

Adoption (Fee Unit Conversion) Amendment Regulation 2022

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 (Fee Unit Conversion) Amendment Regulation 2022* (the Amendment Regulation) made under the *Adoption Act 2009* (the Act).

In my opinion, the *Adoption (Fee Unit Conversion) Amendment Regulation 2022*, 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 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.

On 2 June 2021, the *Acts Interpretation Act 1954* was amended to insert a new Part 12B, which introduced a fee unit model to streamline the annual process for indexation of regulatory fees. Part 12B provides that an Act may express a fee as a number of fee units and the monetary value of a fee unit is \$1, or another amount prescribed by regulation. Similar to the existing model of penalty units for offences in Queensland legislation, the fee unit model allows for all relevant fees and charges to be indexed annually through an amendment regulation to prescribe a new indexed value of a fee unit in line with the Government Indexation Rate.

From 1 July 2022, all fees that are required to be increased by the Government Indexation Rate (GIR) must be expressed as a number of fee units, rather than a dollar amount, in the relevant regulations to facilitate indexation of fees for the 2022-23 financial year.

The Amendment Regulation ensures that conversion of the fee units from dollar values commences as required by the *Queensland Treasury Principles for Fees and Charges* in Schedule 2 of the Regulation.

To ensure ongoing transparency, agencies are required to publish their schedule of fees in dollar amounts, in a way that ensures they are easily accessible by all members of the community.

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 converts dollar values to fee units in Schedule 2 of the Regulation to enable annual indexation. Any 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 enables the annual increase of 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. Any increase to fees based on the GIR 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. Fee increases by indexation (the GIR), 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 (Fee Unit Conversion) Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The Honourable Leanne Linard MP
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