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Statutory Rules 1998 No. /

249

Family Law (Hague Convention on Intercountry Adoption) Regulations 1998

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**SCHEDULE 1
THE CONVENTION**

**SCHEDULE 2
CONVENTION COUNTRIES**



Statutory Rules 1998 No. ¹ /

249

Family Law (Hague Convention on Intercountry Adoption) Regulations 1998

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Family Law Act 1975*.

Dated **30 JUL 1998** 1998.

WILLIAM DEANE
Governor-General

By His Excellency's Command,

DARYL WILLIAMS
Attorney-General

PART 1—PRELIMINARY

Name of Regulations

1. These Regulations are the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

Commencement

2. These Regulations commence on the day the Convention enters into force for Australia.

Note 1 See subsection 111C (2) of the Act.

Note 2 Not all the provisions of these Regulations necessarily apply to all States—see regulation 34.

Definitions

3. In these Regulations, unless the contrary intention appears:

accredited body means a body accredited, under the laws of a State and in accordance with the Commonwealth-State agreement, as an accredited body for the Convention.

Act means the *Family Law Act 1975*.

adoption compliance certificate means a certificate issued in accordance with article 23 of the Convention.

Bureau means the Permanent Bureau of the Hague Conference on Private International Law.

Central Authority means a person or office designated for a Convention country under article 6 of the Convention.

child means an individual who is under 18 years.

Commonwealth Central Authority has the meaning given by regulation 5.

Commonwealth-State agreement means the “Commonwealth-State agreement for the implementation of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption”:

- (a) made between the Commonwealth and the States and Territories; and
- (b) that commenced operation on 9 April 1998.

Convention means the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption:

- (a) mentioned in subsection 111C (1) of the Act; and
- (b) a copy of the English text of which is set out in Schedule 1.

Convention country has the meaning given by regulation 4.

parental responsibility, in relation to a child, has the same meaning as in section 61B of the Act.

receiving State has the same meaning as in article 2 of the Convention.

State includes Territory.

State Central Authority has the meaning given by regulation 8.

State of origin has the same meaning as in article 2 of the Convention.

Note The following expressions used in these Regulations are defined in the Act (see section 4):

- court
- Territory.

Convention countries

4. Subject to article 45 of the Convention, each of the following countries is a Convention country:

- (a) a country mentioned in Schedule 2;
- (b) any other country for which the Convention has entered into force, other than:
 - (i) Australia; and
 - (ii) a country against whose accession Australia has raised an objection under article 44 of the Convention.

PART 2—COMMONWEALTH AND STATE CENTRAL AUTHORITIES

Commonwealth Central Authority

5. For article 6 of the Convention, the Secretary to the Department is designated:

- (a) the Commonwealth Central Authority; and
- (b) the Central Authority to which communication from a country other than Australia may be addressed.

Functions, etc of Commonwealth Central Authority

6. (1) The functions of the Commonwealth Central Authority are to do, or to coordinate the doing of, anything that is necessary:

- (a) to enable the performance of Australia's obligations under the Convention; or
- (b) to obtain for Australia any advantage or benefit under the Convention.

(2) For subregulation (1), the functions of the Commonwealth Central Authority include the following:

- (a) cooperating with Central Authorities outside Australia on matters relating to the administration and implementation of the Convention;
- (b) consulting State Central Authorities to get information for determining whether Australia is meeting its obligations under the Convention;
- (c) to the extent that the legislation and administrative practices of States do not ensure that Australia meets its obligations under the Convention—preparing legislation to ensure that Australia meets those obligations;
- (d) receiving advice from a State Central Authority that a provision of the Convention has not been respected in the State, and ensuring with the State Central Authority that appropriate measures are taken to ensure compliance with the provision;
- (e) receiving advice from a State Central Authority that there is a serious risk that a provision of the Convention may not be respected in the State, and ensuring with the State Central Authority that appropriate measures are taken to ensure compliance with the provision;
- (f) consulting State Central Authorities on matters relating to intercountry adoption.

