

# Hon Stuart Nash, Minister of Revenue

## Information Release

### Signature and ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

January 2020

#### Availability

This information release is available on Inland Revenue's Tax Policy website at <http://taxpolicy.ird.govt.nz/publications/2020-ir-cab-swc-19-sub-0111/overview>.

#### Documents in this information release

1. IR2018/742 – Tax policy report: Update on international child support (26 November 2018)
2. IR2019/316 – Tax policy report: Cabinet paper - Signature and ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (19 June 2019)
3. SWC-19-SUB-0111 – Cabinet paper: Signature and ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (28 August 2019), includes:
  - Appendix A: English text of the Convention
  - Appendix B: Extended national interest analysis (NIA)
4. SWC-19-MIN-0111 – Minute: Signature and ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (28 August 2019)

#### Additional information

The Cabinet paper was considered by the Cabinet Social Wellbeing Committee on 28 August 2019 and confirmed by Cabinet on 2 September 2019.

#### Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

- 9(2)(a) to protect the privacy of natural persons, including deceased people

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## POLICY AND STRATEGY

### Tax policy report: Update on international child support

<b>Date:</b>	26 November 2018	<b>Priority:</b>	Low
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2018/742

### Action sought

	Action sought	Deadline
Minister of Revenue	<p><b>Agree</b> that officials should commence work on ratifying the Hague Convention on Child Support.</p> <p><b>Note</b> that officials are also working on updating New Zealand's reciprocal agreement with Australia.</p>	14 December 2018

### Contact for telephone discussion (if required)

Name	Position	Telephone
Melody Guy	Policy Manager	s 9(2)(a)
s 9(2)(a)	Senior Policy Analyst	

26 November 2018

Minister of Revenue

## **Update on international child support**

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### **Executive summary**

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1. This report seeks your agreement that officials should commence work on ratifying the Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance (the Convention) because it:
  - enables collection of both administrative and court-ordered maintenance between member countries;
  - includes rules on judicial and administrative co-operation that should improve New Zealand's ability to assess and collect child support when liable parents are residing in member countries; and
  - enables Inland Revenue to assess child support for New Zealand children whose parents are not New Zealand citizens or residents.
2. Officials have agreed with their Australian counterparts that New Zealand's reciprocal agreement for child support with Australia should be retained outside of the Convention, because it contains various features that better enable the efficient transfer and resolution of cases. We have also agreed that it should be updated to reflect the significant child support reforms that have occurred in both countries since it came into effect.

### Recommended action

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3. We recommend that you:
- 3.1 **note** that officials consider it would be beneficial to ratify the Convention;  
Noted
  - 3.2 **agree** that officials should commence work on ratifying the Convention; and  
Agreed/Not agreed
  - 3.3 **note** that officials are updating New Zealand's reciprocal agreement with Australia.  
Noted

**Melody Guy**  
Policy Manager  
Policy and Strategy

**Hon Stuart Nash**  
Minister of Revenue  
/ /2018

## Background

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4. Report IR2018/090 summarised the child support scheme including detail of work underway to improve international child support collection. We indicated we would update you on our work on whether New Zealand should ratify the Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance (the Convention).
5. There are approximately 17,000 liable parents who live overseas,<sup>1</sup> with the majority of them residing in Australia (about 13,000). Officials are currently reliant on voluntary compliance in collecting child support from parents living overseas (outside Australia).
6. New Zealand is currently a party to three international maintenance agreements – a reciprocal agreement with Australia, the Commonwealth Scheme and the United Nations Convention on the Recovery Abroad of Maintenance 1956 (UNCRAM).
7. The Hague Conference on Private International Law met annually from 2003 to 2007 to develop the Convention. New Zealand participated in the conference but has not ratified the Convention.
8. The Convention came into effect on 1 January 2013, and currently applies to 37 countries worldwide. Most recently, in 2017, it came into effect for the United States of America, Turkey, Montenegro and Brazil. In 2018, it came into effect for Belarus and Honduras. In 2019, it will come into effect for Kazakhstan.<sup>2</sup>
9. It is expected that the Convention would replace older agreements like the Commonwealth Scheme and UNCRAM that only cater for court-ordered maintenance, unless these prove to still be of some value in dealing with those jurisdictions that have not ratified the Convention.

## The Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance

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10. The Convention is a multilateral treaty that broadly provides for the recovery of child support and other forms of maintenance (such as spousal support) when the liable person resides in a different country to where the maintenance payment was raised. It provides for recognition and collection of both administrative and court-ordered maintenance between member countries.
11. It includes rules on judicial and administrative co-operation and should improve New Zealand's ability to assess and collect child support when liable parents are residing in countries that are (or become) parties to the Convention.

## Key benefits of the Convention

12. The main benefit of ratifying the Convention is the ability to collect assessments administered under the Child Support Act 1991 from other member countries. This is a key advantage over both UNCRAM and the Commonwealth Scheme, which only allow for the collection of court-ordered maintenance.<sup>3</sup> The process prescribed

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<sup>1</sup> Parents who are not resident in New Zealand continue to be liable for child support if they are a New Zealand citizen or resident in a country that New Zealand has entered into a child support reciprocal agreement with.

<sup>2</sup> The Convention takes effect in a country on the first of the month, following the expiry of three months after a country has ratified the Convention.

<sup>3</sup> New Zealand operates an administrative system so can't use the Commonwealth Scheme or UNCRAM to collect New Zealand formula assessed child support. New Zealand does however collect child support (for about 200 cases) on behalf of other countries under these agreements.

under the treaties to get a court order, often in another country, is difficult and expensive for New Zealand caregivers and so that option is rarely taken.

13. As a signatory to the United Nations Convention on the Rights of the Child (UNCROC), New Zealand is obligated to recover child support. Article 27 of UNCROC specifically addresses the obligation of states to secure the recovery of child support both domestically and abroad, including by signing up to international agreements. Article 3 states that in all state actions concerning children, the best interests of the child shall be a primary consideration. By ratifying the Convention, New Zealand will be shown to be supportive of, and meeting, international expectations around the care of children.
14. Approximately 520 liable parents are believed to live in countries that are members of the Convention. Only about 50 of these parents are up to date with their child support payments. If New Zealand were to ratify the Convention, about \$9.1 million in child support owed by these parents could be collected for the benefit of New Zealand children. Penalties for these parents total a further \$103 million – once the assessment is collected, penalties are generally written off.
15. The Convention would also enable Inland Revenue to carry out a formula assessment of child support for New Zealand children whose parents are not New Zealand citizens or residents, so that more children receive the appropriate support. By doing this under the Convention, Inland Revenue could progress these cases outside of the court system via its more efficient administrative assessment processes.
16. Under the Convention, Inland Revenue may also be able to refer old Ministry of Social Development cases for collection from member countries. These cases date from periods prior to 1992 when the Ministry collected maintenance either ordered by the courts or that was assessed under the liable parent scheme.
17. About 2,500 liable parents are thought to be living overseas but their country of residence is unconfirmed. It is likely a proportion reside in Convention member countries. If residence was confirmed, those cases could become collectible. The Convention would allow us to ask other member countries for assistance in locating these liable parents. The Convention could also be used to help obtain income information, resulting in fairer, more accurate assessments. This may, in turn, encourage liable parents to be more compliant with their child support obligations.

### **Key obligations under the Convention**

18. Some of the key functions that must be carried out under the Convention are:
  - transmitting, receiving, and processing of applications;
  - helping to locate liable parents and receiving carers;
  - helping to obtain and provide information in relation to the financial circumstances of liable parents and receiving carers;
  - collecting and transmitting payments;
  - provision of free legal assistance to liable parents and receiving carers where necessary; and
  - assistance with establishing parentage.
19. Most of these functions are already carried out in relation to the current international maintenance agreements New Zealand is party to, particularly under New Zealand's reciprocal agreement with Australia. However, processes may need to be altered to meet the requirements of the Convention and member countries. Officials are

satisfied any such additional procedural obligations are outweighed by the benefits of ratifying the Convention.

### **Administrative, compliance and fiscal implications**

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20. The key impacts arise from communicating changes to customers and business processes to support the exchange of information and money transfers with the 37 and growing number of member countries.
21. As mentioned below, officials intend to align the effective date of the Convention with the planned deployment of child support into Inland Revenue's new START system in April 2021. This will avoid any additional system costs.
22. Some additional one-off costs would arise from the activity required to support implementation across participating countries and ongoing business costs would arise from the additional case management activity:
  - one-off costs \$218,000 – \$436,000; and
  - on-going annual cost \$172,000 – \$344,000.
23. Inland Revenue has assessed the impact of ratifying the Convention and is confident that the administrative and implementation impacts can be absorbed within existing baselines.
24. There are no compliance or fiscal costs associated with ratification.

### **Technology and systems**

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25. The international child support changes will be phased in so that system changes are aligned with Inland Revenue's Business Transformation timelines. Business Transformation has already been tasked with ensuring that the system can accommodate international child support cases, given that we have the reciprocal agreement with Australia.
26. The Business Transformation timeline sees child support move to Inland Revenue's new technology platform (START) on 1 April 2021.

### **Consultation**

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27. Officials have consulted with the Ministry of Justice, which is the lead agency for UNCRAM and the Commonwealth Scheme. Officials will continue to liaise with the Ministry of Justice, as there would be impacts for it if New Zealand were to ratify the Convention. In particular, the Ministry of Justice could be affected by the requirement to provide free legal assistance under the Convention.
28. Officials have consulted with the Ministry of Social Development and Oranga Tamariki and intend to keep them informed of progress towards ratification, as Inland Revenue collects child support for beneficiaries and for Oranga Tamariki as custodian of wards of the state.
29. Officials will be guided by the Ministry of Foreign Affairs and Trade on the ratification process. This will include preparing a National Interest Analysis and obtaining Cabinet approvals. The Convention would be ratified by domestic legislation and consequential changes to existing legislation may also be required.

### Reciprocal agreement with Australia

30. About 13,000 of the 17,000 liable parents living overseas reside in Australia. Since 1 July 2000, New Zealand and Australia have operated a reciprocal agreement under which New Zealand collects child support for Australia and vice versa.
31. Australia has indicated that they intend to ratify the Convention. However, Australia and New Zealand have agreed to maintain the reciprocal agreement as a separate agreement outside of the Convention as it is operating well and provides for more efficient and effective collection processes than are allowed for under the Convention. To date, New Zealand has received over \$523 million from Australia under the agreement, for the benefit of New Zealand children, and disbursed over \$165 million to Australia.
32. The agreement needs updating to reflect the significant child support reforms that have been undertaken by Australia and New Zealand since it first came into effect. Officials are working with Australian counterparts on identifying and agreeing the required changes.
33. We will be guided by the Ministry of Foreign Affairs and Trade as to the process for amending the agreement. However, early indications are that the full treaty ratification process will not be required.

### Next steps

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34. If you agree, officials will commence work on ratifying the Convention, in consultation with the Ministry of Foreign Affairs and Trade and will report back with a National Interest Assessment and associated Cabinet paper in the first half of next year. Officials will also continue to work with Australia on updating the reciprocal agreement.





## POLICY AND STRATEGY

**Tax policy report:** **Cabinet Paper – Signature and ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance**

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<b>Date:</b>	19 June 2019	<b>Priority:</b>	Low
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2019/316

### Action sought

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	<b>Action sought</b>	<b>Deadline</b>
Minister of Revenue	<b>Sign</b> the attached Cabinet paper and lodge it with the Cabinet Office	10am, Thursday 1 August 2019

### Contact for telephone discussion (if required)

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<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Mike Nutsford	Policy Manager	s 9(2)(a)
s 9(2)(a)	Senior Policy Analyst	

19 June 2019

Minister of Revenue

## **Cabinet Paper – Signature and ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance Report guidelines**

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### **Purpose**

1. The attached paper seeks the Cabinet Social Wellbeing Committee’s agreement to New Zealand’s signature of, and the steps necessary to ratify and bring into force, the Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance (“the Convention”).
2. In December 2018, you agreed that officials should start work on ratifying the Convention. Following that approval, officials have prepared the attached Cabinet paper that includes:
  - the key benefits of ratifying the Convention;
  - an overview of the process required to ratify the Convention;
  - the text of the Convention;
  - the reservations and declarations that officials propose to make under the Convention; and
  - the required National Interest Analysis.
3. The Cabinet paper seeks approval to:
  - sign and ratify the Convention;
  - make the recommended reservations and declarations; and
  - issue drafting instructions to the Parliamentary Counsel Office in relation to the Order in Council that is needed in advance of ratification, following signature and completion of the Parliamentary treaty examination process.
4. The paper also notes that officials will need to obtain an “instrument of full powers” from the Minister of Foreign Affairs so that you may sign the Convention on New Zealand’s behalf.

### **Background**

5. Our report of 26 November 2018 (IR2018/742) outlined the key benefits of ratifying the Convention, and the obligations that New Zealand would assume under the Convention. These are also included in the attached Cabinet paper and the paper includes more detail about the impact of ratification on New Zealand in the form of a National Interest Analysis.

