

ADOPTION BILL 2018
(BILL NO. 32 OF 2018)

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SCHEDULE—CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

BILL NO. 32 OF 2018**A BILL**

FOR AN ACT TO PROVIDE FOR LOCAL AND INTERCOUNTRY ADOPTION OF CHILDREN AND ACCESS TO INFORMATION REGARDING ADOPTION AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.—(1) This Act may be cited as the Adoption Act ~~2018~~ 2020.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“adoption compliance certificate” means a certificate issued in accordance with section 3940;

“best interests”, in relation to a child, means the best interests of the child determined in accordance with section 4(2);

- “child” means an individual who has not reached the age of 18 years;
- “consent” means consent freely and voluntarily given by a person with capacity to give such consent;
- “Convention” means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption concluded at the Hague on 29 May 1993, a copy of the English text of which is set out in the Schedule;
- “Convention country”, in accordance with Article 45 of the Convention, means any country in which the Convention has entered into force, except for a country against whose accession Fiji has raised an objection under Article 44 of the Convention;
- “couple” means a husband and a wife or a man and a woman in a *de facto* relationship;
- “court” means the Family Division of a Magistrates Court established by the Family Law Act 2003;
- “*de facto* relationship” has the meaning given in section 2 of the Succession, Probate and Administration Act 1970;
- “decision maker” includes any person making a decision in relation to any aspect of the adoption;
- “Department” means the department responsible for social welfare;
- “Director” means the director responsible for the Department;
- “guardian” means a person who has been granted, whether alone or jointly with another person or other persons, guardianship of the child by the court;
- “home assessment” means an assessment of prospective adoptive parents’ eligibility and suitability to adopt, including their background, character, family history, medical history, and social environment;
- “Minister” means the Minister responsible for social welfare;
- “National Fostering and Adoption Panel” means the National Fostering and Adoption Panel established under section 8;
- “parties”, in relation to an adoption, means the following—
- (a) the child;
 - (b) a birth parent or birth parents who have consented to the child’s adoption;
 - (c) the person or persons selected to be the prospective adoptive parent or adoptive parents of the child; and
 - (d) the Director;

“Permanent Secretary” means the permanent secretary responsible for social welfare;

“private placement” means the action of a birth parent or guardian of a child placing the child for adoption with a person or couple;

“Register of Approved Adoptive Parents” means the register established under section 10;

“relative”, in relation to a child, means a grandparent, sibling, uncle, aunt or cousin of the child; and

“welfare officer” means a welfare officer of the Department, and includes the Director, the Assistant Director, any Senior Welfare Officer, Welfare Officer, or Assistant Welfare Officer.

Objectives

3. The objectives of this Act are to—

- (a) emphasise that the best interests of the child concerned, both in childhood and later in life, must be the paramount consideration in adoption law and practice;
- (b) ensure that adoption is to be regarded as a service for the child concerned;
- (c) protect and nurture children by providing safe and supportive family relationships intended to last a lifetime;
- (d) recognise the changing nature of the practice of adoption;
- (e) promote efficient and accountable practice in the delivery of adoption services;
- (f) ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage; and
- (g) ensure that adoption law and practice comply with Fiji’s obligations under international conventions and other international agreements on adoption.

Decision making principles

4.—(1) In making a decision on the adoption of a child, a decision maker must have regard to the following principles—

- (a) the best interests of the child, both in childhood and later in life, must be the paramount consideration;
- (b) adoption is to be regarded as a service for the child, with the purpose being to provide for a child’s long term care, well-being and development by creating a permanent parent-child relationship;
- (c) no person has the right to adopt the child except in accordance with the procedures set out in this Act;

- (d) an adopted child must be cared for in a way that—
 - (i) ensures a safe, stable and nurturing family and home life; and
 - (ii) promotes the development of the child's emotional, mental, physical and social well-being;
- (e) a child who is able to form his or her own views concerning his or her adoption must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child;
- (f) the child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved; and
- (g) undue delay in making a decision in relation to the adoption of a child is likely to prejudice the child's welfare.

(2) In determining the best interests of the child, the decision maker must take into account the following—

- (a) any wishes expressed by the child;
- (b) the child's age, maturity, level of understanding, gender, background and family relationships;
- (c) the child's physical, emotional and educational needs, including the child's sense of personal, family and cultural identity;
- (d) the importance of preserving the child's cultural, linguistic, or religious heritage;
- (e) any disability that the child has;
- (f) any wishes expressed by either or both of the birth parents or guardian of the child;
- (g) the relationship that the child has with his or her birth parents, guardian and siblings, if any, and any other significant people in relation to whom the decision maker considers the question to be relevant;
- (h) the attitude of each proposed adoptive parent to the child and to the responsibilities of parenthood;
- (i) the nature of the relationship of the child with each proposed adoptive parent;
- (j) the suitability and capacity of each proposed adoptive parent to provide for the needs of the child; and
- (k) the need to protect the child from all forms of violence, abuse, neglect or ill treatment.

Participation of child in decisions

5. To ensure that a child is able to participate in any decision made under this Act, the decision maker is responsible, subject to the child's age and level of maturity, for providing the child with the following—

- (a) adequate information, in a manner and language that the child can understand, concerning the decision;
- (b) the opportunity to express his or her views privately and freely, according to his or her abilities;
- (c) information about the outcome of the decision and an explanation of the reasons for the decision;
- (d) any assistance that is necessary for the child to understand the information and to express his or her views; and
- (e) appropriate counselling when the child's consent is required to his or her adoption.