(3) However, the functions of the Commonwealth Central Authority do not include the following:

- (a) processing the day-to-day casework involved in a particular adoption;
- (b) approving an application for the adoption of a child;
- (c) giving consent to the adoption of a child;
- (d) a function reserved, under the Commonwealth-State agreement, for a State or State Central Authority;
- (e) accrediting a body for the Convention.

(4) The functions of the Commonwealth Central Authority under this regulation are additional to its other functions under these Regulations.

(5) Subject to subregulation (3), the Commonwealth Central Authority:

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

(6) If the exercise by the Commonwealth Central Authority of one of its functions (the ***Commonwealth function***) would affect the exercise of a function of a State Central Authority, the Commonwealth Central Authority must consult the State Central Authority about the exercise of the Commonwealth function before it is exercised.

Notice of designation of Commonwealth Central Authority

7. (1) As soon as practicable after the commencement of these Regulations, the Commonwealth Central Authority must tell the Bureau, in writing, the Commonwealth Central Authority's name, address and functions.

(2) As soon as practicable after a change to the name, address or functions of the Commonwealth Central Authority, the Commonwealth Central Authority must tell the Bureau, in writing, about the change.

State Central Authorities

8. (1) The State Central Authority for a State is the person:

- (a) so designated by the State (if it has the capacity to do so) and notified to the Commonwealth Central Authority under subregulation 10 (1); or
- (b) if a person is not designated under paragraph (a)—so designated by the Commonwealth, under regulation 9.

(2) A State Central Authority designated under regulation 9 ceases to be a State Central Authority under that regulation if the State concerned:

- (a) designates a State Central Authority for the State; and
- (b) tells the Commonwealth Central Authority about the designation under subregulation 10 (1).

State Central Authorities—designation by Commonwealth

9. (1) The Attorney-General of the Commonwealth may designate a person, in writing, as State Central Authority of a State for these Regulations.

(2) A person designated must be:

- (a) the State Minister administering the laws of that State relating to adoptions; or
- (b) a person holding, or for the time being performing the duties of, the office, in the department or service responsible for the administration of adoptions in the State, that supervises the conduct of those adoptions.

(3) A designation may be expressed to have effect only in the circumstances mentioned in the instrument of designation.

(4) As soon as practicable after the Attorney-General designates a State Central Authority, the Attorney-General must publish a notice of the designation in the *Gazette*.

- (5) In this regulation, *State Minister* means:
- (a) for a State—a Minister of the Crown for the State; and
 - (b) for a Territory—a Minister of the Crown for the Territory.

Note Subregulations 9 (1) and (2) do not necessarily apply to all States—see regulation 34.

Notice of designation of State Central Authority

10. (1) As soon as practicable after a State designates a State Central Authority, the State must tell the Commonwealth Central Authority, in writing, the name, address and functions of the State Central Authority.

(2) As soon as practicable after a change to the name, address or functions of a State Central Authority, the State concerned must tell the Commonwealth Central Authority, in writing, about the change.

(3) As soon as practicable after the Commonwealth Central Authority is given information under subregulation (1) or (2), it must give the Bureau the information, in writing.

(4) As soon as practicable after the Commonwealth Central Authority is told about a designation under subregulation (1), it must also publish a notice of the designation in the *Gazette*.

(5) If a State to which subregulation (1) or (2) does not apply gives the Commonwealth Central Authority information of a kind mentioned in the subregulation, the Commonwealth Central Authority must comply with subregulations (3) and (4) as if the information were given under the subregulation.

Note Subregulations 10 (1) and (2) do not necessarily apply to all States—see regulation 34.

State Central Authorities and accredited bodies

11. For these Regulations, a State Central Authority of a State is taken to have carried out a function if the function is carried out by an accredited body of the State.

PART 3—ACCREDITED BODIES

Notice of accreditation

12. (1) As soon as practicable after a State Central Authority accredits a body, the State Central Authority must tell the Commonwealth Central Authority, in writing:

- (a) the name, address, duties and powers of the accredited body; and
- (b) the conditions of the accreditation.

(2) As soon as practicable after a change to the name, address, duties or powers of an accredited body, the State Central Authority that accredited the body must tell the Commonwealth Central Authority, in writing, about the change.

(3) As soon as practicable after a change to the conditions of an accreditation, the State Central Authority that accredited the body must tell the Commonwealth Central Authority, in writing, about the change.