6. In addition, the Cabinet paper describes the steps that are needed to ratify the Convention, including the necessary Order in Council and the types of reservation and declaration that officials consider New Zealand should make under the Convention. We have summarised these steps in this report.

7. We propose that you proactively release:

7.1 the Cabinet paper (including all Annexes);

7.2 the Cabinet minutes; and

7.3 key advice papers (this cover report and our briefing to you of November 2018);

within 30 working days of Cabinet making final decisions. Redacted versions of the key advice papers are attached.

### **The ratification process**

8. Before the Convention can be ratified, New Zealand needs to have taken the necessary steps to incorporate it into domestic law. The Ministry of Foreign Affairs and Trade guides agencies on the ratification process. Essentially, the process is as follows:

8.1 Inland Revenue consults with relevant government agencies.

8.2 Inland Revenue submits a Cabinet paper that includes:

- the key benefits of ratifying the Convention;
- an overview of the process required to ratify the Convention;
- the text of the Convention;
- the reservations and declarations that officials propose to make under the Convention;
- the required National Interest Analysis describing the costs and benefits of ratifying the Convention in more detail; and
- a request for authority to issue drafting instructions to the Parliamentary Counsel Office in relation to the proposed Order in Council that would be needed to implement the Convention.

8.3 The Ministry of Foreign Affairs and Trade consults Tokelau on whether the Convention should also apply to Tokelau.

8.4 The Ministry of Foreign Affairs and Trade presents the Convention and the National Interest Analysis to Parliament.

8.5 The Convention and the National Interest Analysis are referred to relevant Select Committees (such as the External Relations and Defence Committee,

and the Foreign Affairs, Defence and Trade Committee) for a minimum of 15 sitting days (and officials may be called to speak to the National Interest Analysis).

- 8.6 The Select Committee(s) report to Parliament with their recommendations in relation to ratification.
- 8.7 The Government responds to the recommendations within 60 days.
- 8.8 The Minister of Foreign Affairs or a Minister with an “instrument of full powers” signs the Convention.
- 8.9 A Bill is introduced seeking any necessary changes to primary legislation and this goes through the normal Select Committee process (we do not anticipate that any change to primary legislation will be needed in this case).
- 8.10 An Order in Council is prepared, bringing the Convention into effect under the relevant primary legislation (in this case, the Child Support Act 1991) and modifying the application of that Act as needed for the purpose of giving effect to the Convention.
- 8.11 Ratification documents are prepared in consultation with the Ministry of Foreign Affairs and Trade.
- 8.12 Ratification documents, including New Zealand’s reservations and declarations under the Convention, are deposited with the Convention depositary in the Hague.
- 8.13 The Convention takes effect three months later.

### **Proposed timeframes**

9. We do not envisage that any changes to primary legislation will be needed. Rather, we can rely on the Order in Council to modify the application of the Child Support Act 1991 for the purposes of the Convention.
10. We are hoping to align the making of the Order in Council with the other upcoming legislative changes that are proposed for child support, so that all changes can be implemented operationally from April 2021 (when child support is transferred into Inland Revenue’s new systems as part of Business Transformation, Release 5).

### **Next steps**

11. Subject to Cabinet’s agreement, officials will work further with the Parliamentary Counsel Office and the Ministry of Foreign Affairs and Trade to progress ratification.

## **Recommended action**

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12. We recommend that you

12.1 **note** the contents of the attached Cabinet paper.

Noted

12.2 **sign and lodge** the attached paper to the Cabinet Social Wellbeing Committee.

Signed and lodged

### **Mike Nutsford**

Policy Manager  
Policy and Strategy  
Inland Revenue

### **Hon Stuart Nash**

Minister of Revenue  
/ /2019



In Confidence

Office of the Minister of Revenue

Chair, Social Wellbeing Committee

## **Signature and ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance**

### **Purpose**

- 1 This paper proposes that Cabinet authorises New Zealand’s signature of, and the steps necessary to ratify and bring into force, the Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance (“the Convention”).
- 2 The full text of the Convention is attached as Appendix A and a full list of New Zealand’s proposed declarations and reservations to be submitted at the time of signature and confirmed upon ratification is attached to the extended National Interest Analysis (“NIA”) at Appendix B.

### **Executive summary**

- 3 The Convention is a multilateral treaty that provides for the recovery of child support and other forms of maintenance (such as spousal support) when the liable person resides in a different country to where the maintenance payment was raised. It:
  - 3.1 enables the recognition and collection of both administrative and court-ordered maintenance between member countries;
  - 3.2 includes rules on judicial and administrative co-operation that should improve New Zealand’s ability to assess and collect child support when liable parents are residing in member countries; and
  - 3.3 enables Inland Revenue to assess child support for New Zealand children whose liable parent is not a New Zealand citizen or resident and who lives in a member country.
- 4 As at 30 April 2019, there were approximately 16,720 parents with New Zealand-assessed child support liabilities who live overseas, with the majority of them residing in Australia (about 12,500). Inland Revenue is currently reliant on voluntary compliance in collecting child support from parents living overseas outside of Australia (those in Australia are covered by our reciprocal agreement) and voluntary compliance is very low. The Convention can be implemented with minimal administrative cost to Inland Revenue and would currently enable the recovery of up to \$7.7 million in outstanding child support payments from liable parents living outside of Australia.

- 5 This paper seeks Cabinet approval for New Zealand to sign the Convention. As the Convention is subject to ratification, it must be presented to the House of Representatives for Parliamentary treaty examination in accordance with Standing Order 397. This paper also seeks Cabinet approval of the text of an extended National Interest Analysis (“NIA”) for submission to Parliament. The extended NIA is attached as Appendix B.
- 6 This paper also seeks agreement that Cabinet authorises the steps necessary to give effect to the provisions of the Convention under New Zealand law and, after those steps have been successfully completed, authorise officials to ratify the Convention by depositing an instrument of ratification, along with New Zealand’s list of confirmed declarations and reservations, with the Convention depositary (the Treaties Division of the Ministry of Foreign Affairs of the Netherlands).

## **Background**

- 7 The Hague Conference on Private International Law met annually from 2003 to 2007 to develop the Convention. New Zealand participated in the conference but has not yet ratified the Convention. The text of the Convention was finalised on 23 November 2007 and is not subject to negotiation by ratifying parties. New Zealand has not yet signed and ratified the Convention as it wanted to ensure that the Convention would be widely adopted by other States.
- 8 As a signatory to the United Nations Convention on the Rights of the Child (UNCROC), New Zealand is obligated to recover child support. Article 27 of UNCROC specifically addresses the obligation of States to secure the recovery of child support both domestically and abroad, including by signing up to international agreements. Article 3 states that in all State actions concerning children, the best interests of the child shall be a primary consideration. By ratifying the Convention, New Zealand will be shown to be supportive of, and meeting, international expectations around the care of children.
- 9 New Zealand is currently a party to three international maintenance agreements – a reciprocal agreement with Australia, the Commonwealth Scheme, and the United Nations Convention on the Recovery Abroad of Maintenance 1956 (UNCRAM). The Ministry of Justice is currently New Zealand’s central authority in respect of UNCRAM and the Commonwealth Scheme. It has been agreed that Inland Revenue is the lead agency (and would be the central authority) for the Hague Convention, given that it enables the recognition and enforcement of Inland Revenue-assessed child support obligations as well as court-based assessments, without the need for any further court intervention.
- 10 Officials have agreed with their Australian counterparts that New Zealand’s reciprocal agreement for child support with Australia should be retained outside of the Convention, because it contains various features that better enable the efficient transfer and resolution of cases. We think this is prudent given the large number of cases and Article 51 of the Convention enables the continuation of this type of pre-existing arrangement. We have also agreed that the agreement should be updated to reflect the significant child support reforms that have occurred in both countries since it came into effect in 2000.

- 11 The Convention would replace the Commonwealth Scheme and UNCRAM when dealing with other countries that are party to the Convention, in relation to matters within scope of the Convention. However, where a country is not party to the Convention or the matters are outside of the Convention's scope, the Commonwealth Scheme and UNCRAM would continue to apply.<sup>1</sup>

### **Benefits of ratifying the Convention**

- 12 The main benefit of ratifying the Convention is the ability to refer assessments administered under the Child Support Act 1991 (and other forms of maintenance, such as spousal support) to other member countries for collection. This is a key advantage over both UNCRAM and the Commonwealth Scheme, which only allow for the collection of court-ordered maintenance.<sup>2</sup>
- 13 Officials currently have no way of enforcing parents' obligations to pay child support when they live overseas (outside of Australia) if they do not pay voluntarily. The process to get a court order, often in another country, is difficult and expensive for New Zealand caregivers and so that option is rarely taken.
- 14 Based on the information that Inland Revenue holds, approximately 470 liable parents are believed to live in countries that are members of the Convention. Only about 35 of these parents are up to date with their child support payments. If New Zealand were to ratify the Convention, about \$7.7 million in child support owed by these parents could be collected for the benefit of New Zealand children. Penalties for these parents total a further \$101 million. Once the assessment is collected, penalties are generally written off.
- 15 The Convention would also enable Inland Revenue to carry out a formula assessment of child support for New Zealand children whose liable parent is not a New Zealand citizen or resident, so that more children receive the appropriate support. By doing this under the Convention, Inland Revenue could progress these cases outside of the court system via its more efficient administrative assessment processes.
- 16 Under the Convention, Inland Revenue would also be able to refer older Ministry of Social Development cases for collection from member countries. These cases date from periods prior to 1992 when the Ministry collected maintenance that was either ordered by the courts or that was assessed under the liable parent scheme.
- 17 There are approximately 3,210 liable parents who are thought to be living overseas but their country of residence is unconfirmed. It is likely a proportion reside in Convention member countries.<sup>3</sup> The Convention would allow us to ask other member countries for assistance in locating these liable parents. The Convention could also be used to help obtain income information, resulting in fairer, more

1 Current parties to the Convention are: Albania, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Croatia, Cyprus, Czech Republic, Estonia, European Union, Finland, France, Germany, Greece, Guyana, Honduras, Hungary, Ireland, Italy, Kazakhstan, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, Nicaragua, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine, UK, USA.

2 New Zealand operates an administrative system so can't use the Commonwealth Scheme or UNCRAM to collect New Zealand formula assessed child support. New Zealand does however collect child support (for about 200 cases) on behalf of other countries under these agreements. In 2018, there were 16 cases of court-ordered maintenance that New Zealand was seeking collect from Commonwealth or UNCRAM countries.

3 There are approximately a further 540 liable parents that are confirmed as living in countries that are not members of the Convention.

accurate assessments. This may, in turn, encourage liable parents to be more compliant with their child support obligations.

### **Obligations under the Convention**

- 18 Some of the key functions that must be carried out under the Convention are:
- 18.1 transmitting, receiving, and processing of applications;
  - 18.2 helping to locate liable parents and receiving carers;
  - 18.3 helping to obtain and provide information in relation to the financial circumstances of liable parents and receiving carers;
  - 18.4 collecting and transmitting payments;
  - 18.5 provision of free legal assistance to liable parents and receiving carers where necessary;<sup>4</sup> and
  - 18.6 assistance with establishing parentage.
- 19 Most of these functions are already carried out in relation to the current international maintenance agreements New Zealand is party to, particularly under New Zealand's reciprocal agreement with Australia. However, processes may need to be altered to meet the requirements of the Convention and member countries. Officials are satisfied that the burdens of any such additional procedural obligations are outweighed by the benefits of ratifying the Convention.

### **Next steps**

- 20 Subject to Cabinet's approval, I propose that the Minister of Revenue sign the Convention on New Zealand's behalf. An Instrument of Full Powers ("Instrument") will need to be obtained from the Minister of Foreign Affairs to enable the Minister of Revenue to sign the Convention. The Ministry of Foreign Affairs and Trade will prepare this Instrument and arrange for its signature.
- 21 Standing Order 397 provides that the Government will present any international treaty that is the subject of ratification by New Zealand to the House of Representatives for Parliamentary treaty examination by Select Committee. Accordingly, after signature, it is proposed that the Convention be submitted to the House of Representatives for Parliamentary treaty examination. For this purpose, an extended National Interest Analysis ("NIA") has been drafted and is attached as Appendix B. This paper seeks Cabinet approval of the extended NIA so that it can be submitted to Parliament as part of the Parliamentary treaty examination process.
- 22 An Order in Council will be needed to give effect to the Convention, as detailed below. This would be drafted and finalised following the Parliamentary treaty examination process.

<sup>4</sup> However, Article 14(3) states that the requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as are necessary free of charge. Officials anticipate that, in most cases, the Central Authority will be able to provide the necessary services free of charge.

