

DRAFT FOR CONSULTATION

Care of Children (Adoption and Surrogacy Law Reform) Amendment Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Bill is to reform both adoption and surrogacy law in New Zealand.

Need for adoption law reform

New Zealand's current adoption law is archaic and needs to be updated to reflect more modern thinking and other law concerning children and families.

In the 1950s, when the Adoption Act 1955 was drafted, New Zealand society encouraged single mothers to give their child up for adoption, reflecting the prevailing view of the day that children were best brought up in a family home with a married couple. Those single women who refused to give up their child were stigmatised as selfish or immoral. Single mothers who did give up their child for adoption were seen as being responsible, and also fortunate – they were being given a second chance to forget about their transgression (conceiving a child out of wedlock) and move forward with their life. Single women were often sent away from their homes for the term of their pregnancy, often staying in institutions that specialised in pro-

viding accommodation for unmarried mothers. Often, these institutions would actively discourage women from keeping their child. Very little support was provided, publicly or privately, to women who wished to keep their children. Fully informed consent was not available for birth mothers. Children were viewed as being under the authority and control of their parents and were not recognised as having individual rights.

*Ensuring that best interests of child are at heart
of law*

The Law Commission published a report in September 2000 detailing a series of proposed reforms for adoption and guardianship, along with a proposal that reformulated adoption laws and other laws governing the guardianship and care of children be incorporated in a Care of Children Act. A Care of Children Act was passed in 2004 reforming the laws relating to custody, access, and guardianship but no changes were made to adoption law. The result is that the Adoption Act 1955 sits uneasily with the Care of Children Act 2004. The Bill seeks to remedy this problem, and to ensure all arrangements providing for the care of children in New Zealand are found in one statute and the law is unified. Accordingly, the Bill is an amendment to the Care of Children Act 2004 to provide for adoption and surrogacy arrangements, consistent with the Act's modern framework, which requires the court to decide whether the best interests of the child will be served by granting an applicant or applicants an adoption order.

The Bill ensures that adoption legislation is consistent with other family legislation so that parties to an adoption benefit from the same protections. For example, the Bill requires the appointment of a lawyer for the child unless the appointment would serve no useful purpose. Additionally, the Bill ensures the child's views on the adoption are ascertained and that the court must take those views into account.

Shift from closed adoption to open adoption

Under the Adoption Act 1955 (the **Adoption Act**) closed adoptions were highly favoured as a form of adoption. Under the Adoption Act, it was possible and usual practice for adoptive parents to have their identity concealed from the birth parents and vice versa. This was

viewed as desirable, as it blanketed the stigma associated with both illegitimacy and infertility. Later legislation (the Adoption Regulations 1959) also allowed adoptive parents to keep their identities secret. Birth mothers were often told they were not permitted to attempt to find their child.

Under closed adoption, once a child is adopted the birth record is sealed and a new birth certificate is issued, naming the adoptive parents as the only parents of the child and changing the child's names to names chosen by the adoptive parents. This has been widely criticised as creating legal fiction by obscuring the factual history of the child's life. This culture of secrecy has been partially eroded by the Adult Adoption Information Act 1985, which provides a process by which adopted children at age 20 can view their initial birth certificate and seek to make contact with their birth parent(s). More recently (since the early 1980s) there has been a marked increase in the number of adoptions that provide for continuing contact between the adopted child and the birth parents. Today, most adoption arrangements make provision for some form of communication from the beginning of the adoption arrangement.

However, there is no legal backing for such arrangements and no means by which they can be enforced by either party or varied if the circumstances of the parties or of the child change. Courts have often struggled to reconcile open adoption with the terms of the Adoption Act, which provides mechanisms for erecting legal walls between the birth parents and the child.

This Bill changes the law to ensure that in all future adoptions there will be a parenting plan providing for contact with birth parents or exchange of information between adoptive parent(s) and birth parent(s) unless such arrangements are impracticable or contrary to the child's welfare and best interests.

All possible adoptive parents to be considered

The Act reflects 1950s thinking about the categories of people who are suitable to be parents. This Bill seeks to ensure that applicants who wish to adopt do not face automatic ineligibility on grounds of age, sexuality, gender, or relationship status. This ensures the widest possible pool of applicants have the opportunity to be considered as adoptive parents.

However, that does not mean that all people will be successful in being granted an adoption order. Instead, the Bill provides a process that enables social workers and the Family Court to determine whether the welfare and best interests of the individual child will be served by the making of an adoption order.

Intercountry adoptions

Since the passing of the original Adoption Act 1955, further legislation was enacted in the form of the Adoption (Intercountry) Act 1997, in order to address issues created by the adoption of children from other countries. This Bill repeals the Adoption (Intercountry) Act 1997 and incorporates its provisions into the new statute, enabling the Bill to function as a comprehensive piece of legislation for adoption cases.

Surrogacy law

Surrogacy arrangements that are not entered into for the purpose of commercial gain are currently not illegal by reason of the Human Assisted Reproductive Technology Act 2004. However, couples or individuals who choose to have a child through an altruistic surrogacy arrangement have to adopt that child in order to obtain legal parenthood of the child born as a result of the surrogacy arrangement even where the child has been conceived with their ovum or sperm. The Bill sets out the requirements with which a commissioning parent or parents must comply when entering into an altruistic surrogacy arrangement, and when seeking to have that child legally recognised as being a part of their family.

There are also instances where a child is conceived and born through a surrogacy arrangement in other countries. To this end, the Bill sets out the conditions on which a parent or couple may obtain a New Zealand adoption order in respect of a child who is born in consequence of an overseas altruistic surrogacy arrangement.

The Bill also addresses situations where a child is born in an overseas country, and the parents of the child as recognised in that country may be different from the parents as recognised under New Zealand law. To this end, the Bill amends the Status of Children Act 1969.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill to come into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Care of Children Act 2004

Clause 3 provides that the Bill amends the Care of Children Act 2004 (the **principal Act**).

Clause 4 amends section 3 to insert new purposes in respect of adoption and surrogacy arrangements.

Clause 5 amends section 8 to insert new definitions.

Clause 6 inserts a *new Part 4* relating to adoption and surrogacy.

Part 2

Amendments to Status of Children Act 1969

Clause 7 provides that the Bill amends the Status of Children Act 1969.

Clause 8 amends section 5.

Clause 9 amends section 7.

Clause 10 amends section 26

Clause 11 inserts *new section 26A*.

Part 3

Miscellaneous provisions

Clause 12 repeals legislation.

Clause 13 inserts *new Schedule 1A*.

Kevin Hague

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Contents

		Page
1	Title	4
2	Commencement	4
Part 1		
Amendments to Care of Children Act 2004		
3	Principal Act	4
4	Section 3 amended (Purpose of this Act)	4
5	Section 8 amended (Interpretation)	5
6	New Part 4 inserted	6
Part 4		
Adoption and surrogacy		
<i>New Zealand domestic adoption principles, objects, and processes</i>		
165	Principles and objects of adoption process	6
<i>Adoption orders</i>		
166	Who can be adopted	7
167	Who can adopt	8
168	Granting adoption orders	9
169	Legal effect of adoption order	9
170	Adopted child's birth certificate to be annotated	10
<i>Consent</i>		
171	Consents to adoption	10
		1

**Care of Children (Adoption and Surrogacy
Law Reform) Amendment Bill**

172	Lapse or invalidity of consent	13
173	Dispensing with consent	13
174	Child's view to be considered and consent	14
<i>Processes</i>		
175	Legal representation and advice	14
176	Written parenting plan required	14
177	Social workers to be involved in assessment process	16
178	Attendance at hearings	17
179	Evidence in adoption cases	18
180	Pre-adoption arrangements for care of child	18
181	Additional orders	19
182	Discharging or varying an adoption order	19
<i>Offences</i>		
183	Offences	21
184	Appeals	22
185	Extraterritorial jurisdiction in respect of offences under section 183 as required by Optional Protocol	23
186	Attorney-General's consent required where jurisdiction claimed under section 185	23
<i>Access to information</i>		
187	Access to adoption information after commencement of amendment Act	24
188	Access to adoption information before commencement of amendment Act	25
189	Access to adoption information for health reasons	25
190	Access to adoption information for official reasons	25
191	Access to adoption records by other persons	26
<i>Culture and family relationships</i>		
192	Adoption and Māori customary practices	27
193	Succession	27
194	Prohibited degrees of relationship	27
195	Incest	28
	Subpart 1—Recognition of overseas adoption in non-Convention country	
196	Interpretation	28
197	Overseas adoptions of children from non-Convention countries	28