(4) As soon as practicable after the Commonwealth Central Authority is given information under subregulation (1), (2) or (3), it must give the Bureau the information, in writing.

(5) As soon as practicable after the Commonwealth Central Authority is told about an accreditation, it must also publish a notice of the accreditation in the *Gazette*.

(6) If a State to which subregulation (1), (2) or (3) does not apply gives the Commonwealth Central Authority information of a kind mentioned in the subregulation, the Commonwealth Central Authority must comply with subregulations (4) and (5) as if the information were given under the subregulation.

Note Subregulations 12 (1), (2) and (3) do not necessarily apply to all States—see regulation 34.

Notice of revocation

13. (1) As soon as practicable after a State Central Authority revokes the accreditation of a body, the State Central Authority must tell the Commonwealth Central Authority, in writing, about the revocation.

(2) As soon as practicable after the Commonwealth Central Authority is given information under subregulation (1):

- (a) it must give the Bureau the information, in writing; and
- (b) it must publish a notice of the revocation in the *Gazette*.

(3) If a State to which subregulation (1) does not apply gives the Commonwealth Central Authority information of a kind mentioned in the subregulation, the Commonwealth Central Authority must comply with subregulation (2) as if the information were given under subregulation (1).

Note Subregulation 13 (1) does not necessarily apply to all States—see regulation 34.

PART 4—COURT ORDERS AND RECOGNITION OF ADOPTION

Adoption of Australian child into a Convention country

14. (1) This regulation applies if arrangements for the adoption of a child, who is habitually resident in Australia, by a person who is, or persons who are, habitually resident in a Convention country, are made in accordance with:

- (a) the Convention; and
- (b) the laws of the Commonwealth and the State in which the child is habitually resident; and
- (c) the laws of the Convention country.

(2) The person or persons proposing to adopt the child must apply to a court for an order that the child be adopted by the person or persons.

- (3)** The court may make the order only if it is satisfied that:
 - (a) the Central Authority of the Convention country has agreed to the adoption of the child; and
 - (b) the State Central Authority of the State in which the child habitually resides has agreed to the adoption of the child; and
 - (c) the adoption is in the best interests of the child.
- (4)** However, the court must not make the order if:
 - (a) the child is not in Australia; or
 - (b) the child is not allowed to leave Australia:
 - (i) under a law of the Commonwealth or a State; or
 - (ii) because of an order of a court of the Commonwealth or a State.

(5) The best interests of a child must be determined in accordance with section 68F of the Act.

Note This regulation does not necessarily apply to all States—see regulation 34.

Adoption in Australia of a child from a Convention country

15. (1) This regulation applies in relation to an adoption that is to be granted in Australia, of a child who is habitually resident in a Convention country, by a person who is, or persons who are, habitually resident in Australia, if arrangements for the adoption are made in accordance with:

- (a) the Convention; and
- (b) the laws of the Commonwealth and the State of habitual residence of the person or persons proposing to adopt the child; and
- (c) the laws of the Convention country.

(2) The person or persons proposing to adopt the child must apply to a court for an order that the child be adopted by the person or persons.

- (3)** The court may make the order only if it is satisfied that:
- (a) the Central Authority of the Convention country has agreed to the adoption of the child; and
 - (b) the State Central Authority of the State in which the applicant or applicants habitually reside has agreed to the adoption of the child; and
 - (c) the child is allowed to reside permanently in Australia.

(4) However, the court must not make the order if the child is not in Australia.

(5) For paragraph (3) (c), a child is not allowed to reside permanently in Australia if the child is affected by a law of the Commonwealth, or of a State, or by an order of a Commonwealth or State court, the effect of which is to prevent the child from so residing.

Note 1 This regulation does not necessarily apply to all States—see regulation 34.

Note 2 If a child to whom an application relates enters Australia before the application is determined, the child may be subject, while the application is being considered, to the *Immigration (Guardianship of Children) Act 1946*. Legislation of the State in which an application is made may also have consequences for the child concerned.

Adoption of a child from a Convention country to Australia

16. (1) This regulation applies if:

- (a) an adoption, by a person who is habitually resident in Australia, of a child who is habitually resident in a Convention country is granted in that country; and
- (b) an adoption compliance certificate issued in that country is in force for the adoption.

