



Queensland

# **Adoption of Children Amendment Regulation (No. 1) 2007**

## **Regulatory Impact Statement for SL 2007 No. 257**

made under the

*Adoption of Children Act 1964*

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### **Title**

Adoption of Children Amendment Regulation (No. 1) 2007.

### **Introduction**

The proposed Adoption of Children Amendment Regulation (No. 1) 2007 is being developed as subordinate legislation under the Adoption of Children Act 1964. The regulation will increase some adoption fees and remove the fee for accessing identifying information about an adopted person or a birth parent.

Under the Statutory Instruments Act 1992, a regulatory impact statement (RIS) must be prepared before a regulation is made that is likely to impose appreciable costs on the community or part of the community. A RIS is designed to determine whether or not a proposed regulation is the most efficient and effective way of achieving desired policy objectives. It does this by ensuring the government's policy deliberations are clearly documented and subject to public scrutiny.

This RIS outlines the government's proposal to—

- increase the application and expression of interest fees for all adoption programs from \$53 to \$60

- increase the assessment fee for the Intercountry Adoption Program from \$2,000 to \$3,500
- introduce a post-placement supervision fee for the Intercountry Adoption Program of \$1,500
- increase the assessment fee for relative children's adoptions from \$146.30 to \$450
- remove the application fee of \$50 payable by a person seeking identifying information about an adopted person or a birth parent.

The fee changes are proposed to be introduced from 15 October 2007.

The purpose of this document is to explain the need for the proposed changes to adoption fees and to present an evaluation undertaken of the likely costs and benefits that would flow from its acceptance in comparison with other options explored.

All members of the community are invited to comment on the information presented in this RIS. After the public comment period closes, the government will consider issues raised by members of the community.

The closing date for providing comment on this RIS is Friday, 31 August 2007.

Submissions must be provided in writing to—

Adoption Fees RIS Project  
Strategic Policy and Research Branch  
Department of Child Safety  
GPO Box 806  
BRISBANE QLD 4000  
Facsimile: (07) 3224 2013  
Email: [legislation@childsafety.qld.gov.au](mailto:legislation@childsafety.qld.gov.au)

Submissions may be subject to the Freedom of Information Act 1992 and other laws, which should be taken into consideration when making submissions.

Further enquiries can be made by calling (07) 3836 0452.

## **Background**

Adoption is a legal process that establishes a permanent relationship between a child and their adoptive parents by transferring the legal rights

and responsibilities of parenthood from a child's birth parents to their adoptive parents. The Department of Child Safety is the sole agency with authority to arrange for the adoption of children in Queensland and for working with overseas adoption authorities with a view to the children from overseas being adopted by adults living in Queensland.

Adoption Services Queensland within the Department of Child Safety administers four adoption programs—

- the General Children's Adoption Program and the Special Needs Children's Adoption Program, which provide for the adoption of Queensland children whose parents choose adoption for their care or who otherwise require an adoptive placement
- the Relative Children's Adoption Program, which enables a child's step-parent or other relative to adopt the child where the welfare and interests of the child would be promoted by making an adoption order in favour of the person (there have been no instances in recent years where an adoption order has been made in favour of a child's relative, other than a step-parent)
- the Intercountry Adoption Program, which facilitates the adoption of children from overseas for whom an adoptive family cannot be found in their country of origin.

Adoption law focuses on the best interests of the child and is about securing a stable, close and permanent relationship between a child and their adoptive parents. That the services delivered by Adoption Services Queensland, in relation to the adoption application process, are necessary cannot be disputed.

Delivering quality adoption services incurs considerable costs. Most significant are the costs associated with assessing the suitability of a person or couple to be adoptive parents. This is a complex assessment which involves gathering and analysing information regarding a person's personal and family experiences, personal qualities and strengths, life skills and knowledge, and proven ability to respond to challenging life events in a positive way. This information provides evidence of whether a person or couple are likely to have the capacity and competence to meet the needs of a child requiring an adoptive placement.

Under the Relative Children's Adoption Program, Adoption Services Queensland has the further responsibility of making a decision about whether the welfare and best interests of a child can be best served by making an adoption order in favour of a relative or step-parent. This is also

a complex assessment as, in the case of a step-parent, it will result in the name of one of the child's birth parents being removed from the child's birth certificate, to be replaced by the name of the adopting step-parent and for the legal parental relationship to be severed between the child and the non-custodial parent.

