

# Child Protection (International Measures) Act 2006 No 12

[2006-12]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes. Text of the legislation is not affected.

This version has been updated.

### Authorisation

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# Child Protection (International Measures) Act 2006 No 12



New South Wales

## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Objects of Act .....	5
4 Application of Act .....	5
5 Definitions .....	6
6 Act to bind Crown .....	10
7 Circumstances in which New South Wales court may exercise jurisdiction .....	10
<b>Part 2 Jurisdiction for the person of a child</b> .....	11
8 Application of this Part .....	11
9 Matters relating to jurisdiction for the person of a child .....	11
10 Limitation when a child is wrongfully removed from or retained outside a Convention country .....	12
11 Limitations concerning prior proceedings in a Convention country .....	12
12 If a New South Wales authority is asked to assume jurisdiction .....	13
13 Limitation if a competent authority of Convention country is asked to assume jurisdiction .....	13
14 When a certain New South Wales personal protection measure lapses .....	14
<b>Part 3 Jurisdiction for decisions about a guardian of a child's property</b> ..	14
15 Application of this Part .....	14
16 Matters relating to jurisdiction to appoint, or determine the powers of, a guardian of a child's property .....	

.....	15
17 Limitation when a child is wrongfully removed from or retained outside a Convention country .....	16
18 Limitations when prior proceedings pending in a Convention country .....	16
19 If New South Wales authority is asked to assume jurisdiction .....	17
20 Limitation if a competent authority of a Convention country is asked to assume jurisdiction.....	18
21 When a certain New South Wales property protection measure lapses.....	19
<b>Part 4 Applicable law</b> .....	20
22 Applicable law generally .....	20
<b>Part 5 Recognition of foreign measures and their enforcement in New South Wales</b>	
.....	20
23 Action on receipt of foreign personal protection measure .....	20
24 Action on receipt of foreign property protection measure .....	22
25 Recognition of foreign measures in New South Wales courts .....	23
26 Cancellation of registered foreign measure and related matters .....	23
27 Matters relevant for New South Wales court in proceeding under section 23 or 26 .....	24
28 Recognition and enforcement of New South Wales measure.....	24
<b>Part 6 Co-operation and other matters</b> .....	25
29 Secretary is New South Wales' central authority .....	25
30 Functions of Secretary .....	25
31 Functions of NSW Trustee .....	26
32 Obligation to obtain consent to place child .....	26
33 Obligation to inform competent authority about serious danger to a child .....	26
34 Proceedings etc for contact .....	27
35 Giving information to central authorities and competent authorities in Convention countries.....	27
<b>Part 7 Miscellaneous</b> .....	28
36 Helping person in relation to New South Wales measure .....	28
37 Helping person in relation to foreign measure.....	28
38 Delegation .....	29
39 Regulations.....	29
40 Review of Act.....	29

**Schedule 1 Child Protection Convention .....30**

# Child Protection (International Measures) Act 2006 No 12



New South Wales

An Act to implement in New South Wales the *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Child Protection (International Measures) Act 2006*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are to recognise—

- (a) the importance of international co-operation for the protection of children, and
- (b) the need to avoid conflict between the legal systems of different countries about the jurisdiction, applicable law, recognition and enforcement of measures for the protection of children, and
- (c) that a child's best interests are a primary consideration in relation to a measure for protecting the person of the child or a measure for protecting the child's property.

### 4 Application of Act

- (1) This Act does not apply to a matter to which the Child Protection Convention does not apply under Article 4 of the Convention.
- (2) In addition to measures to which the Child Protection Convention applies under Article 53 of the Convention, this Act applies to a measure taken in another country before the Convention has entered into force for that country if, at all relevant times that action is taken under this Act in relation to the measure, the Convention is in force for

that country and Australia.

- (3) This Act does not apply in relation to matters dealt with under an arrangement with New Zealand under Chapter 14A of the *Children and Young Persons (Care and Protection) Act 1998*.
- (4) To the extent that this Act and an arrangement referred to in subsection (3) are inconsistent in providing for the exercise of jurisdiction by a New South Wales authority or a competent authority in a Convention country, this Act prevails.

## 5 Definitions

- (1) In this Act—

**another country** means a Convention country or a non-Convention country.

**Australia** includes the external Territories.

**Note—**

The *Interpretation Act 1987* defines an **external Territory** as a Territory, not being an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act. An **internal Territory** is the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory.

**authorised carer** has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

**central authority** of a Convention country means—

- (a) if there is one central authority of the Convention country under Article 29 of the Child Protection Convention—the Convention country's central authority, or
- (b) otherwise—the central authority designated, under Article 29 of the Child Protection Convention, as the Convention country's central authority to which any communication may be addressed for transmission to the appropriate central authority of the Convention country.

**child** means a person who is under the age of 18 years.

**Child Protection Convention** means the *Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* signed at The Hague on 19 October 1996, a copy of the English text of which is set out in Schedule 1.

**Children's Court** means the Children's Court of New South Wales constituted by the *Children's Court Act 1987*.

**Commonwealth central authority** has the same meaning as in section 111CA (1) of the *Family Law Act 1975* of the Commonwealth.

**Note—**

Under section 111CA (1) of the *Family Law Act 1975* of the Commonwealth, **Commonwealth central authority** means the Secretary of the Commonwealth Attorney-General's Department.

**competent authority**—

- (a) in relation to Australia—means an entity that has responsibility or authority under the law in force in Australia, or part of Australia, to take measures or make decisions about—
  - (i) protecting the person of a child, or
  - (ii) appointing or deciding the powers of a guardian of a child's property, and
- (b) in relation to a Convention country—means an entity that has responsibility or authority under the law in force in the Convention country to take, or make decisions about, a foreign measure relating to a child, and
- (c) in relation to a non-Convention country—means an entity that has responsibility or authority under the law in force in the country to take measures or make decisions about—
  - (i) protecting the person of a child, or
  - (ii) appointing or deciding the powers of a guardian of a child's property.