(2) Subject to regulation 22, the adoption is recognised and effective, for the laws of the Commonwealth and each State, on and from the day the certificate becomes effective.

Note This regulation does not necessarily apply to all States—see regulation 34.

Adoption of a child from a Convention country to another Convention country

17. (1) This regulation applies if:

- (a) a child, who is habitually resident in a Convention country, is adopted by a person who is habitually resident in another Convention country; and
- (b) an adoption compliance certificate issued in the Convention country in which the adoption is granted is in force for the adoption.

(2) Subject to regulation 22, the adoption is recognised and effective, for the laws of the Commonwealth and each State, on and from the day the certificate becomes effective.

Effect of recognition of an adoption

18. Recognition of the adoption of a child includes, for the laws of the Commonwealth and each State, recognition that under those laws:

- (a) the relationship between the child and each of the child's adoptive parents is the relationship of child and parent; and
- (b) each adoptive parent of the child has parental responsibility for the child; and

- (c) if the laws of the Convention country where the adoption was granted provide that the adoption of the child terminates the legal relationship between the child and the individuals who were, immediately before the adoption, the child's parents—the relationship is terminated; and
- (d) the child has the same rights as a child who is adopted under the laws of a State.

Evidential value of adoption compliance certificate

19. Subject to regulation 22, an adoption compliance certificate is evidence, for the laws of the Commonwealth and each State, that the adoption to which the certificate relates:

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

Order terminating legal relationship between child and parents

20. (1) This regulation applies if:

- (a) an adoption, by a person who is habitually resident in Australia, of a child who is habitually resident in a Convention country is granted in that country; and
- (b) the laws of the Convention country do not provide that the adoption of the child terminates the legal relationship between the child and the individuals who were, immediately before the adoption, the child's parents (the *pre-adoption parents*).

(2) The person may apply to a court for an order that the adoption of the child terminates the legal relationship between the child and the pre-adoption parents.

- (3) The court may make the order only if it is satisfied that:
- (a) an adoption compliance certificate issued in the Convention country is in force for the adoption; and
 - (b) the laws of the Convention country do not provide that the adoption of a child terminates the legal relationship between the child and the pre-adoption parents; and
 - (c) the child is allowed:
 - (i) to enter Australia; and
 - (ii) to reside permanently in Australia.

(4) For paragraph (3) (c), a child is not allowed to enter, or reside permanently in, Australia if the child is affected by a law of the Commonwealth, or of a State, or by an order of a Commonwealth or State court, the effect of which is to prevent the child from so entering or residing.

Note This regulation does not necessarily apply to all States—see regulation 34.

Decision in a Convention country to convert an adoption

21. (1) Subject to regulation 22, if a decision is made in a Convention country to convert the adoption of a child, in accordance with article 27 of the Convention, the decision is recognised and effective, for the laws of the Commonwealth and each State, on and from the day the decision becomes effective.

(2) Recognition of the decision includes, for the laws of the Commonwealth and each State, recognition that under those laws, the decision terminates the legal relationship between the child and the individuals who were, immediately before the adoption, the child's parents.

Refusal to recognise an adoption or an article 27 decision

22. (1) This regulation applies if a State Central Authority considers that an adoption, or a decision made in accordance with article 27 of the Convention, is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption or decision relates.

(2) The State Central Authority may apply to a court for a declaration that the adoption or decision is not recognised.

(3) If a court declares that it does not recognise the adoption or decision, the adoption or decision (as the case requires) has no effect for the laws of the Commonwealth and each State.

Notice of application under regulation 22

23. (1) If a State Central Authority applies to a court for a declaration under regulation 22, the State Central Authority must, as soon as practicable, tell the Commonwealth Central Authority, in writing, about the application and its reasons for making the application.

(2) When the Commonwealth Central Authority is given information under subregulation (1), it must, as soon as practicable:

- (a) give the Bureau and the Central Authorities of the State of origin and the receiving State the information, in writing; and
- (b) invite those Central Authorities to make submissions to the court about the application.

