

TASMANIA

**CHILD PROTECTION (INTERNATIONAL
MEASURES) BILL 2003**

CONTENTS

PART 1 - PRELIMINARY

1. Short title
2. Commencement
3. Main purposes of Act
4. Interpretation
5. Application of Act
6. Act binds Crown
7. Circumstances in which Tasmanian court may exercise jurisdiction

**PART 2 - JURISDICTION FOR THE PERSON OF A
CHILD**

8. Application of this Part
9. Matters relating to jurisdiction for the person of a child
10. Limitation when a child is wrongfully removed from or retained outside a Convention country
11. Limitations concerning prior proceedings in a Convention country
12. If a Tasmanian authority is asked to assume jurisdiction

13. Limitation if a competent authority of a Convention country is asked to assume jurisdiction
14. When a certain Tasmanian personal protection measure lapses

PART 3 – JURISDICTION FOR DECISIONS ABOUT A GUARDIAN OF A CHILD’S PROPERTY

15. Application of this Part
16. Matters relating to jurisdiction to appoint, or determine the powers of, a guardian of a child’s property
17. Limitation when a child is wrongfully removed from or retained outside a Convention country
18. Limitations when prior proceedings pending in a Convention country
19. If Tasmanian authority is asked to assume jurisdiction
20. Limitation if a competent authority of a Convention country is asked to assume jurisdiction
21. When a certain Tasmanian property protection measure lapses

PART 4 – APPLICABLE LAW

22. Applicable law generally

PART 5 – RECOGNITION OF FOREIGN MEASURES AND THEIR ENFORCEMENT IN TASMANIA

23. Action on receipt of foreign personal protection measure
24. Action on receipt of foreign property protection measure
25. Recognition of foreign measures in Tasmanian courts
26. Cancellation of registered foreign measure and related matters
27. Matters relevant for Tasmanian court in proceeding under section 23 or 26
28. Recognition and enforcement of Tasmanian measure

PART 6 – CO-OPERATION AND OTHER MATTERS

29. Department is Tasmania’s central authority

30. Functions of Department
31. Obligation to obtain consent to place child
32. Obligation to inform competent authority about serious danger to child
33. Proceedings, &c., for contact
34. Giving information to central authorities and competent authorities in Convention countries

PART 7 – MISCELLANEOUS

35. Helping person in relation to Tasmanian measure
36. Helping person in relation to foreign measure
37. Delegation by Secretary
38. Regulation-making power
39. Administration of Act

SCHEDULE 1 – CHILD PROTECTION CONVENTION

CHILD PROTECTION (INTERNATIONAL MEASURES) BILL 2003

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
15 April 2003

(Brought in by the Minister for Health and Human Services, the Honourable David Edward Llewellyn)

A BILL FOR

An Act to provide for Tasmania's involvement in relation to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, and for other purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Child Protection (International Measures) Act 2003*.

Commencement

2. This Act commences on a day to be proclaimed.

Main purposes of Act

3. The main purposes of this Act are to recognise –

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

Interpretation

4. (1) In this Act, unless the contrary intention appears –

“another country” means a Convention country or a non-Convention country;

“Australia” includes the external Territories;

“central authority” of a Convention country means –

- (a) if there is one central authority of the Convention country under Article 29 of the Child Protection Convention, the

Convention country's central authority;
or

- (b) otherwise, the central authority designated, under Article 29 of the Child Protection Convention, as the Convention country's central authority to which any communication may be addressed for transmission to the appropriate central authority of the Convention country;

“child” means an individual who is under 18 years;

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

“Children's Court” means the Magistrates Court (Children's Division) established under the *Magistrates Court (Children's Division) Act 1998*;

“Commonwealth central authority” has the meaning given by the *Family Law Act 1975* of the Commonwealth, section 111CA(1);

“competent authority” means –

- (a) a competent authority of Australia; or
- (b) a competent authority of a Convention country; or
- (c) a competent authority of a non-Convention country;

“competent authority of Australia” means an entity that has responsibility or authority under the law in force in Australia, or part of Australia, to take measures or make decisions about –

- (a) protecting the person of a child; or
- (b) appointing or deciding the powers of a guardian of a child’s property;

“competent authority of a Convention country” means an entity that has responsibility or authority under the law in force in the Convention country to take, or make decisions about, a foreign measure relating to a child;

“competent authority of a non-Convention country” means an entity that has responsibility or authority under the law in force in the country to take measures or make decisions about –

- (a) protecting the person of a child; or
- (b) appointing or deciding the powers of a guardian of a child’s property;