**Convention country** means a country, other than Australia, for which the Child Protection Convention has entered into force.

**country of refuge** of a child means a country in which the child is present as a refugee child.

**Department** means the Department of Communities and Justice.

**designated agency** has the same meaning as in the *Children's Guardian Act 2019*.

**entity** includes the following—

- (a) an individual,
- (b) a corporation,
- (c) an unincorporated body,
- (d) a government authority or body,
- (e) a court or tribunal.

**foreign measure** means—

- (a) a foreign personal protection measure relating to a child, or

(b) a foreign property protection measure relating to a child.

**foreign personal protection measure relating to a child** means a measure (as referred to in the Child Protection Convention) taken by a competent authority of a Convention country for protecting the person of the child.

**foreign property protection measure relating to a child** means a measure (as referred to in the Child Protection Convention) taken by a competent authority of a Convention country for appointing, or deciding the powers of, a guardian of the child's property.

**interested person**, in relation to a child the subject of a measure or proceedings, means—

- (a) the child, or
- (b) a parent of the child, or
- (c) a grandparent of the child, or
- (d) any other person concerned with the care, welfare or development of the child.

**New South Wales authority** means—

- (a) for a New South Wales personal protection measure relating to a child—a New South Wales court or the Secretary, or
- (b) for a New South Wales property protection measure relating to a child—a New South Wales court or the NSW Trustee.

**New South Wales court** means—

- (a) the Supreme Court, or
- (b) the District Court, or
- (c) the Children's Court, or
- (d) the Local Court, or
- (e) (Repealed)
- (f) the Civil and Administrative Tribunal.

**New South Wales law** means the law in force in New South Wales.

**New South Wales measure** means—

- (a) a New South Wales personal protection measure relating to a child, or
- (b) a New South Wales property protection measure relating to a child.



***New South Wales personal protection measure relating to a child*** means a measure (as referred to in the Child Protection Convention) under New South Wales law that is directed to the protection of the person of the child.

**Note—**

Examples of New South Wales personal protection measures—

- 1 A care order or out-of-home care order, within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.
- 2 An order of the Supreme Court providing for the taking of a child into the Secretary's custody.
- 3 An order protecting the person of a child made by the Supreme Court exercising its inherent jurisdiction for children, including authorising the performance of a medical procedure on, or treatment of, a child for which a parent does not have authority, under New South Wales law, to consent.
- 4 A guardianship order or financial management order made by the Civil and Administrative Tribunal or a consent to medical treatment given by that Tribunal.

Article 3, sub-paragraphs a–f of the Child Protection Convention give examples of the matters that the measures may deal with.

***New South Wales property protection measure relating to a child*** means a measure (as referred to in the Child Protection Convention) under New South Wales law for appointing, or deciding the powers of, a guardian of the child's property.

**Note—**

Article 3, sub-paragraph g of the Child Protection Convention gives examples of the matters that the measures may deal with.

***non-Convention country*** means a country for which the Child Protection Convention has not entered into force.

***NSW Trustee*** means the NSW Trustee and Guardian constituted under the *NSW Trustee and Guardian Act 2009*.

***parental responsibility*** has the same meaning as in the Child Protection Convention.

**Note—**

Article 1, paragraph 2 of the Child Protection Convention defines the term ***parental responsibility***.

***refugee child*** means a child—

- (a) who is a refugee, or
  - (b) who is internationally displaced due to disturbances occurring in his or her country of habitual residence, or
  - (c) whose country of habitual residence cannot be determined,
- and who is not detained under the *Migration Act 1958* of the Commonwealth.

**registrar**, in relation to a court, means—

- (a) if the court is the Supreme Court—a registrar, within the meaning of section 19 of the *Supreme Court Act 1970*, or
- (b) if the court is the District Court—a registrar referred to in section 18G of the *District Court Act 1973*, or
- (c) if the court is the Children’s Court—a Registrar referred to in section 11 of the *Children’s Court Act 1987*, or
- (d) if the court is the Local Court—a registrar referred to in section 18 of the *Local Court Act 2007* (but not a deputy registrar).

**Secretary** means the Secretary of the Department.

(2) Unless the contrary intention appears, expressions used—

- (a) in this Act, or
- (b) in regulations made for the purposes of this Act,

have the same meaning as they have in the Child Protection Convention.

(3) Notes included in this Act do not form part of this Act.

## **6 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **7 Circumstances in which New South Wales court may exercise jurisdiction**

- (1) If, under this Act, a New South Wales court may exercise jurisdiction for a matter, the court may exercise the jurisdiction for the matter—
  - (a) on application by the Secretary or the NSW Trustee, or
  - (b) on its own initiative.
- (2) For the purposes of this Act, the Secretary and NSW Trustee may make applications to a New South Wales court.
- (3) Subsections (1) and (2) are not limited by, and do not limit, a provision made by or under this Act or another Act that states other persons may make an application under this Act or otherwise make a request to a New South Wales court.

### **Note—**

Example for subsection (3)—As mentioned in section 16 (2) (b) (iii), a New South Wales authority may exercise jurisdiction in relation to a child habitually resident in a Convention country only if the New South Wales authority is requested to assume the jurisdiction by, or at the invitation of, a competent authority of

the country of the child's habitual residence or country of refuge.

## **Part 2 Jurisdiction for the person of a child**

### **8 Application of this Part**

- (1) This Part applies only if an issue under New South Wales law is whether a New South Wales court or the Secretary, as opposed to any of the following authorities, is to take measures directed to the protection of the person of a child—
  - (a) a central authority or competent authority of a Convention country,
  - (b) a competent authority of a non-Convention country.
- (2) This Part does not apply if an issue under New South Wales law is whether a New South Wales court or the Secretary, as opposed to another competent authority of Australia, is to take measures directed to the protection of the person of a child.

