

## Legal Affairs and Safety Committee

### Report No. 1, 57th Parliament

#### Subordinate legislation tabled on 14 July 2020

#### 1 Aim of this report

This report summarises the Legal Affairs and Safety Committee's findings following its examination of the subordinate legislation within its portfolio areas that was tabled on 14 July 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).<sup>1</sup>

In addition, the report notes any issues identified by the committee in its consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificate tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

The committee examined the subordinate legislation listed in the table below.

Subordinate legislation	Date tabled	Disallowance date*
Adoption Regulation 2020	14 July 2020	3 December 2020

\* The disallowance date is 14 sitting days after the tabling date. Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

#### 3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the *Adoption Regulation 2020* were identified. The committee considers that the explanatory notes tabled with the subordinate legislation comply with the requirements of s 24 of the LSA.

The committee considers that the regulation raises human rights issues as discussed below. The human rights certificate tabled with the regulation provides a sufficient level of information to facilitate understanding of it in relation to its compatibility with human rights.<sup>3</sup>

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<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

<sup>3</sup> *Human Rights Act 2019*, s 41.

### **3.1 Objective of the *Adoption Regulation 2020***

The objectives of the regulation are to:

- remake the *Adoption Regulation 2009*, which expired on 1 September 2020.<sup>4</sup> The 2009 regulation underwent a sunset review, and it was found that the regulation remains efficient and effective in its operation and no amendments should be made to the regulation, and
- increase fees in the regulation, in line with the government's indexation factor for 2020-21 of 1.8%.

The 2009 regulation underwent a sunset review. According to the explanatory notes, the outcome of the review was that there is an ongoing need for the regulation, it is operating effectively, and there are no necessary amendments required at this time. Accordingly, the remade regulation replicates the majority of provisions in the 2009 regulation making only minor and consequential amendments to provide for updated drafting style and practice, clarification and simplification.<sup>5</sup>

All the fee increases are within the 1.8% indexation amount.

### **3.2 Human rights considerations**

Section 8 of the HRA provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

### **3.3 Human rights issues in the regulation**

In the human rights certificate accompanying the amendment regulation, the Minister stated her opinion that the amendment regulation is compatible with:

- the human rights protected by the HRA, and
- the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The following issues are raised for the House's consideration.

#### **3.3.1 Privacy and reputation – section 25 of the HRA**

A person has the right not have their privacy unlawfully or arbitrarily interfered with.

The right to privacy and reputation may be limited due to the requirements for parties to an adoption to provide proof of identity documentation at various stages in the adoption process.

The Minister provided this justification:

*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*

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<sup>4</sup> By virtue of Part 7 of the *Statutory Instruments Act 1992*.

<sup>5</sup> Explanatory notes, p 1.

*accurate record-keeping, assisting those seeking information about an adoption in the future to do so more efficiently and effectively.*<sup>6</sup>

Committee comment

Given that the information obtained forms part of the suitability assessment, the committee is satisfied that the limit on human rights which arises from the request for personal information is reasonable and demonstrably justified.

**3.3.2 Protection of families and children – section 26 of the HRA**

The HRA recognises that families are the fundamental group unit of society and are entitled to be protected by society and the State. Every child has the right to the protection that is needed by the child. Children have the same rights as adults, but with additional protections according to their best interests.

The increase in fees could arguably be seen as preventing some persons from pursuing the adoption process, which would impact on the human rights of the prospective parents and children.

The Minister stated:

*... 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.*<sup>7</sup>

Committee comment

The committee is satisfied that any impacts on human rights of the increase in fees is reasonable and demonstrably justified.

**4 Recommendation**

The committee recommends that the House notes this report.



Mr Peter Russo MP

**Chair**

**November 2020**

**Legal Affairs and Safety Committee**

**Chair**

**Deputy Chair**

**Members**

Mr Peter Russo MP, Member for Toohey

Ms Laura Gerber MP, Member for Currumbin

Ms Sandy Bolton MP, Member for Noosa

Ms Jonty Bush MP, Member for Cooper

Mr Jason Hunt MP, Member for Caloundra

Mr Andrew Powell MP, Member for Glass House

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<sup>6</sup> Human rights certificate, p 4.

<sup>7</sup> Human rights certificate, p 3.