“Convention country” means a country, other than Australia, for which the Child Protection Convention has entered into force;

“country of refuge” of a child means a country in which the child is present as a refugee child;

“entity” includes the following:

- (a) an individual;
- (b) a corporation;

- (c) an unincorporated body;
- (d) a statutory authority or body;
- (e) a court or tribunal;

“foreign measure” means –

- (a) a foreign personal protection measure; or
- (b) a foreign property protection measure;

“foreign personal protection measure”, in relation to a child, means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for protecting the person of the child;

“foreign property protection measure”, in relation to a child, means a measure (within the meaning of the Child Protection Convention) taken by a competent authority of a Convention country for appointing, or deciding the powers of, a guardian of the child’s property;

“non-Convention country” means a country for which the Child Protection Convention has not entered into force;

“Public Trustee” means The Public Trustee established under the *Public Trustee Act 1930*;

“refugee child” means a child –

- (a) who is a refugee; or
- (b) who is internationally displaced due to disturbances occurring in his or her country of habitual residence; or

- (c) whose country of habitual residence cannot be determined;

“registrar”, in relation to a court, means –

- (a) if the court is the Supreme Court, the Registrar of the Supreme Court; or
- (b) if the court is the Children’s Court, a district registrar of the district registry of the court; or
- (c) if the court is the Magistrates Court, a district registrar of the district registry of the court;

“Tasmanian authority” means –

- (a) for a Tasmanian personal protection measure relating to a child, a Tasmanian court or the Department; or
- (b) for a Tasmanian property protection measure, a Tasmanian court or The Public Trustee;

“Tasmanian court” means –

- (a) the Supreme Court; or
- (b) the Children’s Court; or
- (c) the Magistrates Court;

“Tasmanian law” means the law in force in Tasmania;

“Tasmanian measure” means –

- (a) a Tasmanian personal protection measure relating to a child; or

- (b) a Tasmanian property protection measure relating to a child;

“Tasmanian personal protection measure”, in relation to a child, means a measure (within the meaning of the Child Protection Convention) under Tasmanian law that is directed to the protection of the person of the child;

“Tasmanian property protection measure”, in relation to a child, means a measure (within the meaning of the Child Protection Convention) under Tasmanian law for appointing, or deciding the powers of, a guardian of the child’s property.

(2) Unless the contrary intention appears, expressions used in this Act have the same meaning as they have in the Child Protection Convention.

Application of Act

5. (1) This Act does not apply to a matter to which the Child Protection Convention does not apply under Article 4 of the Convention.

(2) In addition to measures to which the Child Protection Convention applies under Article 53, this Act applies to a measure taken in another country before the Convention has entered into force for that country if, at all relevant times that action is taken under this Act in relation to the measure, the Convention is in force for that country and Australia.

Act binds Crown

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

Circumstances in which Tasmanian court may exercise jurisdiction

7. (1) If, under this Act, a Tasmanian court may exercise jurisdiction for a matter, the court may exercise the jurisdiction for the matter –

- (a) on application by the Department or Public Trustee; or
- (b) on its own initiative.

(2) For this Act, the Department and Public Trustee may make applications to a Tasmanian court.

(3) Subsections (1) and (2) are not limited by, and do not limit, a provision made by or under this Act or another Act that states other persons may make an application under this Act or otherwise make a request to a Tasmanian court.

PART 2 – JURISDICTION FOR THE PERSON OF A CHILD

Application of this Part

8. (1) This Part applies only if an issue under Tasmanian law is whether a Tasmanian court or the Department, as distinct from any of the following authorities, is to take measures directed to the protection of the person of a child:

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

(2) This Part does not apply if an issue under Tasmanian law is whether a Tasmanian court or the Department, as distinct from another competent authority of Australia, is to take measures directed to the protection of the person of a child.

Matters relating to jurisdiction for the person of a child

9. (1) This section applies if a Tasmanian authority has jurisdiction under Tasmanian law, apart from this Act, for a Tasmanian personal protection measure in relation to a child.

(2) The Tasmanian authority may exercise jurisdiction for a Tasmanian personal protection measure only in relation to –

- (a) a child who is present and habitually resident in Australia; or

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

- (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the Tasmanian authority assuming jurisdiction; or
- (d) a child who is present in Australia and is a refugee child; or
- (e) a child who is present in a non-Convention country, if –
 - (i) the child is habitually resident in Australia; or
 - (ii) the child is habitually resident in a non-Convention country and is an Australian citizen; or
- (f) a child who is present in Australia, if the child is habitually resident in a non-Convention country.

