

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 7, 2014**

Issued by the authority of the Attorney-General

*Family Law Act 1975*

*Family Law (Bilateral Arrangements—Intercountry Adoption) Amendment  
(2014 Measures No. 1) Regulation 2014*

Subsection 125(1) 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 the Act requires or permits to be prescribed or are necessary or convenient to be prescribed for carrying out and giving effect to the Act. Subsection 111C(3) of the Act permits regulations to be made to make provision as is necessary or convenient to give effect to any bilateral agreement or arrangement on the adoption of children made between Australia, or an Australian state or territory, and a prescribed overseas jurisdiction.

The purpose of the Regulation is to amend the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998* (the Principal Regulations) to provide that children adopted through Australia's intercountry adoption programs with Taiwan, the Republic of Korea (South Korea) and the Federal Democratic Republic of Ethiopia (Ethiopia) are recognised for the purpose of Australian law. The Regulation achieves this by listing Taiwan, South Korea and Ethiopia as prescribed overseas jurisdictions in Schedule 1 of the Principal Regulations.

The Regulation amends the Principal Regulations to remove the People's Republic of China (the PRC) as a prescribed overseas jurisdiction. In January 2006, the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (the Hague Convention) entered into force in the PRC. Since that time, the China-Australia Intercountry Adoption Program has operated under the Hague Convention, rather than a bilateral arrangement.

The Regulation inserts Taiwan, South Korea and Ethiopia as prescribed overseas jurisdictions, reflecting Australia's bilateral intercountry adoption arrangements with these countries. Listing Taiwan, South Korea and Ethiopia as prescribed overseas jurisdictions allows for the automatic recognition, under Commonwealth, state and territory laws, of adoptions from these countries, provided certain criteria outlined in the Principal Regulation are met. Automatic recognition removes the need for adoptions to be finalised through the Australian court system.

Although the Ethiopia-Australia Intercountry Adoption Program was closed in June 2012, over 600 Ethiopian-born children have been adopted by Australians through the program. Those families who have not yet finalised their Ethiopian intercountry adoptions will benefit from the Principal Regulations' automatic recognition provisions.

While South Korea became a signatory to the Hague Convention on 24 May 2013, adoptions from South Korea will continue to be facilitated under the existing bilateral arrangements until the Hague Convention enters into force in South Korea. It is therefore appropriate that South Korea be prescribed for the interim period, whilst it progresses towards ratification of, or accession to, the Hague Convention.

The Regulation amends the definition of ‘adoption compliance certificate’, by removing the requirement that the document being used as an ‘adoption compliance certificate’ state that the competent authority, of the State where the person adopting the child habitually resides, agreed to the adoption. The final adoption orders issued by Taiwanese, South Korean and Ethiopian courts, which will be utilised as ‘adoption compliance certificates’, do not meet this limb of the definition. As such, this amendment is necessary to ensure that adoptions from the prescribed overseas jurisdictions, Taiwan, South Korea and Ethiopia, receive the benefit of automatic recognition.

The Regulation adds two new requirements to the criteria that an adoption from a prescribed overseas jurisdiction must meet in order to receive the benefit of automatic recognition under the Principal Regulations. Under the first new requirement, the competent authority of the State in which the person adopting the child habitually resides must have agreed that the adoption may proceed. This amendment is necessary to ensure that adoptions by expatriate Australians in prescribed overseas jurisdictions continue to be excluded from automatic recognition, because there is no oversight of these adoption processes by the Commonwealth, state and territory governments. Expatriate Australians continue to need to satisfy Australian immigration requirements to bring a child they have adopted in a prescribed overseas jurisdiction to Australia.

Under the second new requirement, the adoption must have the effect of ending the legal relationship between the child and each individual who was, immediately before the adoption, the child’s parent. This requirement ensures that adoptions from Taiwan, South Korea and Ethiopia will only be recognised where a full adoption order, which severs the existing and creates a new child-parent legal relationship, has been issued. South Korea has recently amended its adoption legislation, to provide for full adoption orders for future adoptions of South Korean children by Australian families. Australian families who have adopted South Korean children under a guardianship order issued by the South Korean court will continue to finalise their adoptions through the Australian court system.

The Attorney-General’s Department consulted with the state and territory central authorities responsible for the delivery of intercountry adoption in Australia.

The Office of Best Practice Regulation was consulted about the Regulation and advised that a Regulatory Impact Statement is not necessary, as the amendments were likely to have no or low regulatory impacts on business and individuals or on the economy.

The Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation will commence on the day after it is registered.

Authority: Subsection 125(1) of the *Family Law Act 1975*.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Family Law (Bilateral Arrangements—Intercountry Adoption) Amendment (2014 Measures No. 1) Regulation 2014**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Regulation**

The Regulation will amend the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998* (the Principal Regulations) by listing Taiwan, the Republic of Korea (South Korea) and the Federal Democratic Republic of Ethiopia (Ethiopia) as a prescribed overseas jurisdiction in Schedule 1. Listing these jurisdictions will mean that children who have been or will be adopted through Australia's intercountry adoption programs with Taiwan, South Korea or Ethiopia will benefit from those provisions within the Principal Regulations providing for the automatic recognition in Australia of adoptions which take effect in prescribed overseas jurisdictions.

#### **Human rights implications**

The Regulation has a positive impact on those rights concerned with upholding the best interests of the child as the paramount consideration and the protection of the institution of family, as outlined in the *Convention on the Rights of Child* and the *International Covenant on Civil and Political Rights*.

The amendments do not limit any human rights, and do not establish any new offences or penalties.

#### **Conclusion**

This Regulation is compatible with human rights as it does not raise any human rights issues.

**Attorney-General Senator the Hon George Brandis QC**