- 23 Article 60 of the Convention provides that it will enter into force for New Zealand on the first day of the month following the expiration of three months after New Zealand has deposited its instrument of ratification. New Zealand will be in a position to deposit its instrument of ratification following the completion of all domestic procedures for entry into force. Subject to the successful promulgation of an Order in Council, this paper seeks Cabinet approval for officials to ratify the Convention by depositing New Zealand's instrument of ratification with the Convention depositary. New Zealand will also need to confirm its final declarations and reservations at this point in time.

### **Consultation**

- 24 Officials have consulted with the Ministry of Justice, which is the central authority for the UNCRAM and the Commonwealth Scheme, as well as with the Ministry of Social Development and Oranga Tamariki (as Inland Revenue collects child support for beneficiaries and for Oranga Tamariki as custodian of wards of the state), and Te Puni Kōkiri.
- 25 Officials have been guided by the Ministry of Foreign Affairs and Trade on the ratification process. Tokelau is a non-self-governing Territory of New Zealand and is "part of New Zealand" under the Tokelau Act 1948. While substantially self-governing in practice, it does not have its own international legal personality. Any treaty-making with respect to Tokelau is carried out by the New Zealand Government, in consultation with the Government of Tokelau. In accordance with the Ministry of Foreign Affairs and Trade's recommendations, if it is determined that New Zealand should proceed with ratifying the Convention the Government will consult with Tokelau on whether the Convention should also extend to Tokelau.

### **Financial implications**

- 26 There will be costs associated with implementing and administering the Convention. However, these are expected to be relatively small and can be absorbed within existing baselines. There are no compliance or fiscal costs associated with ratification.

### **Human rights**

- 27 No inconsistencies with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993 have been identified.

### **Legislative implications**

- 28 The Convention must be given effect by Order in Council, pursuant to section 215 of the Child Support Act 1991. The Order in Council may modify the application of that Act for the purpose of giving effect to the Convention. Officials have identified various minor modifications to the application of the Act that they consider are desirable to accommodate Convention cases.

- 29 Accordingly, this paper seeks approval for an Order in Council to be drafted and submitted to Cabinet following the signing of the Convention and the completion of the Parliamentary treaty examination process.

### **Child impact assessment**

- 30 Officials consider that ratification of the Convention will have a positive effect on the wellbeing of New Zealand children and will help to ensure that they receive the benefit of child support payments that their carer is entitled to, regardless of where their parents live in the world.

### **Regulatory impact analysis**

- 31 As this proposal has regulatory implications (it requires an Order in Council), the Regulatory Impact Analysis (“RIA”) requirements apply. However, as this paper relates to an international treaty, an extended National Interest Analysis (“NIA”) has been prepared (see Appendix B) rather than a separate Regulatory Impact Statement, in accordance with the RIA requirements.
- 32 The extended NIA was prepared by Inland Revenue. The extended NIA was circulated with this paper to the Treasury and the Ministry of Foreign Affairs and Trade for departmental consultation.
- 33 The extended NIA substitutes for a Regulatory Impact Assessment (“RIA”). Inland Revenue’s internal RIA panel has reviewed the extended NIA and associated supporting material and considers that the information and analysis summarised in the extended NIA meet the quality assurance criteria.
- 34 The extended NIA compares the benefits and costs of signing the Convention relative to taking no action and provides sufficient analysis to support the proposals.

### **Publicity**

- 35 The text of the Convention and New Zealand’s declarations and reservations will be publicly available on Inland Revenue’s Tax Policy website. The extended NIA will be publicly available on the Parliamentary website following Parliamentary treaty examination.
- 36 It is expected that the Convention depositary will make all signatories’ declarations and reservations publicly available following the signing. The Ministry of Foreign Affairs and Trade also publishes such information on the New Zealand Treaties Online website at [www.treaties.mfat.govt.nz](http://www.treaties.mfat.govt.nz).

### **Proactive Release**

- 37 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers within 30 working days of Cabinet making final decisions, subject to minor redactions under the Official Information Act 1982.

## Recommendations

38 I recommend that the Cabinet Committee:

- 38.1 **note** that the Child Support Act 1991 authorises the Governor-General to give effect to reciprocal agreements with other jurisdictions relating to child support or domestic maintenance;
- 38.2 **note** that the Convention will enable the recovery of child support and other forms of family maintenance from liable persons residing outside of New Zealand;
- 38.2 **approve** the text of the Convention attached to this Cabinet paper as Appendix A;
- 38.3 **note** that officials have finalised New Zealand's expected declarations and reservations in relation to the choices available in the Convention;
- 38.4 **approve** New Zealand's expected declarations and reservations attached to the extended National Interest Analysis at Appendix B;
- 38.5 **delegate** to the Minister of Revenue the authority to approve any changes to the declarations and reservations that are needed in advance of ratification as a result of developments in other jurisdictions' positions;
- 38.6 **agree** that New Zealand sign the Convention;
- 38.7 **note** that an Instrument of Full Powers will need to be obtained from the Minister of Foreign Affairs to enable the Minister of Revenue to sign the Convention. The Ministry of Foreign Affairs and Trade will prepare this Instrument and arrange for its signature;
- 38.8 **note** that, if Cabinet agrees that New Zealand should sign and ratify the Convention, the Ministry of Foreign Affairs and Trade will consult with Tokelau about whether the Convention should apply to that territory;
- 38.9 **approve** the extended National Interest Analysis attached to the Cabinet paper as Appendix B;
- 38.10 **note** the content of the extended National Interest Analysis may change as a result of developments in other jurisdictions' positions between now and Parliamentary treaty examination;
- 38.11 **note** that the Government will present any international treaty that is the subject of ratification to the House of Representatives for Parliamentary treaty examination, in accordance with Standing Order 397;
- 38.12 **agree** that, following signature, the text of the Convention, New Zealand's notifications and reservations, and the extended National Interest Analysis be presented in the House of Representatives for Parliamentary treaty examination, in accordance with Standing Order 397;

- 38.13 **note** that the Convention will be incorporated into New Zealand domestic law through an Order in Council made pursuant to section 215 of the Child Support Act 1991;
- 38.14 **invite** the Minister of Revenue to instruct the Parliamentary Counsel Office to draft an Order in Council to give effect to the Convention following signature and completion of the Parliamentary treaty examination process;
- 38.15 **authorise** officials, following signature, completion of the Parliamentary treaty examination process, and promulgation of the Order in Council, to bring the Convention into force by depositing New Zealand's instrument of ratification and list of confirmed declarations and reservations with the Convention depositary.

Authorised for lodgement

Hon Stuart Nash  
Minister of Revenue

**CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF  
FAMILY MAINTENANCE**

**PREAMBLE**

The States signatory to the present Convention,

Desiring to improve co-operation among States for the international recovery of child support and other forms of family maintenance,

Aware of the need for procedures which produce results and are accessible, prompt, efficient, cost-effective, responsive and fair

Wishing to build upon the best features of existing Hague Conventions and other international instruments, in particular the United Nations *Convention on the Recovery Abroad of Maintenance* of 20 June 1956,

Seeking to take advantage of advances in technologies and to create a flexible system which can continue to evolve as needs change and further advances in technology create new opportunities,

Recalling that, in accordance with Articles 3 and 27 of the United Nations *Convention on the Rights of the Child* of 20 November 1989,

- in all actions concerning children the best interests of the child shall be a primary consideration,
- every child has a right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,
- the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development, and
- States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child,

Have resolved to conclude this Convention and have agreed upon the following provisions -

## CHAPTER I

### OBJECT, SCOPE AND DEFINITIONS

#### *Article 1*

##### *Object*

The object of the present Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by –

- a) establishing a comprehensive system of co-operation between the authorities of the Contracting States;
- b) making available applications for the establishment of maintenance decisions;
- c) providing for the recognition and enforcement of maintenance decisions; and
- d) requiring effective measures for the prompt enforcement of maintenance decisions.

#### *Article 2*

##### *Scope*

1. This Convention shall apply –
  - a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years;
  - b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of sub-paragraph a); and
  - c) with the exception of Chapters II and III, to spousal support.
2. Any Contracting State may reserve, in accordance with Article 62, the right to limit the application of the Convention under sub-paragraph 1 a), to persons who have not attained the age of 18 years. A Contracting State which makes this reservation shall not be entitled to claim the application of the Convention to persons of the age excluded by its reservation.

3. Any Contracting State may declare in accordance with Article 63 that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the Convention.

4. The provisions of this Convention shall apply to children regardless of the marital status of the parents.

### *Article 3*

#### *Definitions*

For the purposes of this Convention –

- a) “creditor” means an individual to whom maintenance is owed or is alleged to be owed;
- b) “debtor” means an individual who owes or who is alleged to owe maintenance;
- c) “legal assistance” means the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings;
- d) “agreement in writing” means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference;
- e) “maintenance arrangement” means an agreement in writing relating to the payment of maintenance which –
  - i) has been formally drawn up or registered as an authentic instrument by a competent authority; or
  - ii) has been authenticated by, or concluded, registered or filed with a competent authority,and may be the subject of review and modification by a competent authority;

- f) “vulnerable person” means a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself.

## CHAPTER II

### ADMINISTRATIVE CO-OPERATION

#### *Article 4*

##### *Designation of Central Authorities*

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

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 shall 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.

3. The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law at the time when the instrument of ratification or accession is deposited or when a declaration is submitted in accordance with Article 61. Contracting States shall promptly inform the Permanent Bureau of any changes.

#### *Article 5*

##### *General functions of Central Authorities*

Central Authorities shall –

- a) co-operate with each other and promote co-operation amongst the competent

- authorities in their States to achieve the purposes of the Convention;
- b) seek as far as possible solutions to difficulties which arise in the application of the Convention.

#### *Article 6*

##### *Specific functions of Central Authorities*

1. Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall –
- a) transmit and receive such applications;
- b) initiate or facilitate the institution of proceedings in respect of such applications.
2. In relation to such applications they shall take all appropriate measures –
- a) where the circumstances require, to provide or facilitate the provision of legal assistance;
- b) to help locate the debtor or the creditor;
- c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets;
- d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
- e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;
- f) to facilitate the collection and expeditious transfer of maintenance payments;
- g) to facilitate the obtaining of documentary or other evidence;
- h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;
- i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to

secure the outcome of a pending maintenance application;

j) to facilitate service of documents.

3. The functions of the Central Authority under this Article may, to the extent permitted under the law of its State, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by a Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent.

4. Nothing in this Article or Article 7 shall be interpreted as imposing an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested State

#### *Article 7*

##### *Requests for specific measures*

1. A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under Article 6(2) b), c), g), h), i) and j) when no application under Article 10 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a potential applicant in making an application under Article 10 or in determining whether such an application should be initiated.

2. A Central Authority may also take specific measures on the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting State.

*Article 8*

*Central Authority costs*

1. Each Central Authority shall bear its own costs in applying this Convention.
  
2. Central Authorities may not impose any charge on an applicant for the provision of their services under the Convention save for exceptional costs arising from a request for a specific measure under Article 7.
  
3. The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost.

**CHAPTER III**

**APPLICATIONS THROUGH CENTRAL AUTHORITIES**

*Article 9*

*Application through Central Authorities*

An application under this Chapter shall be made through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State. For the purpose of this provision, residence excludes mere presence.

*Article 10*

*Available applications*

1. The following categories of application shall be available to a creditor in a requesting State seeking to recover maintenance under this Convention –
  - a) recognition or recognition and enforcement of a decision;

- b) enforcement of a decision made or recognised in the requested State;
- c) establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage;
- d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible, or is refused, because of the lack of a basis for recognition and enforcement under Article 20, or on the grounds specified in Article 22 *b)* or *e)*;
- e) modification of a decision made in the requested State;
- f) modification of a decision made in a State other than the requested State.

2. The following categories of application shall be available to a debtor in a requesting State against whom there is an existing maintenance decision –

- a) recognition of a decision, or an equivalent procedure leading to the suspension, or limiting the enforcement, of a previous decision in the requested State;
- b) modification of a decision made in the requested State;
- c) modification of a decision made in a State other than the requested State.

3. Save as otherwise provided in this Convention, the applications in paragraphs 1 and 2 shall be determined under the law of the requested State, and applications in paragraphs 1 c) to f) and 2 b) and c) shall be subject to the jurisdictional rules applicable in the requested State.

#### *Article 11*

##### *Application contents*

1. All applications under Article 10 shall as a minimum include –
- a) a statement of the nature of the application or applications;
  - b) the name and contact details, including the address and date of birth of the applicant;
  - c) the name and, if known, address and date of birth of the respondent;
  - d) the name and date of birth of any person for whom maintenance is sought;

- e) the grounds upon which the application is based;
- f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically transmitted;
- g) save in an application under Article 10(1) a) and (2) a), any information or document specified by declaration in accordance with Article 63 by the requested State;
- h) the name and contact details of the person or unit from the Central Authority of the requesting State responsible for processing the application.

2. As appropriate, and to the extent known, the application shall in addition in particular include –

- a) the financial circumstances of the creditor;
- b) the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor;
- c) any other information that may assist with the location of the respondent.

