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The Parliament of the Commonwealth of Australia

Senate

IMMIGRATION (GUARDIANSHIP OF CHILDREN) AMENDMENT BILL 1993

Explanatory Memorandum

(Circulated by authority of the Minister for Immigration and Ethnic Affairs
Senator the Hon. Nick Bolkus)



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OUTLINE

This Bill amends the *Immigration (Guardianship of Children) Act 1946* to preclude the Minister of Immigration and Ethnic Affairs from assuming guardianship of non-citizen children who enter Australia for the purposes of being adopted under relevant State or Territory adoption legislation.

Currently the Minister for Immigration and Ethnic Affairs is the guardian of non-citizen children who enter Australia, are under the age of 18 years and who either:

- (i) intend becoming permanent residents and did not enter Australia in the charge of a parent or other relative, or for the purposes of living under the care of a parent or other relative over 21 years of age, or
- (ii) are subject of a direction under section 4AA of the *Immigration (Guardianship of Children) Act 1946* that the child is a ward of the Minister of Immigration and Ethnic Affairs.

State or Territory administrators will not be able to assume guardianship of a non-citizen child until States or Territories have been declared. The Bill reflects an understanding between Commonwealth, State and Territory Ministers in 1990 that States and Territories will enact complementary legislation to assume guardianship for those non-citizen children who cease to come under the guardianship of the Minister for Immigration and Ethnic Affairs under the *Immigration (Guardianship of Children) Act 1946*.

FINANCIAL IMPACT STATEMENT

The Bill will not impact upon the costs of administering the migration program.

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NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short Title

This clause provides that the Act may be cited as the *Immigration (Guardianship of Children) Amendment Act 1993*.

Clause 2 Principal Act

This clause provides that the term "Principal Act" refers to the *Immigration (Guardianship of Children) Act 1946*.

Clause 3 Definitions

This clause amends section 4 of the Principal Act, variously inserting, omitting and substituting a number of new definitions into section 4 of the Principal Act.

Subclause 3(a) omits the current definition of 'non-citizen child'. The new definition of 'non-citizen child' refers to newly inserted subsections 4AAA(1) and (4). Subsection 4AAA(1) provides that a non-citizen child is a child under the age of 18 years, who enters Australia as a non-citizen and intends, or is intended, to become a permanent resident of Australia. Subsection 4AAA(4) provides that a person under the age of 18 years against whom a direction under s4AA of the Principal Act is in force is a 'non-citizen child'.

Subclause 3(b) inserts 3 new definitions into the Principal Act as follows.

- . A definition of 'declared State or Territory' is inserted. This refers to a newly inserted section 4AAB which provides the Minister of Immigration and Ethnic Affairs with a discretion to declare a State or Territory to be a declared State or Territory for the purposes of the Principal Act.
- . A definition of 'intending adoptive parent' is inserted. An 'intending adoptive parent' is a person who intends to adopt a non-citizen child under the laws of a declared State or Territory, or intends to secure the recognition of an overseas adoption of a non-citizen child by the person under the laws of a declared State or Territory.
- . A definition of 'prescribed adoption class visa' is inserted. This refers to a class of visa under the *Migration Act 1958* that has been prescribed as such by Regulations made under s12 of the *Immigration (Guardianship of Children) Act 1946*.

Clause 4

Insertion of new sections

This clause inserts 2 new sections into the Principal Act.

New section 4AAA provides which children will be included in or excluded from the definition of 'non-citizen child'. This section contains 4 subsections.

Pursuant to subsection 4AAA(1), a child is a 'non-citizen child' if he or she is under 18 years of age, enters Australia as a non-citizen and intends, or is intended, to become a permanent resident of Australia. This subsection brings all non-citizen children who enter Australia within the potential guardianship of the Federal Minister.

A child who otherwise meets the requirements of subsection 4AAA(1) may be excluded from the definition of 'non-citizen child' under either of subsections 4AAA(2) or (3).

Subsection 4AAA(2) excludes from the Minister's guardianship a child who enters Australia in the charge of, or for the purposes of living in Australia under the care of, a parent, a relative who has turned 21 years of age, or an 'intending adoptive parent'. Paragraphs 4AAA(2)(a) and (b) exclude those children who have entered Australia with a parent or adult relative (usually as part of their family unit). Paragraph 4AAA(2)(c) covers those non-citizen children who enter Australia with an 'intending adoptive parent'. That is, a person who will either adopt the child or secure recognition of an overseas adoption under the laws of a declared State or Territory. This paragraph focuses on the specific intention of the 'intending adoptive parent' to adopt or seek recognition of an overseas adoption.

Under subsection 4AAA(3), a child falls outside the definition of 'non-citizen child' where that child enters Australia in the charge of, or for the purposes of living in Australia under the care of, an adult over 21 years of age, is the holder of a prescribed adoption class visa that is in force, and the adult intends to reside with the child in a declared State or Territory. This subsection is designed to be administratively easier to use than paragraph 4AAA(2)(c). Whereas that paragraph focuses on an intention to adopt or secure recognition of an overseas adoption under the laws of a declared State or Territory, subsection 4AAA(3) operates on the basis of documentary evidence. That is, the non-citizen child is the holder of a prescribed adoption class visa. It is intended most non-citizen children who enter Australia for the purposes of adoption (including recognition of an overseas adoption) will come under this subsection.

Subsection 4AAA(4) provides that a child is a 'non-citizen child' if he or she is under 18 years of age and is the subject of a direction under section 4AA of the Principal Act that is in force. Under section 4AA of the Principal Act, the Minister for Immigration and Ethnic Affairs may direct in writing that a child under 18 years of age who enters Australia as a non-citizen in the charge of, or for the purpose of living in Australia under the care of, a relative over 21 years of age and intends, or is intended, to become a permanent resident of Australia shall be the Minister's ward.

New section 4AAB provides that the Minister may declare a State or Territory to be a declared State or Territory for the purposes of this Act.