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

(4) Subsection (2)(a), (b), (c) and (d) is subject to the limitations in sections 10, 11 and 13.

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

10. A Tasmanian authority must not, other than in a case of urgency, exercise jurisdiction in accordance with section 9(2)(a), (b), (c) or (d) to take a Tasmanian personal protection measure relating to a child if –

s. 11

No. *Child Protection (International Measures)* 2003

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

Limitations concerning prior proceedings in a Convention country

11. (1) This section applies to the exercise of jurisdiction by a Tasmanian authority in accordance with section 9(2)(b)(iii), (iv) and (v) or (c).

(2) If the Tasmanian authority is a Tasmanian court, before the court exercises the jurisdiction, the court must order the Department –

- (a) to use the Department's best efforts to consult with the competent authorities in the Convention country to find out whether measures relating to the protection of the person of the child have been sought from the competent authorities; and
- (b) to report to the court about the outcome of those efforts.

(3) If the Tasmanian authority is the Department, before the Department exercises the jurisdiction, the Department must use its best efforts to consult with the competent authorities in the Convention country –

- (a) to find out whether measures relating to the protection of the person of the child have been sought from the competent authorities; and
- (b) to decide the most appropriate course of action.

If a Tasmanian authority is asked to assume jurisdiction

12. (1) A Tasmanian authority may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by a competent authority of a Convention country for the Tasmanian authority to assume jurisdiction to take a Tasmanian personal protection measure relating to the child.

(2) If the Tasmanian authority is a Tasmanian court, the court may order the Department to do both of the following:

- (a) in a way that the Department considers appropriate, to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the Tasmanian court assuming jurisdiction to take a Tasmanian personal protection measure relating to the child;
- (b) to report to the court about the outcome of the request.

(3) The Tasmanian court may only make the order under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests.

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

13. (1) A Tasmanian court may order the Department –

- (a) to request, in a way the Department considers appropriate, a competent authority described

in Article 8, paragraph 2 of the Child Protection Convention –

- (i) to assume jurisdiction under Article 8 of the Convention for protecting the person of a child; and
 - (ii) as the competent authority considers necessary, to take measures to protect the person of a child; and
- (b) to report to the court about the outcome of the request.

(2) In addition, the Tasmanian court may make any other order it considers necessary for an order under subsection (1).

(3) The Tasmanian court may only make the order under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.

(4) The Tasmanian court may accept or reject a request under Article 9 of the Child Protection Convention made by a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take a measure for protecting the person of the child.

(5) If the competent authority assumes jurisdiction under the request, a Tasmanian court must not exercise jurisdiction in accordance with section 9(2)(a), (b)(iii), (iv) and (v), (c) or (d) while the competent authority continues to exercise its jurisdiction.

When a certain Tasmanian personal protection measure lapses

14. (1) A Tasmanian personal protection measure relating to a child that is taken in response to a particular situation by a Tasmanian authority exercising jurisdiction in accordance with section 9(2)(b)(i) or (ii) lapses if a foreign personal protection measure relating to the child, that is taken in response to the same situation, is recognised by registration under section 25.

(2) A Tasmanian personal protection measure relating to a child that is taken in response to a particular situation by a Tasmanian authority exercising jurisdiction in a case of urgency, or in the taking of a measure of a provisional character, lapses if –

- (a) a measure for protecting the person of the child, that is taken in response to the same situation, is taken by a competent authority of a non-Convention country; and
- (b) the measure is recognised under Tasmanian law or under the law of another State or of a Territory.

**PART 3 – JURISDICTION FOR DECISIONS ABOUT
A GUARDIAN OF A CHILD’S PROPERTY**

Application of this Part

15. (1) This Part applies only if an issue under Tasmanian law is whether a Tasmanian court or the Public Trustee, as distinct from any of the following authorities, is to appoint, or determine the powers of, a guardian of a child’s property:

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

(2) This Part does not apply if an issue under Tasmanian law is whether a Tasmanian court or the Public Trustee, as distinct from another competent authority of Australia, is to appoint, or determine the powers of, a guardian of a child’s property.

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

16. (1) This section applies if a Tasmanian authority has jurisdiction under Tasmanian law, apart from this Act, for a Tasmanian property protection measure in relation to a child.

