

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

Member's Bill

Explanatory Note

General Policy Statement

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

The need for adoption law reform

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

In the 1950's, when the original statute was drafted, New Zealand society encouraged single mothers to give their child up for adoption, reflecting the prevailing view of the day that children were best brought up in a family home with a married couple. Those single women who refused to give up their child were stigmatised as selfish or immoral. Single mothers who did give up their child for adoption were seen as being responsible, and also fortunate – they were being given a second chance to forget about their transgression (conceiving a child out of wedlock) and move forward with their life. Single women were often sent away from their homes for the term of their pregnancy, often staying in institutions that specialised in caring for unmarried mothers. Often, these institutions would actively discourage women from keeping their child. Very little support was provided, publicly or privately, to women who wished to keep their children.

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

The Law Commission published a report in September 2000 detailing a series of proposed reforms for adoption and guardianship, along with a proposal for a Care of Children Act. Most of its recommendations are now manifested in the present day Care of Children Act 2004, though the government of the day declined to alter the existing Adoption Act.

The result is that the Adoption Act 1955 sits uneasily with the Care of Children Act 2004. The Bill seeks to remedy this problem, and to ensure all arrangements providing for the

care of children in New Zealand are found in one statute and the law is unified. Accordingly, the Bill is an amendment to the Care of Children Act to provide for adoption and surrogacy arrangements, consistent with the Act's modern framework.

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

The shift from closed adoption to open adoption

Under the Adoption Act 1955 closed adoptions were highly favoured as a form of adoption. Under the Act, parents of a child were able to consent to the adoption of their child without knowing the identity of the adoptive parents. This was viewed as a desirable result, as it blanketed the stigma associated with both illegitimacy and infertility. Further legislation also allowed the identities of adoptive parents to be kept secret¹. Birth mothers were often told they were not permitted to attempt to find their child.

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

Despite this wide practice, open adoption is not recognised in law and the courts have often struggled to reconcile open adoption with the terms of the Adoption Act, which only provides mechanisms for erecting legal walls between the birth parents and the child.

This Bill changes the law to ensure that all adoptions should be open unless, in exceptional circumstances, specific criteria are met that demonstrate a need for severing of the links with biological parents.

All possible adoptive parents to be considered

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

¹Adoption Regulations 1959

However, that does not mean that all people will be successful in being granted an adoption order. Instead the Bill provides a process that enables social workers and the Family Court to determine whether an individual or couple would be the best parents for a child.

Intercountry adoptions

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

Surrogacy law

Surrogacy arrangements that are not entered into for the purpose of commercial gain are currently not illegal, and are referred to in the Human Assisted Reproductive Technology Act 2004. However, there remains a need to enable couples or individuals who choose to have a child through a surrogacy procedure to be able to adopt that child where necessary. The Bill seeks to set out the requirements for a commissioning parent or parents to follow when entering into an altruistic surrogacy arrangement, and when seeking to have that child legally recognised as being a part of their family.

There are also instances where a child is conceived and born through a surrogacy arrangement in other countries. To this end, the bill seeks to set out scenarios where a parent or couple may adopt a child who is a product of an overseas altruistic surrogacy arrangement through the New Zealand adoption process.

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

Clause by clause analysis

Clause 1 is the Title clause.

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

Clause 3 amends the Care of Children Act 2004 (the principal Act) to provide a section for adoption and surrogacy law.

Clause 4 repeals the Adoption Act 1955 and the Adoption (Intercountry) Act 1997.

Clause 5 amends the purpose clause of the Care of Children Act 2004 to include adoption and surrogacy arrangements.

Clause 6 amends the interpretation clause of the Care of Children Act 2004 to include additional definitions.

Clause 7 inserts a new Part 4 to the Care of Children Act 2004 entitled Adoption and Surrogacy.

Clause 8 amends section 5 of the Status of Children Act 1969

Clause 9 inserts a new section 7 into the Status of Children Act 1969

Clause 10 amends section 26 of the Status of Children Act 1969

Clause 11 inserts a new section 26A into the Status of Children Act 1969

Clause 12 inserts a new Schedule 1A: Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

Kevin Hague

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

Members Bill

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- 10 Section 26 amended
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- 8 New Schedule 1A inserted
-

The Parliament of New Zealand enacts as follows-

1 Title

This Act is the Care of Children (Reform of Adoption and Surrogacy Law) Amendment Act **2012**

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent

3 Principal Act

This Act amends the Care of Children Act 2004 (the **Principal Act**).

4 Legislation repealed

This Act repeals the **Adoption Act 1955** and the **Adoption (Intercountry) Act 1997**

Part 1
Amendments to principal Act

Preliminary provisions

5 Section 3 amended

After section 3(2)(g) insert-

“(h) reforms and replaces the Adoption Act 1955 and the Adoption (Intercountry Adoption) Act 1997.

“(i) provides for altruistic surrogacy arrangements for the purposes of adoption”.

6 Section 8 amended

In section 8 insert in their appropriate alphabetical order-

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

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

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

adoptive child means any child who is involved in the adoption process or will be the subject of an adoption order.

adoptive parent means any person who adopts a child in accordance with an adoption order.

adoption order means an adoption order made under **section 168** of this Act.

