition of adoption

- (1) If the adoption of a child is recognized under section 136A, for the purposes of the laws of the State —
 - (a) the relationship between the child and each of the child's adoptive parents is to be treated as being that of child and parent;
 - (b) each adoptive parent of the child has parental responsibility for the child;
 - (c) if the laws of the Convention country where the adoption was granted provide that the adoption has the effect of treating the relationship between the child and the persons who were, immediately before the adoption, the child's parents, as not being that of child and parent — the relationship between the child and those persons is to be treated as not being that of child and parent;
 - (d) if the child had been previously adopted, whether under the law of this State or otherwise, the previous adoption does not have effect and the relationship between the child and the individuals who adopted the child under the previous adoption is to be treated as not being that of child and parent;
 - (e) the child has the same rights as a child who is adopted under this Act;
 - (f) the relationship of all persons to the child, the person who adopted the child and the birth parent or previous adoptive parent are to be determined in accordance with this section; and

s. 16

- (g) an appointment, in a deed or will existing at the time an adoption is effective, of a person as the guardian of the child, ceases to have effect.
- (2) Despite subsection (1), for the purposes of the law of this State relating to sexual offences, being law for the purposes of which the relationship between persons is relevant, the recognition of the adoption of a child in a Convention country does not cause the cessation of any relationship that would have existed if the adoption had not occurred, and any such relationship is to be treated as existing in addition to any relationship that exists by virtue of the application of this section in relation to the recognition of an adoption.
- (3) In this section a reference to a “**child**” includes a reference to a person who is 18 or more years of age.
- (4) Nothing in this section affects the jurisdiction of a court of the State or of the Commonwealth to entertain proceedings, make an order, or take any other action in relation to a child whose adoption is recognized under section 136A.

136E. Recognition of a decision in a Convention country to convert a simple adoption

- (1) Subject to section 136F, if a decision is made in a Convention country to convert an adoption of a child in accordance with Article 27 of the Hague Convention, the decision is recognized and effective for the laws of the State on and from the day the decision becomes effective.

- (2) The recognition of the decision includes the recognition for the laws of the State that the decision has the effect that the relationship between the child and the individuals who were, immediately before the adoption, the child's parents is to be treated as not being that of child and parent.

136F. Refusal to recognize an adoption or a decision to convert a simple adoption

- (1) If the State Central Authority considers that —
- (a) an adoption recognized under section 136A or 136C; or
 - (b) a decision made in accordance with Article 27 of the Hague Convention,

is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption or decision relates, the State Central Authority may apply to the Court for a declaration that the adoption or decision is not recognized.

- (2) If the Court is satisfied that —
- (a) an adoption recognized under section 136A or 136C; or
 - (b) a decision made in accordance with Article 27 of the Hague Convention,

is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption or decision relates, the Court may declare that the adoption or decision is not recognized in this State and that the adoption or decision has no effect in this State.

s. 16

- (3) A declaration made under subsection (2) has effect according to its tenor.
- (4) If the State Central Authority makes an application to the Court under subsection (1), the Authority is to give the Commonwealth Central Authority written notice of the application.
- (5) After the Court has made a decision under subsection (2), the State Central Authority is to give the Commonwealth Central Authority written notice of the Court's decision.

136G. Evidential value of adoption compliance certificate

Subject to a declaration made under section 136F(2), an adoption compliance certificate is evidence, for the laws of the State, that the adoption to which the certificate relates —

- (a) was agreed to by the Central Authorities of the countries identified in the certificate; and
- (b) was carried out in accordance with the Hague Convention and the laws of the countries identified in the certificate.

136H. Report on person who wishes to adopt a child in a Convention country

If a person —

- (a) wishes to adopt a child in a Convention country; and

- (b) is on the register of the names of persons who are approved by an adoption applications committee,

the State Central Authority is to prepare and send a report that complies with Article 15 of the Hague Convention to the Central Authority of the Convention country.

”

17. Section 138 amended

Section 138(1) is amended by deleting “Subject to sections 138A and 138B,”, as inserted by section 6, and inserting instead —

“

Subject to sections 136A, 136B, 136C, 136D, 138A and 138B,

”

18. Section 143 amended

After section 143(3) the following subsection is inserted —

“

- (4) Without limiting the generality of subsection (1), regulations may be made prescribing all matters that are necessary or convenient for giving effect to the Hague Convention including —
 - (a) granting accreditation to a body for the purposes of Article 9 of the Hague Convention;
 - (b) the functions that may be performed by a body granted accreditation;

s. 18

- (c) the qualifications of and requirements to be satisfied by an applicant for accreditation;
- (d) the procedure for applications and grounds for refusal of applications;
- (e) the duration, renewal, revocation and suspension of accreditation;
- (f) the effect of the winding up of an accredited body or revocation or suspension of accreditation, in relation to records and documents held by the accredited body or former accredited body;
- (g) the conferral of a right of appeal and the procedure for and matters in relation to appeals from the Minister's decisions as to applications and accreditation;
- (h) the requirements for public notification of the accreditation of bodies;
- (i) the provision of a biannual report to the Minister on the operations of the body in relation to the performance of authorized functions and any other information as the Minister may direct in writing; and
- (j) the provision of a code of conduct for an accredited body and its staff.

”

19. Schedule 2B inserted

After Schedule 2A the following Schedule is inserted —

“

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 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,

s. 19

- (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;

s. 19

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.

s. 19

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

s. 19

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,
depository 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 depository.
- 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 depository.

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 depository 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;

s. 19

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.

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