(3) As soon as practicable after the court has decided the application, the Commonwealth Central Authority must tell the Bureau, in writing, about the decision.

(4) If a State to which subregulation (1) does not apply gives the Commonwealth Central Authority information of a kind mentioned in the subregulation, the Commonwealth Central Authority must comply with subregulations (2) and (3) as if the information were given under subregulation (1).

Note Subregulation (1) does not necessarily apply to all States—see regulation 34.

PART 5—JURISDICTION OF COURTS

Meaning of *arising* in a State or Territory

24. For this Part, a matter to which a provision of Part 4 applies arises in a State if the adoptive parents, or prospective adoptive parents, concerned are habitually resident in that State.

Jurisdiction of courts—New South Wales

25. (1) The Supreme Court of New South Wales is invested with federal jurisdiction in matters arising in New South Wales to which a provision of Part 4 applies.

(2) An appeal from a decision of the Supreme Court of New South Wales constituted by a single judge, exercising jurisdiction under subregulation (1), may be made to the Court of Appeal of that Court.

(3) The Court of Appeal of the Supreme Court of New South Wales is invested with federal jurisdiction for appeals instituted under subregulation (2).

Jurisdiction of courts—Victoria

26. (1) The following courts of Victoria are invested with federal jurisdiction in matters arising in Victoria to which a provision of Part 4 applies:

- (a) the County Court;
- (b) the Supreme Court of Victoria.

(2) An appeal from a decision of the County Court, exercising jurisdiction under subregulation (1), may be made to the Supreme Court of Victoria.

(3) The Supreme Court of Victoria is invested with federal jurisdiction for appeals instituted under subregulation (2).

(4) An appeal from a decision of the Supreme Court of Victoria constituted by a single judge, exercising jurisdiction under subregulation (1) or (3), may be made to the Court of Appeal of that Court.

(5) The Court of Appeal of the Supreme Court of Victoria is invested with federal jurisdiction for appeals instituted under subregulation (4).

Jurisdiction of courts—Queensland

27. (1) The following courts of Queensland are invested with federal jurisdiction in matters arising in Queensland to which a provision of Part 4 applies:

- (a) the Children's Court;
- (b) the Supreme Court of Queensland.

(2) An appeal from a decision of the Children's Court, exercising jurisdiction under subregulation (1), may be made to the Supreme Court of Queensland.

(3) The Supreme Court of Queensland is invested with federal jurisdiction for appeals instituted under subregulation (2).

(4) An appeal from a decision of the Supreme Court of Queensland constituted by a single judge, exercising jurisdiction under subregulation (1) or (3), may be made to the Court of Appeal of that Court.

(5) The Court of Appeal of the Supreme Court of Queensland is invested with federal jurisdiction for appeals instituted under subregulation (4).

Jurisdiction of courts—South Australia

28. (1) The following courts of South Australia are invested with federal jurisdiction in matters arising in South Australia to which a provision of Part 4 applies:

- (a) the Youth Court of South Australia;
- (b) the Supreme Court of South Australia.

(2) An appeal from a decision of the Youth Court of South Australia, exercising jurisdiction under subregulation (1), may be made to the Supreme Court of South Australia.

(3) The Supreme Court of South Australia is invested with federal jurisdiction for appeals instituted under subregulation (2).

(4) An appeal from a decision of the Supreme Court of South Australia constituted by a single judge, exercising jurisdiction under subregulation (1) or (3), may be made to the Full Court of that Court.

(5) The Full Court of the Supreme Court of South Australia is invested with federal jurisdiction for appeals instituted under subregulation (4).

Jurisdiction of Family Court of Western Australia—Western Australia, Christmas Island and Cocos (Keeling) Islands

29. (1) The Family Court of Western Australia is invested with federal jurisdiction in matters:

- (a) arising in Western Australia, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; and
- (b) to which a provision of Part 4 applies.

(2) An appeal from a decision of the Family Court of Western Australia, exercising jurisdiction under subregulation (1), may be made to the Supreme Court of Western Australia.

(3) The Supreme Court of Western Australia is invested with federal jurisdiction for appeals instituted under subregulation (2).