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

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

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

relative, in relation to any child, means any grandparent, brother, sister, uncle, or aunt

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

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

7 New Part 4: Adoption and surrogacy inserted

After section 164, insert-

“Part 4

“Adoption and surrogacy

“New Zealand Adoption Arrangements

“165 Principles and objectives of the adoption process

- “ Subject to Section 4 and 5 of this Act, in making decisions or undergoing any process that relates to the adoption of a child, all parties must have regard (as far as is practical or appropriate) to the following principles and objectives-
- “(a) the welfare and best interests of the child, both in childhood and in later life, are the paramount considerations in adoption law and in practice;
 - “(b) adoption is to be regarded as a service for the child in order to provide that child with a permanent family life where that child’s parents, family or whānau cannot or will not care for the child;
 - “(c) adoption law and practice in New Zealand must comply with New Zealand’s obligations under treaties and other international arrangements;
 - “(d) the equivalent standards and safeguards afforded to children adopted in New Zealand must apply to children adopted from overseas countries;
 - “(e) adoption law and practice in New Zealand must encourage openness in the adoption process;
 - “(f) an adopted person must be assisted in knowing and having access to his or her racial, cultural, religious, linguistic, genetic and other heritage.

“Adoption orders

“166 Who can be adopted

- “(1) Subject to the provisions of this Act, upon an application made by a person or persons under section 167, the Court may make an adoption order in respect of a child where-
- “(a) the applicant or applicants are habitually resident in New Zealand and entitled to remain indefinitely in New Zealand; and
 - “(b) the child is habitually resident in New Zealand and entitled to remain indefinitely in New Zealand or will soon reside in New Zealand for the purpose of adoption.
 - “(c) Subsections (1)(a) and (1)(b) of this section may be set aside where the Court is satisfied that adoption promotes the welfare and best interests of the child, or in other exceptional circumstances.
- “(2) For the purposes of overseas surrogacy arrangements, there is a presumption that a child born overseas under a surrogacy arrangement to commissioning parents, who are entitled to remain indefinitely in New Zealand or will soon reside in New Zealand, is habitually resident in New Zealand.
- “(3) An adoption order must not be made in respect of a child where-
- “(a) that child is over the age of 17 years; or
 - “(b) that child is married, in a civil union, or in a de facto relationship.

“167 Who can adopt

- “(1) Any person, or two persons who are spouses or partners, over 18 years of age may apply for an adoption order in respect of a child unless-
- “(a) the applicant is a birth parent of the child; or
 - “(b) the applicant is the spouse or partner of the birth parent.
- “(2) Section (1)(b) does not apply where the Court is satisfied that an application to adopt by a spouse or partner is in the best interest of the child.
- “(3) For the purposes of subsection (2), the Court must consider-

- “(a) the degree of contact that the child has with the other birth parent and that birth parent’s whānau or extended family, and the effect that granting an adoption order might have on these relationships and degree of contact; and
- “(b) whether guardianship would be a more appropriate option than adoption to regulate the care of the child in relation to his or her parent’s spouse or partner; and
- “(c) whether the spouse or partner has lived with the child for at least three years prior to making an application to adopt.
- “(4) Notwithstanding section 169, where the Court is satisfied that an application to adopt by a spouse or partner is in the best interests of the child, the adoption order must state that the birth parent retains the status of legal parenthood along with the step parent.
- “(5) Subject to the provisions of this Act, applicants must not be restricted on the basis of any prohibited grounds of discrimination listed in s21 Human Rights Act 1993.
- “(6) Section 167(1) of this Act does not prevent the commissioning parent or parents of a surrogacy arrangement from adopting a child who is the genetic child of one or both parents.

“168 Granting adoption orders

- “(1) The Court may grant an adoption order that has the effect provided for in section 169 of this Act.
- “(2) The Court must not make an adoption order in respect of a child unless it is satisfied that the pre-adoption requirements set out in sections 171 to 181 of this Act have been satisfied.
- “(3) Subject to subsections (4) and (5), an adoption order becomes effective on the date of the actual granting of the order by the Court.
- “(4) An adoption order is a final order, unless valid reasons exist for the granting of an interim order.
- “(5) Any interim order becomes final after a 6 month period has elapsed from the granting of the interim order, unless the Court determines otherwise.

“169 Legal effect of adoption

- “(1) Subject to section 167(4), a final adoption order means that the adoptive parent or parents become the child’s sole legal parent or parents (as the case may be) in place of the birth parents.
- “(2) Upon the granting of an adoption order, including an interim order, the adoptive parents become the child’s guardians and have the role of providing day-to-day care for the child.
- “(3) Child support or maintenance obligations on the part of the birth parents cease from the date of the final adoption order and the adoptive parents assume those obligations.
- “(4) The birth parents remain liable for any arrears and penalties relating to child support and maintenance obligations incurred prior to the adoption order.
- “(5) The adopted child acquires the domicile of his or her adoptive parent or parents.
- “(6) The adopted child may take on the family name of the adoptive parents.
- “(7) To avoid doubt, nothing in this section restricts the operation of section 47 and section 48 of this Act.

“170 Adoptive child’s birth certificate to be annotated

- “(1) The adopted child’s birth certificate must be annotated to show the child’s-
 - “(a) current name, reflecting the child’s new family name where applicable; and
 - “(b) date of birth; and
 - “(c) date of the granting of the final adoption order; and
 - “(d) place of birth; and
 - “(e) the adoptive parents’ names; and
 - “(f) the birth parents names.

Consent

“171 Consents to an adoption

- “(1) Before the Court makes an adoption order in respect of a child, a document containing the consents to the adoption by the child under section 175 and by the child’s birth parents and guardians must be filed in court.
- “(2) A document containing a consent to adoption is not admissible unless-
 - “(a) if given in New Zealand, the signing is witnessed by a Family Court Judge, Registrar of the High Court or District Court or Family Court, or a solicitor; and
 - “(b) the child is at least 28 days old at the date of the execution of the document; and
 - “(c) the document is accompanied by a letter from a solicitor certifying that-
 - “(i) the child, birth parents and guardians have received, and understood, the legal effects of adoption; and
 - “(ii) the solicitor has not also represented the applicants for the same adoption.
- “(3) Subject to section 174, both birth parents and any additional guardian must sign the consent document.
- “(4) Where the birth parents disagree on consenting to the child’s adoption, the Court must suspend adoption proceedings and the matter must be treated as if it were an urgent guardianship dispute.
- “(5) Upon reconciliation of this dispute, adoption proceedings may resume where necessary.
- “(6) The birth parents, prior to granting consent for the adoption of a child, may be permitted to request information about the identity of the prospective adoptive parent or parents.
- “(7) Where a spouse or partner of the parent of a child is applying under section 167(2) to adopt that child, that parent must consent to and support the spouse or partner’s application.