(2) The Tasmanian authority may exercise jurisdiction for a Tasmanian property protection measure only in relation to –

- (a) a child who is habitually resident in Australia;
or

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

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

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

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

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

17. A Tasmanian authority must not, other than in a case of urgency, exercise jurisdiction in accordance with section 16(2)(a), (b) or (c) to take a Tasmanian property protection measure relating to a child if –

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

Limitations when prior proceedings pending in a Convention country

18. (1) This section applies to the exercise of jurisdiction by a Tasmanian authority in accordance with section 16(2)(a), (b)(iii), (iv) and (v) or (c).

(2) The Tasmanian authority must not exercise that jurisdiction to take a Tasmanian property protection measure relating to a child if –

- (a) a corresponding measure has been sought from a competent authority of a Convention country and it was sought –
 - (i) if the Tasmanian authority is a Tasmanian court, before the proceedings were started in the court; or
 - (ii) if the Tasmanian authority is the Public Trustee, before the Public Trustee exercises the jurisdiction; and
- (b) any of the following applies:
 - (i) the child is habitually resident in the Convention country;
 - (ii) the child is present in the Convention country and is a refugee child;
 - (iii) a request to assume jurisdiction is made to a competent authority of the country of the child's habitual residence or country of refuge;
 - (iv) a competent authority of the country of the child's habitual residence or country of refuge agrees to the competent authority assuming jurisdiction;
 - (v) the competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (3));

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

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

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

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

If Tasmanian authority is asked to assume jurisdiction

19. (1) A Tasmanian court may, if it considers that it is in the child's best interests, accept or reject a request made under Article 8 of the Child Protection Convention by, or at the invitation of, a competent authority of a Convention country for the Tasmanian court to assume jurisdiction to take a Tasmanian property protection measure relating to the child.

(2) A Tasmanian court may order, or invite the parties to proceedings before the court to ask, the Department or Public Trustee to do both of the following:

- (a) in a way that the Department or Public Trustee considers appropriate, to request, under Article 9 of the Child Protection Convention, that a competent authority of a Convention country agree to the Tasmanian court assuming jurisdiction to take a Tasmanian property protection measure relating to the child;
- (b) to report to the court about the outcome of the request.

(3) The Public Trustee must –

- (a) apply to a Tasmanian court for an order that the Public Trustee may accept a request, under Article 9 of the Child Protection Convention, for the Public Trustee to assume jurisdiction to take a Tasmanian property protection measure relating to the child that the Public Trustee considers necessary; or
- (b) reject the request.

(4) The Tasmanian court may only –

- (a) make the order, or issue the invitation, under subsection (2) if it considers that it is better placed than the competent authority to assess the child's best interests; or
- (b) make the order under subsection (3)(a) if it considers that the Public Trustee is better placed than the competent authority to assess the child's best interests.

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

20. (1) A Tasmanian court may order, or invite the parties to proceedings before the court to ask, the Department or Public Trustee –

- (a) to request, in a way the Department or Public Trustee considers appropriate, a competent authority described in Article 8, paragraph 2 of the Child Protection Convention –
 - (i) to assume jurisdiction under Article 8 of the Convention for appointing, or deciding the powers of, a guardian of the child's property; and
 - (ii) as the competent authority considers necessary, to take a measure appointing, or deciding the powers of, a guardian of the child's property; and
- (b) to report to the court about the outcome of the request.

(2) In addition, the Tasmanian court may make any other order it considers necessary for an order under subsection (1).

(3) The Tasmanian court may only make the order or issue the invitation under subsection (1) if the court considers that the competent authority is better placed to assess the child's best interests.

(4) The Tasmanian court may accept or reject a request under Article 9 of the Child Protection Convention made by, or at the invitation of, a competent authority of a Convention country described in Article 8, paragraph 2 of the Convention, for the competent authority to assume jurisdiction to take measures for the protection of the child's property.

(5) If the competent authority assumes jurisdiction under the request, a Tasmanian court must not exercise jurisdiction in accordance with section 16(2)(a), (b)(iii), (iv) and (v) or (c) while the competent authority continues to exercise its jurisdiction.

When a certain Tasmanian property protection measure lapses

21. (1) A Tasmanian property protection measure relating to a child that is taken in response to a particular situation by a Tasmanian authority exercising jurisdiction in accordance with section 16(2)(b)(i) or (ii) lapses if –

- (a) a foreign property protection measure relating to the child, that is taken in response to the same situation, is taken by a competent authority of a Convention country; and
- (b) any of the following applies:
 - (i) the child is habitually resident in the Convention country;
 - (ii) the child is present in the Convention country and is a refugee child;

- (iii) a request to assume jurisdiction is made to the competent authority of the Convention country by, or at the invitation of, a competent authority of the country of the child's habitual residence;
- (iv) a competent authority of the country of the child's habitual residence agrees to the competent authority of the Convention country assuming jurisdiction;
- (v) a competent authority of the Convention country is exercising jurisdiction in proceedings concerning the divorce or separation of the child's parents or the annulment of their marriage (but see subsection (2));
- (vi) the child has been wrongfully removed from or retained outside the Convention country and a competent authority of the Convention country keeps jurisdiction under Article 7 of the Child Protection Convention.