3. The application shall be accompanied by any necessary supporting information or documentation including documentation concerning the entitlement of the applicant to free legal assistance. In the case of applications under Article 10(1) a) and (2) a), the application shall be accompanied only by the documents listed in Article 25.

4. An application under Article 10 may be made in the form recommended and published by the Hague Conference on Private International Law.

#### *Article 12*

##### *Transmission, receipt and processing of applications and cases through Central Authorities*

1. The Central Authority of the requesting State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.

2. The Central Authority of the requesting State shall, when satisfied that the application complies with the requirements of the Convention, transmit the application on behalf of and with the consent of the applicant to the Central Authority of the requested State. The application shall be accompanied by the transmittal form set out in Annex 1. The Central Authority of the requesting State shall, when requested by the Central Authority of the requested State, provide a complete copy certified by the competent authority in the State of origin of any document specified under Articles 16(3), 25(1) *a), b), and d)*, (3) *b)* and 30(3).

3. The requested Central Authority shall, within six weeks from the date of receipt of the application, acknowledge receipt in the form set out in Annex 2, and inform the Central Authority of the requesting State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. Within the same six-week period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.

4. Within three months after the acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.

5. Requesting and requested Central Authorities shall keep each other informed of –
- a) the person or unit responsible for a particular case;
  - b) the progress of the case,

and shall provide timely responses to enquiries.

6. Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

7. Central Authorities shall employ the most rapid and efficient means of communication at their disposal.

8. A requested Central Authority may refuse to process an application only if it is manifest that the requirements of the Convention are not fulfilled. In such case, that Central

Authority shall promptly inform the requesting Central Authority of its reasons for refusal.

9. The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or information. If the requesting Central Authority does not do so within three months or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall inform the requesting Central Authority of this decision.

### *Article 13*

#### *Means of communication*

Any application made through Central Authorities of the Contracting States in accordance with this Chapter, and any document or information appended thereto or provided by a Central Authority, may not be challenged by the respondent by reason only of the medium or means of communication employed between the Central Authorities concerned.

### *Article 14*

#### *Effective access to procedures*

1. The requested State shall provide applicants with effective access to procedures, including enforcement and appeal procedures, arising from applications under this Chapter.

2. To provide such effective access, the requested State shall provide free legal assistance in accordance with Articles 14 to 17 unless paragraph 3 applies.

3. The requested State shall not be obliged to provide such free legal assistance if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance, and the Central Authority provides such services as

are necessary free of charge.

4. Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.

5. No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings under the Convention.

#### *Article 15*

##### *Free legal assistance for child support applications*

1. The requested State shall provide free legal assistance in respect of all applications by a creditor under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

2. Notwithstanding paragraph 1, the requested State may, in relation to applications other than those under Article 10(1) *a*) and *b*) and the cases covered by Article 20(4), refuse free legal assistance if it considers that, on the merits, the application or any appeal is manifestly unfounded.

#### *Article 16*

##### *Declaration to permit use of child-centred means test*

1. Notwithstanding Article 15(1), a State may declare, in accordance with Article 63, that it will provide free legal assistance in respect of applications other than under Article 10(1) *a*) and *b*) and the cases covered by Article 20(4), subject to a test based on an assessment of the means of the child.

2. A State shall, at the time of making such a declaration, provide information to the

Permanent Bureau of the Hague Conference on Private International Law concerning the manner in which the assessment of the child's means will be carried out, including the financial criteria which would need to be met to satisfy the test.

3. An application referred to in paragraph 1, addressed to a State which has made the declaration referred to in that paragraph, shall include a formal attestation by the applicant stating that the child's means meet the criteria referred to in paragraph 2. The requested State may only request further evidence of the child's means if it has reasonable grounds to believe that the information provided by the applicant is inaccurate.

4. If the most favourable legal assistance provided for by the law of the requested State in respect of applications under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a child is more favourable than that provided for under paragraphs 1 to 3, the most favourable legal assistance shall be provided.

#### *Article 17*

##### *Applications not qualifying under Article 15 or Article 16*

In the case of all applications under this Convention other than those under Article 15 or Article 16 –

- a) the provision of free legal assistance may be made subject to a means or a merits test;
- b) an applicant, who in the State of origin has benefited from free legal assistance, shall be entitled, in any proceedings for recognition or enforcement, to benefit, at least to the same extent, from free legal assistance as provided for by the law of the State addressed under the same circumstances.

## CHAPTER IV

### RESTRICTIONS ON BRINGING PROCEEDINGS

#### *Article 18*

#### *Limit on proceedings*

1. Where a decision is made in a Contracting State where the creditor is habitually resident, proceedings to modify the decision or to make a new decision cannot be brought by the debtor in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made.

2. Paragraph 1 shall not apply –

- a) where, except in disputes relating to maintenance obligations in respect of children, there is agreement in writing between the parties to the jurisdiction of that other Contracting State;
- b) where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;
- c) where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision; or
- d) where the decision made in the State of origin cannot be recognised or declared enforceable in the Contracting State where proceedings to modify the decision or make a new decision are contemplated.

## CHAPTER V

### RECOGNITION AND ENFORCEMENT

#### *Article 19*

##### *Scope of the Chapter*

1. This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term “decision” also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses.

2. If a decision does not relate solely to a maintenance obligation, the effect of this Chapter is limited to the parts of the decision which concern maintenance obligations.

3. For the purpose of paragraph 1, “administrative authority” means a public body whose decisions, under the law of the State where it is established –

- a) may be made the subject of an appeal to or review by a judicial authority; and
- b) have a similar force and effect to a decision of a judicial authority on the same matter.

4. This Chapter also applies to maintenance arrangements in accordance with Article 30.

5. The provisions of this Chapter shall apply to a request for recognition and enforcement made directly to a competent authority of the State addressed in accordance with Article 37.

## *Article 20*

### *Bases for recognition and enforcement*

1. A decision made in one Contracting State (“the State of origin”) shall be recognised and enforced in other Contracting States if –

- a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;
- b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;
- c) the creditor was habitually resident in the State of origin at the time proceedings were instituted;
- d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;
- e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or
- f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.

2. A Contracting State may make a reservation, in accordance with Article 62, in respect of paragraph 1 c), e) or f).

3. A Contracting State making a reservation under paragraph 2 shall recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.

4. A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and if the debtor is habitually resident in that State, take all appropriate measures to establish a decision for the benefit of the creditor. The preceding

sentence shall not apply to direct requests for recognition and enforcement under Article 19(5) or to claims for support referred to in Article 2(1) b).

5. A decision in favour of a child under the age of 18 years which cannot be recognised by virtue only of a reservation in respect of paragraph 1 c), e) or f) shall be accepted as establishing the eligibility of that child for maintenance in the State addressed.

6. A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

#### *Article 21*

##### *Severability and partial recognition and enforcement*

1. If the State addressed is unable to recognise or enforce the whole of the decision, it shall recognise or enforce any severable part of the decision which can be so recognised or enforced.

2. Partial recognition or enforcement of a decision can always be applied for.

#### *Article 22*

##### *Grounds for refusing recognition and enforcement*

Recognition and enforcement of a decision may be refused if –

- a) recognition and enforcement of the decision is manifestly incompatible with the public policy ("*ordre public*") of the State addressed;
- b) the decision was obtained by fraud in connection with a matter of procedure;
- c) proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;

- d) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;
- e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin –
  - i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
  - ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; or
- f) the decision was made in violation of Article 18.

### *Article 23*

#### *Procedure on an application for recognition and enforcement*

1. Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed.

2. Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either –

- a) refer the application to the competent authority which shall without delay declare the decision enforceable or register the decision for enforcement; or
- b) if it is the competent authority take such steps itself.

3. Where the request is made directly to a competent authority in the State addressed in accordance with Article 19(5), that authority shall without delay declare the decision enforceable or register the decision for enforcement.

4. A declaration or registration may be refused only on the ground set out in Article 22 a). At this stage neither the applicant nor the respondent is entitled to make any submissions.

5. The applicant and the respondent shall be promptly notified of the declaration or registration, made under paragraphs 2 and 3, or the refusal thereof in accordance with paragraph 4, and may bring a challenge or appeal on fact and on a point of law.

6. A challenge or an appeal is to be lodged within 30 days of notification under paragraph 5. If the contesting party is not resident in the Contracting State in which the declaration or registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification.

7. A challenge or appeal may be founded only on the following –

- a) the grounds for refusing recognition and enforcement set out in Article 22;
- b) the bases for recognition and enforcement under Article 20;
- c) the authenticity or integrity of any document transmitted in accordance with Article 25(1) a), b) or d) or (3) b).

8. A challenge or an appeal by a respondent may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.

9. The applicant and the respondent shall be promptly notified of the decision following the challenge or the appeal.

10. A further appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

11. In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

## Article 24

### *Alternative procedure on an application for recognition and enforcement*

1. Notwithstanding Article 23(2) to (11), a State may declare, in accordance with Article 63, that it will apply the procedure for recognition and enforcement set out in this Article.

2. Where an application for recognition and enforcement of a decision has been made through Central Authorities in accordance with Chapter III, the requested Central Authority shall promptly either –

- a) refer the application to the competent authority which shall decide on the application for recognition and enforcement; or
- b) if it is the competent authority, take such a decision itself.

3. A decision on recognition and enforcement shall be given by the competent authority after the respondent has been duly and promptly notified of the proceedings and both parties have been given an adequate opportunity to be heard.

4. The competent authority may review the grounds for refusing recognition and enforcement set out in Article 22 a), c) and d) of its own motion. It may review any grounds listed in Articles 20, 22 and 23(7) **c)** if raised by the respondent or if concerns relating to those grounds arise from the face of the documents submitted in accordance with Article 25.

5. A refusal of recognition and enforcement may also be founded on the fulfilment of the debt to the extent that the recognition and enforcement relates to payments that fell due in the past.

6. Any appeal, if permitted by the law of the State addressed, shall not have the effect of staying the enforcement of the decision unless there are exceptional circumstances.

7. In taking any decision on recognition and enforcement, including any appeal, the competent authority shall act expeditiously.

*Article 25*

*Documents*

1. An application for recognition and enforcement under Article 23 or Article 24 shall be accompanied by the following –

- a) a complete text of the decision;
- b) a document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements;
- c) if the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law;
- d) where necessary, a document showing the amount of any arrears and the date such amount was calculated;
- e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document providing the information necessary to make the appropriate calculations;
- f) where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin.

2. Upon a challenge or appeal under Article 23(7) c) or upon request by the competent authority in the State addressed, a complete copy of the document concerned, certified by the competent authority in the State of origin, shall be provided promptly –

- a) by the Central Authority of the requesting State, where the application has been made in accordance with Chapter III;
- b) by the applicant, where the request has been made directly to a competent authority of the State addressed.

3. A Contracting State may specify in accordance with Article 57 –
  - a) that a complete copy of the decision certified by the competent authority in the State of origin must accompany the application;
  - b) circumstances in which it will accept, in lieu of a complete text of the decision, an abstract or extract of the decision drawn up by the competent authority of the State of origin, which may be made in the form recommended and published by the Hague Conference on Private International Law; or
  - c) that it does not require a document stating that the requirements of Article 19(3) are met.

#### *Article 26*

##### *Procedure on an application for recognition*

This Chapter shall apply *mutatis mutandis* to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

#### *Article 27*

##### *Findings of fact*

Any competent authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

#### *Article 28*

##### *No review of the merits*

There shall be no review by any competent authority of the State addressed of the merits of a decision.

*Article 29*

*Physical presence of the child or the applicant not required*

The physical presence of the child or the applicant shall not be required in any proceedings in the State addressed under this Chapter.

*Article 30*

*Maintenance arrangements*

1. A maintenance arrangement made in a Contracting State shall be entitled to recognition and enforcement as a decision under this Chapter provided that it is enforceable as a decision in the State of origin.

2. For the purpose of Article 10(1) a) and b) and (2) a), the term “decision” includes a maintenance arrangement.

3. An application for recognition and enforcement of a maintenance arrangement shall be accompanied by the following –

- a) a complete text of the maintenance arrangement; and
- b) a document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin.

4. Recognition and enforcement of a maintenance arrangement may be refused if –

- a) the recognition and enforcement is manifestly incompatible with the public policy of the State addressed;
- b) the maintenance arrangement was obtained by fraud or falsification;
- c) the maintenance arrangement is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or

in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.

5. The provisions of this Chapter, with the exception of Articles 20, 22, 23(7) and 25(1) and (3), shall apply *mutatis mutandis* to the recognition and enforcement of a maintenance arrangement save that –

- a) a declaration or registration in accordance with Article 23(2) and (3) may be refused only on the ground set out in paragraph 4 a);
- b) a challenge or appeal as referred to in Article 23(6) may be founded only on the following –
  - i) the grounds for refusing recognition and enforcement set out in paragraph 4;
  - ii) the authenticity or integrity of any document transmitted in accordance with paragraph 3;
- c) as regards the procedure under Article 24(4), the competent authority may review of its own motion the ground for refusing recognition and enforcement set out in paragraph 4 a) of this Article. It may review all grounds listed in paragraph 4 of this Article and the authenticity or integrity of any document transmitted in accordance with paragraph 3 if raised by the respondent or if concerns relating to those grounds arise from the face of those documents.