“172 Lapse of consent

- “(1) A birth parent’s consent to an application for an adoption order lapses if-
 - “(a) no application is made within 12 months of consent being granted; or
 - “(b) if prior to an adoption order being made the birth parent can demonstrate that consent was obtained by-
 - “(i) fraud; or
 - “(ii) duress; or
 - “(iii) undue influence.

“173 Dispensing with consent

- “(1) The Court may dispense with a birth parent’s consent where it is satisfied that the birth parent-
 - “(a) is dead or where the birth parent’s identity or location are not known, and remain unknown after reasonable attempts have been made to locate the parent;
 - “(b) has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child; or
 - “(c) is incapable of discharging or has failed to discharge parental responsibilities.
- “(2) In dispensing with consent under this section, the Court must consider whether the child’s best interests are being met, or can be met, by the parent.

“174 Child’s views to be considered and consent

- “(1) In accordance with section 6 of this Act, the Court must ensure:
 - “(a) the child has been given reasonable opportunities to express views on matters affecting the child; and
 - “(b) any views the child expresses (either directly or through a representative) are taken into account
- “(2) Unless the child is incapable of understanding the procedure and of consenting to the order, an adoption order may not be made in respect of a child unless the child consents.

Processes

“175 Legal representation and advice

- “(1) A child who is to be the subject of an adoption application must have a lawyer for the child appointed by the Court for all stages of the adoption process, unless the Court believes that such an appointment would serve no useful purpose.
- “(2) Before an adoption order may be granted the Court must be satisfied that the adoptive parent or parents received independent legal advice on the legal effects of adoption.

“176 Written parenting plan required

- “(1) Before an adoption order may be granted, the adoptive parents must submit to the Court a written parenting plan accompanying their application detailing-
 - “(a) arrangements regarding any contact between the birth parent(s) and the child; and
 - “(b) arrangements regarding the child knowing of his or her genealogy and heritage; and
 - “(c) any arrangements regarding the religious, spiritual or cultural upbringing of the child; and
 - “(d) options for fostering the child’s cultural heritage; and
 - “(e) any potential consequences or agreed arrangements as a part of an open adoption; and
 - “(f) any relevant information where a birth parent wishes the adoptive child to be able to retain succession rights derived from the birth parent.
- “(2) Nothing set out in the written parenting plan required by subsection (1) is enforceable in the Court, but the plan may assist the Court in deciding whether to grant an adoption order.

- “(3) Before making an adoption order, the Court may ask the adoptive parents to make appropriate amendments to the plan and then to re-submit it to the Court.
- “(4) Any disputes over the contents of the written parenting plan after an adoption order has been granted may be determined by the Court.
- “(5) Arrangements for contact with a birth parent under subsection (1)(a) are not required where the birth parent is dead, has disappeared, has caused the child to be in need of care and protection, or where such arrangements are otherwise contrary to the child’s welfare and best interests.

“177 Social workers to be involved in the assessment process

- “(1) Prior to the Court making an adoption order a social worker must submit a report setting out whether-
 - “(a) the social worker reasonably believes that the adoptive parents are suitable candidates to adopt a child, having regard to that child’s specific circumstances and needs; and
 - “(b) the birth parents received independent legal advice on the legal effect of adoption; and
 - “(c) the birth parents received information from a social worker regarding alternative options for parenting a child; and
 - “(d) the birth parents received information from a social worker on the social and emotional effects of adoption; and
 - “(e) the social worker has discussed with the birth parents the benefits of involving their families or whānau in the care of the child; and
 - “(f) other placement options with the birth parents’ extended families have been explored, and reasons ascertained for their rejection; and
 - “(g) the child to be adopted understands the process and effects of adoption as best as may be understood given the child’s age and maturity.
- “(2) In fulfilling the requirements of subsection (1), the social worker may-
 - “(a) require the adoptive parents to attend programmes or courses preparing them for adoption; and
 - “(b) approach for further information-
 - “(i) a sole applicant’s partner; and
 - “(ii) family members or household members sharing the dwelling of the applicant or applicants; and
 - “(iii) other family or whānau members.
 - “(c) be given reasonable time to complete a report, and be given reasonable notice of any hearing of the application for an adoption order.
- “(3) The Social Worker who prepares the report may appear at any Court proceedings related to the adoption process, and may be heard and be examined.

“178 Attendance at hearings

- “(1) The following persons may attend a hearing of an application for the granting of an adoption order or any other related order under this Act-
 - “(a) officers of the Court;
 - “(b) the birth parents;
 - “(c) the adoptive parent or parents;
 - “(d) the adoptive child;
 - “(e) lawyers representing parties to the proceedings;

- “(f) a social worker who has written a report under section 177;
- “(g) persons whom the Judge permits to be present as support persons for a party on the request of that party;
- “(h) any other persons whom the Judge permits to be present.
- “(2) No other person may attend a hearing of an application under this Act.
- “(3) A person permitted to attend a hearing of an application for the granting of an adoption order under section (1)(g) or (1)(h) may be excluded from attending a portion of the hearing, or the remainder of the hearing, or any combinations from portions of the hearing, at the discretion of the Judge.
- “(4) No support persons may help a party conduct his or her case.
- “(5) Nothing in this section limits the Court from-
 - “(a) hearing a proceeding in private; or
 - “(b) excluding a person from the Court where that person’s exclusion is reasonably justified.