(4) An appeal from a decision of the Supreme Court of Western Australia constituted by a single judge, exercising jurisdiction under subregulation (3), may be made to the Full Court of that Court.

(5) The Full Court of the Supreme Court of Western Australia is invested with federal jurisdiction for appeals instituted under subregulation (4).

Jurisdiction of courts—Tasmania

30. (1) The following courts of Tasmania are invested with federal jurisdiction in matters arising in Tasmania to which a provision of Part 4 applies:

- (a) a court constituted by a magistrate sitting alone;
- (b) the Supreme Court of Tasmania.

(2) An appeal from a decision of a court constituted by a magistrate sitting alone, exercising jurisdiction under subregulation (1), may be made to the Supreme Court of Tasmania.

(3) The Supreme Court of Tasmania is invested with federal jurisdiction for appeals instituted under subregulation (2).

(4) An appeal from a decision of the Supreme Court of Tasmania constituted by a single judge, exercising jurisdiction under subregulation (1) or (3), may be made to the Full Court of that Court.

(5) The Full Court of the Supreme Court of Tasmania is invested with federal jurisdiction for appeals instituted under subregulation (4).

Jurisdiction of courts—Australian Capital Territory, Jervis Bay Territory, Heard and McDonald Islands and Australian Antarctic Territory

31. (1) Jurisdiction is conferred on the Supreme Court of the Australian Capital Territory in matters:

- (a) arising in the Australian Capital Territory, the Jervis Bay Territory, the Territory of Heard and McDonald Islands or the Australian Antarctic Territory; and
- (b) to which a provision of Part 4 applies.

(2) An appeal from a decision of the Supreme Court of the Australian Capital Territory constituted by a single judge, exercising jurisdiction under subregulation (1), may be made to the Full Court of the Federal Court of Australia.

(3) Jurisdiction is conferred on the Full Court of the Federal Court of Australia for appeals instituted under subregulation (2).

**Jurisdiction of courts—Northern Territory and Ashmore and
Cartier Islands**

32. (1) Jurisdiction is conferred on the following courts of the Northern Territory in matters arising in the Northern Territory or the Territory of Ashmore and Cartier Islands to which a provision of Part 4 applies:

- (a) the Local Court;
- (b) the Supreme Court of the Northern Territory of Australia.

(2) An appeal from a decision of the Local Court, exercising jurisdiction under subregulation (1), may be made to the Supreme Court of the Northern Territory of Australia.

(3) Jurisdiction is conferred on the Supreme Court of the Northern Territory of Australia for appeals instituted under subregulation (2).

(4) An appeal from a decision of the Supreme Court of the Northern Territory of Australia constituted by a single judge, exercising jurisdiction under subregulation (1) or (3), may be made to the Court of Appeal of that Court.

(5) Jurisdiction is conferred on the Court of Appeal of the Supreme Court of the Northern Territory of Australia for appeals instituted under subregulation (4).

**Jurisdiction of courts—Norfolk Island and the Coral Seas
Islands Territory**

33. (1) Jurisdiction is conferred on the Court of Petty Sessions of Norfolk Island in matters:

- (a) arising on Norfolk Island or in the Coral Seas Islands Territory; and
- (b) to which a provision of Part 4 applies.

(2) An appeal from a decision of the Court of Petty Sessions of Norfolk Island, exercising jurisdiction under subregulation (1), may be made to the Supreme Court of Norfolk Island.

(3) Jurisdiction is conferred on the Supreme Court of Norfolk Island for appeals instituted under subregulation (2).

(4) An appeal from a decision of the Supreme Court of Norfolk Island constituted by a single Judge, exercising jurisdiction under subregulation (3), may be made to the Full Court of the Federal Court of Australia.

(5) Jurisdiction is conferred on the Full Court of the Federal Court of Australia for appeals instituted under subregulation (4).

PART 6—MISCELLANEOUS

Application

34. (1) A provision of these Regulations, except regulations 5, 6 and 7, does not apply to a State in which there is in force a law (an *intercountry adoption law*) having the same effect as, or comparable effect to, that which the provision would, except for this regulation, have for the State.