PART 2—ADMINISTRATION

Adoption services to be provided by the Director

6. The Director is responsible for providing adoption services in accordance with the objectives of this Act, including—

- (a) the assessment of the suitability of a person or couple to adopt a child in accordance with section 9;
- (b) any decision to place a child with a person or couple wishing to adopt the child;
- (c) the transfer of care and responsibility for a child to the person or couple who will adopt the child;
- (d) the giving of consent to the adoption of a child of whom he or she has guardianship;
- (e) the provision of timely advice to the court in relation to adoption applications;
- (f) the provision of pre-adoption and post-adoption counselling services; and
- (g) the maintenance of adoption records and the facilitation of access to adoption information in accordance with this Act.

Delegation of powers

7.—(1) The Director may, from time to time, in writing either generally or specifically, delegate to any staff member as he or she thinks fit all or any of the powers exercisable by the Director under this Act and may withdraw that delegation in writing at any time.

(2) No person, other than the Director or his or her delegate, may provide any adoption service referred to in section 6.

National Fostering and Adoption Panel

8.—(1) The Director must establish an advisory committee, to be known as the National Fostering and Adoption Panel, which ~~shall be~~ is responsible for advising on—

- (a) the suitability of prospective foster parents and adoptive parents; and
- (b) such other functions as prescribed by law.

(2) The National Fostering and Adoption Panel ~~shall is to~~ be chaired by the Director and consist of not more than 7 other members as appointed by the Director.

(3) The National Fostering and Adoption Panel must meet at such times and places as the chair determines.

(4) Subject to this Act, the National Fostering and Adoption Panel may determine its own procedures.

(5) The Director must appoint a Secretariat of the National Fostering and Adoption Panel.

PART 3—ADOPTION PROCESS

*Division 1—General**Who can adopt*

9.—(1) An application for an adoption order may be made in accordance with this Act—

- (a) solely by a person;
- (b) jointly by a couple; or
- (c) by a married person **or a person in a *de facto* relationship** whose spouse **or *de facto* partner** is the **birth** parent of the child.

(2) A prospective adoptive parent, and in the case of a couple, each of the prospective parents, must be—

- (a) a Fijian citizen who has been residing in the country for at least 3 consecutive months immediately before the application;
- (b) in the case of a person who is not a Fijian citizen, a resident in Fiji for at least 12 consecutive months immediately before the application;
- (c) 25 years of age or older;
- (d) of good character and fit and proper to be entrusted with full parental responsibilities and rights in respect of the child;
- (e) willing and able to undertake, exercise and maintain those responsibilities and rights; and
- (f) properly assessed by a welfare officer for compliance with paragraphs (a) to (e).

(3) The court must not issue an adoption order in favour of a husband and wife or a couple in a *de facto* relationship unless they have been married **or have been living together** for a consecutive period of not less than 2 years immediately before the application for the adoption order.

(4) The court must not issue an adoption order in favour of one person who is married or is in a *de facto* relationship unless the person's spouse **or de facto partner** consents in writing to the application for the adoption order, provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses **or de facto partners** have separated and are living apart and that the separation is likely to be permanent.

(5) The court must not issue an adoption order in favour of a step-parent of a child unless—

- (a) the child is at least 5 years ~~old~~ **of age**;
- (b) the step-parent has lived with the child and the child's birth parent for a continuous period of not less than 3 months immediately before the application for the adoption order; and
- (c) specific consent to the adoption of the child by the step-parent has been given in accordance with this Act by the appropriate persons.

Register of Approved Adoptive Parents

10.—(1) This section establishes the Register of Approved Adoptive Parents.

(2) A person, or a couple, who wishes to be approved as an adoptive parent or parents must make an application, in the approved form, to the Director.

(3) A person, or a couple, may be placed on the Register of Approved Adoptive Parents if the Director is satisfied that—

- (a) each person complies with the requirements of section 9;
- (b) a home assessment has been prepared; and
- (c) each person is a suitable adoptive parent.

(4) In determining a person's suitability under subsection (3), the Director must have regard to—

- (a) the person's character, psychological capacity and other personal qualities;
- (b) the person's attitudes to, and understanding of—
 - (i) children and their physical and emotional development; and
 - (ii) the responsibilities and duties of parenthood;
- (c) the person's capacity to provide for a child's emotional, physical, educational, recreational and social needs;

- (d) if the applicants are married or in a *de facto* relationship, the quality of their relationship, including the duration and stability of the relationship;
- (e) the person's criminal records, if any; and
- (f) any other information relevant to the person's capacity to undertake full parental responsibility for a child.

(5) A person may not be disqualified from adopting a child by virtue of his or her financial status, and any person who adopts a child may apply for social assistance where applicable.

Division 2—Consent to adoption

Who must consent to adoption

11.—(1) The consent of each of the following is required for a child's adoption—

- (a) the child, if 12 years of age or older;
- (b) the birth mother;
- (c) the father; and
- (d) any person appointed as the child's guardian.

(2) For the purpose of giving consent to adoption, the child's father is anyone who—

- (a) has acknowledged paternity by signing the child's birth registration;
- (b) has acknowledged paternity and has custody or access rights to the child by court order or by agreement;
- (c) has acknowledged paternity and has supported, maintained or cared for the child under a court order; or
- (d) has acknowledged paternity and is acknowledged by the birth mother as the child's father.

(3) Notwithstanding subsection (1), if the child is in the permanent custody of the Director, the only consent required is—

- (a) the consent of the Director; and
- (b) the consent of the child, if required under subsection (1)(a).

