

Adoption Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Dianne Farmer, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the Adoption Regulation 2020 (remade Regulation) made under the *Adoption Act 2009* (the Act).

In my opinion, the remade Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Adoption is a legal process that establishes a child's long-term care, wellbeing and development by creating a permanent parent-child relationship between the child and the adoptive parents. The Department of Child Safety, Youth and Women (DCSYW) administers the Act to arrange for the adoption of children in Queensland, including the adoption of children from overseas by Queensland adults.

The Adoption Regulation 2009 (the Regulation) was made under the Act on 11 December 2009 and commenced in February 2010. The Regulation includes provisions relating to requirements for expressing an interest in being assessed as a prospective adoptive parent; various requirements throughout the Act for persons to provide proof of identity documents; and fees.

Under Part 7 of the *Statutory Instruments Act 1992*, the Regulation is due to expire on 1 September 2020.

A sunset review of the Regulation has been undertaken to evaluate its continuing need for and performance. The outcome of the review was that the Regulation remains efficient and effective in its operation and no amendments should be made to the Regulation, with the exception of annual indexing of the adoption fees.

Remade Regulation:

The remade Regulation replicates the majority of provisions in the current regulation, making only minor and consequential amendments to provide for updated drafting style and practice and transitional and savings provisions.

The review has indicated that the current provisions in section 3, Parts 2 to 5 and Schedules 1 and 3 are still required and are effective in achieving their purposes within the Act. DCSYW considers there are no changes to the Regulation alone that would enhance the current operation of these provisions.

It is proposed that the provisions in section 3; Part 2 to Part 5 and Schedules 1 and 3 of the current Regulation be replicated in the remade Regulation.

Fees:

The delivery of high-quality adoption services attracts significant costs. Sections 71(3), 93(c), 112(1), 198(3) and 298(3) of the Act provide for the payment of fees at various stages of the adoption process, including application, assessment and supervision.

Adoption fees have increased annually since 2009. The Regulation will be remade to keep provisions regarded as necessary, with amendments to the fees in Schedule 2 to account for annual indexation.

The *Queensland Treasury Principles for Fees and Charges* requires agencies to have processes in place to ensure that fees maintain their value over time. The government indexation rate for fees and charges for 2020-21 is 1.8 per cent, to be applied from 1 July 2020.

The remade regulation also increases fees in Schedule 2 of the Regulation by applying the government indexation policy in the *Queensland Treasury Principles for Fees and Charges* to adoption fees.

The new adoption fees will commence on notification.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the HR Act that are relevant to the remade Regulation are:

- Privacy and reputation (section 25)
- Protection of families and children (section 26)

The nature and scope of these rights are considered below, followed by a description of how each right may be limited, restricted or interfered by the remade Regulation.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) The nature of the right

- Privacy and reputation (section 25)

The right to privacy and reputation protects a person from all interferences and attacks on their privacy, family, home, correspondence (written and verbal) and reputation. It protects privacy in the sense of personal information, data collection and correspondence, and extends to an individual's private life more generally. The nature of the right to privacy is very broad but contains internal limitations.

The protection against interference with privacy is limited to unlawful or arbitrary interference. 'Arbitrary' in the human rights context refers to conduct that is capricious, unpredictable or unjust and refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.

The adoption process consists of various stages, including expressions of interest to be assessed as a suitable adoptive parent and applications for step parent adoptions,

assessment, supervision and post-adoption services.

The right to privacy and reputation under the remade Regulation may be limited due to the requirements for parties to an adoption to provide specific proof of identity documentation at various stages of the adoption process, including when consenting to adoption of a child; when requesting information post-adoption; and when agreeing to participate in the mailbox service. Enabling these provisions in the remade Regulation ensures effective and efficient administration of the Act as it allows the Chief Executive to: identify parties to the adoption; consider evidence of a person's identity; ; and identify a person entitled to obtain information post adoption and participate in post-adoption services.

- Protection of families and children (section 26)

The protection of families and children entitles families to protection by both the State and society. It recognises that every child has the right, without discrimination, to the protection that is needed by the child. The right further recognises that children have the same rights as adults, but with additional protections according to their best interests and the fact that they are children. The International Convention on the Rights of the Child holds that, 'the best interests of the child' shall be a primary consideration in all actions concerning children'.

The remade Regulation provides amendments to the fees in Schedule 2 to account for annual indexation. Provisions enabling the increase of fees in Schedule 2 potentially limits the rights to the protection of families and children if people do not pursue adoption because they are unable to afford it. These amendments promote and guarantee institutional protection of families and adoptive children via the delivery of high-quality adoption services, which attract significant costs, and provides for the payment of fees at various stages of the adoption process, including application, assessment and supervision. The cost of providing adoption services is subsidised by the Queensland Government, as fees resulting in full cost recovery would be prohibitive. Imposing only minimal fees in comparison to the full cost of providing the service makes adoption services in Queensland accessible to a greater number of people.

(b) The nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting the right to privacy and reputation under the remade Regulation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom. The remade Regulation defines the prescribed identity documents enabling the requirement for parties to an adoption to provide particular proof of identity documentation.

This allows the Chief Executive, under the Act to ensure the identity of parents consenting to a child's adoption; adoptive parents; adopted people; people requesting information about an adoption and people seeking to participate in post-adoption services. Prescribing the required identification documents ensures that the parties to an adoption are correctly identified and that information about the adoption, which is generally highly sensitive and confidential, can only be accessed by the correct people.

The Act's objective is to provide for the adoption of children in Queensland, and for access to information about adoption and parties to adoptions in a way that promotes the wellbeing and best interests of adopted persons throughout their lives; supports efficient and

accountable practice in the delivery of adoption services; and complies with Australia's obligations under the Hague convention.

The provisions in the remade regulation facilitate effective and efficient administration of the Act and the protection of confidential, sensitive and private information about an adoption and the privacy of the people involved in that process. This ensures that information obtained as part of the suitability assessment (including obtaining and considering criminal and traffic history) can only be accessed by correctly identified people, and there is no unintentional disclosure of highly sensitive information. The correct identification of parties to the adoption also enables accurate record-keeping, assisting those seeking information about an adoption in the future to do so more efficiently and effectively.

These rights extend to more than non-interference and in turn, protect the right to protection of families and children under section 26 of the HR Act, and reduce the social costs associated with the adoption process for all parties to an adoption and to adopted people.

(c) The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy and reputation achieves the objective of the Act for the purpose of enabling the appropriate access to information. The limitation promotes the wellbeing and best interests of adopted persons and supports efficient and accountable practice in the delivery of adoption services.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available ways to achieve the purpose. Provisions enabling information sharing between prospective adoptive parents, birth parents, guardians or relatives of the adopted person and the department are appropriately limited to have the least restrictive impact on the right to privacy and reputation under the *Right to Information Act 2009* or the *Information Privacy Act 2009*.

(e) The balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, the importance of enabling the chief executive to appropriately manage applications to access information, which is facilitated by the current and remade Regulation, outweighs negative impacts on the right to privacy and reputation and in turn, promotes the right to protection of families and children.

(f) Any other relevant factors

Nil.

Conclusion

I consider that the remade Regulation is compatible with the *Human Rights Act 2019* because although it limits, restricts or interferes with human rights, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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