6. Proceedings for recognition and enforcement of a maintenance arrangement shall be suspended if a challenge concerning the arrangement is pending before a competent authority of a Contracting State.

7. A State may declare, in accordance with Article 63, that applications for recognition and enforcement of a maintenance arrangement shall only be made through Central Authorities.

8. A Contracting State may, in accordance with Article 62, reserve the right not to recognise and enforce a maintenance arrangement.

*Article 31*

*Decisions produced by the combined effect of provisional and confirmation orders*

Where a decision is produced by the combined effect of a provisional order made in one State and an order by an authority in another State (“the confirming State”) confirming the provisional order –

- a) each of those States shall be deemed for the purposes of this Chapter to be a State of origin;
- b) the requirements of Article 22 e) shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order;
- c) the requirement of Article 20(6) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and
- d) Article 18 shall not prevent proceedings for the modification of the decision being commenced in either State.

**CHAPTER VI**

**ENFORCEMENT BY THE STATE ADDRESSED**

*Article 32*

*Enforcement under internal law*

1. Subject to the provisions of this Chapter, enforcement shall take place in accordance with the law of the State addressed.

2. Enforcement shall be prompt.

3. In the case of applications through Central Authorities, where a decision has been declared enforceable or registered for enforcement under Chapter V, enforcement shall proceed without the need for further action by the applicant.

4. Effect shall be given to any rules applicable in the State of origin of the decision relating to the duration of the maintenance obligation.

5. Any limitation on the period for which arrears may be enforced shall be determined either by the law of the State of origin of the decision or by the law of the State addressed, whichever provides for the longer limitation period.

### *Article 33*

#### *Non-discrimination*

The State addressed shall provide at least the same range of enforcement methods for cases under the Convention as are available in domestic cases.

### *Article 34*

#### *Enforcement measures*

1. Contracting States shall make available in internal law effective measures to enforce decisions under this Convention.

2. Such measures may include –

- a) wage withholding;
- b) garnishment from bank accounts and other sources;
- c) deductions from social security payments;
- d) lien on or forced sale of property;
- e) tax refund withholding;
- f) withholding or attachment of pension benefits;
- g) credit bureau reporting;
- h) denial, suspension or revocation of various licenses (for example, driving

licenses);

- i) the use of mediation, conciliation or similar processes to bring about voluntary compliance.

#### *Article 35*

##### *Transfer of funds*

1. Contracting States are encouraged to promote, including by means of international agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.

2. A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable under this Convention.

### **CHAPTER VII**

#### **PUBLIC BODIES**

#### *Article 36*

##### *Public bodies as applicants*

1. For the purposes of applications for recognition and enforcement under Article 10(1) a) and b) and cases covered by Article 20(4), "creditor" includes a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.

2. The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.

3. A public body may seek recognition or claim enforcement of –

- a) a decision rendered against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;
- b) a decision rendered between a creditor and debtor to the extent of the benefits provided to the creditor in place of maintenance.

4. The public body seeking recognition or claiming enforcement of a decision shall upon request furnish any document necessary to establish its right under paragraph 2 and that benefits have been provided to the creditor.

## **CHAPTER VIII**

### **GENERAL PROVISIONS**

#### *Article 37*

##### *Direct requests to competent authorities*

1. The Convention shall not exclude the possibility of recourse to such procedures as may be available under the internal law of a Contracting State allowing a person (an applicant) to seize directly a competent authority of that State in a matter governed by the Convention including, subject to Article 18, for the purpose of having a maintenance decision established or modified.

2. Articles 14(5) and 17 b) and the provisions of Chapters V, VI, VII and this Chapter, with the exception of Articles 40(2), 42, 43(3), 44(3), 45 and 55, shall apply in relation to a request for recognition and enforcement made directly to a competent authority in a Contracting State.

3. For the purpose of paragraph 2, Article 2(1) a) shall apply to a decision granting maintenance to a vulnerable person over the age specified in that sub-paragraph where such decision was rendered before the person reached that age and provided for maintenance beyond that age by reason of the impairment.

*Article 38*

*Protection of personal data*

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

*Article 39*

*Confidentiality*

Any authority processing information shall ensure its confidentiality in accordance with the law of its State.

*Article 40*

*Non-disclosure of information*

1. An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person.
2. A determination to this effect made by one Central Authority shall be taken into account by another Central Authority, in particular in cases of family violence.
3. Nothing in this Article shall impede the gathering and transmitting of information by and between authorities in so far as necessary to carry out the obligations under the Convention.

*Article 41*

*No legalisation*

No legalisation or similar formality may be required in the context of this Convention.

*Article 42*

*Power of attorney*

The Central Authority of the requested State may require a power of attorney from the applicant only if it acts on his or her behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act.

*Article 43*

*Recovery of costs*

1. Recovery of any costs incurred in the application of this Convention shall not take precedence over the recovery of maintenance.
2. A State may recover costs from an unsuccessful party.
3. For the purposes of an application under Article 10(1) b) to recover costs from an unsuccessful party in accordance with paragraph 2, the term "creditor" in Article 10(1) shall include a State.
4. This Article shall be without prejudice to Article 8.

*Article 44*

*Language requirements*

1. Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State or another language which the requested State has indicated, by way of declaration in accordance with Article 63, it will accept, unless the competent authority of that State dispenses with translation.

2. A Contracting State which has more than one official language and cannot, for reasons of internal law, accept for the whole of its territory documents in one of those languages shall, by declaration in accordance with Article 63, specify the language in which such documents or translations thereof shall be drawn up for submission in the specified parts of its territory.

3. Unless otherwise agreed by the Central Authorities, any other communications between such Authorities shall be in an official language of the requested State or in either English or French. However, a Contracting State may, by making a reservation in accordance with Article 62, object to the use of either English or French.

#### *Article 45*

##### *Means and costs of translation*

1. In the case of applications under Chapter III, the Central Authorities may agree in an individual case or generally that the translation into an official language of the requested State may be made in the requested State from the original language or from any other agreed language. If there is no agreement and it is not possible for the requesting Central Authority to comply with the requirements of Article 44(1) and (2), then the application and related documents may be transmitted with translation into English or French for further translation in

to an official language of the requested State.

2. The cost of translation arising from the application of paragraph 1 shall be borne by the requesting State unless otherwise agreed by Central Authorities of the States concerned.

3. Notwithstanding Article 8, the requesting Central Authority may charge an applicant for the costs of translation of an application and related documents, except in so far as those costs may be covered by its system of legal assistance.

#### *Article 46*

##### *Non-unified legal systems – interpretation*

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

- a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;
- b) any reference to a decision established, recognised, recognised and enforced, enforced or modified in that State shall be construed as referring, where appropriate, to a decision established, recognised, recognised and enforced, enforced or modified in the relevant territorial unit;
- c) any reference to a judicial or administrative authority in that State shall be construed as referring, where appropriate, to a judicial or administrative authority in the relevant territorial unit;
- d) any reference to competent authorities, public bodies, and other bodies of that State, other than Central Authorities, shall be construed as referring, where appropriate, to those authorised to act in the relevant territorial unit;
- e) any reference to residence or habitual residence in that State shall be construed as referring, where appropriate, to residence or habitual residence in the relevant territorial unit;
- f) any reference to location of assets in that State shall be construed as referring, where appropriate, to the location of assets in the relevant territorial unit;
- g) any reference to a reciprocity arrangement in force in a State shall be construed as referring, where appropriate, to a reciprocity arrangement in force in the relevant territorial unit;
- h) any reference to free legal assistance in that State shall be construed as referring, where appropriate, to free legal assistance in the relevant territorial unit;

- i) any reference to a maintenance arrangement made in a State shall be construed as referring, where appropriate, to a maintenance arrangement made in the relevant territorial unit;
  - j) any reference to recovery of costs by a State shall be construed as referring, where appropriate, to the recovery of costs by the relevant territorial unit.
2. This Article shall not apply to a Regional Economic Integration Organisation.

*Article 47*

*Non-unified legal systems – substantive rules*

1. A Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.
2. A competent authority in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a decision from another Contracting State solely because the decision has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.
3. This Article shall not apply to a Regional Economic Integration Organisation.

*Article 48*

*Co-ordination with prior Hague Maintenance Conventions*

In relations between the Contracting States, this Convention replaces, subject to Article 56(2), the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations* and the *Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations*

towards children in so far as their scope of application as between such States coincides with the scope of application of this Convention.

*Article 49*

*Co-ordination with the 1956 New York Convention*

In relations between the Contracting States, this Convention replaces the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956, in so far as its scope of application as between such States coincides with the scope of application of this Convention.

*Article 50*

*Relationship with prior Hague Conventions on service of documents and taking of evidence*

This Convention does not affect the *Hague Convention of 1 March 1954 on civil procedure*, the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* and the *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*.

*Article 51*

*Co-ordination of instruments and supplementary agreements*

1. This Convention does not affect any international instrument concluded before this Convention to which Contracting States are Parties and which contains provisions on matters governed by this Convention.

2. Any Contracting State may conclude with one or more Contracting States agreements, which contain provisions on matters governed by the Convention, with a view to improving the application of the Convention between or among themselves, provided that such agreements are consistent with the objects and purpose of the Convention and do not affect, in the relationship of such States with other Contracting States, the application of the provisions

of the Convention. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

3. Paragraphs 1 and 2 shall also apply to reciprocity arrangements and to uniform laws based on special ties between the States concerned.

4. This Convention shall not affect the application of instruments of a Regional Economic Integration Organisation that is a Party to this Convention, adopted after the conclusion of the Convention, on matters governed by the Convention provided that such instruments do not affect, in the relationship of Member States of the Regional Economic Integration Organisation with other Contracting States, the application of the provisions of the Convention. As concerns the recognition or enforcement of decisions as between Member States of the Regional Economic Integration Organisation, the Convention shall not affect the rules of the Regional Economic Integration Organisation, whether adopted before or after the conclusion of the Convention.

#### *Article 52*

##### *Most effective rule*

1. This Convention shall not prevent the application of an agreement, arrangement or international instrument in force between the requesting State and the requested State, or a reciprocity arrangement in force in the requested State that provides for –

- a) broader bases for recognition of maintenance decisions, without prejudice to Article 22 f) of the Convention;
- b) simplified, more expeditious procedures on an application for recognition or recognition and enforcement of maintenance decisions;
- c) more beneficial legal assistance than that provided for under Articles 14 to 17; or
- d) procedures permitting an applicant from a requesting State to make a request directly to the Central Authority of the requested State.

2. This Convention shall not prevent the application of a law in force in the requested State that provides for more effective rules as referred to in paragraph 1 a) to c). However, as

regards simplified, more expeditious procedures referred to in paragraph 1 b), they must be compatible with the protection offered to the parties under Articles 23 and 24, in particular as regards the rights of the parties to be duly notified of the proceedings and be given adequate opportunity to be heard and as regards the effects of any challenge or appeal.

#### *Article 53*

##### *Uniform interpretation*

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

#### *Article 54*

##### *Review of practical operation of the Convention*

1. 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 and to encourage the development of good practices under the Convention.

2. For the purpose of such review, Contracting States shall co-operate with the Permanent Bureau of the Hague Conference on Private International Law in the gathering of information, including statistics and case law, concerning the practical operation of the Convention.

#### *Article 55*

##### *Amendment of forms*

1. The forms annexed to this Convention may be amended by a decision of a Special Commission convened by the Secretary General of the Hague Conference on Private International Law to which all Contracting States and all Members shall be invited. Notice of the proposal to amend the forms shall be included in the agenda for the meeting.

2. Amendments adopted by the Contracting States present at the Special Commission shall come into force for all Contracting States on the first day of the seventh calendar month after the date of their communication by the depositary to all Contracting States.

3. During the period provided for in paragraph 2 any Contracting State may by notification in writing to the depositary make a reservation, in accordance with Article 62, with respect to the amendment. The State making such reservation shall, until the reservation is withdrawn, be treated as a State not Party to the present Convention with respect to that amendment.

#### *Article 56*

##### *Transitional provisions*

1. The Convention shall apply in every case where –
  - a) a request pursuant to Article 7 or an application pursuant to Chapter III has been received by the Central Authority of the requested State after the Convention has entered into force between the requesting State and the requested State;
  - b) a direct request for recognition and enforcement has been received by the competent authority of the State addressed after the Convention has entered into force between the State of origin and the State addressed.