Birth mother's consent

12. A birth mother's consent to the adoption of her child is valid only if the child is at least 30 days old when the consent is given.

Informed consent

13. The Director must ensure that, before signing the instrument of consent, a person whose consent to an adoption is required under this Act is given a document containing information about the following matters—

- (a) options other than adoption for the child's long term care;

- (b) financial and other support that may be available to the parent or guardian whether or not adoption of the child proceeds;
- (c) possible psychological effects for the parent or guardian, both short and long term, of consenting to the adoption;
- (d) possible psychological effects for the child, both short and long term, of being adopted;
- (e) how and when the parent's or guardian's consent to the adoption may be revoked;
- (f) how the parent or guardian may give the Director the parent's or guardian's preferences relating to the child's adoption;
- (g) the adoption process under this Act, including—
 - (i) the consent required for an adoption;
 - (ii) the process for recruiting, assessing and selecting prospective adoptive parents;
 - (iii) the Director's functions and powers relating to the child's adoption;
 - (iv) the role of the court with regard to adoption;
 - (v) the legal effect of adoption;
 - (vi) the rights and responsibilities of the parties to an adoption, including those relating to access to information about, and contact with, other parties to an adoption throughout the life of the adopted person; and
 - (vii) the requirement for pre-consent counselling and how it will be arranged.

Person consenting must be counselled

- 14.**—(1) The Director must arrange for a person whose consent to an adoption is required under this Act to receive counselling prior to signing the instrument of consent.
- (2) The counselling must be carried out by a counsellor nominated by the Director.
 - (3) The counsellor must—
 - (a) accurately explain to the person, in a way that the counsellor thinks will be understood by the person—
 - (i) the information under section 13; and
 - (ii) the legal effect of signing the instrument of consent and the procedure for revoking consent; and
 - (b) counsel the person on the emotional effects of the adoption and alternatives to adoption.

(4) Before the instrument of consent is signed, a counsellor nominated in accordance with subsection (2), must sign a statement ~~on it~~ certifying that—

- (a) the person giving the consent has been counselled by the counsellor; and
- (b) the counsellor is of the opinion that the person understands the effect of signing the instrument.

Consent form

15.—(1) A person's consent to a child's adoption must be made in the approved form, signed by the person consenting and attested to by a Justice of the Peace or Commissioner for Oaths.

(2) The approved form must include provision for—

- (a) information to identify the child;
- (b) information to identify the parent; and
- (c) a signed statement by the Justice of the Peace or Commissioner for Oaths that he or she has sighted the documents, relating to proof of the person's identity.

(3) A separate instrument of consent must be signed by each person whose consent is required by this Act.

Revocation of consent

16.—(1) A child who has consented to his or her adoption may revoke his or her consent by notice in writing given to the Director at any time before the adoption order is made.

(2) A birth parent may revoke his or her consent to adoption by notice in writing to the Director before the end of the period of 30 days beginning on the day on which the instrument of consent to the adoption was signed.

(3) Except in accordance with subsections (1) and (2), once a child is placed for adoption, consent to the child's adoption may only be revoked by the court.

(4) As soon as practicable, after receiving a written revocation under this section, the Director must—

- (a) give notice of the revocation to the prospective adoptive parents; and
- (b) make reasonable efforts to give notice of the revocation to anyone else who consented to the adoption.

(5) The child must be returned to the birth parent as soon as practicable after the prospective adoptive parents are given notice of the revocation.

Dispensing with consent

17.—(1) On application, the court may dispense with a consent required under this Act if the person whose consent is required—

- (a) is not capable of giving ~~an~~ informed consent;
- (b) cannot, after reasonable inquiry, be found or identified;

(c) has abandoned or deserted the child; or

(d) is unreasonably withholding consent.

(2) The court must not issue an order dispensing with consent unless satisfied that to do so is in the best interests of the child.

(3) Before making an order under this section, the court may consider any recommendation in a report filed by the Director.

(4) An application under this section may be made without notice to any other person and may be joined with any other application that may be made under this Act.

Custody and guardianship of a child pending adoption

18.—(1) When consent to the adoption of a child has been given by the birth parent or guardian, the birth parent or guardian may, in writing, appoint the Director as the guardian of the child until such time as the child is legally adopted.

(2) In transferring guardianship to the Director, the birth parent or guardian may indicate his or her preference regarding—

(a) the child's religious upbringing; and

(b) the characteristics of the child's adoptive parents and adoptive family.

(3) If the Director has guardianship of a child under subsection (1), he or she may transfer care and custody of the child to a prospective adoptive parent in accordance with Division 3 of this Part.

(4) The Director's guardianship of a child under this section ends if—

(a) a final adoption order for the child is made by the court; or

(b) the consent is lawfully revoked.

Division 3—Placement of a child for adoption

Who may place a child for adoption

19.—(1) The following persons may place a child for adoption under this Act—

(a) the Director; or

(b) a birth parent or guardian of the child, by private placement in accordance with this Part.

(2) A person must not—

(a) place or arrange the placement of a child for the purposes of adoption unless the person is authorised by subsection (1) to do so;

(b) receive a child in their home for the purposes of adoption unless the child has been placed by a person authorised by subsection (1) to do so; or

(c) receive a child placed in their home by private placement unless the person has complied with section 20.

(3) A person who contravenes subsection (2) commits an offence and is liable ~~up~~ on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years or both.

Limits on private placements

20.—(1) A birth parent or guardian of the child may arrange a private placement of a child with prospective adoptive parents.

(2) As soon as ~~possible~~ **practicable** before a private placement, the prospective adoptive parents must notify the Director of their intent to receive a child in their home for adoption.