**Care of Children (Adoption and Surrogacy
Law Reform) Amendment Bill**

	Subpart 2—Convention intercountry adoptions	
198	Interpretation	29
199	Convention to have force of law	30
200	New Zealand Central Authority	30
201	Delegation of functions	30
202	Authority for New Zealand accredited bodies to act overseas	31
203	Approval of placement	31
204	Recognition of Convention adoptions	31
205	Termination of pre-existing legal parent-child relationships	32
206	Access to information	32
207	Certificate of Secretary of Foreign Affairs and Trade	33
208	New Zealand accredited bodies	33
209	Application for accreditation	33
210	Grant of accreditation	34
211	Declining of application for accreditation	34
212	Suspension and revocation of accreditation	34
213	Appeals against refusal of approval or revocation or suspension of approval	36
214	Accredited bodies to report annually	36
215	Assessment of accredited bodies	37
216	Change of principal officer to be notified	38
217	Regulations	38
	Subpart 3—Surrogacy arrangements	
218	Interpretation	38
219	Relationship to Human Assisted Reproductive Technology Act 2004	39
220	Altruistic surrogacy arrangements	39
221	Altruistic surrogacy arrangements may be in writing	41
222	Adoption orders for altruistic surrogacy arrangements	41
223	International altruistic surrogacy arrangements	42
224	Offences	42

Part 2

Amendments to Status of Children Act 1969

7	Amendments to Status of Children Act 1969	43
8	Section 5 amended (Presumptions as to parenthood)	43
9	Section 7 amended (Recognition of paternity)	44

Care of Children (Adoption and Surrogacy Law Reform) Amendment Bill		
cl 1		
10	Section 26 amended (Conflicting evidence of paternity)	44
11	New section 26A inserted (Conflicting evidence of parentage)	44
	26A Conflicting evidence of parentage	44
Part 3		
Miscellaneous provisions		
12	Acts repealed	44
13	New Schedule 1A inserted	44
Schedule		45
New Schedule 1A inserted		

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Care of Children (Adoption and Surrogacy Law Reform) Amendment Act **2014**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Amendments to Care of Children Act
2004

- 3 Principal Act**
This **Part** amends the Care of Children Act 2004 (the **principal Act**).
- 4 Section 3 amended (Purpose of this Act)**
After section 3(2)(g), insert:
“(h) repeals the Adoption Act 1955 and the Adoption (Inter-country Adoption) Act 1997:
“(i) provides for altruistic surrogacy arrangements for the purposes of adoption.”

5 Section 8 amended (Interpretation)

In section 8, insert in their appropriate alphabetical order:

“**adopted child** means any child who is the subject of an adoption order

“**adopted person** means any person over the age of 18 who as a child was the subject of an adoption order

“**adoption order** means an adoption order made under **section 168**

“**adoption process** means any part of any process, action, undertaking, or procedure that is related to the adoption of a child by an adoptive parent or parents

“**adoption records** means any records relevant to the adoption of an individual child held by any court, or by the department or any other current or former government entity

“**adoptive parent** means any person who has obtained an adoption order in respect of a child

“**assisted reproductive procedure** means a procedure performed for the purpose of assisting human reproduction that involves the creation of an *in vitro* human embryo; the storage, manipulation, or use of an *in vitro* human gamete or an *in vitro* human embryo; the use of cells derived from an *in vitro* human embryo; or the implantation into a human being of human gametes or human embryos; but does not mean an already established procedure, as defined in the Human Assisted Reproductive Technology Act 2004

“**birth parent** in respect of an adopted person means a biological parent of that person

“**Convention** means the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption

“**partner** means a person’s civil union partner or someone of the same or opposite sex with whom that person has a de facto relationship

“**prospective adoptive child** means any child in respect of whom an adoption order is sought

“**prospective adoptive parent** means a person who seeks to adopt a child or has applied for an adoption order

“**relative**, in relation to any child, means any grandparent, brother, sister, uncle, aunt, or other member of the child’s whānau or family group

“**surrogate birth mother** means any birth mother who has agreed via an altruistic surrogacy arrangement to conceive and give birth to a child for the purposes of adoption by the commissioning parent or parents

“**whāngai** means the customary Māori practice of shared parenting arrangements by members of the child’s whānau in accordance with iwi specific practices of that whānau, commonly occurring within the child’s whānau so that whakapapa (genealogy) is acknowledged and placements are arranged to secure links to whānau and kin”.

6 New Part 4 inserted

After section 164, insert:

“Part 4

“Adoption and surrogacy

*“New Zealand domestic adoption principles,
objects, and processes*

“165 Principles and objects of adoption process

Subject to sections 4 and 5, in making decisions on the administration and application of this Part and on all proceedings that relate to the adoption of a child, all parties must have regard to the following principles and objectives:

- “(a) the welfare and best interests of the particular child in his or her particular circumstances, both in childhood and in later life, are the paramount consideration in adoption law and in practice:
- “(b) adoption is to be regarded as a service for the child in order to provide that child with permanent legal parents where that child’s parents, family, or whānau are not able to care for the child:
- “(c) adoption law and practice in New Zealand must comply with New Zealand’s obligations under the Convention, the United Nations Convention on the Rights of the Child, and other relevant treaties and international arrangements:

- “(d) the equivalent standards and safeguards that apply to children adopted in New Zealand must apply to children adopted from overseas countries:
- “(e) adoption law and practice in New Zealand must encourage openness in the adoption process:
- “(f) an adopted person must be assisted in knowing and having access to information about his or her personal, racial, cultural, religious, linguistic, genetic and other heritage as far as is practicable and appropriate.

“Adoption orders

“166 Who can be adopted

- “(1) Subject to the provisions of this Act, upon an application made by a person or persons under **section 167**, the court may make an adoption order in respect of a child where the applicant or applicants are habitually resident in New Zealand and entitled to remain indefinitely in New Zealand and—
 - “(a) the child is habitually resident in New Zealand and entitled to remain indefinitely in New Zealand; or
 - “(b) the child enters New Zealand for the purpose of adoption with the prior approval of the relevant state authorities.
- “(2) The court has the power to waive the requirements in **subsection (1)(b)** where it is satisfied that an adoption order will promote the welfare and best interests of the child or where there are exceptional circumstances.
- “(3) There is a presumption that a child is permitted to enter New Zealand for the purpose of adoption if—
 - “(a) the child has been born overseas under an altruistic surrogacy arrangement; and
 - “(b) the court has previously approved the altruistic surrogacy arrangement as being in accord with the provisions of **section 223**; and
 - “(c) the commissioning parents have proved to the satisfaction of the court that they are entitled to remain indefinitely in New Zealand and have been assessed as being suitable applicants for an adoption order.
- “(4) An adoption order must not be made in respect of a child if—

- “(a) the child is over the age of 17 years; or
- “(b) the child is or has been married or in a civil union or de facto relationship; or
- “(c) the child is himself or herself the parent of a child.

“167 Who can adopt

- “(1) Any person, or 2 persons jointly, who are spouses or partners and are over the age of 18 years may apply for an adoption order in respect of a child unless—
 - “(a) the applicant is a birth parent of the child; or
 - “(b) the applicant is the spouse or partner of a birth parent.
- “(2) The court may waive compliance with **subsection (1)(a) and (b)** where it is satisfied that an adoption order will promote the welfare and best interests of the child or that there are exceptional circumstances.
- “(3) For the purposes of **subsection (2)**, the court must consider—
 - “(a) the degree of contact that the child has with the other birth parent and that birth parent’s whānau or extended family, and the effect that granting an adoption order might have on these relationships and degree of contact; and
 - “(b) whether guardianship would be a more appropriate option than adoption to regulate the care of the child in relation to his or her parent’s spouse or partner; and
 - “(c) whether the spouse or partner has been involved in the care of the child for at least 3 years prior to making an application to adopt.
- “(4) Despite **section 169**, where the court is satisfied that an application to adopt by a spouse or partner will promote the welfare and best interests of the child, the adoption order must state that the birth parent retains the status of legal parenthood together with the spouse or partner of the parent.
- “(5) Subject to the provisions of this Act, there is no restriction on the eligibility of any person to apply for an adoption order on the basis of any prohibited grounds of discrimination listed in section 21 of the Human Rights Act 1993.

“(6) **Subsection (1)** does not prevent the commissioning parent or parents under a surrogacy arrangement from adopting a child who is the genetic child of one or both parents.

“**168 Granting adoption orders**

“(1) The court may grant an adoption order that has the effect provided for in **section 169**.

“(2) The court must not make an adoption order in respect of a child unless it is satisfied that the pre-adoption requirements set out in **sections 171 to 177** and **180** have been satisfied.