“179 Evidence in adoption cases

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

“180 Pre-adoption arrangements

- “(1) Once consent to adoption has been granted and before an adoption order is made, a social worker may-
 - “(a) permit the prospective adoptive parents a role in providing day-to-day care for the child; or
 - “(b) permit the prospective adoptive parents to receive or keep the child in the home pending the granting of an adoption order.
- “(2) This section does not apply in any case where-
 - “(a) the child is in a home pursuant to any provision of the Children, Young Persons, and Their Families Act 1989 or to an order made under that Act; or
 - “(b) the child is in the home under an order made under any other provision of the Care of Children Act 2004; or
 - “(c) the child is in the home of one of the child’s parents and a partner or spouse of that parent; or
 - “(d) the child is in the home of a relative of the child; or
 - “(e) the child is in the home of a guardian appointed under a whāngai arrangement.
- “(3) Where a social worker has not permitted the prospective parents to care for the child under subsection (1) of this section, the Court may override this upon an application by the prospective parents where it considers this is in the welfare and best interests of the child.

“181 Additional orders

- “(1) Prior to the Court making an adoption order, the Court may-
 - “(a) order cultural, medical, or psychological reports in regards to-
 - “(i) any adoptive parent; and
 - “(ii) any birth parent; and
 - “(iii) any adoptive child; and

- “(iv) any relative of the above where there is reasonable grounds for making such an order; and
- “(b) appoint a lawyer to assist the court.

“182 Appeals

- “(1) Where a person or persons are assessed by a social worker as not suitable to adopt, there is a 28 day period during which the prospective parent or parents may appeal to the Family Court.

“183 Discharging or varying an adoption order

- “(1) The Court may vary an adoption order upon an application by a birth parent or parents, adopted child or adopted person, or adoptive parent or parents, subject to such terms and conditions as it thinks reasonable.
- “(2) The Court may discharge an adoption order, subject to any terms and conditions it thinks reasonable, upon an application by a birth parent or parents, adopted child or adopted person, or adoptive parent or parents where-
 - “(a) the order was made as a result of a mistake as to a material fact or by a material representation to the Court or to any other person involved; or
 - “(b) the adoptive relationship has undergone a significant and irretrievable breakdown; or
 - “(c) the birth parent or parents gave consent to an adoption that was obtained by
 - “(i) fraud; or
 - “(ii) duress; or
 - “(iii) material misrepresentation.
- “(3) An application to discharge an adoption order pursuant to subsection (2)(c) of this section may only be accepted by the Court within two years after the adoption order was made, and the Court must regard to the extent to which the adoptive parents were aware of or participated in the fraud or duress.
- “(4) The Court may discharge an adoption order made in any place outside New Zealand only if-
 - “(a) the adopted child or adopted person is living and is domiciled in New Zealand; and
 - “(b) every living adoptive parent is domiciled in New Zealand.

Offences

“184 Offences

- “(1) Except with the consent of the court, a person commits an offence who-
 - “(a) arranges or brokers an adoption process as a third party for reward;
 - “(b) places or receives or keeps any child in the home of any person for the purpose of adoption in contravention of section 180 of this Act;
 - “(c) gives or receives any form of payment or reward for any element of the adoption process;
 - “(d) publishes an advertisement indicating-
 - “(i) that the parent or guardian of a child desires that the child be adopted; or
 - “(ii) that a person desires to adopt a child; or
 - “(iii) that a person or body of persons is willing to make arrangements for the adoption of a child.

- “(2) The penalty is imprisonment for a term not exceeding 3 months, or a fine not exceeding \$15,000 or both.
- “(3) The offences listed in this section do not apply to the following-
 - “(a) a lawyer bona fide acting for the birth parents, the adoptive parents, the child; or
 - “(b) a social worker; or
 - “(c) reasonable medical and hospital expenses; or
 - “(d) the payment of reasonable costs and expenses to any organisation approved as a New Zealand accredited body under Part 2 of the Adoption (Intercountry) Act 1997, provided those costs and expenses-
 - “(i) are in connection with the exercise of a function delegated to that body under Part 1 of that Act; and
 - “(ii) are set out in an invoice or statement of account rendered by that body which sets out details of the costs and expenses, and the services or functions to which they apply.
- “(4) Where an adoption order is varied or discharged by the Court under this section, the birth parents must be notified, unless after reasonable inquiries it is impossible to locate either or both of the birth parents.
- “(5) The discharge of an adoption order renders the adopted child or person-
 - “(a) legally without parents; or
 - “(b) the legal child of the original birth parents as if the adoption had not occurred, where the birth parent, birth family, or next of kin in the case of a deceased birth parent, support the adoptive persons application.
- “(6) In discharging an adoption order under **subsection 5**, the Court must determine the most favourable outcome based on given scenario, after consultation with the adopted child or person.
- “(7) A former adoptive child or adoptive person’s domicile is not changed through the discharge of an adoption order unless the child is under 18 and the birth parent or parents have resumed the exercise of the role of providing day-to-day care of the child.