(3) As soon as ~~possible~~ **practicable** after being notified under subsection (2), the Director must—

- (a) arrange for the parents and the child to be counselled in accordance with section 14;
- (b) ensure that any consent required under section 11 has been given;
- (c) prepare a home assessment of the prospective adoptive parents;
- (d) give a copy of the home assessment to the prospective adoptive parents and to the birth parent or guardian of the child; and
- (e) make sure that the child, if sufficiently mature, has been counselled about the adoption.

(4) After the conditions in this section have been met, a birth parent or guardian of a child may, in writing, transfer care and custody of the child to a prospective adoptive parent.

(5) Subsections (2) and (3) do not apply if a prospective adoptive parent is a relative of the child.

Placement by the Director

21.—(1) Where the Director is a child's guardian pursuant to section 18 and all consent required for the child's adoption have been given, the Director must select a couple or single person to be the child's prospective adoptive parents or parent.

(2) The Director may only place a child for adoption with a person who has been placed on the Register of Approved Adoptive Parents and has been approved on the basis of a home assessment.

(3) Prior to making a decision about the placement of a child, the Director must convene a meeting of the National Fostering and Adoption Panel to consider and make recommendations on the most suitable prospective adoptive parents for the relevant child.

(4) In making a decision about the placement of a child, the following must be considered—

- (a) the general principles in section 4;

- (b) the individual needs of the child to be adopted, including any needs relating to—
 - (i) the child's age and gender;
 - (ii) the cultural background of the child;
 - (iii) any existing or possible future medical condition or disability of the child; and
 - (iv) the child's education;
- (c) the suitability of the prospective adoptive parents to parent the particular child, including their willingness and suitability to parent a child with the needs of the child to be adopted;
- (d) the consideration that it would ordinarily be in a child's best interests to be placed with the same family as any sibling of the child who is also to be adopted or has previously been adopted; and
- (e) any preferences of the child's parents including preferences about—
 - (i) the child's religious upbringing; and
 - (ii) the characteristics of the child's adoptive parents and adoptive family.

(5) Subsection (4)(e) does not apply to a preference that the Director considers is likely to be contrary to the child's well-being or best interests.

Division 4—Court proceedings

Required documents

- 22.**—(1) An application for an adoption order must be made in the approved form.
- (2) Before an adoption order is made, the following documents must be filed with the court—
- (a) evidence that all the required consents to the adoption have been obtained, or the orders dispensing with consent or an application to dispense with consent;
 - (b) the child's birth registration or, if it cannot be obtained, satisfactory evidence of the facts relating to the child's birth; and
 - (c) a post-placement assessment report prepared in the approved format by the Director not less than 3 months after the child was placed with the prospective adoptive parents.
- (3) The Director may file with the court any evidence or information that he or she considers necessary to enable the court to determine whether the proposed adoption is in the child's best interests, including a recommendation on any issue relating to the adoption.

Notifications

23.—(1) The court must not issue an adoption order unless at least 14 days' notice of the application for the order, containing the particulars, if any, prescribed by the regulations, has been given to—

- (a) any person whose consent to the adoption of the child concerned is required under this Act and has not been given, or the requirement for which has been dispensed with by the court;
- (b) any person, not being a person whose consent is so required, who has actual care and custody of the child; and
- (c) the Director.

(2) If it appears to the court to be in the interests of justice to do so, the court may direct that notice of an application for an adoption order be given to any specified person.

Director may appear at hearings

24. The Director may appear at the hearing of any application under this Act, and may address the court, and call, examine and cross-examine witnesses.

Court may require attendance

25. The court may require any party to the proceedings for an adoption order to attend personally before the court.

Legal representation

26.—(1) If the court considers it is in the child's best interests for the child to be separately represented, the court may order that the child is to be separately represented, and may also issue such other orders as it considers necessary to secure separate representation.

(2) A child's legal representative must—

- (a) act in the child's best interests;
- (b) ensure that the views of the child are placed before the court, if the child is capable of expressing his or her views; and
- (c) ensure that all relevant evidence is adduced and, where necessary, tested.

Proceedings must be private

27. Any proceedings before the court under this Act must be heard in closed court.

Final adoption order

28. The court may issue a final adoption order only if satisfied that—

- (a) consent to the adoption of the child has been given by every person whose consent is required under this Act or that consent has been, or should be, dispensed with;
- (b) every person whose consent is necessary under this Act understands the nature and effect of the adoption order, and in particular, in the case of any

parent, or guardian understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

- (c) as far as practicable and having regard to the age and understanding of the child, the wishes and feelings of the child have been ascertained and due consideration given to them;
- (d) the prospective adoptive parents comply with the requirements of section 9;
- (e) the child has resided with the prospective adoptive parents for at least 6 months immediately before the date of the adoption hearing;
- (f) while the child has been in their custody, the prospective adoptive parents have demonstrated their willingness and ability to meet the child's needs;
- (g) the best interests of the child will be promoted by the adoption; and
- (h) that no person has made or given, agreed to make or give, any payment or other reward in consideration of the adoption.

Making of interim orders

29.—(1) The court may postpone the determination of any application for an adoption order and issue an interim order in favour of the prospective adoptive parent or parents for such period not exceeding 6 months, as the court specifies.

(2) An interim order is subject to such terms and conditions as the court thinks fit.

(3) The court must not issue an interim order in relation to a child in favour of any person unless the court can lawfully issue an order for the adoption of that child by that person.