(2) Subsection (1)(b)(v) only applies if –

- (a) one or both of the child's parents are habitually resident in the Convention country when the proceedings referred to in that subparagraph are started; and
- (b) one or both of the parents have parental responsibility for the child; and
- (c) the jurisdiction of the competent authority of the Convention country to take the foreign property protection measure is accepted by the

parents and each other person with parental responsibility for the child; and

- (d) the exercise of jurisdiction to take the foreign property protection measure is in the best interests of the child; and
- (e) the proceedings on the application for divorce or separation of the child's parents or the annulment of their marriage have not been finalised.

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

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

PART 4 – APPLICABLE LAW**Applicable law generally**

22. (1) This section applies to a Tasmanian authority exercising jurisdiction in accordance with Part 2 or 3.

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

(3) However, the Tasmanian authority may in exceptional circumstances apply or take into account the law of another country with which –

- (a) a child has a substantial connection; or
- (b) a child’s property is substantially connected –

if the Tasmanian authority considers the protection of the person of the child, or the child’s property, requires the authority to do so.

(4) In this section, “**law**” does not include choice of law rules.

**PART 5 – RECOGNITION OF FOREIGN MEASURES
AND THEIR ENFORCEMENT IN TASMANIA****Action on receipt of foreign personal protection
measure**

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

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

(2) After consulting with the competent authority of the country in which the foreign personal protection measure was taken, the Department must do one of the following:

- (a) give the foreign personal protection measure to a registrar of a Tasmanian court for recognition of the measure by registration under section 25;
- (b) give the foreign personal protection measure to the Commonwealth central authority together with a request for the Commonwealth central authority to take action under the Child Protection Convention, including, for example, registration of the measure under the *Family Law Act 1975* of the Commonwealth;
- (c) exercise the Department's jurisdiction in accordance with Part 2;

- (d) apply to a Tasmanian court for the court –
 - (i) to exercise the court's jurisdiction in accordance with Part 2; or
 - (ii) to decide whether or not the court should refuse recognition of the measure under subsection (3);
- (e) agree with the competent authority that the Department will not do anything.

(3) A Tasmanian court may order that a foreign personal protection measure relating to a child be refused recognition on any of the following grounds:

- (a) the competent authority of the Convention country did not have jurisdiction under the Child Protection Convention for taking the foreign personal protection measure;
- (b) in taking the foreign personal protection measure, the competent authority of the Convention country is taken to have acted contrary to the fundamental principles of procedure under Tasmanian law as mentioned in subsection (4);
- (c) recognition of the foreign personal protection measure is contrary to public policy in Tasmania having regard to the child's best interests;
- (d) if the foreign personal protection measure were recognised by registration under section 25, there would be no appropriate means of enforcing the measure under Tasmanian law;
- (e) the foreign personal protection measure is incompatible with a later measure taken in a

non-Convention country in which the child habitually resides and, if the later measure were a foreign personal protection measure, it could not be refused recognition under paragraph (b) or (c);

- (f) the foreign personal protection measure places the child in a foster family or institutional care in Tasmania and the competent authority did not obtain the Department's consent to the placement before taking the measure.

(4) A competent authority is taken to have acted contrary to the fundamental principles of procedure under Tasmanian law if –

- (a) the competent authority did not give the child, or a person with parental responsibility for the child, an opportunity to be heard before taking the foreign personal protection measure; and
- (b) the competent authority did not take the foreign personal protection measure as a matter of urgency.

(5) A person who is interested in an application by the Department under subsection (2)(d) may apply to the court to be joined as a party to the proceeding.

(6) If –

- (a) under subsection (2)(a) the Department gives a foreign personal protection measure relating to a child to a registrar of a Tasmanian court; and
- (b) the measure authorises the performance of a medical procedure or treatment on the child that is a procedure or treatment for which a parent does not, under Tasmanian law, have authority to consent –

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

(7) In this section, “**Family Court declaration**” means a declaration by a court exercising jurisdiction for proceedings under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997* of Western Australia.