### **9 Matters relating to jurisdiction for the person of a child**

- (1) This section applies if a New South Wales authority has jurisdiction under New South Wales law, apart from this Act, for a New South Wales personal protection measure relating to a child.
- (2) The New South Wales authority may exercise jurisdiction for a New South Wales personal protection measure relating to a child only in relation to—
  - (a) a child who is present and habitually resident in Australia, or
  - (b) a child who is present in Australia and habitually resident in a Convention country, if—
    - (i) the child's protection requires taking the measure as a matter of urgency, or
    - (ii) the measure is provisional and limited in its territorial effect to Australia, or
    - (iii) the child is a refugee child, or
    - (iv) a request to assume jurisdiction is made to the New South Wales authority by a competent authority of the country of the child's habitual residence, or
    - (v) a competent authority of the country of the child's habitual residence agrees to the New South Wales authority assuming jurisdiction, or
  - (c) a child who is present in a Convention country, if—
    - (i) the child is habitually resident in Australia, or
    - (ii) the child has been wrongfully removed from or retained outside Australia and New South Wales authorities keep jurisdiction under Article 7 of the Child

Protection Convention, or

- (iii) a request to assume jurisdiction is made to the New South Wales authority by a competent authority of the country of the child's habitual residence or country of refuge, or
  - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the New South Wales authority assuming jurisdiction, or
- (d) a child who is present in Australia and is a refugee child, or
- (e) a child who is present in a non-Convention country, if—
- (i) the child is habitually resident in Australia, or
  - (ii) the child is habitually resident in a non-Convention country and is an Australian citizen, or
- (f) a child who is present in Australia, if the child is habitually resident in a non-Convention country.
- (3) The New South Wales authority may exercise jurisdiction under subsection (2) (b) (ii) only if the measure is not incompatible with a foreign measure already taken by a competent authority of a Convention country under Articles 5–10 of the Child Protection Convention.
- (4) Subsection (2) (a)–(d) are subject to the limitations in sections 10, 11 and 13.

#### **10 Limitation when a child is wrongfully removed from or retained outside a Convention country**

A New South Wales authority must not, other than in a case of urgency, exercise jurisdiction under section 9 (2) (a), (b), (c) or (d) to take a New South Wales personal protection measure relating to a child if—

- (a) the child has been wrongfully removed from or retained outside a Convention country, and
- (b) an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

#### **11 Limitations concerning prior proceedings in a Convention country**

- (1) This section applies to the exercise of jurisdiction by a New South Wales authority under section 9 (2) (b) (iii)–(v) or (c).
- (2) If the New South Wales authority is a New South Wales court, before the court exercises the jurisdiction it must order the Secretary—

- (a) to use the Secretary's best efforts to consult with the competent authorities in the Convention country to find out whether measures relating to the protection of the person of the child have been sought from the competent authorities, and
  - (b) to report to the court about the outcome of those efforts.
- (3) If the New South Wales authority is the Secretary, before the Secretary exercises the jurisdiction the Secretary must use his or her best endeavours to consult with the competent authorities in the Convention country—
- (a) to find out whether measures relating to the protection of the person of the child have been sought from the competent authorities, and
  - (b) to decide the most appropriate course of action.

## **12 If a New South Wales authority is asked to assume jurisdiction**

- (1) A New South Wales authority may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by a competent authority of a Convention country for the New South Wales authority to assume jurisdiction to take a New South Wales personal protection measure relating to the child.
- (2) If the New South Wales authority is a New South Wales court, the court may order the Secretary to do both of the following in a way that the Secretary considers appropriate—
- (a) to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the New South Wales court assuming jurisdiction to take a New South Wales personal protection measure relating to the child,
  - (b) to report to the court about the outcome of the request.
- (3) The New South Wales court may make the order under subsection (2) only if it considers that it is better placed than the competent authority to assess the child's best interests.

## **13 Limitation if a competent authority of Convention country is asked to assume jurisdiction**

- (1) A New South Wales court may order the Secretary to request, in a way the Secretary considers appropriate, a competent authority of a Contracting State referred to in Article 8, paragraph 2 of the Child Protection Convention—
- (a) to assume jurisdiction under Article 8 of the Child Protection Convention for protecting the person of a child, and
  - (b) as the competent authority considers necessary, to take measures to protect the

person of a child, and

(c) to report to the court about the outcome of the request.

- (2) In addition, the New South Wales court may make any other order it considers necessary for an order under subsection (1).
- (3) The New South Wales court may make the order under subsection (1) only if the court considers that the competent authority is better placed to assess the child's best interests.
- (4) The New South Wales court may accept or reject a request under Article 9 of the Child Protection Convention made by a competent authority of a Contracting State referred to in Article 8, paragraph 2 of the Child Protection Convention for the competent authority to assume jurisdiction to take a measure for protecting the person of the child.
- (5) If the competent authority assumes jurisdiction under the request, a New South Wales court must not exercise jurisdiction under section 9 (2) (a), (b) (iii)-(v), (c) or (d) while the competent authority continues to exercise its jurisdiction.

#### **14 When a certain New South Wales personal protection measure lapses**

- (1) A New South Wales personal protection measure relating to a child that is taken in response to a particular situation by a New South Wales authority exercising jurisdiction under section 9 (2) (b) (i) or (ii) lapses if a foreign personal protection measure relating to the child, that is taken in response to the same situation, is recognised by registration under section 25.
- (2) A New South Wales personal protection measure relating to a child that is taken in response to a particular situation by a New South Wales authority exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if—
  - (a) a measure for protecting the person of the child, that is taken in response to the same situation, is taken by a competent authority of a non-Convention country, and
  - (b) the measure is recognised under New South Wales law or under the law of another State or of a Territory.

### **Part 3 Jurisdiction for decisions about a guardian of a child's property**

#### **15 Application of this Part**

- (1) This Part applies only if an issue under New South Wales law is whether a New South Wales court or the NSW Trustee, as opposed to any of the following authorities, is to appoint, or determine the powers of, a guardian of a child's property—

- (a) a central authority or competent authority of a Convention country,
- (b) a competent authority of a non-Convention country.