(4) While an interim order remains in force in relation to a child—

- (a) the person or persons in whose favour the order is made, has or have care and custody of the child;
- (b) the Director must supervise the child's well-being and interests;
- (c) a welfare officer may, at all reasonable times, visit and enter the residence in which the child lives; and
- (d) the order does not affect the Director's guardianship of the child.

(5) An interim order remains in force until the court discharges it or issues a final adoption order for the child.

Effect of final adoption order

30.—(1) When an adoption order is made—

- (a) the adopted child has the same rights in relation to the adoptive parent as a child born to the adoptive parent;
- (b) the adoptive parent has the same parental responsibility as the birth parent of the adopted child; and

(c) the birth parents cease to have any parental rights or obligations with respect to the child.

(2) Notwithstanding subsection (1)(c), if a final adoption order is made in relation to a step-parent to whom the birth parent or adoptive parent is married, an adopted child does not cease to be regarded as the child of a the birth parent or adoptive parent, and the birth parent or adoptive parent does not cease to be regarded as the parent of the child.

(3) A final adoption order does not affect an interest in property or a right of the adopted child that vested in the child before the date of the final adoption order.

(4) For the purposes of any law relating to a sexual offence, any relationship that would have existed if an adoption order had not been made continues to exist for the purposes of that law in addition to any relationship that exists under this section by virtue of such order.

Change of name

31.—(1) The applicant for a final adoption order may request the court to change the child’s given names or family name.

(2) If requested by the applicant, the court may change the child’s given names or family name in the adoption order, but only—

- (a) with the child’s consent, if the child is 12 years of age or older; or
- (b) in any event, after taking into account any wishes expressed by the child, having regard to the child’s age and level of maturity.

Notice of final adoption order

32.—(1) As soon as practicable, after a final adoption order is made, the Director must give to each person who consented to the adoption, a notice stating that the order has been made and explaining its terms and effect.

(2) Subsection (1) does not apply to a person whom the Director cannot locate after making all reasonable enquiries, or who has indicated that he or she does not wish to be so notified.

Appeal against refusal to issue a final adoption order

33. In any case where a court has refused to issue a final adoption order in respect of any child, the person who applied for the order may, within one month after the date of the refusal, appeal to the Family Division of the High Court against the decision.

PART 4—INTERCOUNTRY ADOPTIONS

Convention to have force of law

34.—(1) The provisions of the Convention have the force of law in Fiji.

(2) The laws of Fiji apply to an adoption to which the Convention applies, but, where there is a conflict between the laws of Fiji and the Convention, the Convention prevails.

Central Authority

35.—(1) For the purposes of the Convention, “Central Authority”—

- (a) in relation to Fiji, means the Permanent Secretary;

(b) in relation to a Convention country, means a person or office designated by such convention country under Article 6 of the Convention.

(2) The Permanent Secretary may, in writing, delegate the functions assigned to him or her under the Convention to the Director.

Adoption by relative or step-parent

36. This Part does not apply to a child habitually resident in Fiji and who is to be placed for adoption outside of Fiji with a person who is a relative or will become an adoptive parent jointly with the child's birth parent.

Restrictions on intercountry adoption

3637. A child who is habitually resident in Fiji is not to be adopted in a place outside Fiji unless the Permanent Secretary has determined that—

- (a) the consent necessary for the adoption has been given or dispensed with in accordance with this Act;
- (b) a family or prospective adoptive parent to adopt or otherwise care for the child cannot be found in Fiji; and
- (c) the provisions of this Part have been complied with.

Adoption of child from Fiji by person in Convention country

3738.—(1) Notwithstanding section 9(2)(a) and (b), a person who is habitually resident in a Convention country may apply to adopt a child who is habitually resident in Fiji.

(2) A person who is habitually resident in a Convention country who wishes to adopt a child resident in Fiji must apply to the Central Authority of the Convention country where the applicant habitually resides.

(3) If the Central Authority of the Convention country concerned is satisfied that the applicant is fit and proper to adopt, it must prepare a report on that person in accordance with the requirements of the Convention and transmit the report to the Permanent Secretary.

(4) If a child is available for adoption, the Permanent Secretary must instruct the Director to convene a meeting of the National Fostering and Adoption Panel to consider and make recommendations on the most suitable prospective adoptive parents for the relevant child.

(5) If the Permanent Secretary is satisfied, having regard to the recommendations of the National Fostering and Adoption Panel and that the requirements under section **3637** have been met, that a child should be adopted outside of Fiji, the Permanent Secretary must prepare a report on the child in accordance with the requirements of the Convention and forward it to the Central Authority of the Convention country concerned.

(6) If the Permanent Secretary and the Central Authority in the Convention country concerned both agree to the adoption, the Permanent Secretary must refer the application for adoption together with all relevant documents and the reports compiled in subsections (3) and (5) to the court for consideration.

- (7) The court may issue an order for the adoption of a child if satisfied that—
- (a) consent to the adoption of the child has been given by every person whose consent is required under this Act or that consent has been dispensed with by the court;
 - (b) as far as practicable and having regard to the age and understanding of the child, the wishes and feelings of the child have been ascertained and due consideration given to them;
 - (c) the prospective adoptive parents comply with the requirements of section 9, other than section 9(2)(b);
 - (d) the Permanent Secretary and the Central Authority of the Convention country have agreed to the adoption of the child;
 - (e) the requirements of section 3637 have been met;
 - (f) the child is not prohibited from leaving Fiji under a law of Fiji or because of an order of a court; **and**
 - (g) **the child will be permitted to enter and reside permanently in the applicant's country of residence; and**
 - ~~(g)~~(h) the adoption is in the best interests of the child.