Action on receipt of foreign property protection measure

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

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

(2) The Department must consider whether the foreign property protection measure includes a provision directed to protecting the person of the child.

(3) If the Department considers the foreign property protection measure includes a provision directed to protecting the person of the child, the Department must deal with the measure under section 23 as if it were a foreign personal protection measure.

(4) If the Department does not consider the foreign property protection measure includes a provision directed to protecting the person of the child, the Department must

give the measure to a registrar of a Tasmanian court for recognition of the measure by registration under section 25.

Recognition of foreign measures in Tasmanian courts

25. (1) A registrar of a Tasmanian court must register a foreign measure given to the registrar by the Department under section 23 or 24.

(2) A foreign measure registered under subsection (1) –

- (a) has the same force and effect as a Tasmanian personal protection measure or a Tasmanian property protection measure, as the case may be; and
- (b) prevails over an earlier measure in force in Tasmania to the extent the foreign measure is inconsistent with the earlier measure.

(3) An interested person may take legal proceedings in a Tasmanian court to enforce a foreign measure registered under subsection (1).

(4) Subsections (2) and (3) are subject to the cancellation of the registration of the foreign measure under section 26.

Cancellation of registered foreign measure and related matters

26. (1) An interested person may apply to a Tasmanian court to cancel the registration under section 25 of a foreign measure relating to a child.

(2) The Tasmanian court may cancel the registration of the foreign measure if any of the following applies:

- (a) for a foreign measure that is a foreign personal protection measure, the Tasmanian court may take a Tasmanian personal protection measure relating to the child in accordance with Part 2;
- (b) for a foreign measure that is a foreign property protection measure, the Tasmanian court may take a Tasmanian property protection measure relating to the child in accordance with Part 3;
- (c) the relevant competent authority responsible for taking the foreign measure did not have jurisdiction, under the Child Protection Convention, for taking the measure;
- (d) in taking the measure, the relevant competent authority is taken to have acted contrary to the fundamental principles of procedure under Tasmanian law as mentioned in subsection (3);
- (e) recognition or enforcement of the measure in Tasmania is contrary to public policy, taking into account the child's best interests;
- (f) for a foreign measure that is a foreign measure property protection measure, there are no appropriate means of enforcing the measure under Tasmanian law.

(3) The relevant competent authority is taken to have acted contrary to the fundamental principles of procedure under Tasmanian law if –

- (a) the competent authority did not give the child, or a person with parental responsibility for the

child, an opportunity to be heard before taking the foreign measure; and

- (b) the competent authority did not take the foreign measure as a matter of urgency.

Matters relevant for Tasmanian court in proceeding under section 23 or 26

27. (1) This section applies to a proceeding in a Tasmanian court under section 23 or 26 about a foreign measure.

(2) The Tasmanian court is bound by findings of fact on which the competent authority of the Convention country based its jurisdiction.

(3) Subject to section 26, the Tasmanian court must not review the merits of the measure.

(4) A document of a competent authority of a Convention country is admissible as evidence of the facts stated in the document.

(5) An affidavit of a witness who resides outside Australia, that is filed in the proceeding, is admissible as evidence in the proceeding, even though the witness does not attend for cross-examination in the proceeding.

Recognition and enforcement of Tasmanian measure

28. (1) After consulting with the central authority or a competent authority of a Convention country, the Department may give a Tasmanian personal protection measure relating to a child to the central authority of the Convention country for recognition and enforcement of the

s. 28

No.

*Child Protection (International
Measures)*

2003

Tasmanian personal protection measure in the Convention country.

(2) After consulting with the central authority or a competent authority of a Convention country, a Tasmanian authority may give a Tasmanian property protection measure relating to a child to the central authority of a Convention country for recognition and enforcement of the Tasmanian property protection measure in the Convention country.

PART 6 – CO-OPERATION AND OTHER MATTERS**Department is Tasmania’s central authority**

29. (1) For the Child Protection Convention, the Department is Tasmania’s central authority.

(2) If the Department must or may perform a function or exercise a power under this Act, including under any of the following, the Secretary of the Department is responsible for performing the function or exercising the power:

- (a) a Tasmanian measure;
- (b) a foreign measure recognised by registration under section 25;
- (c) an order of a Tasmanian court under this Act, other than a Tasmanian measure.

