

# **ADOPTION OF CHILDREN (HAGUE CONVENTION ON INTERCOUNTRY ADOPTION) AMENDMENT BILL 1998**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Title of the Bill**

*Adoption of Children (Hague Convention on Intercountry Adoption) Amendment Bill 1998.*

#### **Objectives of the Legislation**

The objective of this Bill is to effect the implementation within Queensland of the *Hague Convention on Protection and Cooperation in Respect of Intercountry Adoption* (the Convention).

Development of the Convention commenced in 1988 and was finalised in May 1993. The Convention is based on the principles set out in the *United Nations Convention on the Rights of the Child*; with a specific focus on securing the best interests of children adopted from one Convention country to another. Specifically, the Convention requires the inclusion into domestic law of basic standards and uniform procedures to regulate intercountry adoptions with the intention of eliminating the abduction of, traffic in, and sale of children. A total of 32 countries are now signatories to the Convention.

#### **Reasons for the Bill**

On 30 July 1997, the Australian Community Services Ministers' Conference recommended that Australia ratify the Convention. The Convention is to be ratified by the Commonwealth of Australia in the near future, and is expected to enter into force on 1 December 1998. Each State and Territory of Australia will implement the Convention, either through the

application of the over-arching *Family Law (Hague Convention on Intercountry Adoption) Regulation 1998 (Cth)*, or through the passage of their own legislation which is similar in effect.

Queensland (along with a number of other States) proposes to implement the Convention through the enactment of State-based legislation.

This Bill will therefore implement the Convention within Queensland through amendment of the *Adoption of Children Act 1964*, ensuring that features of the adoption process which are unique to Queensland can continue. Essentially, relevant adoption orders will continue to be made by the Chief executive of the Department of Families, Youth and Community Care rather than in a Court as would be the case if the Commonwealth regulations came into effect in Queensland.

The Bill also corrects some references to the definition of terms used in the *Adoption of Children Act 1964*, and makes some other machinery changes such as to the bringing of evidence and the omission of outdated and redundant provisions.

### **Estimated Cost for Government Implementation**

No additional costs are envisaged.

### **Consultation**

Extensive and lengthy consultation has occurred across Australia and within Queensland regarding the implementation of the Convention.

The matter has also been discussed in depth at Ministerial Council level and with adoption interest groups.

The specific legislation proposals contained in the Bill have been formulated in consultation with the Commonwealth Attorney-General's Department to ensure that it substantially "mirrors" the Commonwealth regulations; and with Crown Law, the Department of Premier and Cabinet, and the Office of Queensland Parliamentary Counsel.

### **Consistency with Fundamental Legislative Principles**

This Bill is consistent with Fundamental Legislative Principles as outlined in section 4 of the *Legislative Standards Act 1992*.

## NOTES ON CLAUSES

### **Short title**

*Clause 1* sets out the short title of the Act.

### **Commencement**

*Clause 2* provides for commencement of the provisions of the Act on a date to be proclaimed.

### **Act amended**

*Clause 3* states that the Act amends the *Adoption of Children Act 1964* (the Principal Act).

### **Omission of s 4 (Severability)**

*Clause 4* removes a redundant section 4 from the Principal Act.

### **Relocation and renumbering of s 5 (Savings)**

*Clause 5* renumbers this section 5 of the Principal Act as section 68 and relocates it.

### **Amendment of s 6 (Interpretation)**

*Clause 6(1)* removes the heading “Interpretation” from the Principal Act and replaces it with the heading “Definitions”.

*Clause 6(2)* omits the definitions of “department”, “director” and “Minister”, reflecting current drafting practice.

*Clause 6(3)* includes definitions for “adoption compliance certificate”, “central authority”, “Commonwealth central authority”, “Commonwealth regulation”, “country”, “convention country”, “non-convention country” and “Hague Convention”.

*Clause 6(4) and 6(5)* update a citation within the definition of “registrar of the Supreme Court”.

*Clause 6(6)* amends the meaning of the term “the repealed Acts”.

### **Insertion of new s 6A**

*Clause 7* inserts a new section 6A which provides that, for the purposes of the Principal Act, a Convention country is one which is either prescribed by Regulation, or another country for which the Convention has entered into force.

Thus, countries within which the Convention is in force will be automatically defined as Convention countries for the purposes of the Principal Act, ensuring that there is no “time lag” between a new country ratifying the Convention and the time it takes to make a regulation specifically listing the country. The same approach has been adopted by the Commonwealth within its template regulations and Queensland is therefore required to adopt this approach to ensure consistency.

### **Amendment of s 7 (Adoption by order of Director)**

*Clause 8* removes redundant subsections 7(3) to 7(6) from the Principal Act.

### **Amendment of s 7A (Nexus with Queensland)**

*Clause 9* inserts subsection 7A(1A) to ensure that the requirement within subsection 7A(1) that adopters be resident or domiciled in Queensland in order for the chief executive to make an adoption order does not apply to adopters resident in another Convention country who are adopting a child from Queensland.