(2) This Part does not apply if an issue under New South Wales law is whether a New South Wales court or the NSW Trustee, as opposed to another competent authority of Australia, is to appoint, or determine the powers of, a guardian of a child's property.

**16 Matters relating to jurisdiction to appoint, or determine the powers of, a guardian of a child's property**

(1) This section applies if a New South Wales authority has jurisdiction under New South Wales law, apart from this Act, for a New South Wales property protection measure relating to a child.

(2) The New South Wales authority may exercise jurisdiction for a New South Wales property protection measure relating to a child only in relation to—

- (a) a child who is habitually resident in Australia, or
- (b) a child who is habitually resident in a Convention country, if—
  - (i) the protection of the child's property in Australia requires taking the measure as a matter of urgency, or
  - (ii) the measure is provisional and limited in its territorial effect to property in Australia, or
  - (iii) a request to assume jurisdiction is made to the New South Wales authority by, or at the invitation of, a competent authority of the country of the child's habitual residence or country of refuge, or
  - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the New South Wales authority assuming jurisdiction, or
  - (v) the child has been wrongfully removed from or retained outside Australia and New South Wales authorities keep jurisdiction under Article 7 of the Child Protection Convention, or
- (c) a child who is present in Australia and is a refugee child, or
- (d) a child who is present in a non-Convention country, if—
  - (i) the child is habitually resident in Australia, or
  - (ii) the child is habitually resident in a non-Convention country and is an Australian citizen, or

(e) a child who is present in Australia, if the child is habitually resident in a non-Convention country.

(3) The New South Wales authority may exercise jurisdiction under subsection (2) (b) (ii) only if the measure is not incompatible with a foreign measure already taken by a competent authority of a Convention country under Articles 5–10 of the Child Protection Convention.

(4) Subsection (2) (a)–(c) are subject to the limitations in sections 17, 18 and 20.

### **17 Limitation when a child is wrongfully removed from or retained outside a Convention country**

A New South Wales authority must not, other than in a case of urgency, exercise jurisdiction under section 16 (2) (a), (b) or (c) to take a New South Wales property protection measure relating to a child if—

- (a) the child has been wrongfully removed from or retained outside a Convention country, and
- (b) an authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

### **18 Limitations when prior proceedings pending in a Convention country**

(1) This section applies to the exercise of jurisdiction by a New South Wales authority under section 16 (2) (a), (b) (iii)–(v) or (c).

(2) The New South Wales authority must not exercise that jurisdiction to take a New South Wales property protection measure relating to a child if—

- (a) a corresponding measure has been sought from a competent authority of a Convention country and it was sought—
  - (i) if the New South Wales authority is a New South Wales court—before the proceedings were started in the court, or
  - (ii) if the New South Wales authority is the NSW Trustee—before the NSW Trustee exercises the jurisdiction, and
- (b) any of the following applies—
  - (i) the child is habitually resident in the Convention country,
  - (ii) the child is present in the Convention country and is a refugee child,
  - (iii) a request to assume jurisdiction is made to a competent authority of the country of the child’s habitual residence or country of refuge,
  - (iv) a competent authority of the country of the child’s habitual residence or



country of refuge agrees to the competent authority assuming jurisdiction,

- (v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3)),
- (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(3) Subsection (2) (b) (v) applies (subject to subsection (4)) only if—

- (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started, and
- (b) one or both of the parents have parental responsibility for the child, and
- (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child, and
- (d) the exercise of jurisdiction to take the measure is in the best interests of the child, and
- (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(4) Subsection (2) does not apply if the competent authority of the Convention country has declined jurisdiction or is no longer considering taking the measure sought.

### **19 If New South Wales authority is asked to assume jurisdiction**

- (1) A New South Wales court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the New South Wales court to assume jurisdiction to take a New South Wales property protection measure relating to the child.
- (2) A New South Wales court may order, or invite the parties to proceedings before the court to ask, the NSW Trustee to do both of the following in a way that the NSW Trustee considers appropriate—
  - (a) to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the New South Wales court assuming jurisdiction to take a New South Wales property protection measure relating to the child,
  - (b) to report to the court about the outcome of the request.

- (3) The NSW Trustee must—
- (a) apply to a New South Wales court, under the *NSW Trustee and Guardian Act 2009*, for an order that the NSW Trustee may accept a request, under Article 9 of the Child Protection Convention, for the NSW Trustee to assume jurisdiction to take a New South Wales property protection measure relating to the child that the NSW Trustee considers necessary, or
  - (b) reject the request.
- (4) The New South Wales court may—
- (a) make the order, or issue the invitation, under subsection (2) only if it considers that it is better placed than the competent authority to assess the child's best interests, or
  - (b) make the order under subsection (3) (a) only if it considers that the NSW Trustee is better placed than the competent authority to assess the child's best interests.

**20 Limitation if a competent authority of a Convention country is asked to assume jurisdiction**

- (1) A New South Wales court may order, or invite the parties to proceedings before the court to ask, the NSW Trustee to request, in a way the NSW Trustee considers appropriate, a competent authority of a Contracting State referred to in Article 8, paragraph 2 of the Child Protection Convention—
- (a) to assume jurisdiction under Article 8 of the Child Protection Convention for appointing, or deciding the powers of, a guardian of the child's property, and
  - (b) as the competent authority considers necessary, to take a measure appointing, or deciding the powers of, a guardian of the child's property, and
  - (c) to report to the court about the outcome of the request.
- (2) In addition, the New South Wales court may make any other order it considers necessary for an order under subsection (1).
- (3) The New South Wales court may make the order or issue the invitation under subsection (1) only if the court considers that the competent authority is better placed to assess the child's best interests.
- (4) The New South Wales court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Contracting State referred to in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take measures for the protection of the child's property.