2. With regard to the recognition and enforcement of decisions between Contracting States to this Convention that are also Parties to either of the Hague Maintenance Conventions mentioned in Article 48, if the conditions for the recognition and enforcement under this Convention prevent the recognition and enforcement of a decision given in the State of origin before the entry into force of this Convention for that State, that would otherwise have been recognised and enforced under the terms of the Convention that was in effect at the time the decision was rendered, the conditions of that Convention shall apply.

3. The State addressed shall not be bound under this Convention to enforce a decision or a maintenance arrangement, in respect of payments falling due prior to the entry into force of the Convention between the State of origin and the State addressed, except for

maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

*Article 57*

*Provision of information concerning laws, procedures and services*

1. A Contracting State, by the time its instrument of ratification or accession is deposited or a declaration is submitted in accordance with Article 61 of the Convention, shall provide the Permanent Bureau of the Hague Conference on Private International Law with –
  - a) a description of its laws and procedures concerning maintenance obligations;
  - b) a description of the measures it will take to meet the obligations under Article 6;
  - c) a description of how it will provide applicants with effective access to procedures, as required under Article 14;
  - d) a description of its enforcement rules and procedures, including any limitations on enforcement, in particular debtor protection rules and limitation periods;
  - e) any specification referred to in Article 25(1) b) and (3).
  
2. Contracting States may, in fulfilling their obligations under paragraph 1, utilise a country profile form recommended and published by the Hague Conference on Private International Law.
  
3. Information shall be kept up to date by the Contracting States.

## CHAPTER IX

### FINAL PROVISIONS

#### *Article 58*

##### *Signature, ratification and accession*

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 Twenty-First 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.

3. Any other State or Regional Economic Integration Organisation may accede to the Convention after it has entered into force in accordance with Article 60(1).

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

5. 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 12 months after the date of the notification referred to in Article 65. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

#### *Article 59*

##### *Regional Economic Integration Organisations*

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional

Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by the Convention.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.

3. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare in accordance with Article 63 that it exercises competence over all the matters governed by this Convention and that the Member States which have transferred competence to the Regional Economic Integration Organisation in respect of the matter in question shall be bound by this Convention by virtue of the signature, acceptance, approval or accession of the Organisation.

4. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation makes a declaration in accordance with paragraph 3.

5. Any reference to a "Contracting State" or "State" in this Convention shall apply equally to a Regional Economic Integration Organisation that is a Party to it, where appropriate. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 3, any reference to a "Contracting State" or "State" in this Convention shall apply equally to the relevant Member States of the Organisation, where appropriate.

*Article 60*

*Entry into force*

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 second instrument of ratification, acceptance or approval referred to in Article 58.

2. Thereafter the Convention shall enter into force –

- a) for each State or Regional Economic Integration Organisation referred to in Article 59(1) subsequently ratifying, accepting or approving it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance or approval;
- b) for each State or Regional Economic Integration Organisation referred to in Article 58(3) on the day after the end of the period during which objections may be raised in accordance with Article 58(5);
- c) for a territorial unit to which the Convention has been extended in accordance with Article 61, on the first day of the month following the expiration of three months after the notification referred to in that Article.

*Article 61*

*Declarations with respect to non-unified legal systems*

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 in accordance with Article 63 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 shall extend to all territorial units of that State.

4. This Article shall not apply to a Regional Economic Integration Organisation.

#### *Article 62*

##### *Reservations*

1. Any Contracting State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 61, make one or more of the reservations provided for in Articles 2(2), 20(2), 30(8), 44(3) and 55(3). No other reservation shall be permitted.

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

3. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in paragraph 2.

4. Reservations under this Article shall have no reciprocal effect with the exception of the reservation provided for in Article 2(2).

#### *Article 63*

##### *Declarations*

1. Declarations referred to in Articles 2(3), 11(1) *g*), 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1), may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

2. Declarations, modifications and withdrawals shall be notified to the depositary.

3. A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.

4. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months after the date on which the notification is received by the depositary.

#### *Article 64*

##### *Denunciation*

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

2. The denunciation shall take effect on the first day of the month following the expiration of 12 months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

#### *Article 65*

##### *Notification*

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 58 and 59 of the following –

- a) the signatures, ratifications, acceptances and approvals referred to in Articles 58 and 59;

- b) the accessions and objections raised to accessions referred to in Articles 58(3) and (5) and 59;
- c) the date on which the Convention enters into force in accordance with Article 60;
- d) the declarations referred to in Articles 2(3), 11(1) g), 16(1), 24(1), 30(7), 44(1) and (2), 59(3) and 61(1);
- e) the agreements referred to in Article 51(2);
- f) the reservations referred to in Articles 2(2), 20(2), 30(8), 44(3) and 55(3), and the withdrawals referred to in Article 62(2);
- g) the denunciations referred to in Article 64.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at The Hague, on the 23rd day of November 2007, 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 Members of the Hague Conference on Private International Law at the date of its Twenty-First Session and to each of the other States which have participated in that Session.

ANNEX 1

**Transmittal form under Article 12(2)**

**CONFIDENTIALITY AND PERSONAL DATA PROTECTION NOTICE**

*Personal data gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such data shall ensure its confidentiality, in accordance with the law of its State.*

*An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 40.*

- A determination of non-disclosure has been made by a Central Authority in accordance with Article 40.*

<b>1. Requesting Central Authority</b>	<b>2. Contact person in requesting State</b>
a. Address	a. Address (if different)
b. Telephone number	b. Telephone number (if different)
c. Fax number	c. Fax number (if different)
d. E-mail	d. E-mail (if different)
e. Reference number	e. Language(s)

3. Requested Central Authority \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

4. Particulars of the applicant

a. Family name(s): \_\_\_\_\_

b. Given name(s): \_\_\_\_\_

c. Date of birth: \_\_\_\_\_ (dd/mm/yyyy)

or

a. Name of the public body: \_\_\_\_\_  
\_\_\_\_\_

**5. Particulars of the person(s) for whom maintenance is sought or payable**

- a.  The person is the same as the applicant named in point 4
- b. i. Family name(s): \_\_\_\_\_  
Given name(s): \_\_\_\_\_  
Date of birth: \_\_\_\_\_ (dd/mm/yyyy)
- ii. Family name(s): \_\_\_\_\_  
Given name(s): \_\_\_\_\_  
Date of birth: \_\_\_\_\_ (dd/mm/yyyy)
- iii. Family name(s): \_\_\_\_\_  
Given name(s): \_\_\_\_\_  
Date of birth: \_\_\_\_\_ (dd/mm/yyyy)

**6. Particulars of the debtor<sup>1</sup>**

- a.  The person is the same as the applicant named in point 4
- b. Family name(s): \_\_\_\_\_
- c. Given name(s): \_\_\_\_\_
- d. Date of birth: \_\_\_\_\_ (dd/mm/yyyy)

**7. This transmittal form concerns and is accompanied by an application under:**

- Article 10(1) *a*
- Article 10(1) *b*
- Article 10(1) *c*
- Article 10(1) *d*
- Article 10(1) *e*
- Article 10(1) *f*
- Article 10(2) *a*
- Article 10(2) *b*
- Article 10(2) *c*

**8. The following documents are appended to the application:**

- a. For the purpose of an application under Article 10(1) *a* and:  
In accordance with Article 25:
- Complete text of the decision (Art. 25(1) *a*)
- Abstract or extract of the decision drawn up by the competent authority of the State of origin (Art. 25(3) *b*) (if applicable)

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<sup>1</sup> According to Art. 3 of the Convention “‘debtor’ means an individual who owes or who is alleged to owe maintenance”.

- Document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with Article 57 that decisions of its administrative authorities always meet those requirements (Art. 25(1) *b*) or if Article 25(3) *c*) is applicable
- If the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law (Art. 25(1) *c*))
- Where necessary, a document showing the amount of any arrears and the date such amount was calculated (Art. 25(1) *d*))
- Where necessary, a document providing the information necessary to make appropriate calculations in case of a decision providing for automatic adjustment by indexation (Art. 25(1) *e*))
- Where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin (Art. 25(1) *f*))

**In accordance with Article 30(3):**

- Complete text of the maintenance arrangement (Art. 30(3) *a*))
- A document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin (Art. 30(3) *b*))
- Any other documents accompanying the application (*e.g.*, if required, a document for the purpose of Art. 36(4)):

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**b. For the purpose of an application under Article 10(1) *b*), *c*), *d*), *e*), *f*) and (2) *a*), *b*) or *c*), the following number of supporting documents (excluding the transmittal form and the application itself) in accordance with Article 11(3):**

- Article 10(1) *b*) \_\_\_\_\_
- Article 10(1) *c*) \_\_\_\_\_
- Article 10(1) *d*) \_\_\_\_\_
- Article 10(1) *e*) \_\_\_\_\_
- Article 10(1) *f*) \_\_\_\_\_
- Article 10(2) *a*) \_\_\_\_\_
- Article 10(2) *b*) \_\_\_\_\_
- Article 10(2) *c*) \_\_\_\_\_

**Name:** \_\_\_\_\_ **(in block letters)**      **Date:** \_\_\_\_\_

**Authorised representative of the Central Authority**      **(dd/mm/yyyy)**

ANNEX 2

## Acknowledgement form under Article 12(3)

### CONFIDENTIALITY AND PERSONAL DATA PROTECTION NOTICE

*Personal data gathered or transmitted under the Convention shall be used only for the purposes for which it was gathered or transmitted. Any authority processing such data shall ensure its confidentiality, in accordance with the law of its State.*

*An authority shall not disclose or confirm information gathered or transmitted in application of this Convention if it determines that to do so could jeopardise the health, safety or liberty of a person in accordance with Article 40.*

*A determination of non-disclosure has been made by a Central Authority in accordance with Article 40.*

<b>1. Requested Central Authority</b>	<b>2. Contact person in requested State</b>
<b>a. Address</b>	<b>a. Address (if different)</b>
<b>b. Telephone number</b>	<b>b. Telephone number (if different)</b>
<b>c. Fax number</b>	<b>c. Fax number (if different)</b>
<b>d. E-mail</b>	<b>d. E-mail (if different)</b>
<b>e. Reference number</b>	<b>e. Language(s)</b>

**3. Requesting Central Authority** \_\_\_\_\_  
**Contact person** \_\_\_\_\_  
**Address** \_\_\_\_\_  
\_\_\_\_\_

**4. The requested Central Authority acknowledges receipt on \_\_\_\_\_ (dd/mm/yyyy) of the transmittal form from the requesting Central Authority (reference number \_\_\_\_\_); dated \_\_\_\_\_ (dd/mm/yyyy) concerning the following application under:**

- Article 10(1) a)**
- Article 10(1) b)**
- Article 10(1) c)**
- Article 10(1) d)**
- Article 10(1) e)**
- Article 10(1) f)**
- Article 10(2) a)**
- Article 10(2) b)**
- Article 10(2) c)**

**Family name(s) of applicant:** \_\_\_\_\_

**Family name(s) of the person(s) for whom  
maintenance is sought or payable:** \_\_\_\_\_

\_\_\_\_\_

**Family name(s) of debtor:** \_\_\_\_\_

**5. Initial steps taken by the requested Central Authority:**

- The file is complete and is under consideration**
  - See attached status of application report**
  - Status of application report will follow**
- Please provide the following additional information and / or documentation:** \_\_\_\_\_  
\_\_\_\_\_
- The requested Central Authority refuses to process this application as it is manifest that the requirements of the Convention are not fulfilled (Art. 12(8)). The reasons:**
  - are set out in an attached document**
  - will be set out in a document to follow**

**The requested Central Authority requests that the requesting Central Authority inform it of any change in the status of the application.**

**Name:** \_\_\_\_\_ **(in block letters)**

**Date:** \_\_\_\_\_

**Authorised representative of the Central Authority**

**(dd/mm/yyyy)**

Copie certifiée conforme à l'original

Le Directeur des Traités  
du Ministère des Affaires Étrangères  
du Royaume des Pays-Bas



Certified true copy of the original

The Director of Treaties  
of the Ministry of Foreign Affairs  
of the Kingdom of the Netherlands

## **Appendix B: Extended National Interest Analysis (“NIA”)**

**NATIONAL INTEREST ANALYSIS:  
Hague Convention of 23 November 2007 on the International Recovery of Child  
Support and Other Forms of Family Maintenance**

**Executive summary**

- 1 On 23 November 2007, the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention) was open for signature by States which were members of the Hague Conference on Private International Law at the time of its twenty-first session and by other States which participated in that session. It subsequently came into effect for the first signatories on 1 January 2013.
- 2 New Zealand has not yet signed and ratified the Convention and the purpose of this National Interest Analysis is to consider whether it should do so. This has not been done earlier as New Zealand wanted to ensure that the Convention would be widely adopted by other States.
- 3 The Convention is a multilateral international treaty that enables member countries to recover child support and other forms of maintenance (such as spousal support) from liable persons residing in another Contracting State. It provides for the establishment, recognition and enforcement of both administrative and court-ordered maintenance.
- 4 The Convention may be given effect to under New Zealand domestic law by Order in Council made under section 215 of the Child Support Act 1991.
- 5 Key obligations under the Convention include:
  - transmitting, receiving and processing applications; helping to locate liable parents and receiving carers;
  - helping to obtain and provide information in relation to the financial circumstances of liable parents and receiving carers;
  - collecting and transmitting payments;
  - providing free legal assistance to liable parents and receiving carers where necessary; and
  - establishing maintenance decisions and assisting with establishing parentage.
- 6 Ratifying the Convention is in New Zealand's interests as it will enable the collection of New Zealand's administratively-assessed maintenance. This is a key advantage over both the United Nations Convention on the Recovery Abroad of Maintenance 1956 (UNCRAM) and the Commonwealth Scheme, which only allow for the collection of court-ordered maintenance. These other agreements will continue to apply to countries that have not ratified the Convention or matters that are not within scope of the Convention.