“(3) Subject to **subsections (4) and (5)**, an adoption order becomes effective on the date of the granting of the order by the court.

“(4) An adoption order will be a final order, unless the court is satisfied that there are special reasons why an interim order should be made in the first instance.

“(5) Any interim order will become a final order after a 6-month period has elapsed from the granting of the interim order, unless the court determines otherwise.

“**169 Legal effect of adoption order**

“(1) Subject to **section 167(4)**, a final adoption order has the effect that the adoptive parent or parents become the child’s sole legal parent or parents (as the case may be) in place of the birth parents.

“(2) Upon the making of a final adoption order, the adoptive parents become the child’s guardians and have the role of providing day-to-day care for the child.

“(3) Upon the making of an interim adoption order the adoptive parent or parents—

“(a) have the role of providing day-to-day care for the child and must comply with any terms of the order in respect of the child’s day-to-day care; and

“(b) must allow a social worker, at all reasonable times, to visit the residence where the child lives and must give a social worker at least 7 days’ notice of any change of residence.

- “(4) Child support or maintenance obligations on the part of the birth parents in respect of the adopted child shall cease from the date of the final adoption order and the adoptive parents will then assume those obligations.
- “(5) The birth parents remain liable for any arrears and penalties relating to child support and maintenance obligations incurred prior to the final adoption order.
- “(6) The adopted child acquires the domicile of his or her adoptive parent or parents.
- “(7) The court on making an adoption order may at the request of the proposed adoptive parents confer on the child the family name of the adoptive parents and the child’s family name will then be changed by the adoption order provided that, if the child is of or over the age of 8 years, the court will have regard to the views of the child before making such a change.
- “(8) To avoid doubt, nothing in this section restricts the operation of **sections 47 and 48**.

“**170 Adopted child’s birth certificate to be annotated**

On the making of a final adoption order, the Registrar (as defined in section 2 of the Births, Deaths, Marriages and Relationships Registration Act 1995) will issue an annotated birth certificate containing, in addition to the information included in the original birth certificate,—

- “(a) any new family name or names conferred on the child by the adoptive parents; and
- “(b) the date and place of the making of the final adoption order; and
- “(c) the full names of the adoptive parent or parents.

“*Consent*

“**171 Consents to adoption**

- “(1) Before the court makes an interim or final adoption order, consents to the adoption must be given by the persons whose consents are required under this section and must be filed in court.
- “(2) The persons whose consents are required are—

- “(a) the child who is the subject of the adoption application if the child is over the age of 8 years unless the child’s consent has been dispensed with under this section; and
 - “(b) every parent and guardian of the child unless the child has been adopted under a previous adoption order or the consent of the parent or guardian has been dispensed with under this section; and
 - “(c) if there is an adoption order in force in respect of the child, the surviving adoptive parent or parents.
- “(3) A child is not able to give a valid consent to his or her adoption unless—
- “(a) he or she has received counselling from a person trained or accredited for adoption counselling and the counsellor has provided a letter to the court confirming that the counsellor has explained to the child and the child understands the effect that an adoption order will have on him or her and on his or her relationship with the birth parents and relatives traced through them; and the child consents to the making of an adoption order; and
 - “(b) the consent is given in the form prescribed by regulations; and
 - “(c) the form of consent is signed by the child or if the child is under 8 years of age either by the child or by the counsellor or lawyer for the child on behalf of the child.
- “(4) A birth parent or guardian is not able to give a valid consent to an adoption order unless—
- “(a) the child is at least 28 days old at the date of the execution of the consent document; and
 - “(b) the consent is given in a form prescribed by regulations; and
 - “(c) the parent or guardian has received information and counselling from a qualified or accredited adoption counsellor or adoption social worker in relation to—
 - “(i) the legal effects of an adoption order on the relationship between the parent or guardian and the child, and the effect on the child of severance of that relationship; and

- “(ii) the short and long-term emotional consequences that placing a child for adoption may have on the relinquishing parent or guardian; and
- “(iii) alternative placements other than adoption that are or might be available for the care of the child; and
- “(iv) financial and other support that is available to the parent or guardian if he or she chooses to care for the child; and
- “(d) the parent or guardian has confirmed that he or she has received information and counselling on the matters referred to in **paragraph (c)** by signing a certificate in the prescribed form of consent; and
- “(e) every consent form has endorsed on it a certificate signed by the parent or guardian stating that the lawyer acting for them has personally explained to them—
 - “(i) the legal effect of an adoption order on the relationship of the parent or guardian with the child and the effect on the child and that the parent or guardian has fully understood that explanation; and
 - “(ii) the alternatives to adoption that are available to non-parental carers including a parenting order or a guardianship order under this Act.
- “(5) A document containing a consent to adoption is not a valid consent unless, if given in New Zealand, the signing is witnessed by a Family Court Judge, a Registrar of the High Court or District Court or Family Court, or a lawyer.
- “(6) The lawyer acting for the parent or guardian must certify that he or she has given the explanations required in **subsection (4)(e)** and does not act for, nor has previously acted for, the applicants for adoption.
- “(7) Where the birth parents disagree on consenting to the child’s adoption, the court must suspend adoption proceedings and the matter must be treated as if it were an urgent guardianship dispute.
- “(8) On the reconciliation of this dispute, adoption proceedings may resume where necessary.

“(9) The birth parents, prior to granting consent for the adoption of a child, must have the right to be provided with information about the identity of the prospective adoptive parent or parents and must be informed of this right, and the form of consent must contain the full names of the prospective adoptive parent or parents.

“(10) Where a spouse or partner of the parent of a child is applying under **section 167(2)** to adopt that child, that parent must consent to the proposed adoption in the form prescribed by regulations.

“**172 Lapse or invalidity of consent**

“(1) A birth parent’s consent to an application for an adoption order lapses if no application is made to the court within 12 months of consent being granted.

“(2) A birth parent’s consent to an application for an adoption order is invalid and of no effect if, prior to a final adoption order being made, the court is satisfied that consent was—

“(a) obtained without the consenting parent having been given the counselling or explanations required by **section 171**; or

“(b) induced by material misrepresentation, fraud, duress, or undue influence.

“**173 Dispensing with consent**

“(1) The court may dispense with a birth parent’s consent where it is satisfied that the birth parent—

“(a) is dead or the birth parent’s identity or location are not known, and remain unknown after reasonable attempts have been made to establish his or her identity and location:

“(b) has abandoned, neglected, persistently failed to maintain, or persistently ill-treated the child:

“(c) has persistently failed to discharge his or her parental responsibilities in respect of the child.

“(2) The court may dispense with the consent of a child if the child is under the age of 8 years and lacks the maturity to understand the meaning and consequences of an adoption order and is unable or unwilling to express a view on the adoption.

“174 Child’s view to be considered and consent

- “(1) In meeting its obligations under section 6, the court must ensure—
- “(a) the child has been given reasonable opportunities to express views on matters affecting the child; and
 - “(b) any views the child expresses (either directly or through a representative) are to be taken into account.
- “(2) Unless the consent of the child is dispensed with under **section 173(2)** or the child is incapable of understanding the procedure and of consenting to the order, an adoption order may not be made in respect of a child of or over the age of 8 years unless the child has consented to the adoption.

*“Processes***“175 Legal representation and advice**

- “(1) The provisions of section 7 apply to a child who is the subject of an adoption application and a lawyer must be appointed by the court to act for the child in any proceedings under this Part unless the court believes that such an appointment would serve no useful purpose.
- “(2) Before an adoption order may be granted, the court must be satisfied that the adoptive parent or parents have received independent advice from a lawyer on the legal effects of adoption.