- (5) If the competent authority assumes jurisdiction under the request, a New South Wales court must not exercise jurisdiction under section 16 (2) (a), (b) (iii)–(v) or (c) while the competent authority continues to exercise its jurisdiction.

**21 When a certain New South Wales property protection measure lapses**

- (1) A New South Wales property protection measure relating to a child that is taken in response to a particular situation by a New South Wales authority exercising jurisdiction under section 16 (2) (b) (i) or (ii) lapses if—
- (a) a foreign property protection measure relating to the child, that is taken in response to the same situation, is taken by a competent authority of a Convention country, and
  - (b) any of the following applies—
    - (i) the child is habitually resident in the Convention country,
    - (ii) the child is present in the Convention country and is a refugee child,
    - (iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child’s habitual residence,
    - (iv) a competent authority of the country of the child’s habitual residence agrees to the competent authority of the Convention country assuming jurisdiction,
    - (v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child’s parents or the annulment of their marriage (but see subsection (2)),
    - (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.
- (2) Subsection (1) (b) (v) applies only if—
- (a) one or both of the child’s parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started, and
  - (b) one or both of the parents have parental responsibility for the child, and
  - (c) the jurisdiction of the competent authority of the Convention country to take the measure is accepted by the parents and each other person with parental responsibility for the child, and
  - (d) the exercise of jurisdiction to take the measure is in the best interests of the child, and

(e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

(3) A New South Wales property protection measure relating to a child that is taken in response to a particular situation by a New South Wales authority exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if—

- (a) a measure for the appointment, or the determination of the powers, of a guardian for the child's property, that is taken in response to the same situation, is taken by a competent authority of a non-Convention country, and
- (b) the measure is recognised under New South Wales law or under the law of another State or of a Territory.

## **Part 4 Applicable law**

### **22 Applicable law generally**

(1) This section applies to a New South Wales authority exercising jurisdiction under Part 2 or 3.

(2) The New South Wales authority must apply New South Wales law in exercising that jurisdiction, other than choice of law rules.

(3) However, the New South Wales authority may in exceptional circumstances apply or take into account the law of another country with which—

- (a) a child has a substantial connection, or
- (b) a child's property is substantially connected,

if the New South Wales authority considers the protection of the person of the child, or the child's property, requires the authority to do so.

## **Part 5 Recognition of foreign measures and their enforcement in New South Wales**

### **23 Action on receipt of foreign personal protection measure**

(1) This section applies if the Secretary is given either of the following documents, together with a request for the Secretary to take an action under the Child Protection Convention—

- (a) a document that is a foreign personal protection measure relating to a child,
- (b) a document that, although it is not a foreign personal protection measure relating to a child, states details of a foreign personal protection measure relating to a child.

- (2) After consulting with the competent authority of the country in which the foreign personal protection measure was taken, the Secretary must do one of the following—
- (a) give the foreign personal protection measure to a registrar of a New South Wales court for recognition of the measure by registration under section 25,
  - (b) give the foreign personal protection measure to the Commonwealth central authority together with a request for the Commonwealth central authority to take action under the Child Protection Convention, including, for example, registration of the foreign measure under the *Family Law Act 1975* of the Commonwealth,
  - (c) exercise the Secretary's jurisdiction under Part 2,
  - (d) apply to a New South Wales court for the court—
    - (i) to exercise the court's jurisdiction under Part 2, or
    - (ii) to decide whether or not the court should refuse recognition of the foreign measure under subsection (3),
  - (e) agree with the competent authority that the Secretary will not do anything.
- (3) A New South Wales court may order that a foreign personal protection measure relating to a child be refused recognition on any of the following grounds—
- (a) the competent authority of the Convention country did not have jurisdiction under the Child Protection Convention for taking the foreign personal protection measure,
  - (b) in taking the foreign personal protection measure, the competent authority of the Convention country is taken to have acted contrary to the fundamental principles of procedure under New South Wales law as mentioned in subsection (4),
  - (c) recognition of the foreign personal protection measure is contrary to public policy in New South Wales having regard to the child's best interests,
  - (d) if the foreign personal protection measure were recognised by registration under section 25, there would be no appropriate means of enforcing the measure under New South Wales law,
  - (e) the foreign personal protection measure is incompatible with a later measure taken in a non-Convention country in which the child habitually resides and, if the later measure were a foreign personal protection measure, it could not be refused recognition under paragraph (b) or (c),
  - (f) the foreign personal protection measure places the child in the care of an authorised carer or of the principal officer of a designated agency as an authorised carer in New South Wales and the competent authority did not obtain the

Secretary's consent to the placement before taking the measure.

- (4) The competent authority of the Convention country is taken to have acted contrary to the fundamental principles of procedure under New South Wales law if—
  - (a) the competent authority did not give the child, or a person with parental responsibility for the child, an opportunity to be heard before taking the foreign personal protection measure, and
  - (b) the competent authority did not take the foreign personal protection measure as a matter of urgency.
- (5) An interested person may apply to the court to be joined as a party to the proceeding arising from an application under subsection (2) (d).
- (6) If—
  - (a) under subsection (2) (a) the Secretary gives a foreign personal protection measure relating to a child to a registrar of a New South Wales court, and
  - (b) the measure authorises the performance of a medical procedure or treatment on the child that is a procedure or treatment for which a parent does not, under New South Wales law, have authority to consent,

the measure must be accompanied by a Family Court declaration that recognition of the measure is not contrary to public policy having regard to the child's best interests.

- (7) In this section—

**Family Court declaration** means a declaration by a court exercising jurisdiction for proceedings under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997* of Western Australia.

#### **24 Action on receipt of foreign property protection measure**

- (1) This section applies if the Secretary or NSW Trustee is given either of the following documents, together with a request for the Secretary or the NSW Trustee to take an action under the Child Protection Convention—
  - (a) a document that is a foreign property protection measure relating to a child,
  - (b) a document that, although it is not a foreign property protection measure relating to a child, states details of a foreign property protection measure relating to a child.
- (2) The Secretary or NSW Trustee (as the case may be) must consider whether the foreign property protection measure includes a provision directed to protecting the person of the child.