Adoption Services Queensland engages suitably qualified Adoption Contract Workers to undertake an assessment of prospective adoptive parents' suitability and to prepare a report at the conclusion of the assessment. Adoption Contract Workers are required to arrange a series of at least five interviews with the applicants and their family over a three month period.

Adoption Services Queensland is also required to provide regular assessment reports about an adopted child's progress to the overseas authorities for children adopted through the Intercountry Adoption Program. Post-placement assessments are undertaken one month, four months, seven months and 10 months after placement by an Adoption Contract Worker engaged by the department.

Administrative costs are also significant and need to be met. The processing of an application file requires exacting work that must be accurate and thorough with the majority of processes being labour intensive.

Currently, all prospective adoptive parents pay a fee of \$53 when they lodge their expression of interest or application. The assessment fees payable differ depending on the type of adoption the person's suitability is being assessed for—

- \$487.30 for a local adoption
- \$2,000 for an intercountry adoption
- \$146.30 for a relative (step-parent) adoption.

The fees associated with adoptions have not been indexed in line with the Consumer Price Index (CPI) since 2002 and are not currently adequate to recover costs associated with processing adoption applications. During the 2005-06 financial year fee revenue represented 15.3 per cent of the actual costs to the department for delivering intercountry adoption services and 2.5 per cent of the actual cost to the department for delivering relative adoption services.

Adoption Services Queensland also provides post-adoption services to adopted children and adults and their families by providing them with

identifying information, to the extent allowed under the Adoption of Children Act 1964, and non-identifying information from the records held by the department.

Adopted persons over 18 years of age and birth parents who consented to the adoption of their child are entitled to receive identifying information about other people associated with the same adoption made under Queensland law (providing, for an adoption that happened before June 1991, the other party has not objected to its disclosure).

The identifying information given to an adopted person, if available from the department's records, includes their birth parents' names at the time of the adoption and dates of birth, and the names and dates of birth of any siblings who were also adopted. The identifying information given to birth parents includes the name of their child after adoption and the adoptive parents' names at the time of the adoption.

## **Stakeholders**

Key stakeholders who will be directly affected by the proposed changes to adoption fees are—

- people who intend to, or have, expressed an interest in being assessed as suitable to adopt a child from overseas
- people who intend to, or have, applied to adopt their step-child or a child who is related to them
- people who have been adopted in Queensland, or who are the birth parent of a child who was adopted in Queensland
- the Queensland Government, through the Department of Child Safety, which is responsible for administering Queensland's adoption legislation and programs and receives the revenue from the levying of adoption fees.

## **Authorising Law**

*Adoption of Children Act 1964.*

## **Policy Objectives**

The policy objectives of the proposed Adoption of Children Amendment Regulation (No. 1) 2007 are to—

- reduce the proportion of the costs of administering the Intercountry and Relative Adoption Programs that are met by the government
- ensure there is no charge for obtaining identifying adoption information, to be consistent with the Freedom of Information Act 1992 which does not charge a citizen for obtaining information relating to their own personal affairs from a government agency.

### **Legislative Intent**

The government's policy objectives will be met by amending the schedule of adoption fees in the Adoption of Children Regulation 1999 to—

- increase all expression of interest and application fees
- increase the intercountry and relative assessment fees
- introduce a post-placement supervision fee for intercountry adoption
- remove the application fee for obtaining identifying adoption information.

These changes will be made by the Adoption of Children Amendment Regulation (No. 1) 2007.

The proposed increases in adoption fees are reasonable and appropriate because they will reduce the extent to which adoption services provided to individuals are subsidised by the government, while maintaining the fees at an affordable level.

The proposal to remove the application fee for obtaining identifying information is also reasonable and appropriate because it is consistent with the government's position under the Freedom of Information Act 1992 to not charge a citizen for obtaining information relating to their own personal affairs held by a government agency. Information about the identity of a parent or child is fundamentally information about an individual's personal affairs.

### **Consistency with the Authorising Law**

The proposed regulation is consistent with achieving the overall objectives of the authorising legislation, the Adoption of Children Act 1964, as it will

provide Adoption Services Queensland with the necessary revenue to administer the Intercountry and Relative Adoption Programs while reducing the financial burden on the Queensland Government.

## **Consistency with other Legislation**

The proposed regulation is consistent with other legislation.