“176 Written parenting plan required

- “(1) The social worker who reports to the court on an adoption application must encourage the birth parents and adoptive parents to enter into an open adoption and to this end must assist them to draw up a parenting plan setting out their agreed intentions regarding—
- “(a) arrangements in respect of the nature and frequency of any contact between a birth parent or the birth parents and the child; and
 - “(b) arrangements as to the age at and the manner in which the child will be told that he or she is adopted and will be given information about the circumstances of his or her birth, the reasons for the adoption, and information

- about his or her whakapapa (genealogy) and personal and cultural heritage; and
- “(c) arrangements for the sharing of photographs and other visual images of the child; and
 - “(d) providing on a regular basis information about the child’s health, development, and educational progress and attainment, and up-to-date information about the child’s place of residence and changes to it, and about important events in the child’s life; and
 - “(e) arrangements regarding the religious, spiritual, or cultural upbringing of the child; and
 - “(f) arrangements aimed at fostering the child’s cultural heritage including practical measures to allow the child to enjoy his or her own culture and to know and use his or her indigenous language; and
 - “(g) arrangements for the exchange of medical information relevant to the child’s health and wellbeing; and
 - “(h) any relevant information where a birth parent wishes the adoptive child to be able to retain succession rights derived from the birth parent and, in particular, any interest in Māori land; and
 - “(i) any agreement between the parties about the process by which any arrangements recorded in the parenting plan may be changed where there has been a change in the circumstances of the parties to the agreement or of the child or where differences arise as to the interpretation or implementation of the agreed arrangements.
- “(2) Nothing set out in the written parenting plan required by **subsection (1)** is enforceable by the court, but the plan may assist the court in deciding whether to grant an adoption order or in determining whether to make some other order available to it under the Act (for example a contact order under section 48(3)).
- “(3) Before making an adoption order, the court may ask the parties to the plan to make appropriate amendments to the plan and then to re-submit it to the court.
- “(4) In the event of a dispute between the parties to the plan as to the interpretation of the plan or the implementation of the agreed arrangement, the court will have the power to refer the matter

to mediation or to make any directions to assist the parties to resolve the dispute.

- “(5) Arrangements for contact with a birth parent under **subsection (1)(a)** are not required where a birth parent is dead, cannot be located after reasonable inquiry, or has been violent towards the child or the adoptive parents, or where the child has been the subject of an application that he or she is in need of care and protection, or where such arrangements would otherwise be contrary to the child’s welfare and best interests.

“**177 Social workers to be involved in assessment process**

- “(1) Prior to the court making an adoption order, a social worker must provide a report for the court on the adoption application and the report must set out whether—
- “(a) the social worker reasonably believes that any prospective adoptive parent is a suitable person to adopt the child, having regard to his or her specific circumstances and needs; and
 - “(b) the child to be adopted has been given an explanation about and understands the process and effects of adoption as well as may be understood given the child’s age and maturity; and
 - “(c) the birth parents have received independent advice from a lawyer on the legal effect of adoption and alternatives available to non-parental carers such as a guardianship order or parenting order; and
 - “(d) the birth parents have received information from a counsellor or social worker regarding alternative options for parenting a child; and
 - “(e) the birth parents have received information from a social worker or an adoption counsellor on the social and emotional effects of adoption; and
 - “(f) the social worker has discussed with the birth parents the benefits of involving their families or whānau in the care of the child; and
 - “(g) inquiries have been made about other options for placement of the child with family or whānau members or relatives of a birth parent and the outcome of those inquiries; and

- “(h) the child to be adopted has been given an explanation about and understands the process and effects of adoption as well as may be understood given the child’s age and maturity.
- “(2) In fulfilling the requirements of **subsection (1)**, the social worker—
 - “(a) may require the adoptive parents to attend programmes or courses preparing them for adoption; and
 - “(b) may request further information from—
 - “(i) a sole applicant’s spouse or partner; and
 - “(ii) any other family or whānau members of an applicant; and
 - “(iii) any other persons who share the home of the applicant or applicants and any frequent visitors to their home; and
 - “(iv) any care and protection social worker employed by the chief executive; and
 - “(c) must be given reasonable time to complete a report, and be given reasonable notice of any hearing of the application for an adoption order.
- “(3) The social worker who prepares the report may appear at any court proceedings related to the adoption process, and may be heard and be examined.

“178 Attendance at hearings

- “(1) Notwithstanding section 137(1), only the following persons may attend a hearing of an application for an adoption order or any other related order (other than criminal proceedings) under this Part:
 - “(a) officers of the court:
 - “(b) any birth parent:
 - “(c) the prospective adoptive parent or parents:
 - “(d) the child who is the subject of the application:
 - “(e) any lawyer representing the child or a party to the proceeding:
 - “(f) a social worker who has written a report under **section 177**:

- “(g) any other person whom the Judge permits to be present as a support person for the child or for a party on the request of that party:
- “(h) any other persons whom the Judge permits to be present.
- “(2) A person permitted to attend a hearing of an application for an adoption order under **subsection (1)(g) or (h)** may be excluded from attending the hearing, the remainder of the hearing, or any portion of the hearing, at the discretion of the Judge.
- “(3) No support persons may help a party conduct his or her case.
- “(4) Nothing in this section limits the court from—
 - “(a) hearing a proceeding in private; or
 - “(b) excluding a person from the court where that person’s exclusion is reasonably justified.

“**179 Evidence in adoption cases**

- “(1) For the purposes of all proceedings relating to adoption, section 128 will apply.
- “(2) At any stage, the court may receive evidence from a person who has knowledge of issues relevant to the particular case.

“**180 Pre-adoption arrangements for care of child**

- “(1) Except as provided in **subsection (2)**, the prospective adoptive parent or parents must not receive or keep the child in their home pending the making of an adoption order; however, once consent to adoption has been given and filed in the court and before an adoption order is made, a social worker may, after consultation with the birth parents, permit the prospective adoptive parent or parents to receive and keep the child in their home.
- “(2) **Subsection (1)** does not apply in any case where—
 - “(a) the child is in the home of the prospective adoptive parents pursuant to any provision of the Children, Young Persons, and Their Families Act 1989 or to an order made under that Act; or
 - “(b) the child is in the home under an order made under any other provision of this Act; or
 - “(c) the child is in the home of one of the child’s parents and a partner or spouse of that parent; or

- “(d) the child is in the home of a relative of the child; or
 - “(e) the child is in the home of a carer appointed under a whāngai arrangement.
- “(3) Where a social worker has not permitted the prospective parents to care for the child under **subsection (1)**, on application by the prospective adoptive parent or parents, the court may make an order determining that any prospective adoptive parent or parents will have the role of providing day-to-day care for the child pending the making of a final adoption order where it considers this is in the welfare and best interests of the child.

“**181 Additional orders**

Prior to the court making an adoption order, the court may—

- “(a) order cultural, medical, or psychological reports in regard to—
 - “(i) any adoptive parent; and
 - “(ii) any birth parent; and
 - “(iii) any adoptive child; and
 - “(iv) any relative of the above where there are reasonable grounds for making such an order; and
- “(b) appoint a lawyer to assist the court.

“**182 Discharging or varying an adoption order**

- “(1) The court may vary an adoption order on an application by a birth parent or parents, adopted child or adopted person, or adoptive parent or parents, and the order may be made subject to such terms and conditions as the court thinks reasonable.
- “(2) The court may discharge an adoption order upon an application by a birth parent or parents, adopted child or adopted person, or adoptive parent or parents where—
 - “(a) the order was made as a result of a mistake as to a material fact or by a material representation to the court or to any other person involved; or
 - “(b) the relationship between adoptive parents or the relationship between an adoptive parent and the child has undergone a significant and irretrievable breakdown; or
 - “(c) the consent of any birth parent or guardian was obtained by—

- “(i) fraud, duress, or undue influence; or
 - “(ii) material misrepresentation.
- “(3) An application to discharge an adoption order pursuant to **subsection (2)(c)** may only be brought within 2 years after the adoption order was made, and the court must have regard to whether, and the extent to which, an adoptive parent was aware of or participated in the fraud, duress, or undue influence.
- “(4) The court may discharge an adoption order made in any place outside New Zealand only if—
- “(a) the adopted child or adopted person is living and is domiciled in New Zealand; and
 - “(b) every living adoptive parent is domiciled in New Zealand.
- “(5) On the discharge of an adoption order the court may direct—
- “(a) that any adoptive parent is no longer a legal parent of the child:
 - “(b) that the child will from the date of discharge again become the legal child of the birth parent or parents as if the adoption had not occurred, provided that such a direction will only be made in respect of a deceased birth parent where that parent’s next of kin or members of his or her whānau or family support the order.
- “(6) Before making an order varying an adoption or order under **subsection (1)** or discharging an adoption order under **subsection (2)** in respect of an adult adopted person, the court must have regard to the views of the adopted person and the effect that any variation or discharge will have on his or her interests and wellbeing.
- “(7) The domicile of a former adoptive child or adoptive person is not changed by the discharge of an adoption order unless the child is under the age of 18 years and the birth parent or parents have resumed the exercise of the role of providing day-to-day care of the child.
- “(8) The Registrar of the court must notify the Registrar-General of the discharge of an adoption order and of any ancillary orders made at the time of discharge.