- 7 By ratifying the Convention, New Zealand will also be shown to be supportive of, and meeting, international expectations around the care of children. As a signatory to the United Nations Convention on the Rights of the Child (UNCROD), New Zealand is obligated to recover child support, including by signing up to international agreements.
- 8 There will be costs associated with implementing and administering the Convention. However, these are expected to be relatively small and can be absorbed within Inland Revenue's existing baselines. There are no compliance or fiscal costs associated with ratification.

## **Nature and timing of the proposed treaty action**

### *Nature of the Convention*

- 9 The Convention is a multilateral international treaty. The text of the Convention has been finalised and is not subject to negotiation by ratifying parties (although certain reservations and declarations may be made). A copy of the English version of the Convention is annexed to the relevant Cabinet paper seeking approval to sign and ratify.
- 10 The proposed treaty action is to ratify the Convention following signature. Ratification occurs by depositing New Zealand's instrument of ratification with the Convention depositary, after the necessary domestic procedures have been completed.

### *Signature, entry into force and when obligations take effect*

- 11 The Convention is open for signature by the States which were members of the Hague Conference on Private International Law at the time of its twenty-first session in November 2007 and by the other States which participated in that session (including New Zealand).
- 12 To become a party to the Convention, States must ratify, accept or approve it, and the instruments of ratification, acceptance or approval must be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which is the depositary of the Convention. Ratification is the method relevant to New Zealand.
- 13 Before ratification can occur, New Zealand must have taken the necessary steps to be able to implement it under domestic law. We will need to obtain an Order in Council to recognise and implement the Convention under New Zealand law.
- 14 Officials estimate that this would need to be done by the end of 2020. The Convention would apply to New Zealand three months after ratification, in around April 2021, aligning with the transfer of child support into Inland Revenue's new systems as part of Business Transformation.

## *Application to Tokelau*

- 15 Tokelau is a non-self-governing Territory of New Zealand and is “part of New Zealand” under the Tokelau Act 1948. While substantially self-governing in practice, it does not have its own international legal personality. Any treaty-making with respect to Tokelau is carried out by the New Zealand Government, in consultation with the Government of Tokelau. In accordance with the Ministry of Foreign Affairs and Trade’s recommendations, if it is determined that New Zealand should proceed with ratifying the Convention the Government will consult with Tokelau on whether the Convention should also extend to Tokelau.

## **Reasons for New Zealand becoming party to the treaty**

### *Background to the Convention*

- 16 The Hague Conference on Private International Law met annually from 2003 to 2007 to develop the Convention. New Zealand participated in the conference but has not yet signed or ratified the Convention.
- 17 The object of the Convention is to ensure the effective international recovery of child support and other forms of family maintenance, in particular by:
- establishing a comprehensive system of co-operation between the authorities of the contracting States;
  - making available applications for the establishment of maintenance decisions;
  - providing for the recognition and enforcement of maintenance decisions; and
  - requiring effective measures for the prompt enforcement of maintenance decisions.

The Hague website summarises this as seeking to “establish a modern, efficient and accessible international system for the cross-border recovery of child support and other forms of family maintenance.”

### *Meeting international expectations*

- 18 Ratifying the Convention would assist New Zealand in meeting its obligations as a signatory to UNCROC. Article 27 of UNCROC requires state signatories to secure the recovery of child support both domestically and abroad, including by signing up to international agreements. Article 3 states that in all State actions concerning children, the best interests of the child shall be a primary consideration. Ratification would demonstrate that New Zealand is supportive of, and meeting, international expectations around the care of children.
- 19 Ratifying the Convention would also align New Zealand with many of its major trading partners. The Convention currently applies to 39 countries worldwide. In 2017, it came into effect for the United States of America, Turkey, Montenegro and Brazil. In 2018, it came into effect for Belarus and Honduras. In 2019, it will come into effect for

Kazakhstan and the United Kingdom. In 2020, it will come into effect for Guyana and Nicaragua. Australian officials have indicated that Australia intends to ratify the Convention in the near future (although we agree that, even when this occurs, the reciprocal agreement for child support between Australia and New Zealand will remain in place).

#### *Recovering significant amounts of additional maintenance*

- 20 There are approximately 16,720 parents with New Zealand-assessed child support liabilities who live overseas, with the majority of them (about 12,500) residing in Australia. Officials are currently reliant on voluntary compliance in collecting administratively assessed child support from parents living overseas outside of Australia (those in Australia are covered by our reciprocal agreement). The Convention can be implemented with minimal administrative cost to Inland Revenue and would currently enable us to seek enforcement of up to \$7.7 million in outstanding child support payments from liable parents living outside of Australia.
- 21 Domestic law allows Inland Revenue to assess parents to pay child support when they live overseas, but officials have no way of enforcing their obligation if they do not pay voluntarily. Under the Convention, New Zealand will be able to transmit administratively assessed (as opposed to court-ordered) maintenance cases to member countries for enforcement. This is a key advantage for New Zealand caregivers and their children, as it is difficult and expensive for them to obtain a court order in a foreign jurisdiction. Now that a large number of countries have ratified the Convention, the value in being a member has increased.
- 22 An alternative to ratifying the Convention would be to try to secure multiple bilateral agreements in addition to the agreement that we have with Australia. However, this would be time consuming and would likely result in many slightly differing processes which could cause confusion and additional cost. In addition, most countries would be unlikely to agree to a reciprocal agreement with New Zealand as this would not be warranted given the low number of cases.
- 23 Another alternative would be to do nothing, in which case New Zealand children would be missing out on child support and we would be missing an opportunity to better meet the objectives of the child support scheme. By ratifying the Convention, the Government aims to ensure that those who owe child support to New Zealand children comply with their obligations even if they are living abroad. Ratification is a simple step that will contribute to the wellbeing of New Zealand children and their caregivers.

#### *Modernising international procedures*

- 24 New Zealand is currently a party to three international child support maintenance arrangements – a reciprocal agreement with Australia, the Commonwealth Scheme (which is not formally documented but applies to Commonwealth countries) and the United Nations Convention on the Recovery Abroad of Maintenance 1956 (UNCRAM).
- 25 Officials have agreed with their Australian counterparts that New Zealand's reciprocal agreement for child support with Australia should be retained and updated outside of the Convention, even though Australian officials have indicated that Australia intends

to become a party to the Convention in future. The reciprocal agreement contains various features that better enable the efficient transfer and resolution of cases. Article 51 of the Convention enables the continuation of this type of pre-existing arrangement.

- 26 By virtue of Article 49, the Convention would replace UNCRAM when dealing with countries that are party to the Convention in relation to matters within scope of the Convention. However, UNCRAM would continue to apply when dealing with countries that are not party to the Convention or matters that are outside the scope of the Convention. Officials consider that the Commonwealth Scheme would continue to operate in a similar way.

### **Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand**

#### *Advantages of entering into force*

- 27 Key advantages of ratifying the Convention are:

- obtaining support for those carers and children who otherwise wouldn't have been able to receive it;
- obtaining information from member countries such as income details to enable Inland Revenue to assess child support more accurately;
- obtaining assistance from member countries in locating a liable parent or receiving carer and in establishing parentage, where necessary;
- recovering the costs associated with the Government paying benefits for children whose carer is in receipt of a sole parent benefit;
- complying with our international obligations, maintaining our international reputation and joining an international community of countries who are collectively striving to protect children's interests;
- assisting to create linkages and efficiencies in the systems that are used to collect child support internationally; and
- ensuring that our child support assessments take into account any overseas-based children, thereby increasing the appropriateness of the assessment for the liable parent.

- 28 It is also advantageous that there are no compliance or fiscal costs associated with ratification.

#### *Disadvantages of entering into force*

- 29 Key disadvantages of ratifying the Convention are:

- Inland Revenue would incur some administrative costs in complying with the Convention (although these are expected to be minimal and able to be absorbed within existing baselines). Some one-off costs would arise from the activity required to support implementation across participating countries (approximately \$218,000 - \$436,000) and ongoing business costs would arise from the additional case management activity (approximately \$172,000 - \$344,000);
- Inland Revenue may experience some difficulties in collecting its assessments in countries with 'weaker' currencies. There may also be challenges with over and under payments because of exchange rate fluctuations;
- some liable parents may feel that it is unfair for them to be subject to New Zealand child support assessments when they are residing in another jurisdiction;
- there may continue to be jurisdictional issues that arise such as potential dual liabilities that need to be resolved, other conflicts or jurisdiction gaps; and
- if a case is referred from another jurisdiction, we will need to take any overseas-based children into account as part of our assessment and, therefore, the payment for New Zealand-based children would be reduced.

*Advantages of not entering into force*

- 30 There are few advantages in not ratifying the Convention, other than avoidance of the work and cost required to implement it. It is possible that New Zealand could negotiate more advantageous terms with other jurisdictions on a bilateral basis. However, as more and more countries become parties to the Convention, New Zealand may be unlikely to find any willing partners.

*Disadvantages of not entering into force*

- 31 New Zealand would have to continue to rely on voluntary compliance with its administrative assessments. We would not see change or improvement in our ability to collect child support liabilities from New Zealand-assessed parents living overseas (outside Australia) and parents with overseas liabilities who live in New Zealand. We would have to negotiate bilateral arrangements with individual countries in order to obtain these improvements. This would be time consuming and resource-intensive, and likely to be unsuccessful as other jurisdictions are favouring the Convention.

**Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms**

*Legal obligations*

32 Key obligations under the Convention include:

- transmitting, receiving and processing various applications;
- helping to locate debtors and creditors (what we would call liable parents and receiving carers);
- helping to obtain and provide information in relation to the financial circumstances of debtors and creditors;
- collecting and transmitting payments;
- providing free legal assistance to liable parents and receiving carers where necessary; and
- assisting with establishing parentage.

33 Most of these functions are already carried out in relation to the current international maintenance agreements New Zealand is party to, particularly under New Zealand's reciprocal agreement with Australia. However, processes may need to be altered to meet the requirements of the Convention and member countries. Officials are satisfied any such additional procedural obligations are outweighed by the benefits of ratifying the Convention.

*Reservations and declarations*

34 Any permitted reservations or declarations under the Convention must be made at the time of ratification. The reservations and declarations that may be made, and the proposed approach to these, are set out at Annex A and B.

*Settlement of disputes*

35 The Convention does not include a disputes resolution procedure for resolving disputes between contracting States. Instead, Article 22 sets out when an application can be refused, and Article 5 relies on mutual co-operation in resolving difficulties.

**Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation**

36 Officials consider that an Order in Council will need to be made under section 215 of the Child Support Act 1991 before New Zealand can ratify the Convention. The Order in Council is to give the Convention the force of law in New Zealand and can modify the application of the Child Support Act 1991 to give effect to the Convention. Officials

have identified various minor changes to the application of that Act that they consider are needed to accommodate cases that will be covered by the Convention.

- 37 Officials will discuss these legislative measures further with the Parliamentary Counsel Office and will continue to review current operational arrangements to ensure that they can accommodate Convention cases.

## **Economic, social, cultural and environmental costs and effects of the treaty action**

### *Economic costs and effects*

- 38 The Convention will not impose any additional economic costs on New Zealand, other than the minor administrative costs referred to above. The economic effect will be that more child support payments will flow into the country for the benefit of New Zealand children, or to recover the costs associated with the Government paying benefits for those children (ie where the receiving carer is in receipt of a sole parent benefit, or potentially is Oranga Tamariki, as custodian of the child). There will also be an increase in child support payments going offshore, where the liable parent resides in New Zealand but their child is overseas.

### *Social costs and effects*

- 39 The Convention will help to avoid the social costs associated with carers not receiving child support that is owed to them. The social effect will be to help ensure that all children receive the support that they are entitled to, even if they have one or both parents residing overseas. Conversely, it will help to ensure that parents residing in New Zealand pay child support for overseas children. This may have a financial impact on their families in New Zealand.