### **Amendment of s 13A (Applications)**

*Clause 10* removes a redundant subsection 13A(5) from the Principal Act.

### **Amendment of s 13B (Director’s assessments)**

*Clause 11* removes a redundant subsection 13B(9) from the Principal Act.

### **Amendment of s 17 (Keeping of lists)**

*Clause 12* removes a redundant subsection 17(4) from the Principal Act.

### **Insertion of new pt 3, div 2A**

*Clause 13* adds a new division 2A into part 3 of the Principal Act dealing with all matters relating to intercountry adoption processes under the Convention.

Section 18B reinforces the continued operation of other provisions within the Principal Act, particularly section 10, which specifies that the welfare and interests of the child are to be paramount in the course of making decisions under the Act.

Section 18C enables the chief executive to make an adoption order in relation to the adoption of a Queensland child by adopters who are "habitually resident" (have permanent resident status) in another Convention country, provided that the chief executive is satisfied that the arrangements for the adoption are in line with the Convention.

Section 18D enables the chief executive to make an adoption order in relation to a child habitually resident in a Convention country in favour of applicants who are habitually resident in Queensland provided that the chief executive is satisfied that the arrangements for the adoption are in line with the Convention.

### **Replacement of pt 4 hdg**

*Clause 14* amends the existing heading within the Principal Act to reflect the inclusion of the new provisions relating to the Convention.

### **Omission of s 36 (Definition)**

*Clause 15* omits the definition of "country" from this Part of the Act, as it will in future be defined under section 6 of the Principal Act.

### **Insertion of new s 37A**

*Clause 16* adds a new section 37A to the Principal Act concerning the

recognition of adoptions granted in Convention countries. It provides that such adoptions will be recognised as having the same effect as an adoption order made under the Principal Act, provided that an adoption compliance certificate is in force for the adoption, unless a declaration of non-recognition of the adoption has been issued.

The section also sets out the procedures concerning the application for and issue of such declarations by the Supreme Court, in circumstances where the Court is satisfied that the adoption is manifestly contrary to public policy, taking into account the child's interests.

### **Amendment of s 38 (Recognition of foreign adoptions)**

*Clause 17* amends section 38 of the Principal Act so that foreign countries will in future be known as either 'convention' or 'non-convention' countries for the purpose of intercountry adoptions.

### **Insertion of new pt 4, div 2**

*Clause 18* inserts a new Division concerning the issue of "simple adoptions", which are currently not dealt with within Queensland adoption law. Simple adoptions are common in some overseas countries (but not within Queensland) and refer to an adoption in which the legal relationship between the adopted child and the pre-adoption parent(s) is not ended.

This new Division will ensure the recognition within Queensland of simple adoptions granted in a Convention country in favour of Queensland applicants, as well as the conversion (either within a Convention country or Queensland) from a simple adoption to a full adoption.

The Division also provides that the Supreme Court may make a declaration of the non-recognition of a conversion from a simple adoption to a full adoption in a Convention country in circumstances where the Court is satisfied that the conversion is manifestly contrary to public policy, taking into account the child's interests.

### **Insertion of new pt 4, div 3 hdg**

*Clause 19* inserts a new heading to arrange the amended Part 4 in a clear and logical manner.

### **Amendment of s 39 (Declarations of validity of foreign adoptions)**

*Clause 20* modifies the existing section 38 concerning the recognition of foreign adoptions to now cover the recognition of adoptions granted in convention countries (s 37A) and non-convention countries (s 38).

### **Amendment of s 56 (Sending of memoranda of orders to other places)**

*Clause 21* amends section 56 by removing reference to “a country specified in a subsisting Order in Council made under section 38(3)”, consequential upon the omission of section 38(3) by clause 17 above.

### **Amendment of s 60 (Proof of adoptions)**

*Clause 22* amends section 60 to recognise the evidentiary value of a document purporting to be made under the new section 38AD, a certified copy of such an order, and an adoption compliance certificate.

### **Amendment of s 61 (Judicial notice of signatures)**

*Clause 23* amends section 61 to ensure that judicial notice is taken of the chief executive’s signature.

### **Amendment of s 65 (Regulations)**

*Clause 24* amends the heading to section 65 to reflect current drafting practice and amends the section to enable the Governor in Council to make regulations concerning countries which are convention countries for the purpose of the Principal Act.

### **Omission of s 66 (Publication of proclamations etc.)**

*Clause 25* removes a redundant section 66 from the Principal Act.

### **Insertion of new pt 7 and div 1, hdgs**

*Clause 26* establishes a new Part 7 Division 1 within the Principal Act which incorporates the savings provisions previously located in section 5.

**Insertion of new pt 7, div 2**

*Clause 27* establishes a new Part 7 Division 2 of the Principal Act and inserts section 69 which ensures the continued validity of adoptions made in foreign countries before the commencement of this Act.

**Insertion of new schedule**

*Clause 28* incorporates within the Principal Act the full text of the Convention.

## *Schedule*

This Schedule updates references to director within the Principal Act to chief executive, reflecting current drafting practice.