EXPLANATORY STATEMENT

Select Legislative Instrument No. 93, 2014

Issued by the authority of the Attorney-General

Family Law Act 1975

Family Law (Bilateral Arrangements—Intercountry Adoption) Amendment (2014 Measures No. 2) 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 a 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 clarify its operation. The Regulation clarifies that adoptions of children 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 Commonwealth, state and territory laws whether the adoption took effect in the overseas jurisdiction before or after the overseas jurisdiction was prescribed. The Regulation also clarifies that adoptions that have been already recognised by an Australian court will not be recognised by the Principal Regulations, as the adoption is already recognised and given effect under Commonwealth, state and territory laws.

The Commonwealth Government has committed to delivering reform on intercountry adoption, including streamlining adoption processes. As a result of amendments to the Principal Regulations that commenced on 4 March 2014 (the Family Law (Bilateral Arrangements – Intercountry Adoption) Amendment (2014 Measures No.1) Regulation 2014), the intercountry adoptions of children from Taiwan, South Korea and Ethiopia are automatically recognised under Commonwealth, state and territory laws, removing the need for families to finalise their adoptions through a state or territory court. The Regulation amends subregulation 5(1) to clarify that the intercountry adoptions recognised include those that took place in an overseas jurisdiction prior to or after it was prescribed, where the adoption has not been already recognised by an Australian court. Recognition by an Australian court involves either: the court recognising the adoption order issued by the overseas country as valid; or the court issuing a state or territory adoption order, naming the same child/ren as in the adoption order issued by the overseas country.

The Regulation achieves this by: clarifying that adoptions recognised under the Principal Regulations include those that took place in an overseas jurisdiction before and after the overseas jurisdiction was prescribed, provided that all of the requirements outlined in subregulation 5(1) are met; and inserting a new requirement in subregulation 5(1), which requires that the adoption must not have been already recognised by an Australian court.

The Attorney-General's Department consulted with all state and territory central authorities responsible for the delivery of intercountry adoption services in Australia prior to the amendments to the Principal Regulations that commenced on 4 March 2014. Given that the purpose of the

Regulation is to clarify those amendments and the perceived need for clarification was raised by one jurisdiction, limited further consultation was undertaken with only that jurisdiction.

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. 2) 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 amends the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998* (the Principal Regulations) to clarify that intercountry adoptions taking place in an overseas jurisdiction prior to its being prescribed are automatically recognised where the adoption has not been already recognised by an Australian court.

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. It does not raise any human rights issues.

Attorney-General Senator the Hon George Brandis QC