### *Cultural costs and effects*

- 40 Ratifying the Convention is expected to have a positive effect on New Zealand culture, rather than any adverse cost or effect. It aligns with New Zealand and Māori cultural values of supporting each other and, in particular, ensuring the wellbeing of family members. It will also reinforce the importance of paying child support, regardless of where you are located.

### *Environmental costs and effects*

- 41 Given the subject matter, there are no environmental costs or effects expected as a result of ratifying the Convention.

## **The costs to New Zealand of compliance with the treaty**

- 42 Article 8 clarifies that each central authority shall bear its own costs in applying the Convention. Central authorities may not impose any charge on an applicant for the provision of their services, other than in exceptional circumstances.

- 43 As noted above, there are certain relatively minor administrative costs associated with ratifying the Convention. These cover the training and allocation of staff, adaptation of systems and processes, and provision of a limited level of legal assistance. These costs can be absorbed within existing baselines and officials consider that they are outweighed by the financial gains that can be made for New Zealand carers as a result of ratifying the Convention.

### **Completed or proposed consultation with the community and parties interested in the treaty action**

- 44 As lead agency (and central authority) for the purposes of the Convention, Inland Revenue has consulted with the Ministry of Foreign Affairs and Trade, the Treasury, the Ministry of Justice, the Ministry of Social Development, Te Puni Kokiri and Oranga Tamariki in relation to the proposed ratification of the Convention.
- 45 The Ministry of Social Development has an interest in ratification as Inland Revenue collects child support for beneficiaries and may be able to use the Convention to collect outstanding debts under the liable parent scheme. Oranga Tamariki has an interest in ratification as Inland Revenue collects child support for it as custodian of wards of the state.
- 46 As noted above, in accordance with the Ministry of Foreign Affairs and Trade's recommendations, if it is determined that New Zealand should proceed with ratifying the Convention, the Government will consult with Tokelau on whether the Convention should also extend to Tokelau.

### **Subsequent protocols and/or amendments to the treaty and their likely effects**

- 47 There is a protocol to the Convention entitled "Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations." This is intended to supplement the Convention by developing general rules on applicable law. Officials consider that it is not necessary for New Zealand to ratify this Protocol as New Zealand already has sufficiently well-developed rules on applicable law. We understand that Australia does not intend to ratify the Protocol for this reason.
- 48 Contracting States may withdraw reservations or declarations at any time. As mentioned below, the transmittal and acknowledgement forms that are annexed to the Convention may be amended in future by a Special Commission of the Hague Conference on Private International Law. However, there would be an opportunity to make a reservation in respect of any such amendment.
- 49 There is provision at Article 54 for regular review of the practical operation of the Convention, to encourage the development of good practices, however, no express provision for amendment of the Convention itself.

## **Withdrawal or denunciation provision in the treaty**

- 50 Article 64 of the Convention enables withdrawal from the Convention by “denunciation” in writing addressed to the Convention depository. Denunciation takes effect 12 months after notification is received, unless the notice specifies a longer period.

## **Agency Disclosure Statement**

- 51 Inland Revenue has prepared this extended National Interest Analysis (NIA). Inland Revenue has analysed the issue of implementing the Convention, and the legislative and regulatory proposals arising from that implementation.
- 52 As part of that process, Inland Revenue considered the option of not ratifying the Convention and instead retaining the status quo or entering into bilateral negotiations with other jurisdictions.
- 53 Inland Revenue is of the view that there are no significant constraints, caveats or uncertainties concerning the regulatory analysis. This policy aligns with the Government Statement on Regulation.
- 54 The reservations and declarations that Inland Revenue proposes to make at the time of ratification are those that are needed for ease of implementation in New Zealand.
- 55 The revenue effect for New Zealand as a result of changes under the Convention is expected to be neutral.
- 56 An Order in Council will be required to give the Convention effect in New Zealand law. This will be made under section 215 of the Child Support Act 1991.
- 57 The Ministry of Foreign Affairs and Trade, the Treasury, the Ministry of Justice, the Ministry of Social Development, Te Puni Kokiri and Oranga Tamariki have been consulted about the content of this extended NIA.

Mike Nutsford  
Policy Manager  
Policy and Strategy  
Inland Revenue

19 June 2019

## Annex A: Reservations

Reservations may be made under Article 62 in respect of the following Articles:

- *2(2): Any Contracting State may reserve the right to limit the application of the Convention to persons who have not attained the age of 18 years.*

Officials consider that New Zealand should not make this reservation as we currently consider child support applications, both domestically and internationally, in respect of children who are over the age of 18 but still at school, for example.

- *20(2): A Contracting State may make a reservation in respect of paragraph 1(c), (e) or (f). These paragraphs provide that a decision made in one Contracting State ("the state of origin") shall be recognised and enforced in other Contracting States if:  
(c) the creditor was habitually resident in the state of origin at the time proceedings were instituted;  
(e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or  
(f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.*

Officials consider that there is no need for New Zealand to make a reservation in respect of any of these paragraphs as New Zealand can recognise and enforce decisions made in all of these circumstances.

- *30(8): A Contracting State may reserve the right not to recognise and enforce a maintenance arrangement. A maintenance arrangement is defined at Article 3(e) as an agreement in writing relating to the payment of maintenance which (i) has been formally drawn up or registered as an authentic instrument by a competent authority; or (ii) has been authenticated by, or concluded, registered or filed with a competent authority, and (in both cases) may be the subject of review and modification by a competent authority.*

Officials consider that New Zealand should not make a reservation under this provision and should recognise and enforce maintenance arrangements (which, as defined in the Convention, are similar to "voluntary agreements" in New Zealand).

- *44(3): Unless otherwise agreed by the Central Authorities, any other communications between such authorities shall be in an official language of the requested state or in either English or French. However, a Contracting State may, by making a reservation, object to the use of either English or French.*

Officials consider that New Zealand should make a reservation that objects to the use of French, except by countries who have objected to the use of English, to avoid translation costs.

- *55(3): During the period provided for in paragraph 2 any Contracting State may by notification in writing to the depositary make a reservation with respect to the amendment. The State making such reservation shall, until the reservation is withdrawn,*

*be treated as a state not party to the present Convention with respect to that amendment. Paragraph 2 relates to the amendment of forms that are annexed to the Convention.*

It is not necessary for New Zealand to make any reservation under this Article at this time, as it only applies to future amendments to the forms.

## Annex B: Declarations

Declarations may be made under Article 63 in respect of the following Articles:

- *2(3): Any Contracting State may declare that it will extend the application of the whole or any part of the Convention to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons. Any such declaration shall give rise to obligations between two Contracting States only in so far as their declarations cover the same maintenance obligations and parts of the Convention.*

Officials consider that New Zealand should declare that it will extend the application of the whole of the Convention to spousal support obligations, regardless of whether or not they exist alongside maintenance obligations arising from a parent-child relationship, as provided for at Article 2(1). Inland Revenue currently enforces spousal support obligations independently of child support obligations domestically and under its other international agreements.

- *11(1)(g): All applications (for recognition and enforcement of a child support decision etc) under Article 10 shall as a minimum include, save in an application under Article 10(1)(a) and (2)(a), any information or document specified by declaration by the requested state.*

Officials consider that there is no need for New Zealand to make a declaration under this Article as there is no particular information that New Zealand needs to process an application that is not already provided for in Article 11 and the transmittal form at Annex 1.

- *16(1): Notwithstanding Article 15(1), a State may declare that it will provide free legal assistance in respect of applications other than under Article 10(1)(a) and (b) and the cases covered by Article 20(4), subject to a test based on an assessment of the means of the child.*

Officials consider that New Zealand should not make a declaration under this provision as we can provide free legal assistance (at the level that it would be provided domestically) regardless of the means of child.

- *24(1): Notwithstanding Article 23(2) to (11), a State may declare that it will apply the procedure for recognition and enforcement set out in this Article.*

Officials consider that New Zealand should make a declaration under this provision that New Zealand will use the Article 24 procedure rather than the Article 23 procedure on receipt of applications for recognition and enforcement. The Article 24 procedure is preferable because it enables Inland Revenue to process applications more expeditiously and aligns with how it processes other domestic and international applications.

- *30(7): A State may declare that applications for recognition and enforcement of a maintenance arrangement shall only be made through central authorities.*

Officials consider that New Zealand should make this declaration to ensure that Inland Revenue, which will be designated as New Zealand's central authority in accordance with Article 4, is aware of all applications. Inland Revenue will consult with other agencies such as the Ministry of Social Development, Oranga Tamariki, and the Ministry of Justice, as necessary in relation to an application. Inland Revenue will also use court processes where needed.

- *44(1): Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State or another language which the requested state has indicated, by way of declaration, it will accept, unless the competent authority of that state dispenses with translation.*

Officials consider that there is no need for New Zealand to make a declaration under this provision, as translations into an official language of New Zealand (including English and te reo Māori) will be acceptable.

- *44(2): A Contracting State which has more than one official language and cannot, for reasons of internal law, accept for the whole of its territory documents in one of those languages shall, by declaration, specify the language in which such documents or translations thereof shall be drawn up for submission in the specified parts of its territory.*

Officials consider that there is no need for New Zealand to make this declaration as English can be used throughout New Zealand's territories.

- *59(3): At the time of signature, acceptance, approval or accession, a regional economic integration organisation may declare that it exercises competence over all the matters governed by this Convention and that the member States which have transferred competence to the regional economic integration organisation in respect of the matter in question shall be bound by this Convention by virtue of the signature, acceptance, approval or accession of the organisation.*

Officials do not consider that there is any such regional organisation in respect of which a declaration would need to be made under this provision.

- *61(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.*

Subject to further consultation with Tokelau, officials consider that New Zealand should not make a declaration under this provision that the Convention shall extend to Tokelau, as similar Conventions that New Zealand has ratified do not apply to that territory.





# Cabinet Social Wellbeing Committee

## Minute of Decision

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*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

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### Signature and Ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

Portfolio                      Revenue

On 28 August 2019, the Cabinet Social Wellbeing Committee:

- 1        **noted** that the Child Support Act 1991 authorises the Governor-General to give effect to reciprocal agreements with other jurisdictions relating to child support or domestic maintenance;
- 2        **noted** that the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention) will enable the recovery of child support and other forms of family maintenance from liable persons residing outside of New Zealand;
- 3        **approved** the text of the Convention, attached as Appendix A to the paper under SWC-19-SUB-0111;
- 4        **noted** that officials have finalised New Zealand's expected declarations and reservations in relation to the choices available in the Convention;
- 5        **approved** New Zealand's expected declarations and reservations attached to the extended National Interest Analysis at Appendix B to the paper under SWC-19-SUB-0111;
- 6        **authorised** the Minister of Revenue to approve any changes to the declarations and reservations that are needed in advance of ratification as a result of developments in other jurisdictions' positions;
- 7        **agreed** that New Zealand sign the Convention;
- 8        **noted** that an Instrument of Full Powers will need to be obtained from the Minister of Foreign Affairs to enable the Minister of Revenue to sign the Convention, and that the Ministry of Foreign Affairs and Trade will prepare this Instrument and arrange for its signature;
- 9        **noted** that, if Cabinet agrees that New Zealand should sign and ratify the Convention, the Ministry of Foreign Affairs and Trade will consult with Tokelau about whether the Convention should apply to that territory;
- 10       **approved** the extended National Interest Analysis attached to the paper under SWC-19-SUB-0111 as Appendix B;

- 11 **noted** the content of the extended National Interest Analysis may change as a result of developments in other jurisdictions' positions between now and Parliamentary treaty examination;
- 12 **noted** that the government will present any international treaty that is the subject of ratification to the House of Representatives for Parliamentary treaty examination, in accordance with Standing Order 397;
- 13 **agreed** that, following signature, the text of the Convention, New Zealand's notifications and reservations, and the extended National Interest Analysis, be presented in the House of Representatives for Parliamentary treaty examination, in accordance with Standing Order 397;
- 14 **noted** that the Convention will be incorporated into New Zealand domestic law through an Order in Council made pursuant to section 215 of the Child Support Act 1991;
- 15 **invited** the Minister of Revenue to instruct the Parliamentary Counsel Office to draft an Order in Council to give effect to the Convention following signature and completion of the Parliamentary treaty examination process;
- 16 **authorised** officials, following signature, completion of the Parliamentary treaty examination process, and promulgation of the Order in Council, to bring the Convention into force by depositing New Zealand's instrument of ratification and list of confirmed declarations and reservations with the Convention depositary.

Gerrard Carter  
Committee Secretary

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**Present:**

Rt Hon Jacinda Ardern  
Hon Grant Robertson  
Hon Dr Megan Woods  
Hon Andrew Little  
Hon Carmel Sepuloni (Chair)  
Hon David Parker  
Hon Jenny Salesa  
Hon Damien O'Connor  
Hon Willie Jackson  
Hon Aupito William Sio  
Hon Poto Williams  
Jan Logie, MP

**Hard-copy distribution:**

Minister of Revenue

**Officials present from:**

Office of the Prime Minister  
Office of the Chair  
Officials Committee for SWC