- (3) If the Secretary is given a foreign property protection measure that the Secretary considers includes a provision directed to protecting the person of the child, the Secretary must deal with the measure under section 23 as if it were a foreign personal protection measure relating to a child.
- (4) If the NSW Trustee is given a foreign property protection measure that the NSW Trustee considers includes a provision directed to protecting the person of the child, the NSW Trustee must provide the Secretary with the measure. The Secretary is then to deal with the measure under section 23 as if it were a foreign personal protection measure relating to a child.
- (5) If the Secretary or NSW Trustee (as the case may be) does not consider that the foreign property protection measure includes a provision directed to protecting the person of the child, the Secretary or NSW Trustee must give the measure to a registrar of a New South Wales court for recognition of the measure by registration under section 25.

## **25 Recognition of foreign measures in New South Wales courts**

- (1) A registrar of a New South Wales court must register a foreign measure given to the registrar by the Secretary or the NSW Trustee under section 23 or 24.
- (2) A foreign measure registered under subsection (1)—
  - (a) has the same force and effect as a New South Wales personal protection measure relating to a child or a New South Wales property protection measure relating to a child (as appropriate), and
  - (b) prevails over an earlier measure in force in New South Wales to the extent the foreign measure is inconsistent with the earlier measure.
- (3) An interested person may take legal proceedings in a New South Wales court to enforce a foreign measure registered under subsection (1).
- (4) Subsections (2) and (3) are subject to the cancellation of the registration of the foreign measure under section 26.

## **26 Cancellation of registered foreign measure and related matters**

- (1) An interested person may apply to a New South Wales court to cancel the registration under section 25 of a foreign measure relating to a child.
- (2) The New South Wales court may cancel the registration of the foreign measure if any of the following applies—
  - (a) in the case of a foreign measure that is a foreign personal protection measure relating to a child—the New South Wales court may take a New South Wales personal protection measure relating to the child under Part 2,

- (b) in the case of a foreign measure that is a foreign property protection measure relating to a child—the New South Wales court may take a New South Wales property protection measure relating to the child under Part 3,
  - (c) the relevant competent authority responsible for taking the foreign measure did not have jurisdiction, under the Child Protection Convention, for taking the measure,
  - (d) in taking the measure, the relevant competent authority is taken to have acted contrary to the fundamental principles of procedure under New South Wales law as mentioned in subsection (3),
  - (e) recognition or enforcement of the measure in New South Wales is contrary to public policy taking into account the child’s best interests,
  - (f) in the case of a foreign measure that is a foreign property protection measure relating to a child—there are no appropriate means of enforcing the measure under New South Wales law.
- (3) The relevant competent authority is taken to have acted contrary to the fundamental principles of procedure under New South Wales law if—
- (a) the competent authority did not give the child, or a person with parental responsibility for the child, an opportunity to be heard before taking the foreign measure, and
  - (b) the competent authority did not take the foreign measure as a matter of urgency.

**27 Matters relevant for New South Wales court in proceeding under section 23 or 26**

- (1) This section applies to a proceeding in a New South Wales court under section 23 or 26 about a foreign measure.
- (2) The New South Wales court is bound by findings of fact on which the competent authority of the Convention country based its jurisdiction.
- (3) Subject to section 26, the New South Wales court must not review the merits of the measure.
- (4) A document of a competent authority of a Convention country is admissible as evidence of the facts stated in the document.
- (5) An affidavit of a witness who resides outside Australia, that is filed in the proceeding, is admissible as evidence in the proceeding, even though the witness does not attend for cross-examination in the proceeding.

**28 Recognition and enforcement of New South Wales measure**

- (1) After consulting with the central authority or a competent authority of a Convention



country, the Secretary may give a New South Wales personal protection measure relating to a child to the central authority of the Convention country for recognition and enforcement of the New South Wales personal protection measure in the Convention country.

- (2) The Secretary or the NSW Trustee may give a New South Wales property protection measure relating to a child to the central authority of a Convention country for recognition and enforcement of the New South Wales property protection measure in the Convention country.

## **Part 6 Co-operation and other matters**

### **29 Secretary is New South Wales' central authority**

For the Child Protection Convention, the Secretary is New South Wales's central authority.

### **30 Functions of Secretary**

- (1) The Secretary's functions include co-operating with central authorities of Convention countries—
  - (a) to find solutions for the protection of particular children, and
  - (b) to help in the implementation of New South Wales measures, foreign measures and measures of non-Convention countries directed to protecting children or their property, and
  - (c) to consider taking, or applying for, a New South Wales measure relating to a child—
    - (i) at the request of a competent authority of another country if the measure is a New South Wales personal protection measure, or
    - (ii) at the request, or at the invitation, of a competent authority of another country if the measure is a New South Wales property protection measure, and
  - (d) to exchange information, subject to appropriate confidentiality provisions, and
  - (e) to provide information on laws and services, and
  - (f) to help in locating children, and
  - (g) to provide reports on the situation of particular children, and
  - (h) to apply to New South Wales courts for orders in response to requests from competent authorities in Convention countries—
    - (i) to transfer or receive jurisdiction, or
    - (ii) to take measures directed to protecting the person of a child.

- (2) If a competent authority of a Convention country consults with the Secretary for the purpose of obtaining the Department's consent to placing a child with an authorised carer, or in the care of the principal officer of a designated agency as an authorised carer, in New South Wales, the Department must take into account the child's best interests in deciding whether or not to consent.
- (3) Subsection (1) is subject to section 35 (2).

### **31 Functions of NSW Trustee**

The NSW Trustee's functions include co-operating with central authorities of Convention countries to apply to New South Wales courts for orders in response to requests from competent authorities in Convention countries to take measures directed to protecting the property of a child.

