

# **Family Law (Hague Convention on Intercountry Adoption) Amendment Regulations 2003 (No. 1) 2003 No. 341**

## **EXPLANATORY STATEMENT**

Statutory Rules 2003 No. 341

*Issued by the authority of the Attorney-General*

*Family Law Act 1975*

*Family Law (Hague Convention on Intercountry Adoption) Amendment Regulations 2003 (No. 1)*

Section 125 of the *Family Law Act 1975* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 111C (1) of the Act provides that the regulations may make such provision as is necessary or convenient to enable the performance of the obligations of Australia, or to obtain for Australia any advantage or benefit, under the *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* (the Convention), which entered into force for Australia on 1 December 1998.

Regulation 4 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (the Adoption Regulations) provides that a Convention country is either a country mentioned in Schedule 2 to the Adoption Regulations, on and from the date mentioned in relation to that country (paragraph 4(a)), or any other country for which the Convention has entered into force (other than Australia and a country against whose accession Australia has raised an objection) (paragraph 4(b)).

The purpose of the Regulations is to add Albania, Bolivia, Bulgaria, Estonia, Germany, Latvia, Luxembourg, the Slovak Republic, Slovenia, Switzerland, the United Kingdom, the Isle of Man and the Canadian province of Nunavut to the list of Convention countries in Schedule 2 to the Adoption Regulations.

- Where the Canadian federal government enters into a treaty on a subject that is within the legislative power of the provinces, the treaty is extended to each province when its implementing measures are in place. Since not all Canadian provinces have measures in place to implement the Convention, it is necessary to list only those provinces to which the Convention may apply in the list of Convention countries in Schedule 2 to the Adoption Regulations.
- The United Kingdom has responsibility for the international relations of the territory of the Isle of Man and has extended the operation of the Convention to that territory.

The Regulations also specify the date on which the Convention entered into force between Australia and the countries to be added.

All the countries added to Schedule 2 have ratified the Convention, except Estonia which has acceded to the Convention. Article 44, paragraph 3 of the Convention provides that an accession has effect only between an acceding State and those Contracting States that have not raised an objection to the accession in the six months after receipt of the notification of accession. Article 46, paragraph 2(a), provides that the Convention enters into force for countries on the first day

of the month following the expiration of three months after the deposit of their instruments of ratification or accession. Estonia deposited instruments of accession in accordance with Article 44 of the Convention on 22 February 2002. Therefore, the Convention entered into force for Estonia on 1 June 2002. As the Commonwealth and the States and Territories did not object to the accession of Estonia, the Convention has had effect as regards the relations between Australia and Estonia since 1 June 2002.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations commenced on gazettal. However, for the purposes of the Act and the Adoption Regulations, Australia's relations with each country to be listed have been effective since the date on which the Convention entered into force for each of those countries, by virtue of paragraph 4(b) of the Adoption Regulations.