Adoption of child from Fiji by person in non-Convention country

3839.—(1) Notwithstanding section 9(2)(a) and (b), a person who is habitually resident in a non-Convention country may apply to adopt a child who is habitually resident in Fiji in accordance with this Part.

(2) A person who is habitually resident in a non-Convention country who wishes to adopt a child resident in Fiji must apply to the relevant adoption authority of the country where that person habitually resides.

(3) If the adoption authority of the non-Convention country concerned is satisfied that the applicant is fit and proper to adopt, it must prepare a report on that person in accordance with the prescribed requirements and transmit the report to the Permanent Secretary.

(4) If a child is available for adoption, the Permanent Secretary must instruct the Director to convene a meeting of the National Fostering and Adoption Panel to consider and make recommendations on the most suitable prospective adoptive parents for the relevant child.

(5) If the Permanent Secretary is satisfied, having regard to the recommendations of the National Fostering and Adoption Panel and that the requirements under section 3637 have been met, that a child should be adopted outside of Fiji, the Permanent Secretary must prepare a report on the child and transmit it to the adoption authority in the **non-Convention** country concerned.

(6) If the Permanent Secretary and the adoption authority in the non-Convention country concerned both agree to the adoption, the Permanent Secretary must refer the application for adoption together with all relevant documents and the reports contemplated in subsections (3) and (5) to the court for consideration.

(7) The court may issue an order for the adoption of a child if satisfied that—

- (a) consent to the adoption of the child has been given by every person whose consent is required under this Act or that consent has been dispensed with by the court;
- (b) as far as practicable and having regard to the age and understanding of the child, the wishes and feelings of the child have been ascertained and due consideration given to them;
- (c) the prospective adoptive parents comply with the requirements of section 9, other than section 9(2)(b);
- (d) the Permanent Secretary and the adoption authority in the non-Convention country concerned have agreed to the adoption of the child;
- (e) the requirements of section 3637 have been met;
- (f) the child is not prohibited from leaving Fiji under a law of Fiji or because of an order of a court; **and**
- (g) **the child will be permitted to enter and reside permanently in the applicant's country of residence; and**
- (g)(h) the adoption is in the best interests of the child.

Adoption compliance certificate

3940. If the court has approved the adoption of a child in accordance with section 3738 or 3839, the Permanent Secretary may issue an adoption compliance certificate in accordance with Article 23 of the Convention.

Restriction on removal of children for adoption outside Fiji

4041.—(1) Except under the authority of a court order issued in accordance with this Act, a person must not take or send a child who is habitually resident in Fiji to any place outside Fiji with a view to facilitate the adoption of the child by any person not being a **birth** parent or guardian of the child.

(2) Any person who ~~takes or sends a child to any person for the purpose of adoption contravenes subsection (1)~~ commits an offence and is liable **up** on conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 5 years or both.

Adoption by relative or step-parent

41. ~~This Part does not apply to a child habitually resident in Fiji and who is to be placed for adoption outside of Fiji with a person who is a relative or will become an adoptive parent jointly with the child's birth parent.~~

Adoption of child from Convention country by person in Fiji

42.—(1) A person who is habitually resident in Fiji and wishes to adopt a child habitually resident in a Convention country must apply to the Permanent Secretary.

(2) If the Permanent Secretary is satisfied that the applicant is fit and proper to adopt, it must prepare a report on that person in accordance with the requirements of the Convention and any prescribed requirements and transmit the report to the Central Authority of the Convention country concerned.

(3) If a child is available for adoption, the Central Authority of the Convention country concerned must prepare a report on the child in accordance with the requirements of the Convention and transmit it to the Permanent Secretary.

(4) If the Permanent Secretary and the Central Authority of the Convention country concerned both agree to the adoption, the Central Authority in that Convention country will refer the application for adoption for the necessary consent in that Convention country.

(5) Where—

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

the adoption is recognised and effective on and from the day the adoption compliance certificate becomes effective, and is to be treated as having the same effect as a final adoption order made under this Act.

Recognition of adoption from non-Convention country

43. The court may, on application, declare that an order for the adoption of a person made in a country other than Fiji that is not a Convention country is to have the same effect as an adoption order made under this Act provided that—

- (a) at the time at which the legal steps that resulted in the adoption were commenced, the adoptive parent or parents had been resident in that country for 12 months or more;
- (b) the adoption is in accordance with and has not been rescinded under the law of that country; and
- (c) the adoption in that country has the same effect as if the order had been made in Fiji.

PART 5—RECORDS AND DISCLOSURE

Post adoption reports

44.—(1) An adoption order under sections 38 and 39 must require the applicants to provide post adoption reports, prepared by the adoption authority in the country concerned and submitted to the Permanent Secretary, within 6 months of the adoption order, and thereafter annually for a period of 3 years.

(2) A post adoption report must contain a description of how the child and family are adjusting, whether bonding and attachment between the child and family are sufficient, whether the child's health and emotional needs are being met, what the family is doing to encourage the child's cultural heritage and any other pertinent information about the status and well-being of the child.

Register of Adopted Children

4445.—(1) This section establishes the Register of Adopted Children which must be maintained by the Director.

(2) The Director must record the following particulars in the Register of Adopted Children—

- (a) the registration numbers allocated to records of adoption cases;
- (b) the personal details of adopted children, their **biological birth** parents and their adoptive parents;
- (c) records of the child's origin, identity of birth parent and medical history; and
- (d) any other information prescribed by this Act or necessary for the purposes of maintaining proper adoption records.