### **32 Obligation to obtain consent to place child**

- (1) A New South Wales authority must obtain the consent of the Secretary and a competent authority of a Convention country before placing a child in a foster family, or in institutional care, in the Convention country.
- (2) If the New South Wales authority is a New South Wales court, before placing a child the New South Wales authority may order the Secretary to consult a competent authority of the Convention country concerned.
- (3) If a New South Wales court orders the Secretary to consult, then the Secretary must prepare a report on the child and the reasons for the proposed placement. The Children's Court must, at the Secretary's request, make any relevant information that the Children's Court has under its control available to the Secretary for this purpose.

### **33 Obligation to inform competent authority about serious danger to a child**

- (1) A New South Wales authority must inform a competent authority of another country about any information the New South Wales authority may have about any serious danger to a child—
  - (a) whose residence has moved from New South Wales to the other country, or
  - (b) who is present in the other country.
- (2) Subsection (1) has effect despite any obligation of confidentiality imposed on the New South Wales authority or a person by a New South Wales law or anything else (including a contract or professional ethics).
- (3) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of the provision of information under subsection (1).

- (4) Evidence of the provision of information under subsection (1) is not admissible in any—
- (a) court (whether or not exercising jurisdiction under this Act), or
  - (b) tribunal or other body concerned with professional ethics,
- except where that evidence is given by the person who provided the information.

- (5) In this section—

***New South Wales authority*** includes a person carrying out duties, performing functions or exercising powers as—

- (a) a member of the court personnel, or
- (b) a member of staff of the Department or an agent of the NSW Trustee.

### **34 Proceedings etc for contact**

- (1) A New South Wales court hearing proceedings concerning contact with a child must admit into evidence and consider the findings (if any) of a competent authority of a Convention country on the suitability of a parent to have contact with the child.
- (2) A New South Wales court may adjourn the proceedings concerning contact with a child pending the outcome of a request by a parent in relation to the child to a competent authority of a Convention country for a finding on the suitability of the parent to have contact with the child.
- (3) On the application of a parent who is an Australian resident seeking to obtain or keep contact with a child, a New South Wales court may—
- (a) admit evidence, and
  - (b) make a finding on the suitability of that parent to have contact with the child, and
  - (c) specify conditions on which the contact is to be given.
- (4) In considering a matter concerning contact with a child, the Secretary—
- (a) must consider evidence and the findings (if any) of a competent authority of a Convention country on the suitability of a parent to have contact with the child, and
  - (b) may postpone considering the matter pending the outcome of a request by a parent to a competent authority of a Convention country for a finding on the suitability of the parent to have contact with the child.

### **35 Giving information to central authorities and competent authorities in Convention**

### **countries**

- (1) This section applies to—
  - (a) a court, and
  - (b) the Commonwealth central authority, and
  - (c) central authorities of Australia appointed as mentioned in Article 29, paragraph 2, of the Child Protection Convention, and
  - (d) other competent authorities of Australia.
- (2) If it would be consistent with this Act or the Child Protection Convention to do so, a New South Wales authority may give information to—
  - (a) a court or an authority of Australia to which this section applies, or
  - (b) a central authority or other competent authority of a Convention country.
- (3) This section applies so as to permit the giving of information despite any provision of the following Acts that would prevent the giving of that information—
  - (a) the *Children and Young Persons (Care and Protection) Act 1998*,
  - (b) the *Community Welfare Act 1987*,
  - (c) the *Health Records and Information Privacy Act 2002*,
  - (d) the *Privacy and Personal Information Protection Act 1998*.

## **Part 7 Miscellaneous**

### **36 Helping person in relation to New South Wales measure**

- (1) A person who is to exercise parental responsibilities under a New South Wales measure may apply to a New South Wales authority for information about the particular way in which the person may exercise the person's responsibilities under the New South Wales measure.
- (2) The New South Wales authority may, by written notice, give information to the person about the powers conferred on the person as a parent under the New South Wales measure.

### **37 Helping person in relation to foreign measure**

- (1) An interested person who wants to ask a competent authority of another country to vary or cancel a foreign measure may apply to the Secretary or the NSW Trustee for help in sending the request to the authority.

- (2) The Secretary or the NSW Trustee may help the interested person in relation to sending the request.

### **38 Delegation**

- (1) The Secretary may delegate the Secretary's powers (other than this power of delegation) to any person.
- (2) The NSW Trustee may delegate the NSW Trustee's powers (other than this power of delegation) to any person.
- (3) In this section—

**Secretary's powers** means the powers the Secretary must or may exercise under this Act.

**NSW Trustee's powers** means the powers the NSW Trustee may or must exercise under this Act.

### **39 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), a regulation may prescribe—
  - (a) that a particular measure, or a particular type of measure, recognised by registration under section 25 has effect as a particular type of New South Wales measure, as mentioned in section 25 (2) (a), and
  - (b) the way the measure or the type of measure has effect as the particular type of New South Wales measure, including the way it may be varied or otherwise dealt with under an Act applying to that particular type of New South Wales measure.

### **40 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Child Protection Convention

(Section 5 (1))

### **CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international co-operation for the protection of children,

Confirming that the best interests of the child are to be a primary consideration,

Noting that the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors is in need of revision,

Desiring to establish common provisions to this effect, taking into account the United Nations Convention on the Rights of the Child of 20 November 1989,

Have agreed on the following provisions—

#### **CHAPTER I SCOPE OF THE CONVENTION**

—

##### **Article 1**

###### **1**

The objects of the present Convention are—

- a* to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;
- b* to determine which law is to be applied by such authorities in exercising their jurisdiction;
- c* to determine the law applicable to parental responsibility;
- d* to provide for the recognition and enforcement of such measures of protection in all Contracting States;
- e* to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

###### **2**

For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the

child.