Functions of Department

30. (1) The Department’s functions include co-operating with central authorities of Convention countries –

- (a) to find solutions for the protection of particular children; and
- (b) to help in the implementation of Tasmanian measures, foreign measures and measures of non-Convention countries directed to protecting children or their property; and
- (c) to consider taking, or applying for, a Tasmanian measure relating to a child –

- (i) at the request of a competent authority of another country if the measure is a Tasmanian personal protection measure; or
- (ii) at the request, or at the invitation, of a competent authority of another country if the measure is a Tasmanian property protection measure; and
- (d) to exchange information, subject to appropriate confidentiality provisions; and
- (e) to provide information on laws and services; and
- (f) to help in locating children; and
- (g) to provide reports on the situation of particular children; and
- (h) to apply to Tasmanian courts for orders in response to requests from competent authorities in Convention countries –
 - (i) to transfer or receive jurisdiction; or
 - (ii) to take measures directed to protecting the person of a child or measures directed to protecting a child's property.

(2) If a competent authority of a Convention country consults with the Department for the purpose of obtaining the Department's consent to placing a child with a foster family, or in institutional care, in Tasmania, the Department must take into account the child's best interests in deciding whether or not to consent.

Obligation to obtain consent to place child

31. (1) A Tasmanian authority must obtain the consent of a competent authority of a Convention country before placing a child in a foster family, or in institutional care, in the Convention country.

(2) If the Tasmanian authority is a Tasmanian court, before placing a child, the Tasmanian authority may order the Department to consult a competent authority of the Convention country concerned.

(3) If a Tasmanian court orders the Department to consult, then the court must provide the Department with a report on the child and the reasons for the proposed placement.

Obligation to inform competent authority about serious danger to child

32. (1) A Tasmanian authority must inform a competent authority of another country of any information the Tasmanian authority may have about any serious danger to a child –

- (a) whose residence has moved from Tasmania to the other country; or
- (b) who is present in the other country.

(2) Subsection (1) has effect despite any obligation of confidentiality imposed on the Tasmanian authority or a person by a Tasmanian law or anything else (including a contract or professional ethics).

(3) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of the provision of information under subsection (1).

(4) Evidence of the provision of information under subsection (1) is not admissible in any –

- (a) court (whether or not exercising jurisdiction in accordance with this Act); or
- (b) tribunal or other body concerned with professional ethics –

except where that evidence is given by the person who provided the information.

(5) In this section, “**Tasmanian authority**” includes a person carrying out duties, performing functions or exercising powers as an employee, within the meaning of the *State Service Act 2000*, employed in the Department, in the Office of the Public Trustee or in any court.

Proceedings, &c., for contact

33. (1) A Tasmanian court hearing proceedings concerning contact with a child must admit into evidence and consider the findings (if any) of a competent authority of a Convention country on the suitability of a parent to have contact with the child.

(2) A Tasmanian court may adjourn the proceedings concerning contact with a child pending the outcome of a request by a parent of the child to a competent authority of a Convention country for a finding on the suitability of the parent to have contact with the child.

(3) On the application of a parent who is an Australian resident seeking to obtain or keep contact with a child, a Tasmanian court may –

- (a) admit evidence; and

- (b) make a finding on the suitability of that parent to have contact with the child; and
- (c) specify conditions on which the contact is to be allowed.

(4) A Tasmanian authority considering a matter concerning contact with a child –

- (a) must consider evidence and the findings (if any) of a competent authority of a Convention country on the suitability of a parent to have contact with the child; and
- (b) may postpone considering the matter pending the outcome of a request by a parent to a competent authority of a Convention country for a finding on the suitability of the parent to have contact with the child.

Giving information to central authorities and competent authorities in Convention countries

34. (1) This section applies to –

- (a) a court; and
- (b) the Commonwealth central authority; and
- (c) central authorities of Australia appointed as mentioned in Article 29, paragraph 2, of the Child Protection Convention; and
- (d) other competent authorities of Australia.

(2) If it would be consistent with this Act or the Child Protection Convention to do so, a Tasmanian authority may give information to –

s. 34

No.

*Child Protection (International
Measures)*

2003

- (a) a court or an authority of Australia to which this section applies; or
- (b) a central authority or other competent authority of a Convention country.

PART 7 – MISCELLANEOUS**Helping person in relation to Tasmanian measure**

35. (1) A person who is to exercise parental responsibilities under a Tasmanian measure may apply to a Tasmanian authority for information about the particular way in which the person may exercise the person's responsibilities under the Tasmanian measure.

(2) The Tasmanian authority may, by written notice, give information to the person about the powers conferred on the person as a parent under the Tasmanian measure.

Helping person in relation to foreign measure

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

(2) The Department may help the interested person in relation to sending the request.