## **Options and Alternatives**

### **Intercountry and Relative Adoption Fees**

Consideration has been given to two options for achieving the desired policy objective of reducing the proportion of the costs of administering the Intercountry and Relative Adoption Programs that are met by the Queensland Government—

- Option 1—maintaining the existing fee structure and increasing existing fees in accordance with changes in CPI
- Option 2—increase the existing fees to a partial cost recovery level and introduce an additional fee for post-placement supervision for intercountry adoption.

Option 2 is the preferred option as it is the only option that will achieve any real reduction in the proportion of the costs of administering the Intercountry and Relative Adoption Programs that are met by the government. At the same time, this option will maintain the adoption fees at a level that is affordable and comparable with the fees charged in other Australian jurisdictions.

Option 1 has been eliminated as it will maintain the level of government subsidy at 85 per cent of the costs of administering the Intercountry Adoption Program and 97.5 per cent of the costs of the Relative Children's Adoption Program.

### **Application Fee for Identifying Information**

In relation to the application fee payable for identifying information, the only option that will achieve the policy objective of ensuring there is no charge for a person to receive identifying adoption information is to remove the existing fee.

This is the only option that has been considered, so the proposed Adoption of Children Amendment Regulation (No. 1) 2007 will remove the fee that adopted people and birth parents are currently required to pay when they apply for identifying information about their birth parents or adopted child, respectively.

Charging a fee for obtaining this information is not consistent with the government's position under the Freedom of Information Act 1992 in relation to personal affairs information. Under that Act, no application fee or processing or access charges are payable where a person seeks to obtain information from government agencies concerning their own personal affairs. Information about the identity of a person's parents or child is very clearly information concerning their own personal affairs.

The fee currently generates limited revenue and is not applied in all circumstances, as illustrated in the table below. The department has a discretion to waive the payment of this fee, in whole or in part, and exercises this discretion broadly.

	Total revenue	Applications received	Fees exempt, waived or refunded
2006–07	\$11,600	498	266 (53%)
2005–06	\$11,256	539	314 (58%)

### **Adoption fee—Summary of options**

The following table provides a comparison between the current fees and the proposed options.

Adoption Fees (All figures in \$AUD)	Current	Option 1 CPI Indexation	Option 2 Partial Cost Recovery
Special Needs Children's Adoption Program—			
(a) application fee	Nil	Nil	Nil
(b) assessment fee	Nil	Nil	Nil
Relative Children's Adoption Program—			
<b>(a) application fee</b>	<b>53.00</b>	<b>54.35</b>	<b>60.00</b>
<b>(b) assessment fee</b>	<b>146.30</b>	<b>149.95</b>	<b>450.00</b>
Intercountry Adoption Program—			
<b>(a) expression of interest fee</b>	<b>53.00</b>	<b>54.35</b>	<b>60.00</b>
<b>(b) assessment fee</b>	<b>2,000.00</b>	<b>2,050.00</b>	<b>3,500.00</b>

Adoption Fees (All figures in \$AUD)	Current	Option 1 CPI Indexation	Option 2 Partial Cost Recovery
<b>(c) post-placement supervision fee</b> Local Children's Adoption Program—	<b>Nil</b>	<b>Nil</b>	<b>1,500.00</b>
<b>(a) expression of interest fee</b>	<b>53.00</b>	<b>54.35</b>	<b>60.00</b>
(b) assessment fee	487.30	487.30	487.30
Application for identifying information—			
(a) for an applicant receiving a prescribed Commonwealth pension	Nil	Nil	Nil
<b>(b) for any other person</b>	<b>50.00</b>	<b>Nil</b>	<b>Nil</b>

## Cost Benefit Assessment

### Intercountry and Relative Adoption Fees

#### Option 1

Option 1 is consistent with the Queensland Government's policy of adjusting statutory fees annually in respect of fluctuations in CPI. This would result in the existing adoption fees being increased by 2.5 per cent in accordance with Queensland Treasury CPI projections for the 2007-08 State Budget. However, this option would not result in any real costs or benefits to the Department of Child Safety or to prospective adoptive parents.

Introducing this option would result in the government continuing to subsidise the delivery of adoption services at approximately 85 per cent for intercountry adoptions and 97.5 per cent for relative adoptions. The increased revenue that would result from CPI indexed fees would be offset by a corresponding increase in the costs associated with delivering adoption services.

