

CHAPTER 1

Introduction

1.1 On 29 May 2014, the Prime Minister, the Hon Tony Abbott MP, introduced the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014 (the Bill) into the House of Representatives.¹ On 17 June 2014, pursuant to a report of the Selection of Bills Committee, the Senate referred the provisions of the Bill to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 26 August 2014.²

Conduct of the inquiry

1.2 In accordance with usual practice the committee wrote to a number of individuals and organisations, inviting submissions by 18 July 2014. Details of the inquiry were also made available on the committee's website (www.aph.gov.au/senate_legalcon).

1.3 The committee received ten submissions, which are listed at Appendix 1. The committee thanks those individuals and organisations who made submissions to the inquiry. The committee held a public hearing on 28 July 2014, in Sydney. The witnesses who appeared at the hearing are listed at Appendix 2.

Background to the Bill

1.4 In December 2013 the Prime Minister announced that the government would reform Australia's processes for intercountry adoption, in cooperation with the states and territories. An interdepartmental committee was convened to undertake consultations and report to the government by March 2014, 'including on the immediate steps that could be taken to make inter-country adoption easier and faster for Australian couples'.³

1.5 The interdepartmental committee submitted its report to the government in April 2014. The report recommended, *inter alia*, that the government:

introduce amendments to the *Australian Citizenship Act 2007*...to enable children from non-Hague [Convention] countries that issue final adoption orders, with which Australia has a bilateral arrangement, to obtain Australian citizenship in their country of origin where one or both of the adoptive parents is an Australian citizen.⁴

1 House of Representatives, *Votes and Proceedings*, No.41, 29 May 2014, p. 513.

2 *Journals of the Senate*, No 31, 17 June 2014, pp 888-889.

3 The Hon Tony Abbott MP, Prime Minister, 'Making Overseas Adoption Easier for Australian Families', Media Release, 19 December 2013.

4 Department of the Prime Minister and Cabinet, *Report of the Interdepartmental Committee on Intercountry Adoption*, April 2014, Recommendation 2, p. viii.

1.6 On 5 May 2014, the Prime Minister announced that the Council of Australian Governments (COAG) had agreed to a new national system for intercountry adoption, to be put in place by early 2015. This would include amendments to the Australian Citizenship Act to allow adoptees to obtain Australian citizenship in their country of origin.⁵

Purpose of the Bill

1.7 The Bill seeks to amend the *Australian Citizenship Act 2007* (the Act) with respect to the acquisition of Australian citizenship by a person adopted outside Australia by an Australian citizen under a bilateral arrangement between Australia and another country.

1.8 According to the Explanatory Memorandum, the amendments would provide persons adopted in a country with which Australia has a bilateral adoption arrangement with the same citizenship entitlement as persons adopted in a country which is a party to the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (the Hague Convention).⁶ The Hague Convention process, as implemented into Australian law, provides for the immediate grant of citizenship following the completion of the adoption in the foreign country.⁷

1.9 In his second reading speech on the Bill, the Prime Minister said that:

At present, children adopted under bilateral arrangements require a passport from the home country and an adoption visa to travel to Australia. This imposes additional complexity and cost on the adopting families. Under the amendments to be made by this bill, children will be able to be granted citizenship as soon as the adoption is finalised. They will then be able to travel to Australia on an Australian passport, with their new families, as Australian citizens.

This bill will place children adopted by Australian citizens under bilateral arrangements in the same position as children adopted by Australian citizens under Hague Convention arrangements. The overarching requirement from Australia's perspective is that a potential partner country, first, is willing to participate in an intercountry adoption arrangement with Australia, and, secondly, will meet the standards and safeguards equivalent to those required under the Hague convention.

Where a non-convention country meets these standards, there is no reason why adoptions should not be recognised in the same way as adoptions in convention countries.⁸

5 The Hon Tony Abbott MP, Prime Minister, 'Reform and Action on Intercountry Adoption', Media Release, 5 May 2014.

6 The Hague, 29 May 1993. Entered into force for Australia 1 December 1998, [1998] ATS 21.

7 Explanatory Memorandum, p. 1.

8 The Hon Tony Abbott MP, Prime Minister, Second Reading Speech, *House of Representatives Hansard*, 29 May 2014, pp 1-2.

1.10 The bilateral arrangements to which the amendments would apply are specified in the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998*. Presently there are three such arrangements, with Ethiopia, the Republic of Korea and Taiwan, although Australia's adoption programme with Ethiopia has been closed since 2012.⁹

Key provisions of the Bill

1.11 As discussed above, the Bill seeks to amend the *Australian Citizenship Act 2007* (the Act). The Bill consists of three items and a schedule, Schedule 1. Schedule 1 of the Bill sets out the amendments to the Act.

1.12 The substantive provisions of the Act covering citizenship for persons adopted overseas are found in its Subdivision AA. Items 2 to 7 of the schedule amend the subdivision to extend the procedures for Australian citizenship currently applied to persons adopted under the provisions of the Hague Convention, to also cover persons adopted overseas in accordance with bilateral arrangements.

1.13 Item 4 of the schedule amends paragraph 19C(2)(a) of the Act to apply the citizenship criteria for adoptions in accordance with the Hague Convention equally to adoptions from a 'prescribed overseas jurisdiction'. A prescribed overseas jurisdiction is the term used in the *Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998* (the regulations) to refer to countries which are parties to bilateral arrangements with Australia. This means that the eligibility for citizenship set out in section 19C will apply to persons adopted under current bilateral arrangements, and under any bilateral arrangements entered into by Australia in the future.¹⁰

1.14 Item 5 of the schedule inserts reference to the regulations into paragraph 19C(2)(c) of the Act. This means that an adoption 'recognised and effective for the laws of the Commonwealth and each state and territory' under the regulations will now be eligible immediately for citizenship under Section 19C of the Act.

1.15 Under section 5 of the regulations, an adoption is recognised and effective for Commonwealth, state and territory laws once it takes effect in the relevant overseas jurisdiction, provided that:

- the adoption is of a child habitually resident in that jurisdiction;
- the adoption is by a resident of a state or territory of Australia;
- the competent authority of that state or territory has agreed to the adoption;

9 Attorney-General's Department, Information Sheet, *Closure of the Australia-Ethiopia Intercountry Adoption Program*, <http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/CountryPrograms/Documents/MICAB%20-%20Ethiopia%20-%20Information%20sheet%20for%20website%20on%20program%20clos.pdf>, accessed 14 July 2014.

10 Explanatory Memorandum, p. 4.

- an adoption compliance certificate has been issued by a competent authority of the overseas jurisdiction, and it states that the adoption was carried out in accordance with the laws of that jurisdiction; and
- the adoption effectively ends the legal relationship between the child and its previous parent/s.¹¹

1.16 Item 9 of the schedule provides that a person adopted in accordance with a bilateral arrangement may apply for citizenship under section 19C of the Act as soon as the amendments commence, regardless of whether the adoption was finalised before or after the commencement of the amendments.

11 Explanatory Memorandum, pp 4-5.