

**COMMONWEALTH-STATE AGREEMENT FOR THE  
IMPLEMENTATION OF THE HAGUE CONVENTION ON  
PROTECTION OF CHILDREN AND COOPERATION IN RESPECT OF  
INTERCOUNTRY ADOPTION**

This agreement (to be known as the "Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption") is made between—

THE COMMONWEALTH OF AUSTRALIA; and

THE STATE OF NEW SOUTH WALES; and

THE STATE OF VICTORIA; and

THE STATE OF QUEENSLAND; and

THE STATE OF WESTERN AUSTRALIA; and

THE STATE OF SOUTH AUSTRALIA; and.

THE STATE OF TASMANIA; and

THE AUSTRALIAN CAPITAL TERRITORY; and

THE NORTHERN TERRITORY.

(A) The Ministers of the respective governments in Australia who are responsible for intercountry adoption have agreed that it is in the interests of Australia to recommend to the Commonwealth Government that it ratify the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption ["the Hague Convention"].

(B) The Ministers have agreed that in order to enable the Commonwealth Government to ratify the Hague Convention, Australia as the Contracting State, must be able to demonstrate its ability to carry out the obligations of the Convention.

(C) The Ministers have also agreed that the existing standards applicable to intercountry adoption, found in the legislation and administrative procedures of each of the States, are sufficient to comply with the standards and procedures of the Hague Convention.

## PART I—INTERPRETATION

1. In this agreement, unless the contrary intention appears:  
"**Hague Convention**" means the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption done at The Hague on 29 May 1993;  
"**Minister**" means the Minister for Family Services of the Commonwealth, or a State Minister for the time being responsible for the administration of the laws of the State relating to adoption of children, and includes a Minister who is for the time being acting for or on behalf of that Minister;  
"**reasonable time**" in clause 16 (c) means such period of time, not exceeding twelve months; as is determined by the Community Service Ministers' Council;  
"**State**" includes the Australian Capital Territory and the Northern Territory.

## PART II—OBJECTIVES OF AGREEMENT

2. An objective of this agreement is to produce a statement of compliance that guarantees that existing State legislation and administrative procedures relating to intercountry adoption are sufficient to ensure compliance with the obligations of the Hague Convention.
3. A further objective of this agreement is that, in conjunction with the relevant Commonwealth legislation and the relevant State legislation and practices, it shall provide a cooperative scheme for the implementation and administration of the Hague Convention in Australia, and that it shall do so with a minimum of disruption or alteration to existing State legislation and administrative procedures.
4. Another objective of this agreement is that questions of policy which affect the implementation, operation or administration of the Hague Convention in Australia shall be determined through consultation between the Commonwealth and the States while the operation and administration of intercountry adoption casework and adoption policy shall remain the responsibility of the States unless the intervention of the Commonwealth is requested by a State or another Contracting State.

## PART III—GENERAL PROVISIONS

5. The Commonwealth will as soon as practicable after the conclusion of this agreement submit to the Federal Executive Council for making by the Governor-General regulations under section 111C of the *Family Law Act 1975*.
6. The regulations shall provide for the establishment of the Commonwealth Central Authority and shall, subject to this agreement, include such other provisions as would enable the Commonwealth to do all things necessary to fulfil its obligations under the Hague Convention.

7. The regulations, and an intercountry adoption law mentioned in clause 20, shall provide for the appointment by the States of State Central Authorities and require the States to inform the Commonwealth of such appointment and of any changes in those appointments.

8. The functions that a State may give its State Central Authority include:

- (a) processing the day-to-day casework involved in a particular adoption; and
- (b) approving an application for the adoption of a child; and
- (c) giving consent to the adoption of a child; and
- (d) accrediting a body for the purposes of the Hague Convention; and
- (e) revoking the accreditation of a body; and
- (f) recommending to the Commonwealth Central Authority the preparation of legislation to ensure that Australia meets its obligations under the Hague Convention; and
- (g) advising the Commonwealth Central Authority that:
  - (i) a provision of the Hague Convention has not been respected; or
  - (ii) there is a serious risk that a provision of the Convention may not be respected.

9. The functions that a State may give its State Central Authority do not include any functions of the Commonwealth Central Authority under the regulations.

10. If the regulations are made after the commencement of the *Legislative Instruments Act 1997*, the regulations will be registered in the Federal Register of Legislative Instruments. In accordance with section 111C of the *Family Law Act 1975*, the regulations will enter into force when the Hague Convention enters into force for Australia.

11. The signature of a State Minister to this agreement indicates that at the time when this agreement commences operation the legislation (other than an intercountry adoption law mentioned in clause 20) and administrative procedures of the State which that Minister represents comply with the requirements of the Hague Convention.