“185 Extraterritorial jurisdiction in respect of offences under section 184 as required by Optional Protocol

- “(1) In this section, **Optional Protocol** means the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by the General Assembly of the United Nations at New York on 25 May 2000.
- “(2) Even if the acts alleged to constitute an offence under section 184 occurred wholly outside New Zealand, proceedings may be brought in respect of that offence-
 - “(a) if the person to be charged-
 - “(i) is a New Zealand citizen; or
 - “(ii) is ordinarily resident in New Zealand; or
 - “(iii) has been found in New Zealand and has not been extradited; or
 - “(iv) is a body corporate, or a corporation sole, incorporated under the law of New Zealand; or
 - “(b) if the person whose consent to an adoption has been induced-
 - “(i) is a New Zealand citizen; or
 - “(ii) is ordinarily resident in New Zealand.
- “(1) Nothing in this section limits the application of 184 in respect of-
 - “(a) acts that occurred wholly within New Zealand; or

- “(b) the application of section 7 of the Crimes Act 1961 to the occurrence in New Zealand of-
- “(i) an act forming part of an offence; or
- “(ii) an event necessary to the completion of an offence; or
- “(c) the application of section 8 of the Crimes Act 1961; or
- “(d) the application of section 8A of the Crimes Act 1961

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

- “(1) No proceedings for an offence against section 185 may be brought in a New Zealand court in respect of any person without the consent of the Attorney-General if jurisdiction over the person is claimed by virtue of section 185.
- “(2) However, a person alleged to have committed an offence against section 185 may be arrested, or a warrant for the person’s arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General’s consent under subsection (1) has not been obtained.

Access to information

“187 Access to adoption information after the commencement of Amendment Act

- “(1) This section applies to adoption orders made after the commencement of the Care of Children (Adoption and Surrogacy Law Reform) Amendment Act 2012.
- “(2) Notwithstanding section 63 of the Births, Deaths, Marriages, and Relationships Registration Act 1995, an adopted child or adopted person of any age may obtain from the Registrar-General a copy of his or her original birth certificate and his or her birth certificate as annotated in accordance with section 170.
- “(3) No one seeking his or her adoption information under this section is required to undergo any form of counselling prior to receiving the information.

“188 Access to adoption information before the commencement of Amendment Act

- “(1) This section applies to adoption orders made before the commencement of the Care of Children (Adoption and Surrogacy Law Reform) Amendment Act 2012.
- “(2) Subject to section 190 of this Act, the Adult Adoption Information Act 1985 continues to apply to requests for access to identifying adoption information.

“189 Access to adoption information for health reasons

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

“190 Access to adoption information for official reasons

- “(1) An adoption order is open to inspection by any person who requires to inspect it for some purpose in connection with the administration of an estate or trust of which that person is executor, administrator, or trustee.
- “(2) Adoption records are open to inspection by—

- “(a) any Registrar (as defined in section 2 of the Births, Deaths, Marriages, and Relationships Registration Act 1995) or marriage celebrant under the Marriage Act 1955 for the purpose of investigating forbidden degrees of relationship under the Marriage Act 1955; and
- “(b) any Registrar (as so defined) or civil union celebrant under the Civil Union Act 2004 for the purpose of investigating prohibited degrees of civil union under the Civil Union Act 2004.
- “(3) Adoption records are open to inspection by a Social Worker for the purpose of preparing a report required under section 192(3) of this Act.
- “(4) A Family Court, a District Court, or the High Court may order that adoption records be available for production or open to inspection-
 - “(a) for the purposes of a prosecution for making a false statement; or
 - “(b) in the event of any question as to the validity or effect of any interim order or adoption order.

“191 Other access to adoption information

- “(1) Any other person may apply to the Family Court for access to adoption records where-
 - “(a) the person has the permission of the adopted child or person; or
 - “(b) the person can demonstrate that the adopted child or person is dead; or
 - “(c) the person can demonstrate a sufficient and proper interest in inspecting such records.
- “(2) For the purposes of subsection (1)(c), a sufficient and proper reason includes, but is not restricted to, the proof of whakapapa and genealogical research.
- “(3) A Court may require a Social Worker to prepare a report following an application for an order under subsection (1)(c).
- “(4) A Social Worker preparing a report required under subsection (3)—
 - “(a) may consider any information obtained for the purpose, including information in the adoption records concerned and the application for the order; but
 - “(b) may not consider information relating to any party to the adoption or application that was obtained by the Department before the application was made.
- “(5) Where a veto has been lodged under the Adult Adoption Information Act, that veto extends to restrict access to all adoption records under this section.

Culture and family relationships

“192 Adoption and Māori Culture

- “(1) The customary practice of Whāngai is permitted under this Act, and operates according to local, iwi-specific practices.

“193 Succession

- “(1) An adopted child or person is to be treated the same as a biological child for the purposes of succession.
- “(2) All class gifts left to children in a will include adopted children in addition to biological children, unless explicitly stated otherwise in the will.

“194 Marriage and civil union restrictions

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

“195 Incest

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

Non Convention Intercountry and overseas adoption

“196 Non-Convention Overseas adoptions

- “(1) Where a person has been adopted (whether before or after the commencement of this Act) in any place outside New Zealand according to the law of that place, and the adoption is one to which this section applies, then, for the purposes of this Act and all other New Zealand statutes and laws, the adoption has the same effect as an adoption order validly made under this Act.
- “(2) Subsection (1) of this section applies to an adoption in any place outside New Zealand, if-
 - “(a) the adoption is legally valid according to the law of that place; and
 - “(b) in consequence of the adoption, the adoptive parents of any adopted person had, or would (if the adopted person had been a young child) have had, immediately following the adoption, according to the law of that place, a right superior to that of any natural parent of the adopted person in respect of the role of providing day-to-day care for that person and;
 - “(c) in consequence of the adoption, the adoptive parents or any adoptive parent had, immediately, following the adoption, according to the law of that place, a right superior to or equal with that of any birth parent in respect of any property of the adopted person which was capable of passing to the parents or any parent of the person in the event of the person dying intestate without other next of kin and

habitually resident in the place where the adoption was made and a national of the State which had jurisdiction in respect of that place.