“Offences

“183 Offences

- “(1) A person commits an offence who—
- “(a) arranges or brokers an adoption as a third party for payment or reward;
 - “(b) places or receives or keeps any child in the home of any person for the purpose of adoption in contravention of **section 180**;
 - “(c) gives or receives or agrees to give or receive any payment or reward in consideration of the adoption or proposed adoption of a child or in consideration of the making of arrangements for an adoption or proposed adoption;
 - “(d) publishes an advertisement indicating—
 - “(i) that the parent or guardian of a child desires that the child be adopted; or
 - “(ii) that a person desires to adopt a child; or
 - “(iii) that a person or body of persons is willing to make arrangements for the adoption of a child.
- “(2) The penalty is imprisonment for a term not exceeding 3 months, or a fine not exceeding \$15,000, or both.
- “(3) The offences listed in this section do not apply to the following:
- “(a) reasonable charges and expenses of a lawyer bona fide acting for a birth parent, an adoptive parent, or the child; or
 - “(b) a social worker in the course of his or her official duties; or
 - “(c) payment of reasonable medical or hospital expenses in respect of the birth mother or the child; or
 - “(d) the payment of reasonable costs and expenses to any organisation approved as a New Zealand accredited body under Part 2 of the Adoption (Intercountry) Act 1997, provided those costs and expenses—
 - “(i) are in connection with the exercise of a function delegated to that body, under Part 1 of that Act; and
 - “(ii) are set out in an invoice or statement of account rendered by that body, which sets out details of

the costs and expenses, and the services or functions to which they apply.

“184 Appeals

- “(1) Where the court has made an order under **section 173** dispensing with the consent of any person whose consent is required, that person may, within 1 month of the order dispensing with consent or of an adoption order made subsequent to the dispensation order, appeal to the High Court against the order dispensing with consent and against any subsequent adoption order.
- “(2) Where the court has refused to make an interim or final adoption order in respect of any child, the person or persons who applied for the order may, within 1 month of that refusal, appeal to the High Court against the decision and the High Court may grant the order sought.
- “(3) Where the court has made an interim order or adoption order in respect of a child, the child, a birth parent, or any other person with a legitimate interest in the adoption of the child may, within 1 month of the order, appeal to the High Court against the decision and the High Court may discharge or vary the adoption order.
- “(4) Where the court has made or refused to make an order under **section 182** varying or discharging an adoption order, any person may, within 1 month of the order or refusal, appeal to the High Court against that decision and on the granting of an appeal the High Court may make any orders necessary for the future guardianship or day-to-day care of the child that will promote the child’s welfare and best interests.
- “(5) Where the court has made or refused to make an order under **section 187** or **sections 189 to 191**, any person may, within 1 month of the order or refusal, appeal to the High Court against that decision.
- “(6) Where a person or persons are assessed by a social worker as not suitable to adopt, there is a 28-day period during which the prospective parent or parents may appeal to the Family Court.

“185 Extraterritorial jurisdiction in respect of offences under section 183 as required by Optional Protocol

- “(1) In this section, **Optional Protocol** means the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by the General Assembly of the United Nations at New York on 25 May 2000.
- “(2) Even if the acts alleged to constitute an offence under **section 183** occurred wholly outside New Zealand, proceedings may be brought in respect of that offence—
- “(a) if the person to be charged—
 - “(i) is a New Zealand citizen; or
 - “(ii) is ordinarily resident in New Zealand; or has been found in New Zealand and has not been extradited; or
 - “(iii) is a body corporate, or a corporation sole, incorporated under the law of New Zealand; or
 - “(b) if the person whose consent to an adoption has been induced—
 - “(i) is a New Zealand citizen; or
 - “(ii) is ordinarily resident in New Zealand.
- “(3) Nothing in this section limits the application of **section 183** in respect of—
- “(a) acts that occurred wholly within New Zealand; or
 - “(b) the application of section 7 of the Crimes Act 1961 to the occurrence in New Zealand of—
 - “(i) an act forming part of an offence; or
 - “(ii) an event necessary to the completion of an offence; or
 - “(c) the application of section 8 of the Crimes Act 1961; or
 - “(d) the application of section 8A of the Crimes Act 1961.

“186 Attorney-General’s consent required where jurisdiction claimed under section 185

- “(1) No proceedings for an offence against **section 185** may be brought in a New Zealand court in respect of any person without the consent of the Attorney-General if jurisdiction over the person is claimed by virtue of **section 185**.

- “(2) However, a person alleged to have committed an offence against **section 185** may be arrested, or a warrant for the person’s arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General’s consent under **subsection (1)** has not been obtained.

“Access to information

“**187 Access to adoption information after commencement of amendment Act**

- “(1) This section applies to adoption orders made after the commencement of the Care of Children (Adoption and Surrogacy Law Reform) Amendment Act **2014**.
- “(2) Despite section 63 of the Births, Deaths, Marriages, and Relationships Registration Act 1995, an adopted child or adopted person of any age may obtain from the Registrar-General a copy of his or her original birth certificate and his or her birth certificate as annotated in accordance with **section 170** of this Act.
- “(3) For the avoidance of doubt, no adopted child or adopted person seeking his or her original or annotated birth certificate under this section is required to undergo any form of counselling prior to receiving the information.
- “(4) An adopted person who has ascertained the name and address of a birth parent may request a social worker to approach that parent on that person’s behalf.
- “(5) A person who is the birth parent of an adopted person may apply in writing to the chief executive for identifying information relating to the adopted person, and, if satisfied that the applicant is a birth parent of the adopted person to whom the information relates, the chief executive must supply such information as is in his or her possession.
- “(6) For the avoidance of doubt, no birth parent seeking identifying information under this section is required to undergo any form of counselling prior to receiving the information.
- “(7) A birth parent who has ascertained the name and address of an adopted person under this section may request a social worker to approach the adopted person on behalf of the birth parent.

“188 Access to adoption information before commencement of amendment Act

- “(1) This section applies to adoption orders made before the commencement of the Care of Children (Adoption and Surrogacy Law Reform) Amendment Act **2014**.
- “(2) Subject to **sections 189 and 190**, the Adult Adoption Information Act 1985 shall apply to requests for access to identifying adoption information.

“189 Access to adoption information for health reasons

- “(1) A registered health practitioner may apply to the Family Court for access to important and relevant health information about an adopted person’s birth parents or the relatives of birth parents where such information is believed to be necessary to provide advice or treatment for a health condition or genetic counselling.
- “(2) For the purposes of this section, a **health condition** includes psychiatric health.

“190 Access to adoption information for official reasons

- “(1) An adoption order is open to inspection by any person who requires to inspect it for some purpose in connection with the administration of an estate or trust of which that person is an executor, administrator, or trustee.
- “(2) Adoption records are open to inspection by—
- “(a) any Registrar (as defined in section 2 of the Births, Deaths, Marriages, and Relationships Registration Act 1995) or marriage celebrant under the Marriage Act 1955 for the purpose of investigating forbidden degrees of relationship under that Act; and
- “(b) any Registrar (as so defined) or civil union celebrant under the Civil Union Act 2004 for the purpose of investigating prohibited degrees of civil union under that Act.
- “(3) Adoption records are open to inspection by a social worker for the purpose of preparing a report required under **section 191(3)**.

- “(4) A Family Court, a District Court, or the High Court may order that adoption records be available for production or open to inspection—
- “(a) for the purposes of a prosecution for making a false statement; or
 - “(b) in the event of any question as to the validity or effect of any interim order or adoption order.

“**191 Access to adoption records by other persons**

- “(1) Despite anything in the Adult Adoption Information Act 1985, any other person may apply to the Family Court for an order that court adoption records or adoption records held by the department be made available for his or her inspection who—
- “(a) has the written consent of the adopted child or adopted person; or
 - “(b) can satisfy the court that the adopted child or adopted person or any birth parent of the child is dead; or
 - “(c) can satisfy the court that he or she has a sufficient and proper interest in inspecting such records.
- “(2) For the purposes of **subsection (1)(c)**, a sufficient and proper interest includes, but is not restricted to, the establishment or proof of whakapapa and the undertaking of genealogical research.
- “(3) A court may require a social worker to prepare a report following an application for an order under **subsection (1)**.
- “(4) A social worker preparing a report required under **subsection (3)**—
- “(a) may consider any information obtained for the purpose, including information in the court adoption records and the records held by the department relevant to the application for the order; but
 - “(b) may not consider information relating to any party to the adoption or the application for an adoption order that was obtained by the department before the application was made.
- “(5) Where a veto has been lodged under the Adult Adoption Information Act 1985 and has not expired, that veto extends to restrict access to all adoption records under this section.

“Culture and family relationships

“192 Adoption and Māori customary practices

The customary practice of whāngai is permitted under this Act, and operates according to local, iwi-specific practices.

“193 Succession

- “(1) An adopted child or person is to be treated as a biological child of the adoptive parents for the purposes of the laws of intestacy and succession.
- “(2) All class gifts left to children by an adoptive parent in a will, or to which that parent’s children are entitled under an intestacy, shall be deemed to include any adopted child of the adoptive parent unless the parent has explicitly stated otherwise in the will.