The financial impact for prospective adoptive parents would increase marginally.

#### Option 2

##### Impact on the Queensland Government

The proposed fee increases represent a clear financial benefit to the Queensland Government. The increased fees are expected to generate additional revenue of \$201,800 in 2007-08, increasing to an additional \$493,000 in 2010-11. This additional revenue will equate to a reduction in the cost to the Queensland Government of administering adoption

programs. Fee revenue presently represents 15.3 per cent of the cost to the government of delivering intercountry adoption services and only 0.82 per cent of the cost to the government of delivering local, relative and post-adoption services. By 2010-11, the proportion of costs recovered through fee revenue will increase to 30 per cent for intercountry adoption services and 1.5 per cent for local, relative and post-adoption services.

The proposed fee increase is not expected to impact on the number of expressions of interest that will be received from people who are interested in adopting a child from overseas. As discussed below, the proposed increase is not significant when considering the overall cost of adopting a child from overseas and the existing requirement for prospective adoptive parents to demonstrate that they have the financial capacity and stability to parent an adopted child through to adulthood. This continuing level of interest will enable the Queensland Government to continue to meet its obligations to provide the profiles of an agreed number of prospective adoptive parents to overseas adoption authorities.

### **Impact on prospective adoptive parents**

Option 2 involves a direct financial cost to prospective adoptive parents. The total fees payable to Adoption Services Queensland under the Intercountry and Relative Adoption Programs will increase by approximately 250 per cent. For a completed intercountry adoption, this is an increase from \$2,053 to \$5,060 and for a completed relative adoption from \$199.30 to \$510.

While the proposed fees will increase the cost of an adoption, they are not expected to place an unreasonable financial burden on prospective adoptive parents. To be found to be suitable to adopt a child, applicants must show that they have the financial capacity and stability to parent an adopted child through to adulthood. In this context, the price rise is not significant.

The rise in intercountry adoption fees is also not significant when the overall costs involved in adopting a child from overseas are taken into account. This overall cost ranges from \$15,000 to \$40,000 depending on the child's country of origin and includes fees required by the overseas adoption authority, translation and notarisation of documents, legal costs in the overseas country and international travel and accommodation costs when taking custody of a child. The proposed fee increase represents only a 7.5 per cent to 20 per cent increase in the overall costs of an intercountry adoption.

Additional costs associated with a step-parent adoption, which are the only adoptions that have been made under the Relative Children's Adoption Program in recent years, also provide further context for the proposed increase in fees. All step-parents who are considering adopting a step child are encouraged to seek legal advice about whether or not they will make an application to the Family Court for 'leave to undertake adoption proceedings'. Unless leave is granted by the Family Court, the rights and responsibilities of the non-custodial birth parent are not extinguished by the making of an adoption order (which is a state legal matter). As such, step-parents generally incur the costs of obtaining legal advice and making an application to the Family Court.

If the increase in relative adoption fees does make the costs of a relative adoption prohibitive for some applicants, neither the child nor the step-parent should be disadvantaged legally or emotionally. Most step-families recognise that they do not need the adoption process to develop strong and caring relationships and they formalise family relationships without the use of adoption. Parents seeking to legally secure and include a child from a previous relationship into their new relationship can consider a range of alternatives, including changing the child's surname, seeking parenting orders through the Family Court and a step-parent making provision for a step-child in their will.

Option 2 clearly benefits prospective adoptive parents by not increasing the fees to the level that would be necessary to recover the full costs to the government of delivering adoption services. Full cost recovery for the Intercountry Adoption Program would see the fees set at \$10,850 per completed adoption, which would represent an increase of 528 per cent.

A further benefit to prospective adoptive parents is that they will not be disadvantaged in comparison to adoption applicants in other jurisdictions. The proposed Queensland fees are within the range of fees charged by the other Australian states and territories for both intercountry and relative adoption, as demonstrated by the following tables.