(3) The Director must ensure that all information held by the Register of Adopted Children is preserved and that access to such information is only given to a person in accordance with this Act.

Duties of the court registrar

4546.—(1) The court registrar must—

- (a) keep a record of all adoption cases heard by the court, including all adoption orders issued by the court, in the approved manner; and
- (b) as soon as is practicable after an adoption order has been issued, forward the adoption order, a copy of the record of the adoption inquiry and other prescribed documents relating to the adoption to the Director.

(2) Where upon any application for an adoption order in respect of a child there is proved to the satisfaction of the court the identity of the child to which an entry in the Register of Births relates, any adoption order made must contain a direction to cause the entry in the Register of Births to be marked with the word "Adopted".

(3) Where an adoption order is made in respect of an infant who has previously been the subject of an adoption order, the order must contain a direction to cause the previous entry in the Register of Adopted Children to be marked with the word "Readopted".

(4) The Director must, upon receipt of such notification, ensure compliance with the directions contained in such order in regard to both making any entry in the Register of Births kept in accordance with the provisions of the Births, Deaths and Marriages Registration Act 1975, with the word "Adopted" and making the appropriate entry in the Register of Adopted Children.

Disclosure to adopted person 18 years of age or older

4647.—(1) An adopted person who is 18 years of age or older may apply to the Director for a copy of the following—

- (a) the adopted person's original birth registration;
- (b) the adoption order; and
- (c) any prescribed information relating to the adopted person held by the Director.

(2) The Director must give the applicant a copy of the requested records unless a disclosure veto has been filed under section ~~48~~ 49.

Disclosure to birth parent when adopted person is 18 years of age or older

4748.—(1) If an adopted person is 18 years of age or older, a birth parent may apply to the Director for a copy of one or more of the following—

- (a) the original birth registration with a notation of the adoption and any change of name consequent to the adoption;
- (b) the adoption order; and
- (c) any prescribed information relating to the adopted person held by the Director.

(2) The Director must give the applicant a copy of the requested records unless a disclosure veto has been filed under section ~~48~~ 49.

Disclosure veto

4849.—(1) Either of the following may apply to the Director to file a written veto prohibiting the disclosure of a birth registration or other record under section ~~46~~ 47 or ~~47~~ 48—

- (a) an adopted person who is 18 years of age or older and was adopted under this Act, or any written law preceding to this Act; or
- (b) a birth parent of an adopted person referred to in paragraph (a).

(2) When an applicant complies with subsection (1), the Director must file the disclosure veto.

Restriction on inspection of records

4950.—(1) Except as provided by this Act or the regulations, the following records are not to be open to inspection by, or made available to, any person including any party to proceedings before the court under this Act—

- (a) records made in connection with the administration or execution of this Act or the former written laws;
- (b) without limiting paragraph (a)—
 - (i) records of any proceedings under this Act or any former laws; and

- (ii) any reports made under this Act, or comparable provisions of former laws.

(2) Subsection (1)(b) does not apply to any record or report if so ordered by the Court.

Disclosure in the interest of a child

5051. Notwithstanding this Part, the Director may disclose identifying information to a person if the disclosure is necessary for the safety, health or well-being of a child.

PART 6—OFFENCES

Paying or accepting payment for an adoption

5152.—(1) A person who gives, receives or agrees to give or receive any payment or reward, whether directly or indirectly to—

- (a) procure or assist in procuring a child for the purposes of adoption written or outside Fiji; or
- (b) place or arrange the placement of a child for the purposes of adoption within or outside of Fiji,

commits an offence and is liable **upon** conviction to a fine not exceeding \$25,000 or imprisonment for a term not exceeding 5 years or both.

(2) Subsection (1) does not apply to approved fees or charges under this Act or to reasonable fees, charges and expenses paid to a legal practitioner for legal services provided in relation to an adoption.

Advertising

5253.—(1) A person who publishes or causes to be published in any form or by any means an advertisement indicating that—

- (a) the parent or guardian of a child desires to cause the child to be adopted;
- (b) a person desires to adopt a child;
- (c) a child is available for adoption; or
- (d) a person or body of persons is willing to make arrangements for the adoption of a child,

commits an offence and is liable **upon** conviction to a fine not exceeding \$25,000 or imprisonment for a term not exceeding 5 years or both.

(2) This section does not apply to the publication of any advertisement, public information, news item or other matter approved by the Permanent Secretary.

Making a false statement

5354. A person who makes any statement, whether orally or in writing, that the person knows to be false for the purposes of, or in connection with a proposed adoption under this Act commits an offence and is liable **upon** conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

Impersonation

5455. A person who impersonates an adopted person, birth parent, adoptive parent, or other person having an interest in an adopted person in connection with any matter under this Act commits an offence and is liable **upon** conviction, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

Presenting forged consent or other document

5556.—(1) A person who presents, or causes to be presented, to the court in connection with an application under this Act a document that—

- (a) the person knows is forged; or
- (b) bears any signature or certification that was obtained by fraud or duress,

commits an offence and is liable **upon** conviction, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

Undue influence

5657. Any person who induces another person, by fraud, duress, threats, undue influence (by payment or otherwise), or other improper means, to consent to an adoption commits an offence and is liable **upon** conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both.

PART 7—MISCELLANEOUS

Regulations

5758.—(1) The Minister may make regulations for any purpose related to the implementation of this Act.