Delegation by Secretary

37. (1) The Secretary of the Department may delegate any of the Secretary's powers under this Act to an appropriately qualified employee, within the meaning of the *State Service Act 2000*, employed in the Department.

(2) In this section –

“appropriately qualified” includes having the qualifications, experience or standing appropriate to the exercise of the power;

“Secretary’s powers” means the powers the Secretary must or may exercise under section 29.

Regulation-making power

38. (1) The Governor may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may prescribe –

- (a) that a particular measure, or a particular type of measure, recognised by registration under section 25 has effect as a particular type of Tasmanian measure, as mentioned in section 25(2)(a); and
- (b) the way the measure or the type of measure has effect as the particular type of Tasmanian measure, including the way it may be varied or otherwise dealt with under an Act applying to that particular type of Tasmanian measure.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

Administration of Act

39. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

2003

*Child Protection (International
Measures)*

No.

s. 39

- (a) the administration of this Act is assigned to the Minister for Health and Human Services; and
- (b) the department responsible to the Minister for Health and Human Services in relation to the administration of this Act is the Department of Health and Human Services.

**SCHEDULE 1 – CHILD PROTECTION
CONVENTION**

Section 4(1)

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

The States signatory to the present Convention,

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

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

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

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

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

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

Have agreed on the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION***Article 1***

1. The objects of the present Convention are –

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

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

Article 2

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

Article 3

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

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

Article 4

The Convention does not apply to –

- (a) the establishment or contesting of a parent-child relationship;

2003

*Child Protection (International
Measures)*

No.

sch. 1

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

CHAPTER II – JURISDICTION

Article 5

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

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

Article 6

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

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

Article 7

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

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

2. The removal or the retention of a child is to be considered wrongful where –

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

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

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

Article 8

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

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or

–suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

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

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

3. The authorities concerned may proceed to an exchange of views.

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

Article 9

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

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

2. The authorities concerned may proceed to an exchange of views.

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

Article 10

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

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

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

Article 11

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

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

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

Article 12

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

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

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

Article 13

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

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

Article 14

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

CHAPTER III - APPLICABLE LAW***Article 15***

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

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

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

Article 16

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

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

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

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

Article 17

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

Article 18

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

Article 19

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

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

Article 20

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

Article 21

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

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

Article 22

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

**CHAPTER IV – RECOGNITION AND
ENFORCEMENT*****Article 23***

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

2. Recognition may however be refused –

- (a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

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

Article 24

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

Article 25

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

Article 26

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

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

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

Article 27

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

Article 28

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

CHAPTER V – CO-OPERATION***Article 29***

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

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

Article 30

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

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

Article 31

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

- (a) facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;

- (b) facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;
- (c) provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

Article 32

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

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

Article 33

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

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

Article 34

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

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

Article 35

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

2. The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child shall admit and consider such information, evidence and finding before reaching its decision.

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

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

Article 36

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

Article 37

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

Article 38

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

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

Article 39

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

CHAPTER VI - GENERAL PROVISIONS

Article 40

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

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

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

Article 41

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

Article 42

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

Article 43

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

Article 44

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

Article 45

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

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

Article 46

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

Article 47

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

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

9. any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

10. any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

Article 48

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

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

Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply –

- (a) if there are rules in force in such a State identifying which among such laws applies, that law applies;

- (b) in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

Article 50

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

Article 51

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

Article 52

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

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

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

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

Article 53

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

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

Article 54

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

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

Article 55

1. A Contracting State may, in accordance with Article 60,
 - (a) reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;
 - (b) reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.
2. The reservation may be restricted to certain categories of property.

Article 56

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

CHAPTER VII - FINAL CLAUSES***Article 57***

1. The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.
2. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

1. Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.
2. The instrument of accession shall be deposited with the depositary.
3. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph (b) of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
3. If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 60

1. Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.
2. Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.
3. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 61

1. The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.
2. Thereafter the Convention shall enter into force –
 - (a) for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - (b) for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;

- (c) for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 62

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

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

Article 63

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

- (a) the signatures, ratifications, acceptances and approvals referred to in Article 57;
- (b) the accessions and objections raised to accessions referred to in Article 58;
- (c) the date on which the Convention enters into force in accordance with Article 61;
- (d) the declarations referred to in Articles 34, paragraph 2, and 59;
- (e) the agreements referred to in Article 39;

2003

*Child Protection (International
Measures)*

No.

sch. 1

- (f) the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;
- (g) the denunciations referred to in Article 62.

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

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.