**Table 2: Intercountry Adoption Fees in Australia (as at March 2007)**

	QLD current	WA	TAS	ACT	QLD proposed	VIC	NT	SA	NSW
Expression of interest fee	53	nil	242	nil	60	104	1,000	623	nil
Information/Education fee	nil	720	40	264	nil	*	*	*	640
Application	nil	750	nil	1,250	nil	1,259	1,000	nil	nil
Assessment fee	2,000	986	986	2,119	3,500	2,783	2,300	3,114	4,260
Preparation of documents	nil	nil	605	nil	nil	1,365	1,300	2,076	nil

	QLD current	WA	TAS	ACT	QLD proposed	VIC	NT	SA	NSW
Placement supervision fee	nil	nil	605	860	1,500	1,050	1,000	2,699	4,800
Court fee	nil	nil	242	nil	nil	nil	nil	nil	nil
<b>Total fees per placement</b>	<b>\$2,053</b>	<b>\$2,456</b>	<b>\$2,460</b>	<b>\$4,493</b>	<b>\$5,060</b>	<b>\$6,561</b>	<b>\$6,600</b>	<b>\$8,512</b>	<b>\$9,700</b>

\* Some jurisdictions charge one fee to cover both education of prospective adoptive parents and the assessment process.

N.B. These fees have been calculated on each state's basic charge rate for a first intercountry adoption. Some states have set a different level of fees for a second or subsequent adoption.

**Table 3: Relative Adoption Fees in Australia (as at March 2007)**

	NSW	NT	VIC	QLD current	ACT	SA	TAS	QLD proposed	WA
Application/registration	nil	nil	78	53	nil	nil	242	60	nil
Assessment	nil	nil	nil	146.30	257	289	nil	450	650
Court-related costs	nil	nil	nil	nil	nil	nil	242	nil	nil
<b>Total fees per adoption</b>	<b>nil</b>	<b>nil</b>	<b>78</b>	<b>\$199.30</b>	<b>\$257</b>	<b>289</b>	<b>\$484</b>	<b>\$510</b>	<b>\$650</b>

## Application Fees for Identifying Information

### Impact on the Queensland Government

Removing the \$50 application fee for obtaining identifying adoption information will have a negligible financial impact on the Queensland Government. The revenue generated by the fee (\$11,256 in 2005-06 and \$11,600 in 2006-07) is less than 0.5 per cent of the Adoption Services Queensland budget. Further, the loss of revenue will be partially offset by savings in the administrative costs associated with receipting the fee and refunding the fee when the department is legislatively prevented from releasing information to an applicant.

Removing the fee is expected to be welcomed by the majority of the adoption community, generating a level of goodwill between the Queensland Government and the community.

The proposal will also achieve the policy objective of ensuring that access to adoption information is consistent with the government's position under the Freedom of Information Act 1992 in relation to personal affairs information. That is, that there is no cost to a person to access information about their own personal affairs that is held by a Queensland Government agency.

## **Impact on adopted people and birth parents**

It is expected that the proposal will have a negligible financial impact on adopted people and birth parents. Removing the fee will not represent a significant cost saving for applicants as the current fee is set at a reasonable level and is waived in all circumstances where it will cause financial hardship.

The clear benefit to adopted people and birth parents, while largely symbolic, is a recognition that they should be able to obtain information about them that is held by a Queensland Government department free of charge. For many adults who have been affected by adoption, their own birth identity or the identity of their adopted child could be the most significant information about them that is held by government.

## **Fundamental Legislative Principles**

The Adoption of Children Amendment Regulation (No. 1) 2007 is consistent with the fundamental legislative principles.

## **Conclusion**

Delivering quality adoption services incurs considerable costs. Increasing fee revenue in 2007-08 by more than CPI is the only option that will achieve any real reduction in the proportion of the costs of adoption services that are subsidised by the government. By 2010-11, the increase proposed in option 2 will increase the proportion of the costs of delivering adoption services that is recovered from fee revenue from 15.3 per cent to 30 per cent for intercountry adoptions and from 0.82 per cent to 1.5 per cent for local and relative adoptions and post-adoption services. At the same time, option 2 will maintain the adoption fees at a level that is affordable and comparable with the fees charged in other Australian jurisdictions.

The Adoption of Children Act 1964 provides adopted adults and their birth parents a right of access to identifying information (providing, for an adoption that happened before June 1991, the other party has not objected to its disclosure). Removing the application fee payable for this information acknowledges that, for many adults who have been affected by adoption, their own birth identity or the identity of their adopted child could be the most significant information about them that is held by government and it should be available to them free of charge. The proposal

will achieve the policy objective of ensuring that access to adoption information is consistent with the government's position under the Freedom of Information Act 1992 in relation to personal affairs information with only a negligible financial impact on the Queensland Government.

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#### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Child Safety.