“194 Prohibited degrees of relationship

- “(1) For the avoidance of doubt, the rules relating to prohibited degrees of marriage and civil union set out in the Marriage Act 1955 and the Civil Union Act 2004 apply to all relationships created by an adoption order.
- “(2) Despite the existence of an adoption order, the birth mother, birth father, and other members of the birth family continue to fall within the prohibited degrees of relationship as if the adoption order had not been made.
- “(3) An adopted child or adopted person may apply to the Family Court to marry or enter into a civil union with an adoptive relative deemed to be related within the degrees of affinity for the purposes of the Marriage Act 1955 or the Civil Union Act 2004.
- “(4) In deciding an application under **subsection (3)** in order to determine whether the proposed marriage or civil union is contrary to the public interest, the court must consider—
- “(a) the age at which the child was adopted; and
 - “(b) the other party’s role in and degree of participation in the family unit; and
 - “(c) the need to protect the sanctity and integrity of the family relationship.

“195 Incest

- “(1) Section 130 of the Crimes Act 1961 applies to all relationships between adoptive parents and the person whom they have adopted, and any other relationships created by the adoption.
- “(2) Despite the existence of an adoption order, the birth mother, birth father and other members of the birth family continue to fall within the relationships set out in section 130 of the Crimes Act 1961 as if the adoption order had not been made.
- “(3) Nothing in this Act limits the operation of section 130 of the Crimes Act 1961.

**“Subpart 1—Recognition of overseas
adoption in non-Convention country****“196 Interpretation**

In this subpart, unless the context otherwise requires,—

“**Convention** means the Convention on Protection of Children and Co-operation 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 1A**

“**non-Convention country** means a country that has not ratified or acceded to the Convention.

“197 Overseas adoptions of children from non-Convention countries

- “(1) Where a person is the subject of an adoption order made after the commencement of the Care of Children (Adoption and Surrogacy Law Reform) Amendment Act **2014** in any non-Convention country and the adoption is legally valid according to the law of that place, then, for the purposes of this Act and all other statutes and laws, the adoption has the same effect as an adoption order validly made under this Act provided that—
- “(a) the adoptive parent or parents had been at the time of the adoption order habitually resident in the country where the adoption took place for not less than 2 years; and
- “(b) in consequence of the adoption, the adoptive parent or parents of any adopted person had, or would (if the adopted person had been a young child) have had, im-

- mediately following the adoption, according to the law of that place, a right superior to that of any birth parent of the adopted person in respect of the role of providing day-to-day care for that person; and
- “(c) in consequence of the adoption, the adoptive parents or any adoptive parent had, immediately following the adoption, according to the law of that place, a right superior to or equal with that of any birth parent in respect of any property of the adopted person that was capable of passing to the parents or any parent of the person in the event of the person dying intestate without other next of kin and habitually resident in the place where the adoption was made and a national of the country that had jurisdiction in respect of that place.
- “(2) The production of a document purporting to be the original or a certified copy of an order or record of adoption made by a court or a judicial or public authority in any place outside New Zealand is, in the absence of proof to the contrary, sufficient evidence that the adoption was made and that it is legally valid according to the law of that place.
- “(3) Nothing in this section shall alter the effect of any other adoption made before or after the commencement of the Care of Children (Adoption and Surrogacy Law Reform) Amendment Act **2014** in any place outside New Zealand where the adoptive parent or parents were not habitually resident in New Zealand.
- “(4) This section does not apply to any adoption that is an adoption in a Convention country and is an adoption to which the Hague Convention applies.

“Subpart 2—Convention intercountry
adoptions

“**198 Interpretation**

In this subpart, unless the context otherwise requires,—

“**chief executive** means the chief executive of the department

“**Contracting State** means, subject to Article 45 of the Convention, a country for which the Convention is for the time being in force as between that country and New Zealand

“**Convention** means the Convention on the Protection of Children and Co-operation 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 1A**

“**department** means the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989

“**intercountry adoption** means the adoption of a child who is habitually resident in an overseas Contracting State and has been, is being, or is to be moved to New Zealand either after his or her adoption in that State, or for the purposes of his or her adoption in New Zealand

“**New Zealand accredited body** means an organisation approved as an accredited body under **section 209**

“**New Zealand Central Authority** means the chief executive of the department

“**organisation** means any body or organisation, whether incorporated or unincorporated.

“**199 Convention to have force of law**

Subject to the provisions of this Act, the provisions of the Convention have the force of law in New Zealand.

“**200 New Zealand Central Authority**

“(1) The chief executive is the New Zealand Central Authority for the purposes of the Convention.

“(2) The chief executive has all the duties, may exercise all the powers, and must perform all the functions that a Central Authority has under the Convention.

“(3) The chief executive may not be made subject to any order to pay costs relating to adoptions in relation to the exercise or performance, by the chief executive, of any of the chief executive’s duties, powers, or functions as the New Zealand Central Authority.

“**201 Delegation of functions**

“(1) The New Zealand Central Authority may, to the extent permitted by the Convention and by any regulations made under this

Act, delegate the functions of a Central Authority under Article 9 or Chapter IV of the Convention to public authorities or New Zealand accredited bodies.

“(2) No such delegation prevents the exercise of any functions by the New Zealand Central Authority.

“**202 Authority for New Zealand accredited bodies to act overseas**

The New Zealand Central Authority may authorise a New Zealand accredited body to act in another Contracting State.

“**203 Approval of placement**

“(1) A child who is habitually resident in another Contracting State must not be entrusted to prospective adoptive parents who are habitually resident in New Zealand unless the New Zealand Central Authority has approved the decision.

“(2) Where the New Zealand Central Authority refuses to approve such a decision, the Authority must give notice in writing to the prospective adoptive parents of the refusal and the reasons for it.

“**204 Recognition of Convention adoptions**

“(1) An adoption made in accordance with the Convention, subject to Article 24 of the Convention,—

“(a) must be recognised in accordance with the Convention; and

“(b) for the purposes of this Act and all other New Zealand enactments and laws, has, subject to **section 205**, the same effect as an adoption order validly made under this Act.

“(2) A certificate signed by the competent authority in the State where the adoption took place and stating that the adoption was made in accordance with the Convention is for all purposes prima facie evidence of that fact.

“(3) The Family Court may, under Article 24 of the Convention, refuse to recognise an adoption made in accordance with the Convention, subject to such terms and conditions as it thinks fit.

- “(4) No application to the court under **subsection (3)** may be made without the prior approval of the Attorney-General.
- “(5) Every application to the court under **subsection (3)** must be heard as soon as practicable.

“**205 Termination of pre-existing legal parent-child relationships**

- “(1) An adoption in accordance with the Convention does not have the effect of terminating a pre-existing legal parent-child relationship unless—
 - “(a) the adoption has that effect in the State where it was made; or
 - “(b) the Family Court makes an order converting the adoption into one having that effect.
- “(2) The court may, on application, make such an order if satisfied that—
 - “(a) the adoptive parent is habitually resident in New Zealand; and
 - “(b) the adoptive parent has, in accordance with the Convention, adopted, in another Contracting State, a child who is habitually resident in that Contracting State; and
 - “(c) the consents to the adoption required by paragraphs *c* and *d* of Article 4 of the Convention have been given for the purpose of an adoption that terminates the pre-existing legal parent-child relationship.

“**206 Access to information**

- “(1) The New Zealand Central Authority must ensure that every report under paragraph 1 of Article 16 of the Convention that is prepared or received by it, and that results in an adoption, in accordance with the Convention, of the child who is the subject of the report, is retained either by the New Zealand Central Authority or by the Chief Archivist under the Public Records Act 2005.
- “(2) Every New Zealand accredited body that prepares or receives a report under paragraph 1 of Article 16 of the Convention must give a copy to the New Zealand Central Authority.

“207 Certificate of Secretary of Foreign Affairs and Trade

A certificate signed by the Secretary of Foreign Affairs and Trade and stating that a specified country is or is not a Contracting State is, unless the contrary is proved by the production of another certificate issued under this section (being a certificate that was issued after the first-mentioned certificate was issued), for all purposes conclusive evidence of that fact.

“208 New Zealand accredited bodies

- “(1) The chief executive may approve as a New Zealand accredited body under the Convention any organisation that—
- “(a) pursues only non-profit objectives; and
 - “(b) has demonstrated its capability and competence to carry out properly and on a continuing basis the tasks that may be delegated to it under the Convention; and
 - “(c) has demonstrated, by its aims, policy, and operations, that it will operate in the best interests of the child, and with respect for his or her fundamental rights, when carrying out tasks that may be delegated to it under the Convention; and
 - “(d) is directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
- “(2) An organisation that is formed or carried on for the purpose of trading or securing a pecuniary profit for its members is, for the purpose of this Act, treated as pursuing profit objectives.