12. If a State determines that its State Central Authority should exercise its function to accredit bodies for the purposes of Article 9 of the Hague Convention, the State agrees to ensure that the Authority will only accredit a body that satisfies the criteria set out in Part II of the Accreditation Criteria agreed by the Community Service Ministers' Council, the terms of which are set out in the Schedule to this agreement.

13. If a State Central Authority proposes to revoke the accreditation of a body, the State of the Authority agrees to ensure that the Authority will only revoke the accreditation if the body does not comply with the criteria set out in Part IV of the Accreditation Criteria agreed by the Community Service Ministers' Council, the terms of which are set out in the Schedule to this agreement.

14. Each State agrees not to introduce amendments to its legislation or change its administrative procedures in relation to intercountry adoption in such a way as may adversely affect Australia' s ability to comply with the Hague Convention.
15. If the legislation or administrative procedures of a State do not enable compliance with the Convention, then:
  - (a) the State may amend its legislation or administrative procedures to ensure compliance with the Hague Convention; or
  - (b) the State may request the Commonwealth to enact such legislation for the duration of time and to the extent necessary to ensure compliance.
16. If it subsequently comes to notice that there is a deficiency in the legislation or administrative procedures of a State such that the State does not comply with the requirements of the Hague Convention, then the State shall forthwith notify in writing the other parties to this agreement of the deficiency, and:
  - (a) the State may amend its legislation or administrative procedures to ensure compliance with the Hague Convention; or
  - (b) the State may request the Commonwealth to enact such legislation for the duration of time and to the extent necessary to ensure compliance; or
  - (c) if, within a reasonable time from the deficiency coming to notice, a State does not amend its legislation or administrative procedures in accordance with paragraph (a) or make a request of the kind referred to in paragraph (b), the Commonwealth will, if necessary and in consultation with the State, enact such legislation as is required to ensure compliance with the Hague Convention.
17. Where a country which has an existing bilateral agreement with Australian States does not become a party to the Hague Convention within three years from the date of Australia' s ratification of the Convention, that bilateral agreement is to be renegotiated by the Commonwealth (in conjunction with the States) to obtain conformity with the provisions of the Hague Convention.
18. For a country that is not a party to the Hague Convention, and where there is no existing bilateral arrangement or agreement between a State and the country, any proposals for a bilateral agreement between the State and the country shall be on the basis of compliance with the requirements of the Hague Convention and shall be negotiated in accordance with the State *Protocols and Procedures for Developing New Programs with New Countries 1991* with Commonwealth involvement because of Australia' s ratification of the Hague Convention and the entering into of this agreement.
19. This agreement does not give rise to any legally enforceable right, privilege, obligation or liability in respect of:
  - (a) anything done under the agreement; or
  - (b) anything omitted to be done under the agreement.

#### **PART IV—STATE LAWS TO GIVE EFFECT TO THE HAGUE CONVENTION**

20. If a State proposes to make an intercountry adoption law to give effect to the Hague Convention, the responsible State Minister will inform the responsible Commonwealth Minister of the proposal in sufficient time to allow the Commonwealth to make regulations that disapply to the State the Commonwealth regulations made for the purpose of section 111C of the *Family Law Act 1975*.

21. If the Commonwealth proposes to make regulations that will amend regulations made for section 111C of the *Family Law Act 1975*, the Commonwealth Central Authority will consult the State Central Authority of each State regarding the proposal.

22. If a State proposes to amend an intercountry adoption law to give effect to the Hague Convention, the State Central Authority of the State will consult the Commonwealth Central Authority and the State Central Authority of each other State regarding the proposal.

#### **PART V—OPERATION OF AGREEMENT**

23. This agreement shall commence operation and shall have effect on and from the date on which the agreement is signed by all the parties to the agreement.

24. This agreement may be amended by the parties to it for the time being only in accordance with a resolution of the Community Service Ministers' Council passed by a unanimous vote of all the members of that Council with a right to vote in its proceedings.

25. If a State no longer wishes to be a party to this agreement, it may give a notice to that effect to the Community Service Ministers' Council. The State will cease to be a party to the agreement 12 months after the State gives the notice unless the State withdraws the notice before the expiration of those 12 months.

26. If a State ceases to be a party to this agreement under clause 25, and the State wishes to again be a party to the agreement, the State may give a notice to that effect to the Community Service Ministers' Council. If the Council is satisfied that at the time of giving the notice the State complied with the requirements of this agreement, the State will again become a party to the agreement 3 months after giving the notice.

