

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 96

Issued by the authority of the Attorney-General

Family Law Act 1975

*Family Law (Hague Convention on Intercountry Adoption) Amendment
Regulations 2006 (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 *Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* (the Convention), which was signed at The Hague in 1993 and entered into force for Australia on 1 December 1998.

The Convention establishes a system of cooperation amongst Convention countries to ensure that intercountry adoptions take place in the best interests of the child and with regard to the child's fundamental rights. A country which has ratified or acceded to the Convention secures the recognition in Convention countries of adoptions made in accordance with the Convention and ensures that those safeguards are respected, thereby preventing the abduction, the sale of, or the traffic of children.

The *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* (the Principal Regulations) give effect to the Convention in Australian law, including the recognition of adoption decisions made in other Convention countries. Regulation 4 of the Principal Regulations provides that a Convention country is either a country mentioned in Schedule 2 to those Regulations, on and from the date mentioned in relation to that country, or any other country for which the Convention has entered into force.

The purpose of the Regulations is to add 14 countries (Azerbaijan, Belarus, Belgium, China, Guatemala, Guinea, Hungary, India, Malta, Portugal, San Marino, South Africa, Thailand, and Uruguay) to the list of Convention countries specified in Schedule 2 to the Principal Regulations. The Regulations also specify the date on which the Convention entered into force between Australia and each of these countries.

Belarus, Belgium, China, Hungary, India, Portugal, Thailand, and Uruguay have all ratified the Convention. Azerbaijan, Guatemala, Guinea, Malta, San Marino and South Africa have deposited instruments of accession in accordance with Article 44 of 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. No objection was made by Australia to the accession of Azerbaijan, Guatemala, Guinea, Malta, San Marino and South Africa.

Article 46, subparagraph 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.

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

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

These Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

State and Territory Central Authorities are informed of Notifications so that any concerns can be considered in deciding whether to initiate the objection process.