- “(3) The production of a document purporting to be the original or a certified copy of an order or record of adoption made by a Court or a judicial or public authority in any place outside New Zealand is, in the absence of proof to the contrary, sufficient evidence that the adoption was made and that it is legally valid according to the law of that place.
- “(4) Nothing in this section restricts or alters the effect of any other adoption made in any place outside New Zealand.
- “(5) This section does not apply to any adoption in another Hague Convention compliant State that is an adoption-
- “(a) by a person habitually resident in New Zealand; and
- “(b) to which the Hague Convention applies; and
- “(c) which takes place in that Hague Convention compliant state on or after the date on which the Convention entered into force as between New Zealand and that Convention compliant state.

Subpart Convention intercountry adoptions

“197 Interpretation

- “ In this subpart unless the context otherwise requires,—
- chief executive** means the chief executive of the department
- commissioning parent or parents** means any person or persons who enter into an altruistic surrogacy arrangement with a surrogate birth mother for the purposes of adopting a child.
- commercial nature** means any arrangement where one or more parties gives or receives, or agrees to give or receive, valuable consideration for his or her participation or for any other person’s participation, or for arranging any other person’s participation in any kind of arrangement in connection to the provisions of this Act.
- contracting state** means, subject to Article 45 of the Convention, a country for which the Convention is for the time being in force as between that country and New Zealand.
- convention** means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993, a copy of the English text of which is set out in Schedule 1A
- department** means the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989
- New Zealand accredited body** means an organisation approved as an accredited body under **section 209** of this Act and the Convention
- New Zealand Central Authority** has the meaning given by section 5
- organisation** means any body or organisation, whether incorporated or unincorporated

“198 Convention to have force of law

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

“199 New Zealand Central Authority

- “(1) The chief executive is the New Zealand Central Authority for the purposes of the Convention.
- “(2) The chief executive has all the duties, may exercise all the powers, and must perform all the functions that a Central Authority has under the Convention.
- “(3) The chief executive may not be made subject to any order to pay costs relating to adoptions in relation to the exercise or performance, by the chief executive, of any of the chief executive’s duties, powers, or functions as the New Zealand Central Authority.

“200 Delegation of functions

- “(1) The New Zealand Central Authority may, to the extent permitted by the Convention and by any regulations made under this Act, delegate the functions of a Central Authority under Article 9 or Chapter IV of the Convention to public authorities or New Zealand accredited bodies.
- “(2) No such delegation prevents the exercise of any functions by the New Zealand Central Authority.

“201 Chief executive must offer choice of report-writing service

- “(1) The chief executive must, on application by prospective adoptive parents, prepare reports under the Convention as to their eligibility and suitability to adopt.
- “(2) Subsections (1) applies notwithstanding that the function of preparing those reports may also have been delegated to any public authority or New Zealand accredited body.
- “(3) This section applies for the purpose of offering prospective adoptive parents a choice of whether the report is prepared by a Government or non-Government agency.

“202 Authority for New Zealand accredited bodies to act overseas

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

“203 Authority for overseas accredited bodies to act in New Zealand

- “ The New Zealand Central Authority may authorise a body accredited under Chapter III of the Convention in another Contracting State to act in New Zealand.

“204 Approval of placement

- “(1) A child who is habitually resident in another Contracting State must not be entrusted to prospective adoptive parents who are habitually resident in New Zealand unless the New Zealand Central Authority has approved the decision.
- “(2) Where the New Zealand Central Authority refuses to approve such a decision, the Authority must give notice in writing to the prospective adoptive parents of the refusal and the reasons for it.

“205 Recognition of Convention adoptions

- “(1) An adoption made in accordance with the Convention, subject to Article 24 of the Convention,—
 - “(a) Must be recognised in accordance with the Convention; and

- “(b) For the purposes of this Act and all other New Zealand enactments and laws, has, subject to section 12, the same effect as an adoption order validly made under the Adoption Act 1955.
- “(2) A certificate signed by the competent authority in the State where the adoption took place and stating that the adoption was made in accordance with the Convention is for all purposes prima facie evidence of that fact.
- “(3) The Family Court may, under Article 24 of the Convention, refuse to recognise an adoption made in accordance with the Convention, subject to such terms and conditions as it thinks fit.
- “(4) No application to the court under subsection (3) may be made without the prior approval of the Attorney-General.
- “(5) Every application to the court under subsection (3) must be heard as soon as practicable.

“206 Termination of pre-existing legal parent-child relationships

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

“207 Access to information

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

“208 Certificate of Secretary of Foreign Affairs and Trade

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

“209 New Zealand accredited bodies

- “(1) The chief executive may approve as a New Zealand accredited body under the Convention any organisation that—

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

“210 Application for accreditation

- “(1) Any application for approval as a New Zealand accredited body—
- “(a) Must be in writing and contain such information relating to the organisation as is required by the chief executive; and
- “(b) Must nominate a person to act as principal officer of the organisation for the purposes of this Act.
- “(2) Before considering any such application, the chief executive must publicly notify the application in at least 1 daily newspaper circulating in the area in which the principal office of the organisation is situated.
- “(3) The notice must set a closing date for receiving submissions on the application, which must not be earlier than 10 working days after publication.
- “(4) The chief executive is not required to conduct a public hearing on the application.

“211 Grant of accreditation

- “ Where the chief executive approves an organisation as a New Zealand accredited body, the accreditation must—
- “(a) Be in writing; and
- “(b) Specify any conditions to which it is subject (if any); and
- “(c) Specify the functions that have been delegated to the organisation under Article 9 or Chapter IV of the Convention; and
- “(d) Be notified in the Gazette.