Signed by the Honourable  
Warwick Smith MP on the  
day of 1998

.....  
Minister for Family Services,  
Commonwealth of Australia

Signed by the Honourable  
Faye Lopo MP on the  
day of 1998

.....  
Minister for Youth and  
Community Services,  
New South Wales

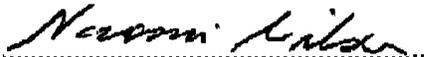
Signed by the Honourable  
Dr Denis Napthine MLA on the  
day of 1998

.....  
Minister for Youth and  
Community Services, Victoria

Signed by the Honourable  
Dean Brown MP on the  
day of 1998

.....  
Minister for Human Services,  
South Australia

Signed by the Honourable  
Naomi Wilson MP on the  
day of 1998

  
.....  
Minister for Families, Youth and  
Community Care, Queensland

Signed by the Honourable  
Peter McKay MLC on the  
day of 1998

.....  
Minister for Community and  
Health Care, Tasmania

Signed by the Honourable  
R K Parker MLA on the  
day of 1998

.....  
Minister for Family and  
Children's Services, Western  
Australia

## SCHEDULE

### CRITERIA IN RELATION TO THE ACCREDITATION OF BODIES UNDER THE HAGUE CONVENTION ON THE PROTECTION OF CHILDREN AND COOPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

#### PART I—BACKGROUND

1. States and internal Territories may enter into arrangements with a body for the accreditation of that body to provide State or Territory intercountry adoption services or across border services consistent with the terms of accreditation.
2. A body applying for accreditation is required to satisfy the criteria set out in Part II.
3. Accreditation of a body is subject to annual review and may be revoked at any time by the State Central Authority issuing accreditation if the body does not comply with the criteria set out in Part IV.
4. A State Central Authority that accredits a body or revokes the accreditation of a body is required to provide notice of that accreditation or revocation to the Commonwealth Central Authority who will advise the Permanent Bureau of the Hague Conference on Private International Law of the terms of accreditation.

#### PART II—ACCREDITATION CRITERIA

##### **Eligibility**

5. The body must be an incorporated non-profit body.
6. The body must not be, and must not be likely to be, a party to negotiations or an agreement for the establishment of adoption arrangements with overseas countries.
7. The body must give an undertaking that during any period of accreditation the body will not enter negotiations for the establishment of an adoption agreement with an overseas country.

##### **The Body**

8. The body must employ a principal officer with social science qualifications and experience in adoption, substitute care or family services to supervise the adoption arrangements undertaken by the body.
9. The body must be financially viable.
10. The body must employ professional staff with appropriate qualifications to undertake training, assessments and placement tasks.

## SCHEDULE—continued

11. The body must have accommodation available for its use that:
- (a) is suitable for the conduct of assessment, interviews, training and support to adoption arrangements; and
  - (b) does not form part of and is not adjacent to accommodation that is used by an aid organisation or an organisation that represents adoptive parents.

**Conduct of the Body**

12. The body must comply with the practice that applies, in the State or Territory in which the body is seeking accreditation, relating to the approval or contracting of bodies to undertake arrangements with a view to the adoption of a child.

13. The body must comply with:
- (a) the laws of the Commonwealth and the State or Territory in which it is seeking accreditation; and
  - (b) the requirements of the Convention.

14. The body must not be associated with, and must not be likely to be associated with the collection and disbursement of aid to an overseas country.

15. A body must have suitable facilities for the confidential storage of records, and must give an undertaking to maintain those records.

16. The body must give an undertaking that during any period of accreditation the body:
- (a) will only undertake the functions approved at the time of accreditation; and
  - (b) will only offer adoption services in respect of the countries specified in its accreditation; and
  - (c) will not destroy any records maintained by the body; and
  - (d) will not issue publications promoting adoption, or offer preparation courses for adoption applicants, unless the content of the publication or the course has been approved by the State Central Authority to which the body has applied for accreditation.

17. The body must give an undertaking that on its winding up it will lodge any records, that it has maintained during any period of accreditation, with the State Central Authority to which it has applied for accreditation.