## **Article 2**

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

## **Article 3**

The measures referred to in Article 1 may deal in particular with—

- a* the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;
- b* rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;
- c* guardianship, curatorship and analogous institutions;
- d* the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- e* the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution;
- f* the supervision by a public authority of the care of a child by any person having charge of the child;
- g* the administration, conservation or disposal of the child's property.

## **Article 4**

The Convention does not apply to—

- a* the establishment or contesting of a parent-child relationship;
- b* decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- c* the name and forenames of the child;
- d* emancipation;
- e* maintenance obligations;
- f* trusts or succession;
- g* social security;
- h* public measures of a general nature in matters of education or health;
- i* measures taken as a result of penal offences committed by children;

*j* decisions on the right of asylum and on immigration.

## **CHAPTER II JURISDICTION**

### **Article 5**

#### **1**

The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

#### **2**

Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

### **Article 6**

#### **1**

For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

#### **2**

The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

### **Article 7**

#### **1**

In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

- a* each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
- b* the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

#### **2**

The removal or the retention of a child is to be considered wrongful where—

- a* it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and



- b* at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

### **3**

So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

## **Article 8**

### **1**

By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or
- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

### **2**

The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

- a* a State of which the child is a national,
- b* a State in which property of the child is located,
- c* a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
- d* a State with which the child has a substantial connection.

### **3**

The authorities concerned may proceed to an exchange of views.

### **4**

The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

## **Article 9**

**1**

If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or
- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.

**2**

The authorities concerned may proceed to an exchange of views.

**3**

The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

**Article 10**

**1**

Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if

- a* at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and
- b* the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

**2**

The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

**Article 11**

**1**

In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

**2**

The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

**3**

The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

**Article 12**

**1**

Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

**2**

The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

**3**

The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

**Article 13**

**1**

The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

**2**

The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

**Article 14**

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even

if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

### **CHAPTER III APPLICABLE LAW**

#### **Article 15**

##### **1**

In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

##### **2**

However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

##### **3**

If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

#### **Article 16**

##### **1**

The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

##### **2**

The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

##### **3**

Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

##### **4**

If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

#### **Article 17**

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

### **Article 18**

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

### **Article 19**

#### **1**

The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

#### **2**

The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

### **Article 20**

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

### **Article 21**

#### **1**

In this Chapter the term "law" means the law in force in a State other than its choice of law rules.

#### **2**

However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

### **Article 22**

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

## **CHAPTER IV RECOGNITION AND ENFORCEMENT**

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### **Article 23**

#### **1**

The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

#### **2**

Recognition may however be refused—

- a* if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;
- b* if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;
- c* on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;
- d* if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;
- e* if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;
- f* if the procedure provided in Article 33 has not been complied with.

#### **Article 24**

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

#### **Article 25**

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

#### **Article 26**

##### **1**

If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

##### **2**

Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

##### **3**

The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

#### **Article 27**

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

### **Article 28**

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

## **CHAPTER V CO-OPERATION**

### **Article 29**

#### **1**

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on 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 30**

#### **1**

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

#### **2**

They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

### **Article 31**

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to—

- a facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;
- b facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;
- c provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in

need of protection within the territory of the requested State.

### **Article 32**

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

- a provide a report on the situation of the child;
- b request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

### **Article 33**

#### **1**

If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

#### **2**

The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

### **Article 34**

#### **1**

Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

#### **2**

A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

### **Article 35**

#### **1**

The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

#### **2**

The authorities of a Contracting State in which the child does not habitually reside may, on the



request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

**3**

An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

**4**

Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

**Article 36**

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

**Article 37**

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

**Article 38**

**1**

Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

**2**

Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

**Article 39**

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

**CHAPTER VI GENERAL PROVISIONS**

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## **Article 40**

### **1**

The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

### **2**

The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

### **3**

Each Contracting State shall designate the authorities competent to draw up the certificate.

## **Article 41**

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

## **Article 42**

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

## **Article 43**

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

## **Article 44**

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

## **Article 45**

### **1**

The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

### **2**

The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

## **Article 46**

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

## **Article 47**

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units—

- 1 any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
- 2 any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;
- 3 any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;
- 4 any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;
- 5 any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application;
- 6 any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;
- 7 any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;
- 8 any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;
- 9 any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;
- 10 any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

#### **Article 48**

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply—

- a* if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;
- b* in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

#### **Article 49**

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has

two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply—

- a* if there are rules in force in such a State identifying which among such laws applies, that law applies;
- b* in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

### **Article 50**

This Convention shall not affect the application of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

### **Article 51**

In relations between the Contracting States this Convention replaces the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, and the Convention governing the guardianship of minors, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

### **Article 52**

#### **1**

This 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**

This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

#### **3**

Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

#### **4**

The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

### **Article 53**

#### **1**

The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

**2**

The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

**Article 54**

**1**

Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

**2**

However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

**Article 55**

**1**

A Contracting State may, in accordance with Article 60,

- a* reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;
- b* reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

**2**

The reservation may be restricted to certain categories of property.

**Article 56**

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

**CHAPTER VII FINAL CLAUSES**

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**Article 57**

**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 Eighteenth 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 58**

**1**

Any other State may accede to the Convention after it has entered into force in accordance with Article 61, 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 63. 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 59**

**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 this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the 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 60**

**1**

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

**2**

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

**3**

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

**Article 61**

**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 57.

**2**

Thereafter the Convention shall enter into force—

- a* for each State ratifying, accepting or approving it subsequently, 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 each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;
- c* for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

**Article 62**

**1**

A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

**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.

**Article 63**

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following—

- a* the signatures, ratifications, acceptances and approvals referred to in Article 57;
- b* the accessions and objections raised to accessions referred to in Article 58;
- c* the date on which the Convention enters into force in accordance with Article 61;
- d* the declarations referred to in Articles 34, paragraph 2, and 59;
- e* the agreements referred to in Article 39;
- f* the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;
- g* the denunciations referred to in Article 62.

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

Done at The Hague, on the 19th day of October 1996, 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 Eighteenth Session.