“209 Application for accreditation

- “(1) Any application for approval as a New Zealand accredited body—
- “(a) must be in writing and contain such information relating to the organisation as is required by the chief executive; and
 - “(b) must nominate a person to act as principal officer of the organisation for the purposes of this Act.
- “(2) Before considering any such application, the chief executive must publicly notify the application in at least 1 daily newspaper circulating in the area in which the principal office of the organisation is situated.

“(3) The notice must set a closing date for receiving submissions on the application, which must not be earlier than 10 working days after publication.

“(4) The chief executive is not required to conduct a public hearing on the application.

“**210 Grant of accreditation**

Where the chief executive approves an organisation as a New Zealand accredited body, the accreditation must—

“(a) be in writing; and

“(b) specify any conditions to which it is subject (if any); and

“(c) specify the functions that have been delegated to the organisation under Article 9 or Chapter IV of the Convention; and

“(d) be notified in the *Gazette*.

“**211 Declining of application for accreditation**

The chief executive must not decline an application made under **section 209** without giving the applicant—

“(a) a copy of any information on which the chief executive relies in proposing to decline the application; and

“(b) a reasonable opportunity to make written submissions to the chief executive in relation to the information.

“**212 Suspension and revocation of accreditation**

“(1) The chief executive may exercise either or both of the powers contained in **subsection (2)** if the chief executive is satisfied that a New Zealand accredited body—

“(a) has pursued, or is pursuing, profit objectives; or

“(b) is no longer suited to performing functions that, under the Convention, may be delegated to New Zealand accredited bodies; or

“(c) has failed in a significant way to adequately perform any function that has been delegated to that body under the Convention; or

“(d) has not provided to the New Zealand Central Authority access to documents or records relating to any adoption

- arranged by the body in accordance with functions delegated to it under the Convention; or
- “(e) has not submitted to supervision of its composition, operation, and financial situation by the chief executive; or
 - “(f) has charged excessive costs and expenses in respect of the performance of any function delegated to that body under the Convention; or
 - “(g) has allowed the payment of unreasonably high remuneration to the principal officer or staff in relation to functions delegated to that body under the Convention.
- “(2) The chief executive may—
- “(a) suspend the approval of an organisation as a New Zealand accredited body if the chief executive considers that suspension is desirable in the public interest; and
 - “(b) give the organisation 60 days’ notice of the chief executive’s intention to revoke the approval of the organisation as a New Zealand accredited body and the reasons for that intention.
- “(3) The chief executive must have regard to any submissions that are received from the organisation before the decision to revoke the approval of the organisation as a New Zealand accredited body is made.
- “(4) The chief executive must—
- “(a) give notice in writing of the suspension or revocation of accreditation, and the reasons for it, to the organisation; and
 - “(b) give notice of the suspension or revocation in the *Gazette*.
- “(5) Where the accreditation of any organisation is suspended or revoked under this section, the New Zealand Central Authority must ensure, in relation to any ongoing adoption, that the functions that were delegated to the organisation under the Convention at the time of suspension or revocation are carried out.

“213 Appeals against refusal of approval or revocation or suspension of approval

- “(1) Any person may appeal to a District Court against a decision, if that person is dissatisfied with—
- “(a) any decision of the chief executive to decline an application by that person for approval as a New Zealand accredited body; or
 - “(b) any decision of the chief executive to revoke or suspend that person’s approval as a New Zealand accredited body.
- “(2) An appeal under this section must be brought within 28 days after notice of the decision was communicated to the appellant, or within such further time as a District Court may allow on application made before or after the expiration of that period.
- “(3) Every appeal under this section must be heard as soon as practicable after the appeal is lodged.
- “(4) Where, before an appeal against a decision to suspend a person’s approval as a New Zealand accredited body has been dealt with, the approval is revoked, the court may treat the appeal as an appeal against the decision to revoke the approval.
- “(5) On the hearing of an appeal under this section, the District Court may confirm, reverse, or modify the decision of the chief executive, or may give any decision that the chief executive could have given or made in respect of the matter.
- “(6) Nothing in this section gives a District Court power to review any part of the decision of the chief executive other than the part against which the appellant has appealed.
- “(7) Subject to any order of the court, every decision appealed against under this section continues in force and has effect according to its tenor pending the determination of the appeal.
- “(8) The decision of a District Court on any appeal under this section is final.

“214 Accredited bodies to report annually

- “(1) Every New Zealand accredited body must report annually to the chief executive on the exercise of its functions delegated under the Convention during the year.

- “(2) The report must be given within 3 months of the end of each year ending with 30 June, or such other date as may from time to time be directed by the chief executive.
- “(3) The report must be accompanied by a copy of the body’s financial accounts, which must include a statement of the money received, and the expenses paid to other persons, by the body in respect of—
 - “(a) the functions delegated to the body under the Convention; and
 - “(b) the services provided by the body to persons intending to be adoptive parents.

“215 Assessment of accredited bodies

- “(1) The chief executive may at any time, and must at intervals of not more than 12 months, carry out an assessment of a New Zealand accredited body for the purpose of—
 - “(a) supervising the organisation as to its composition, operation, and financial situation; and
 - “(b) reviewing whether or not its approval as a New Zealand accredited body should continue.
- “(2) Any such assessment may be carried out by any employee of the department authorised by the chief executive.
- “(3) Every employee of the department who carries out an assessment of a New Zealand accredited body must prepare a report on that assessment for the chief executive, and a copy of that report must be supplied by the chief executive to that organisation.
- “(4) For the purpose of carrying out an assessment under this section, an employee of the department authorised by the chief executive may—
 - “(a) interview the principal officer or any other officer or employee of the organisation; and
 - “(b) examine any documents or records that are held by the organisation and that relate to its composition, operation, or financial situation; and
 - “(c) communicate with any person to whom the organisation is providing a service, or has provided a service, in relation to functions delegated to the organisation under the Convention; and

- “(d) communicate with any other person who may be able to provide relevant information.
- “(5) Every employee of the department who carries out an assessment under this section must give reasonable notice of that person’s intention to interview the principal officer or other officer or employee of an organisation, or to examine any documents or records held by the organisation.
- “(6) The provisions of **subsections (2) to (4)** apply to any review under **subsection (1)(b)** as if it were an application.

“**216 Change of principal officer to be notified**

Every New Zealand accredited body must, within 10 working days, notify the chief executive in writing of any change in the person acting as its principal officer for the purposes of this Act.

“**217 Regulations**

The Governor-General may from time to time, by Order in Council, make regulations—

- “(a) prescribing the extent to which the functions of a Central Authority under Article 9 or Chapter IV of the Convention may be delegated to public authorities or New Zealand accredited bodies:
- “(b) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

“Subpart 3—Surrogacy arrangements

“**218 Interpretation**

In this subpart, unless the context otherwise requires,—

“**birth mother**, for the purpose of surrogacy arrangements, means the woman who gives birth to a child, even where that child is conceived using genetic material other than her own

“**commissioning parent or parents** means any person or persons who enter into an altruistic surrogacy arrangement with a prospective surrogate birth mother with the intention that the commissioning parent or parents will care for the child and take steps to adopt the child

“**commercial nature** means any arrangement where one or more parties gives or receives, or agrees to give or receive, valuable consideration for another party’s participation in a surrogacy arrangement, or for arranging another party’s participation in the surrogacy arrangement

“**prospective surrogate birth mother** means a woman who enters into an altruistic surrogacy arrangement with a commissioning parent or parents whereby she will gestate a child and relinquish the child to the commissioning parent or parents with the intention that they will care for the child and will take steps to adopt the child.

“**219 Relationship to Human Assisted Reproductive Technology Act 2004**

The provisions of this Act, and any altruistic surrogacy arrangement entered into in accordance with this Act, are subject to the Human Assisted Reproductive Technology Act 2004.

“**220 Altruistic surrogacy arrangements**

- “(1) An altruistic surrogacy arrangement is permitted where—
- “(a) a commissioning parent or commissioning parents wish to make an arrangement with a prospective surrogate birth mother whereby she will undergo an assisted reproductive procedure with the aim of giving birth to a child with the intention that the child will be cared for and adopted by the commissioning parent or parents; and
 - “(b) all parties to the arrangement consent to all stages of the assisted reproductive procedure process; and
 - “(c) the commissioning parent or commissioning parents have proved that they are entitled to remain indefinitely in New Zealand; and
 - “(d) the proposed arrangement and process have been determined as falling within the guidelines of, and have been approved by, the Ethics Committee on Assisted Reproductive Technology in accordance with the Human Assisted Reproductive Technology Act 2004; and
 - “(e) the arrangement is not an arrangement of a commercial nature that constitutes an offence against section 14(3)

of the Human Assisted Reproductive Technology Act 2004.

