

Family Law (Bilateral Arrangements - Intercountry Adoption) Regulations 1998 No. 248

EXPLANATORY STATEMENT

Statutory Rules 1998 No. 248

Issued by the Authority of the Attorney-General

Family Law Act 1975

Family Law (Bilateral Arrangements - Intercountry Adoption) Regulations

Subsection 125(1) of the *Family Law Act 1975* (the Act) empowers the Governor-General to make Regulations prescribing all matters necessary to be prescribed for the purposes of the Act.

Sub-section 111C(3) of the Act provides that the Regulations may make such provision as is necessary to enable Australia to give effect to any bilateral agreement or arrangement on the adoption of children made between Australia, or a State or Territory of Australia, and a prescribed overseas jurisdiction. Sub-section 111C(4) of the Act provides that the Regulations made under sub-section 111C(3) may provide for the recognition of adoptions made under the law of a prescribed overseas jurisdiction and may provide that the regulations do not affect the operation of laws of a State or Territory that relate to adoptions.

The purpose of the Regulations is to provide that adoptions made under the laws of a prescribed overseas jurisdiction are recognised for the purpose of Australian law. The Regulations also provide that an adoption compliance certificate issued by a competent authority in a prescribed overseas jurisdiction is evidence that the adoption was carried out in accordance with the laws of that jurisdiction. The Regulations prescribe the People's Republic of China as a prescribed overseas jurisdiction.

Details of the Regulations are as follows:

Regulation 1 is formal.

Regulation 2 provides that the Regulations commence on the same date that item 4 in Schedule 1 of the Family Law Amendment Act (No. 1) 1998 commences. The Regulations are made pursuant to sub-sections 111C(3) and 111C(4) of the Family Law Act 1975 and those sub-sections were inserted in that Act by item 4 of Schedule 1 of the Family Law Amendment Act (No. 1) 1998. Regulation 2 ensures that the Regulations do not commence before the Family Law Amendment Act (No. 1) 1998 commences.

Regulation 3 defines the word Act in the Regulations to mean the Family Law Act 1975. Regulation 3 also defines the expression adoption compliance certificate for the purpose of Regulations 5 and 7. Regulation 3 defines the word child for the purposes of the Regulations as an individual who is under 18 years. Regulation 3 defines the expression competent authority for the purposes of Regulations 5 and 7. Regulation 3 defines the expression parental authority as having the same meaning as set out in section 61B of the Family Law Act 1975 which provides that in relation to a child parental responsibility means all the duties, powers, responsibilities and authority which by law parents have in relation to children. Regulation 3 defines prescribed overseas jurisdiction for the purpose of the Regulations as an overseas jurisdiction mentioned in Schedule 1 to the Regulations. Regulation 3 defines the word State in the Regulations to include a Territory, which is defined in section 111C(8) of the Family Law Act 1975 as including an external Territory.

Regulation 4 provides that the overseas jurisdictions mentioned in Schedule 1 to the Regulations are prescribed overseas jurisdictions for the purpose of the Regulations.

Regulation 5 provides that an adoption of a child granted in accordance with the laws of a prescribed overseas jurisdiction is recognised and effective for the purpose of Australian law.

Regulation 6 provides that the effect of recognition in Australian law of an adoption under the laws of a prescribed overseas jurisdiction is to establish the relationship of parent and child between the adoptive parents and the child, to confer parental responsibility on the adoptive parents, to terminate the relationship between the child and the child's birth parents and to confer on the child rights equivalent to the rights conferred by State laws on an adopted child.

Regulation 7 provides that an adoption compliance certificate issued by authorities in a prescribed overseas jurisdiction is evidence for the purpose of Australian law that the adoption was carried out in accordance with the laws of the prescribed overseas jurisdiction.

Sub-regulation 8(1) provides that the Regulations do not apply in a State which passes a law having the same or comparable effect as the Regulations. Sub-regulation 8(1) is made pursuant to sub-section 111C(4) of the Family Law Act 1975, which provides that the Regulations may provide that the Regulations do not affect the operation of laws of a State that relate to adoptions. Sub-regulation 8(1) ensures that, where a State chooses to pass its own legislation to give effect to a bilateral intercountry adoption agreement or arrangement, there will be no conflict between the State law and the Regulations. Sub-regulation 8(2) provides that nothing in the Regulations affects the jurisdiction of courts in adoption proceedings, court orders in adoption proceedings or the operation of State adoption laws.

Schedule 1 to the Regulations provides that, for the purpose of the Regulations, the People's Republic of China is a prescribed overseas jurisdiction.

The Minute recommends that regulations be made in the form proposed.

Authority: Section 125 of the *Family Law Act 1975*