

Adoption (Fees) Amendment Regulation 2021

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, the Honourable Leanne Linard MP, Minister for Children and Youth Justice and Minister for Multicultural Affairs provide this human rights certificate with respect to the *Adoption (Fees) Amendment Regulation 2021* (the Amendment Regulation) made under the *Adoption Act 2009* (the Act).

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

Overview of the Subordinate Legislation

Adoption is a legal process that creates a permanent parent-child relationship between the child and the adoptive parents. The Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) 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 2020* (the Regulation) was made under the Act and commenced on 1 July 2020. The Regulation includes provisions relating to requirements for expressing an interest in being assessed as suitable to be an adoptive parent; requirements for persons to provide proof of identity documents; and 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. Schedule 2 of the Regulation sets fees and charges related to adoption services. 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 2021-22 is 1.7 per cent, to be applied from 1 July 2021.

The Amendment Regulation increases fees in Schedule 2 of the Regulation by applying the annual adjustment of fees for indexation. The new adoption fees will commence on 1 July 2021.

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 protected under the HR Act that are relevant to the Amendment Regulation are:

- Property rights (section 24 HR Act)

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

(a) The nature of the right

Property rights entitle all persons to have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. Section 24 of the HR Act should be interpreted liberally and beneficially to encompass economic interests in a broad sense, including money.

The Amendment Regulation adjusts the fees in Schedule 2 of the Regulation to account for annual indexation. The increase in fees may indirectly impact on people's ability to meet the costs of pursuing an adoption. Therefore, the right to property will be limited by the Amendment Regulation which increases the monetary value of a fee because it results in a deprivation of property in the form of money.

(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 delivery of high-quality adoption services attracts significant cost. Queensland's adoption framework seeks to promote and guarantee institutional protection of families and adoptive children by requiring a rigorous, staged process for adoption that includes application, assessment and supervision. The increase to fees based on the government indexation rate helps to meet the cost of delivering these adoption services.

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

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. Fees increased for indexation, such as the fee increase proposed, occur annually, are routine and are not arbitrarily applied. These increases in fees are intended to maintain the value of the fees over time relative to the anticipated increase in associated costs.

In this way the Amendment Regulation is rationally connected to the purpose of helping to meet the cost of delivering adoption services in Queensland.

(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. Annual adjustment of fees to account for indexation occurs across all government services.

(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

Charging minimal fees is necessary to ensure the Queensland Government continues to deliver high quality adoption services that serve the best interests of both prospective families and adoptive children. On balance, the need for a rigorous adoption process outweighs potential impacts on the limitation to the right to property.

(f) any other relevant factors

Nil.

Conclusion

I consider that the *Adoption (Fees) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because although it limits, restricts or interferes with human rights, the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The Honourable Leanne Linard MP
Minister for Children and Youth Justice and Minister for Multicultural Affairs

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