

# **Family Law (Hague Convention on Intercountry Adoption) Amendment Regulations 1999 (No. 1) 1999 No. 283**

## EXPLANATORY STATEMENT

Statutory Rules 1999 No. 283

Issued by the Authority of the Attorney-General

Family Law Act 1975

Family Law (Hague Convention on Intercountry Adoption) Amendment Regulations 1999 (No. 1)

Section 125 of the Family Law Act 1975 (the Act) provides that the Governor-General may make regulations that are necessary or convenient for carrying out or giving effect to the Act.

Section 111C of the Act provides for the making of regulations prescribing all matters necessary for the purposes of giving effect to international arrangements in respect of intercountry adoptions under the Act.

Sub-section 111C(1) of the Act provides that the Regulations may make such provision as is necessary to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (the Convention). Sub-section 111C(5) of the Act provides that the regulations may confer jurisdiction on federal or Territory courts or invest a State Court with federal jurisdiction.

The purpose of the Regulations is to give effect to the Convention by making interim provision to enable the Family Court to exercise jurisdiction under the Adoption Regulations and by setting out procedures for making applications to the court in relation to Convention adoptions. Having regard to the references to applications (in regulations 14(2), 15(2), 20(2) and 22(2)) and orders (in regulations 14(2), 15(2), 20(2) and 22(2)) it is necessary for the regulations to prescribe appropriate forms. These measures are necessary as the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 invested certain State and Territory courts with jurisdiction under the Regulations. The States and Territories have advised that their courts did not have rules in place to implement the jurisdictional requirements of the Adoption Convention at the commencement date of the Regulations on 1 December 1998. An amendment is required to confer on the Family Court of Australia jurisdiction to make adoption orders under Part 4 of the Regulations. This power lapses in each State or Territory as that State or Territory puts in place its own legislation for the making of adoption orders. The amendment also sets out a limited process for appeals from a decision of the Family Court of Australia made under Part 4 of the Regulations.

Further, amendments have been made to Regulation 34(1) to replace the references to Regulations "5, 6 and 7 with references to Regulations "5, 6, 7, 8, 9, 12 and 13".

The Regulations have also been amended to add various countries to the list of Convention countries in Schedule 2 of the Regulations.

Details of the Regulations are as follows:

Regulation 1 is formal naming of the Regulations

Regulation 2 provides for commencement of the Regulations upon gazettal.

Amendment 1 makes a formal amendment to the heading of Regulation 3 from "Definitions" to "Interpretation".

Amendment 2 corrects a drafting error in the opening of Regulation 3.

Amendment 3 inserts into Regulation 3 a new definition of working day to clarify the calculation of undertaking actions under the Regulations.

Amendment 4 inserts into Regulation 3 a new subregulation 3(2) indicating the inclusion of a new Schedule 3 containing a number of forms to be used for concluding adoption arrangements under the Convention.

Amendment 5 inserts a new regulation 3A which specifies the form of headings to be used on all forms contained in Schedule 3.

Amendment 6 makes additions to Schedule 2 of the list of Convention countries operating under the Regulations.

Amendment 7 inserts Regulations 14(2)(2A), (2B), (2C), (2D) and (2E) which provide for the procedure to make an application with respect to the adoption of an Australian child into a Convention country. Subregulation (2F) provides for an order to be made.

Amendment 8 inserts Regulations 15(2)(2A), (2B), (2C) and (2D) which provide for the procedure to make an application in respect of an adoption in Australia of a child from a Convention country. Subregulation (2E) provides for an order to be made.

Amendment 9 inserts Regulations 20(2)(2A), (2B), (2C), (2D) and (2E) which provide for the procedure to make an application for an order terminating the legal relationship between the child and the child's birth parents. Subregulation (2F) provides for an order to be made terminating the legal relationship between the child and parents.

Amendment 10 inserts Regulations 22(2)(2A), (2B), (2C) and (2D) which provide for the procedure in order for the State Central Authority to make an application to the court for a declaration that it is contrary to public policy to recognise a decision by authorities in another Convention country. Subregulation (2E) provides for an order to be made.

Amendment 11 inserts Regulations 24A, 24B, 24C, 24D, 24E and 24F. The amendment is required to confer on the Family Court of Australia jurisdiction to make adoption orders under Part 4 of the Regulations. This power lapses in each State or Territory as that State or Territory puts in place its own legislation for the making of adoption orders. The amendment also sets out a limited process for appeals from a decision of the Family Court of Australia made under Part 4 of the Regulations.

Amendment 12 substitutes in Regulation 34(1) reference to Regulations "5, 6 and 7 with a reference to Regulations "5, 6, 7, 8, 9, 12 and 13". This amendment is necessary as certain States have indicated that, while they will be passing their own intercountry adoption laws, they will not include provisions relating to appointment of State Central Authorities or accreditation of bodies. It will be necessary for the provisions of regulations 8, 9, 12 and 13 to apply to these States.

Amendment 13 substitutes Schedule 2 listing the Convention countries with which Australia has relationships as a consequence of ratification of the Hague Convention. In addition, it includes a further column specifying the date upon which the Convention operated between Australia and each other convention country. It also adds to the previous list of convention countries France, the Netherlands, Colombia, Israel, Burundi, Mauritius, El Salvador, New Zealand, Brazil, Georgia, Austria and Chile.

Amendment 14 inserts Schedule 3 providing a number of Forms for the purposes of implementation of the Convention.

Form 1 is the heading to be used on all other Forms.

Form 2 provides for the affidavit form for the purposes of subregulations 14(2A) (b), 14(2D) (b), 14(2E) (b), 15 (2A) (b), 15 (2C) (b), 15 (2D) (b), 20 (2A) (b), 20 (2D) (b), 20(2E) (b), 22 (2A) (b), 22(2C) (b) and 22(2D) (b) of the regulations.

Form 3 provides for the application form for an order under subregulations 14(2A) (a), 15 (2A) (a), 20 (2A) (a) and 22(2A)(a).

Form 4 provides for a notice of application for an order under subregulations 14(2C), 20(2C) and 22(2B).

Form 5 provides a form for the response to an application for an order under Regulation 14, 15, 20 and 22.

Form 6 provides a form for the reply to the response to an application under regulation 14, 15, 20 and 22.

Form 7 provides for an adoption order under subregulation 14 (H) for the adoption of an Australian child into a Convention country.

Form 8 provides for an adoption order under subregulation 15 (2E) for the adoption in Australia of a child from a Convention country.

Form 9 provides for an order under subregulation 20(2F) terminating the legal relationship between child and parents.

Form 10 provides under subregulation 22 (2E) for a declaration that the adoption or decision is not recognised.