(2) Without limiting subsection (1), the Minister may make regulations—

- (a) prescribing forms, documents and reports for the purposes of this Act;
- (b) prescribing when a person is or is not to be considered a resident of Fiji for the purposes of this Act;
- (c) respecting the assessment of the suitability of persons to be approved to adopt, and selection of persons to adopt, children under this Act;
- (d) regarding the adoption consent and the witnessing of consent; or
- (e) with respect to the form and content of the Register of Approved Adoptive Parents and the Register of Adopted Children.

Fees and charges

5859.—(1) The Minister may, by notice in the Gazette, specify the minimum fees or charges payable in relation to the supply of any document or information, or provision of any service, under this Act.

(2) The Director may, with the approval of the Minister, waive or reduce any fee or charge payable under this Act.

Repeals and amendments

5960.—(1) The Adoption of Infants Act 1944 is hereby repealed.

(2) Notwithstanding subsection (1), the subsidiary laws and forms made under the **repealed** Adoption of Infants Act 1944 and in force immediately before the commencement of this Act, except where they are inconsistent with the provisions of this Act or any other written law, continue in force until altered, amended or revoked.

Transitional provisions

6061.—(1) An adoption order or probatory order made under the repealed Adoption of Infants Act 1944 and in force immediately before the repeal of that Act continues in force under this Act as if the order was made under this Act and the parties to the adoption were parties to an adoption under this Act.

(2) A valid consent to the adoption of a child given under the **repealed** Adoption of Infants Act 1944 and that had not, immediately before the commencement of this Act, been revoked, is taken to be a consent given in accordance with this Act.

(3) An application for an adoption order pending before the commencement of this Act is to continue to be dealt with under the **repealed** Adoption of Infants Act 1944, despite the repeal of that Act.

SCHEDULE

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN
RESPECT OF INTERCOUNTRY ADOPTION

The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions—

CHAPTER I—SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are—

- a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised 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, subparagraph *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 recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c), were given.

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

Article 24

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

Article 25

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

Article 26

(1) The recognition of an adoption includes recognition of

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

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

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

Article 27

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

- a)* if the law of the receiving State so permits; and
- b)* if the 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 authorised thereto, have signed this Convention.

Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

ADOPTION BILL 2018

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Adoption Bill 2018 (**'Bill'**) is the result of the review of the Adoption of Infants Act 1944 (**'Act'**) by the Ministry of Women, Children and Poverty Alleviation with the assistance of the United Nations Children's Emergency Fund, commonly known as UNICEF.
- 1.2 The Act which was enacted in 1944 regulates all matters pertaining to adoption, including its procedures and processes.
- 1.3 However, the Act is outdated and does not comprehensively cater for the changing nature of adoption which has now shifted to mostly intercountry adoption.
- 1.4 An important feature of this Bill is that it domesticates the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption which has been ratified by Fiji and is attached as a schedule to the Bill.
- 1.5 The Act focuses primarily on the court process for approving an adoption application, and does not address the adoption process as a whole, such as screening of prospective adoptive parents and the matching and placement of adoptive children.
- 1.6 Therefore, in line with common trends in other common law countries, the Bill includes much more detail about the pre-court aspects of the adoption process and ultimately repeals and replaces the outdated Act.

2.0 CLAUSES

- 2.1 The Bill caters for the following—
- (a) disallows private adoption arrangements which cater for the removal of a child for the purpose of adoption outside of Fiji;

- (b) prohibits faith based organisations, children’s homes, hospitals and other like organisations from facilitating adoption without the approval of the Department of Social Welfare (**‘Department’**);
- (c) the Department will maintain a Register of Approved Adoptive Parents, of people who have been screened and approved as prospective adoptive parents;
- (d) matching of potential foster parents and a child will be done on the advice of the National Fostering and Adoption Panel;
- (e) a child would have to be living with the prospective adoptive parents for at least 3 months before an application can be made to the court for an adoption order;
- (f) the requirements for intercountry adoption are as follows, where the applicant(s)—
 - (i) must be resident in Fiji for at least 3 consecutive months;
 - (ii) must be 25 years of age or older;
 - (iii) in the case of a couple, must have been married for at least 2 consecutive years;
 - (iv) must be of good character and fit and proper to be entrusted with full parental responsibilities;
 - (v) must be willing and able to undertake, exercise and maintain those responsibilities; and
 - (vi) if a step-parent, has to have been living with the child and birth parent for at least 3 consecutive months;
- (g) in addition to the relevant requirements in paragraph (f), other general requirements for adoption (both intercountry and local adoption) are as follows—
 - (i) consent of the child will now be required if the child is 12 years or older;
 - (ii) both child and birth parents must be given counselling before they consent to be sure they understand the consequences of the decision they are making;
 - (iii) consent to the adoption of a newborn baby will not be valid until the child is 30 days old;
 - (iv) the birth parent(s) will also be allowed to revoke their consent within 30 days of signing the consent;
 - (v) the court must request and consider a report from a welfare officer before approving an adoption;

- (vi) the court can grant the adoption request, or make an interim order of up to 6 months to allow for further monitoring by the welfare officer;
- (vii) any decision on an adoption matter should always be based on the best interests of the child in question;
- (viii) non-residents have to apply to their own social welfare department for screening and approval;
- (ix) once a child turns 18 years of age, he or she will be allowed to have access to his or her original birth certificate so that they can know the identity of their birth parents;
- (x) the birth parent(s) will also be able to access information about their child after the child has turned 18 years of age; and
- (xi) the birth parent(s) or the relevant child may also ask that a disclosure veto be put in their file preventing the disclosure of their identity.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for women, children and poverty alleviation.

A. SAYED-KHAIYUM
Attorney-General