- “(2) **Subsection (1)(e)** does not restrict the payment of any reasonable expenses incurred by the birth mother associated with any of the following matters:
- “(a) any attempts to conceive a child; or
 - “(b) her pregnancy or giving birth; or
 - “(c) costs incurred by the birth mother or her partner in connection with any application by the commissioning parent or parents to obtain an adoption order in respect of the child.
- “(3) Without limiting **subsection (2)**, the following may be included in the birth mother’s expenses:
- “(a) any reasonable medical expenses associated with any of the matters referred to in **subsection (2)**; and
 - “(b) any reasonable expenses, including reasonable medical expenses, for a child born as a result of the altruistic surrogacy arrangement; and
 - “(c) any insurance premium payable for health, disability, or life insurance that would not have been obtained by the birth mother if the altruistic surrogacy arrangement had not been entered into; and
 - “(d) any reasonable costs of counselling before or after the altruistic surrogacy arrangement was entered into; and
 - “(e) any reasonable legal costs for her and her partner (if any) relating to the altruistic surrogacy arrangement and any proceedings relating to the granting of an adoption order, guardianship order, or parenting order in respect of the child; and
 - “(f) any reasonable compensation for the birth mother’s loss of earnings or other income during the time of the altruistic surrogacy arrangement—
 - “(i) for a period of not more than 2 months during the birth mother’s pregnancy or after the birth of the child; or
 - “(ii) for any other period during the birth mother’s pregnancy when the birth mother was unable to work on medical grounds; and

- “(g) any clothing, bedding, and toilet articles for the newborn child; and
- “(h) any DNA or similar genetic testing or procedures required in the course of the altruistic surrogacy arrangement.

“221 Altruistic surrogacy arrangements may be in writing

- “(1) An altruistic surrogacy arrangement may be, but need not be, expressed as a written arrangement including defined terms and conditions whereby the birth mother agrees to conceive and carry a child to full term, using the genetic material of another person or persons.
- “(2) Any written altruistic surrogacy arrangement must be—
 - “(a) signed by the commissioning parent or commissioning parents; and
 - “(b) signed by the surrogate birth mother and the birth mother’s spouse or partner (if any).
- “(3) No written surrogacy arrangement will be enforceable as a contract, but will be taken into account by the court when it is considering an application for an adoption order or other relevant orders regarding the welfare and best interests of the child.

“222 Adoption orders for altruistic surrogacy arrangements

- “(1) All adoption orders granted in respect of any child conceived as a result of an altruistic surrogacy arrangement are subject to all relevant adoption provisions in this Part.
- “(2) Where a written altruistic surrogacy arrangement exists, the commissioning parent or parents and the surrogate birth mother may, prior to the birth of the child, agree to an adoption assessment process pursuant to the pre-adoption requirements specified in this Act.
- “(3) After the birth of a child conceived as a result of an altruistic surrogacy arrangement, and where the applicants have been accepted as suitable to adopt the child, the commissioning parent or parents may provide day-to-day care for the child, subject to—
 - “(a) the consent of the birth mother; and

- “(b) the approval of any social workers involved in the adoption process; and
- “(c) the approval of the court on application by the commissioning parent or parents.

“223 International altruistic surrogacy arrangements

- “(1) Commissioning parents who are parties to a written altruistic surrogacy arrangement may apply to the court for leave to commence the pre-adoption assessment process in a New Zealand court in respect of a child who may be born in consequence of an altruistic surrogacy arrangement, or any equivalent arrangement, in another country where—
- “(a) the overseas altruistic surrogacy arrangement, or any equivalent arrangement, is lawful in the law of the country where the surrogacy procedure will occur; and
 - “(b) the court considers that the proposed overseas altruistic surrogacy arrangement is not repugnant to the purpose and principles of—
 - “(i) this Act; or
 - “(ii) the Human Assisted Reproductive Technology Act 2004; or
 - “(iii) any regulations, guidelines, or requirements laid down by the Ethics Committee on Assisted Reproductive Technology or the Advisory Committee on Assisted Reproductive Technology; and
 - “(c) the commissioning parent or parents are—
 - “(i) New Zealand citizens; or
 - “(ii) habitually resident in New Zealand and entitled to remain indefinitely in New Zealand.
- “(2) Commissioning parents who are granted leave by the court under this section are still subject to the rules and procedures of this Part.
- “(3) Commissioning parents may apply to the relevant authorities for prior approval for a child born consequent to such procedures, to enter New Zealand for the purpose of adoption.

“224 Offences

- “(1) Under the Human Assisted Reproductive Technology Act 2004, it is an offence for any person or persons to enter in to

any surrogacy arrangement where 1 or more parties gives or receives, or agrees to give or receive, valuable consideration for his or her participation or for any other person's participation, or for arranging any other person's participation, in a surrogacy arrangement occurring in New Zealand.

- “(2) This section does not apply in respect of a person or persons agreeing to pay for any of the costs referred to in **section 220(2) and (3)**.
- “(3) It is an offence for any medical practitioner to be a party to an unapproved surrogacy arrangement.”

Part 2

Amendments to Status of Children Act 1969

7 Amendments to Status of Children Act 1969

This **Part** amends the Status of Children Act 1969.

8 Section 5 amended (Presumptions as to parenthood)

- (1) In section 5(1), replace “A” with “a” and before “A child born”, insert “Subject to **subsections (4) and (5)**”.
- (2) After section 5(3), insert:
- “(4) If a child has been born in a foreign country, and the names of the parent or parents for that child have been entered in a register relating to births in that country, a certified copy of that entry purporting to be signed or sealed in accordance with the law of that foreign country shall be prima facie evidence that in New Zealand, the person or persons named as the parent or parents are the parent or parents of the child.
- “(5) If a child has been born in a foreign country, and a court or a judicial or public authority in that country has made an order as to the parentage of the child, a certified copy of that order purporting to be signed or sealed in accordance with the law of that foreign country shall be prima facie evidence that in New Zealand the person or persons named in the order as the parent or parents are the parent or parents of the child.
- “(6) This section applies only to those adoptions made—

- “(a) before the commencement of the **Care of Children (Adoption and Surrogacy Law Reform) Amendment Act 2014** in any place outside New Zealand; or
- “(b) after the commencement of that Act in any place outside New Zealand where the adoptive parents are not habitually resident in New Zealand.”

9 Section 7 amended (Recognition of paternity)

After section 7(1)(c), insert:

- “(d) paternity has been established in accordance with **section 5(4) or (5)**”.

10 Section 26 amended (Conflicting evidence of paternity)

In section 26, replaced “Sections” with “Subject to **section 26A**, sections”.

11 New section 26A inserted (Conflicting evidence of parentage)

After section 26, insert:

“26A Conflicting evidence of parentage

Evidence of parentage in accordance with **section 5(4) and (5)** has effect despite anything in this Part.”

Part 3

Miscellaneous provisions

12 Acts repealed

The Adoption Act 1955 and the Adoption (Intercountry) Act 1997 are repealed.

13 New Schedule 1A inserted

After Schedule 1, insert the **Schedule 1A** set out in the Schedule of this Act.

Schedule

s 13

New Schedule 1A inserted

Schedule 1A

s 196

**Convention on Protection of Children and
Co-operation 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

Chapter I—*continued*

- his or her fundamental rights as recognized in international law;
- b* to establish a system of co-operation 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

Chapter II—*continued*

- (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 co-operate with each other and promote co-operation 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.

Chapter III—*continued*

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.

Chapter III—*continued**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—

Chapter IV—*continued*

- 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.

Chapter IV—*continued**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

Chapter IV—*continued*

- 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 persons 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 provided 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 recognized 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 recognize 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.

Chapter V—*continued*

- 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 recognized, 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 recognizes 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 recognizes 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 consents 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.

Chapter VI—*continued**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 persons 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

Chapter VI—*continued*

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 the 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 persons, 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.

Chapter VI—*continued**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.

Chapter VII—*continued*

- 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 matters 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 de-

Chapter VII—*continued*

posit 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;

Chapter VII—*continued*

f the denunciations referred to in Article 47.

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

Done at The Hague, on the day of 19...*, 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.

*The Convention was signed on the 29th of May 1993 and thus
bears that date.