(2) Nothing in these Regulations affects:

- (a) the jurisdiction of a court of the Commonwealth or a State, or the power of an authority, under an intercountry adoption law to entertain proceedings, make an order or take any other action in relation to an intercountry adoption; or
 - (b) any such order or action; or
 - (c) the operation, within a State, of an intercountry adoption law of the State.
-

SCHEDULE 1

Regulation 3

THE CONVENTION

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

The States signatory to the present Convention,

Recognising 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,

Recognising 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),

SCHEDULE 1—continued

Have agreed upon the following provisions—

CHAPTER 1—SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are—

- a* to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
- b* to establish a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c* to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

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

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

Article 3

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

SCHEDULE 1—continued

**CHAPTER II—REQUIREMENTS FOR INTERCOUNTRY
ADOPTIONS**

Article 4

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

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

SCHEDULE 1—continued

- (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.

SCHEDULE 1—continued

Article 7

1 Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

2 They shall take directly all appropriate measures to—

a provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

b keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

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

Article 9

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

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

b facilitate, follow and expedite proceedings with a view to obtaining the adoption;

c promote the development of adoption counselling and post-adoption services in their States;

d provide each other with general evaluation reports about experience with intercountry adoption;

SCHEDULE 1—continued

e reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

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

Article 11

An accredited body shall—

a pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

b be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

c be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

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

Article 13

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

SCHEDULE 1—continued

**CHAPTER IV—PROCEDURAL REQUIREMENTS IN
INTERCOUNTRY ADOPTION**

Article 14

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

Article 15

1 If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

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

Article 16

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

a prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

b give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

c ensure that consents have been obtained in accordance with Article 4; and

d determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

SCHEDULE 1—continued

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

Article 17

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

a the Central Authority of that State has ensured that the prospective adoptive parents agree;

b the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

c the Central Authorities of both States have agreed that the adoption may proceed; and

d it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

Article 18

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

Article 19

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

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

SCHEDULE 1—continued

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

Article 20

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

Article 21

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

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

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

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

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

SCHEDULE 1—continued

Article 22

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

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

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

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

3 A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

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

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

SCHEDULE 1—continued

**CHAPTER V—RECOGNITION AND EFFECTS OF THE
ADOPTION**

Article 23

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

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

Article 24

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

Article 25

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

Article 26

1 The recognition of an adoption includes recognition of—

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

b parental responsibility of the adoptive parents for the child;

SCHEDULE 1—continued

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

2 In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.

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

Article 27

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

a if the law of the receiving State so permits; and

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

2 Article 23 applies to the decision converting the adoption.

CHAPTER VI—GENERAL PROVISIONS

Article 28

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

SCHEDULE 1—continued

Article 29

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

Article 30

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

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

Article 31

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

Article 32

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

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

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

SCHEDULE 1—continued

Article 33

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

Article 34

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

Article 35

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

Article 36

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

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

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

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

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

SCHEDULE 1—continued

Article 37

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

Article 38

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

Article 39

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

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

Article 40

No reservation to the Convention shall be permitted.

Article 41

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

SCHEDULE 1—continued

Article 42

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

CHAPTER VII—FINAL CLAUSES

Article 43

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

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

Article 44

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

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

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

SCHEDULE 1—continued

Article 45

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

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

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

Article 46

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

2 Thereafter the Convention shall enter into force—

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

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

Article 47

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

SCHEDULE 1—continued

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

Article 48

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

- a* the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b* the accessions and objections raised to accessions referred to in Article 44;
- c* the date on which the Convention enters into force in accordance with Article 46;
- d* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e* the agreements referred to in Article 39;
- f* the denunciations referred to in Article 47.

SCHEDULE 1—continued

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

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

SCHEDULE 2

Regulation 4

CONVENTION COUNTRIES

Column 1 Item	Column 2 Country
1	Andorra
2	Burkina Faso
3	Canada (extending to the provinces Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island, Saskatchewan and the Yukon Territory only)
4	Costa Rica
5	Cyprus
6	Denmark
7	Ecuador
8	Finland
9	Lithuania
10	Mexico
11	Moldova
12	Norway
13	Paraguay
14	Peru
15	Philippines
16	Poland
17	Romania
18	Spain
19	Sri Lanka
20	Sweden
21	Venezuela

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 1998.

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6 August