“212 Declining of application for accreditation

- “ The chief executive must not decline an application made under section 16 without giving the applicant—
- “(a) a copy of any information on which the chief executive relies in proposing to decline the application; and
- “(b) a reasonable opportunity to make written submissions to the chief executive in relation to the information.

“213 Suspension and revocation of accreditation

- “(1) If the chief executive is satisfied that a New Zealand accredited body—
- “(a) Has pursued, or is pursuing, profit objectives; or
- “(b) Is no longer suited to performing functions that, under the Convention, may be delegated to New Zealand accredited bodies; or

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

“214 Appeals

- “(1) Any person who is dissatisfied with—
 - “(a) Any decision of the chief executive to decline an application by that person for approval as a New Zealand accredited body; or
 - “(b) Any decision of the chief executive to revoke or suspend that person’s approval as a New Zealand accredited body,—
- may appeal to a District Court against the decision.
- “(2) An appeal under this section must be brought within 28 days after notice of the decision was communicated to the appellant, or within such further time as a District Court may allow on application made before or after the expiration of that period.
 - “(3) Every appeal under this section must be heard as soon as practicable after the appeal is lodged.
 - “(4) Where, before an appeal against a decision to suspend a person’s approval as a New Zealand accredited body has been dealt with, the approval is revoked, the court may treat the appeal as an appeal against the decision to revoke the approval.
 - “(5) On the hearing of an appeal under this section the District Court may confirm, reverse, or modify the decision of the chief executive, or may give any decision that the chief executive could have given or made in respect of the matter.

- “(6) Nothing in this section gives a District Court power to review any part of the decision of the chief executive other than the part against which the appellant has appealed.
- “(7) Subject to any order of the court, every decision appealed against under this section continues in force and has effect according to its tenor pending the determination of the appeal.
- “(8) The decision of a District Court on any appeal under this section is final

“215 Accredited bodies to report annually

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

“216 Assessment of accredited bodies

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

“(6) The provisions of section 217(2) to (4) apply to any review under subsection (1)(b) as if it were an application.

“217 Change of principal officer to be notified

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

“218 Regulations

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

“(a) Prescribing the extent to which the functions of a Central Authority under Article 9 or Chapter IV of the Convention may be delegated to public authorities or New Zealand accredited bodies:

“(b) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Surrogacy arrangements

“219 Relationship to Human Assisted Reproductive Technology Act 2004

“(1) Nothing in this act, or any altruistic surrogacy arrangement, may contravene anything in the Human Assisted Reproductive Technology Act 2004.

“220 Altruistic surrogacy arrangements

“(1) An altruistic surrogacy arrangement between two parties is permitted where-

“(a) a person or persons wish to engage in an arrangement to undergo an assisted reproductive procedure to produce a child; and

“(b) the purpose of the arrangement is to produce a child for the purpose of adoption by the commissioning parent or parents; and

“(c) all parties consent to all stages of the assisted reproductive procedure process; and

“(d) the arrangement and process fall within the guidelines of, and are sanctioned by, the Ethics Committee on Assisted Reproductive Technology; and

“(e) the arrangement is not one of a commercial nature.

“(2) Subsection 1(e) does not restrict the payment of any reasonable costs accrued by the birth mother associated with any of the following matters:

“(a) trying to become pregnant; or

“(b) a pregnancy or birth; or

“(c) the birth mother and the birth mother’s partner (if any) being a party to a surrogacy arrangement or proceedings in relation to the granting of an adoption order.

“(3) Without limiting subsection 2, the following may be included in the birth mothers costs-

“(a) Any reasonable medical costs for the birth mother associated with any of the matters referred to in subsection 2; and

“(b) any reasonable costs, including a reasonable medical costs, for a child born as a result of an altruistic surrogacy arrangement; and

- “(c) any insurance premium payable for health, disability or life insurance that would not have been obtained by the birth mother if the altruistic surrogacy arrangement had not been entered into; and
- “(d) any reasonable costs of counselling before or after the altruistic surrogacy arrangement was entered into; and
- “(e) any reasonable legal costs for the birth mother and the birth mother’s partner (if any) relating to the altruistic surrogacy arrangement and any proceedings relating to the granting of an adoption order in respect of the child; and
- “(f) any reasonable compensation for the birth mother’s lost earnings during the time of the altruistic surrogacy arrangement-
 - “(i) up to a period of not more than 2 months during which a birth occurred or was expected to occur; or
 - “(ii) for any other period during the birth mother’s pregnancy when the birth mother was unable to work on medical grounds;
- And
 - “(g) any layette or similar for the child; and
- “(h) any DNA or similar genetic testing or procedures required in the course of the altruistic surrogacy arrangement; and
- “(i) any other reasonable costs associated with the altruistic surrogacy arrangement, or the adoption process.
 - “(i) This subsection does not apply to any payments permitted under s226(2) of this Act.
- “(4) To avoid doubt, nothing in this section prevents two parties from entering into an altruistic surrogacy arrangement where this would fall within the prohibited grounds of discrimination listed in s21 Human Rights Act 1993.

“221 Altruistic surrogacy arrangements may be in writing

- “(1) An altruistic surrogacy arrangement may be, but need not be, expressed as a written arrangement including defined terms and conditions whereby the birth mother agrees to conceive and carry a child to full term, using the genetic material of another person or persons.
- “(2) Any written altruistic surrogacy arrangement may be-
 - “(a) signed by the commissioning parent or parents; and
 - “(b) signed by the surrogate birth mother and the birth mother’s partner (if any).
- “(3) No written surrogacy arrangement shall be enforceable as a contract, but shall be informative to the Court when granting an adoption order or other relevant orders regarding the welfare of the child.
- “(4) Any provisions contained in a written surrogacy arrangement that include an obligation to reimburse the reasonable expenses of the surrogate birth mother will be enforceable as a contract unless-
 - “(a) the birth mother does not wish to proceed with the adoption process following the birth of the child; or
 - “(b) the birth mother, on the application by the commissioning parents for an adoption order in respect of the child, does not consent to the making of the adoption order.