**PART III—FUNCTIONS OF AN ACCREDITED BODY**

18. A body may be accredited to undertake any of the following functions in relation to the adoption process:
- (a) Initial Enquiries—respond to initial enquiries for intercountry adoption;

## SCHEDULE—continued

- (b) Information Sessions—conduct regular information sessions to inform potential applicants;
- (c) Expressions of Interest—receive and process expressions of interest;
- (d) Applications—receive and process applications to adopt (Article 14);
- (e) Assessments—undertake assessments of suitability (including relevant medical, referee and police reports, and preparation of the Home Study);
- (f) Decision to approve or not to approve—determine the suitability of applicants;
- (g) Forwarding of file—forward a report including all relevant information required to the country of origin (Article 15);
- (h) Allocation of children—receive allocation of children, confirm suitability of match (Article 17b) and advise applicants;
- (i) Supervision of Placement—provide support and advice to applicants following placement;
- (j) Placement Breakdown—in case of placement breakdown prior to adoption orders being made, consult with the State Central Authority regarding appropriate arrangements, but the body is not to make decisions on alternative arrangements;
- (k) Adoption Information—collect and preserve relevant information about the child and the applicants (Article 9a), and respond to requests for adoption information until the child attains the age of 18 years;
- (l) Evaluation Reports—prepare general evaluation report for the State Central Authority (Article 9d);
- (m) Post Adoption Services—provide a referral and support service post granting of the adoption order;
- (n) administrative arrangements—undertake approved administrative arrangements between already established programs.

## PART IV—REVOCATION CRITERIA

*Division 1—Review and assessment of the body*

19. A body must submit to the supervision of the State Central Authority that accredited the body, and must provide the State Central Authority with access to the records and reports of the body in accordance with the requirements of the State Central Authority.
20. The body must provide biannual reports to the State Central Authority as required in the accreditation of the body.
21. The accommodation at which the body performs its functions as an accredited body:
- (a) must be suitable for the conduct of assessment, interviews, training and support to adoption arrangements; and

## SCHEDULE—continued

- (b) must not form part of, or be adjacent to, accommodation that is use by an aid organisation or an organisation that represents adoptive parents.
22. Except in accordance with an arrangement between States and internal Territories, the functions approved in the accreditation must only be provided by the body within the State or internal Territory of the State Central Authority that accredited the body.
23. The body must comply with any undertakings given for the purpose of accreditation.
24. The body must continue to satisfy the criteria set out in Part II and any conditions set out in the instrument of accreditation.
25. A body must comply with, and must ensure its staff members comply with, the code of conduct for bodies accredited to conduct adoption arrangements set out in Division 2.

*Division 2—Code of Conduct*

[NOTE: This code exists to recognize and give effect to the right of the public to expect that accredited intercountry adoption bodies are of the highest integrity and competence and treat all clients fairly, reasonably and equitably and are accountable to the State Central Authority that accredited the body.]

**Conflict of Interest**

26. A member of staff of an accredited body must not hold any financial or other interest, and must not give an undertaking, that could directly or indirectly compromise the performance of his or her functions. Conflict of interest must be assessed by taking into account, amongst other things, the likelihood that a member of staff possessing a particular interest could be influenced, or might appear to be influenced, in the performance of his or her responsibilities on a particular matter. A member of staff must notify that State Central Authority that accredited the body if a potential or actual conflict of interest arises.

**Acceptance of gifts or benefits**

27. An accredited body or member of staff must not accept a gift, donation or benefit if it could be seen by a client as intended or likely to cause the member to undertake his or her responsibilities in a particular way, or deviate from the proper course of action.

**Personal and professional behaviour**

28. A member of staff of an accredited body must perform any duties associated with his or her position diligently, impartially and conscientiously, to the best of his or her ability.
29. In the performance of duties, a member of staff of an accredited body:
- (a) must keep up to date with any changes in practice or procedure relating to intercountry adoption; and
  - (b) must comply with the laws, and any relevant administrative requirements of the Commonwealth and the State or internal Territory of accreditation; and
  - (c) must maintain and preserve record information systems in accordance with the requirements of the State Central Authority that accredited the body; and
  - (d) must treat all clients with courtesy, sensitivity and in confidence; and
  - (e) must not take any improper advantage of any information gained in the carrying out of his or her duties; and
  - (f) must report to the State Central Authority that accredited the body any unethical behaviour or wrong doing by other members of staff or which he or she is aware.

**Fairness and equity**

30. The manual in which an accredited body deals with issues or clients must be consistent, prompt and fair. This includes:
- (a) dealing with matters in accordance with approved procedures; and
  - (b) dealing with matters without discrimination on any grounds; and
  - (c) providing appropriate review and appeal mechanisms.
31. If an accredited body proposes to exercise a discretionary power in relation to a particular case, the body must ensure that all relevant considerations are taken into account in regard to the particular merits of the case.

**Public comment and the use of information**

32. While staff members of an accredited body have the right to make public comment and to enter into public debate on political and social issues, the accredited body must refrain from public comment where that comment is sufficiently strong to undermine the accredited body, the State Central Authority that accredited the body or the Commonwealth Central Authority.
33. An accredited body must be disclose official information or documents acquired in the course of carrying out its functions as an accredited body unless the proper authority has been sought and given.
-