“222 Adoption orders for altruistic surrogacy arrangements

- “(1) All adoption orders granted in respect of any child conceived as a result of an altruistic surrogacy arrangement are subject to all relevant adoption provisions of this act.
- “(2) Where a written altruistic surrogacy arrangement exists between the commissioning parent or parents and the surrogate birth mother, both the commissioning parent or parents and the surrogate birth mother may commence an adoption assessment process pursuant to the pre-adoption requirements specified in this Act prior to the birth of the child.
- “(3) After the birth of a child conceived as a result of an altruistic surrogacy arrangement, and where an adoption order has not been granted in respect of that child prior to its birth, the commissioning parent or parents may provide day-to-day care for the child, subject to-
 - “(a) the consent of the birth mother; and
 - “(b) the approval of any social workers involved in the adoption process; or
 - “(c) the approval of the Court.

“223 International altruistic surrogacy arrangements

- “(1) Commissioning parents who are party to a written altruistic surrogacy arrangement may apply to the Court for leave to commence the adoption process in a New Zealand Court in respect of a child who is the product of an altruistic surrogacy arrangement, or any equivalent arrangement, in another country where-
 - “(a) the overseas altruistic surrogacy arrangement, or any equivalent arrangement, is lawful in the law of the land where the surrogacy procedure will occur or has occurred; and
 - “(b) the Court considers that the overseas altruistic surrogacy arrangement is not repugnant to the purpose and principles of-
 - “(i) this Act; and
 - “(ii) the Human Assisted Reproductive Technology Act; and
 - “(iii) any regulations, guidelines or schedules as set out by the Ethics Committee on Assisted Reproductive Technology and the Advisory Committee on Assisted Reproductive Technology; and
 - “(c) the commissioning parent or parents are-
 - “(i) New Zealand citizens; or
 - “(ii) habitually resident in New Zealand and entitled to remain indefinitely in New Zealand
- “(2) Commissioning parents who are granted leave by the Court under this section are still subject to the rules and procedures of this part of the Act.
- “(3) Commissioning parents may apply to the Court for leave to adopt prior to the commencement of any surrogacy procedures.

“224 Offences

- “(1) Pursuant to the Human Assisted Reproductive Technology Act, it is an offence for any person or persons to enter in to any arrangement where a surrogacy arrangement is agreed where one or more parties gives or receives, or agrees to give or receive, valuable consideration for his or her participation or for any other person’s participation, or for arranging any other person’s participation, in a surrogacy arrangement occurring in New Zealand.

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

Part 2

Amendments to Status of Children Act 1969

“8 Section 5 amended

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

“9 Section 7 amended

- “After section 7(1)(c) insert–
- “(d) paternity has been established in accordance with section 5(4) or section 5(5)”

“10 “Section 26 amended

At the beginning of section 26 insert–
“Subject to section 26A,”

“11 New section 26A

“After section 26 insert–

“26A Conflicting evidence of parentage

“Evidence of parentage in accordance with subsections (4) and (5) of sections 5 have effect despite anything in this Part.”

Part 3

Schedules inserted

12 New Schedule 1A inserted

After schedule 1, insert:

Schedule 1A

Convention on Protection of Children and Co-operation in

Respect of Intercountry Adoption

The States signatory to the present Convention,
Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,
Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,
Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,
Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,
Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),
Have agreed upon the following provisions—

Chapter 1 Scope of the Convention

Article 1

The objects of the present Convention are—

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

Article 2

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

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

Article 3

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

Chapter II Requirements for intercountry adoptions

Article 4

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

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

Article 5

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

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

Chapter III Central Authorities and accredited bodies

Article 6

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

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

2 They shall take directly all appropriate measures to—

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

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

Article 8

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

Article 9

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

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

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

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

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

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

Article 10

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

Article 11

An accredited body shall—

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

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

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

Article 12

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

Article 13

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

Chapter IV

Procedural requirements in intercountry adoption

Article 14

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

Article 15

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

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

Article 16

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

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

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

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

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

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

Article 17

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

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

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

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

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

Article 18

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

Article 19

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

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

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

Article 20

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

Article 21

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

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

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

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

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

Article 22

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

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

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

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

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

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

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

Chapter V

Recognition and effects of the adoption

Article 23

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

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

Article 24

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

Article 25

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

Article 26

1 The recognition of an adoption includes recognition of

- a* the legal parent-child relationship between the child and his or her adoptive parents;
- b* parental responsibility of the adoptive parents for the child;
- c* the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

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

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

Article 27

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

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

2 Article 23 applies to the decision converting the adoption.

Chapter VI General provisions

Article 28

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

Article 29

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

Article 30

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

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

Article 31

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

Article 32

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

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

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

Article 33

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

Article 34

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

Article 35

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

Article 36

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

- a* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b* any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c* any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;
- d* any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

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

Article 38

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

Article 39

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

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

Article 40

No reservation to the Convention shall be permitted.

Article 41

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

Article 42

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

Chapter VII Final clauses

Article 43

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

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

Article 44

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

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

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

Article 45

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

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

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

Article 46

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

2 Thereafter the Convention shall enter into force—

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

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

Article 47

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

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

Article 48

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

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

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

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

- d* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e* the agreements referred to in Article 39;
- f* the denunciations referred to in Article 47.

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

Done at The Hague, on the day of 19...*, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that session.

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