

Australian Capital Territory

# Adoption (Fees) Determination 2022 (No 1)

Disallowable instrument DI2022-257

made under the

**Adoption Act 1993, section 118 (Determination of Fees)**

## EXPLANATORY STATEMENT

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The *Adoptions Act 1993* (the Act) commenced operation on 1 July 1993. The Act provides the legal framework for adoptions in the ACT.

Section 118 of the Act provides for fees to be determined in respect of these services. Fees are charged in respect of Intercountry Adoption as this program is not viewed as a service to children of the ACT community. Fees assist in part reimbursement of the infrastructure necessary to maintain an overseas adoption program.

*"Known" child adoptions* are of children born or permanently residing in Australia who have a pre-existing relationship with the adoptive parent(s), such as step-parents, other relatives and carers.

Fees are charged for step-parent adoption as these services are viewed as non-essential as a range of alternative options are available to these children through Family Law provisions.

Fees are not charged for known adoptions when the child or young person is in out of home care.

There are five different Adoption fees:

**Intercountry Adoption** – this type of adoption is for families residing in the ACT wishing to adopt a child or children born overseas. Intercountry adoption attracts four fees for components at four different stages of the adoptions process:

- Two-day education seminar
- Intercountry adoption application
- Intercountry adoption private assessor
- Intercountry adoption post placement reports

**Step-Parent or known Adoption** – this type of adoption is for families residing in the ACT wishing to adopt a relative or known child. Step-parent or known adoption attracts only one fee:

- Step-parent / known adoption application and assessment

Under Division 81 Determinations of the GST legislation, adoption fees do not attract GST.

In accordance with Part 6.3 *Legislation Act 2001* (Making of certain statutory instruments about fees), all mandatory conditions have been met. Applicable mandatory conditions are:

*56 (5) the determination*

*(a) must provide by whom the fee is payable; (intercountry and step-parent adoption applicants) and*

*(b) must provide to whom the fee is paid (Child and Youth Protection Services, Community Services Directorate).*

Child and Youth Protection Services last increased these ongoing fees and charges for the 2020-2021 financial year by 2 per cent of the previous determination (DI-2019/150), in line with the Wage Price Index (WPI).

Child and Youth Protection Services did not increase these fees for the 2021-2022 financial year.

Child and Youth Protection Services is increasing these ongoing fees and charges for the 2022-2023 financial year by the WPI of 3.25 per cent of the previous determination (DI-2020/190). The WPI reflects the minimum increase in the cost of administering the underlying activity.

	<u>Old Rate (20/21)</u>	<u>New Rate (22/23)</u>
• Two-day education seminar	\$369.00	\$381.00
• Intercountry adoption application	\$1803.00	\$1862.00
• Intercountry adoption private assessor	\$3058.00	\$3157.00
• Intercountry adoption post placement reports	\$1241.00	\$1281.00
• Step-parent / known adoption application and assessment	\$1091.00	\$1126.00

The instrument commences the day after it is notified.

This instrument revokes the *Adoption Fees Determination 2019* (DI-2019/150).

A determination under section 118 of the Act is a disallowable instrument and must be presented to the Legislative Assembly within 6 sitting days after its notification pursuant to section 64 of the *Legislation Act 2001*.

## **Human Rights**

Determinations must be compatible with the *Human Rights Act 2004* (HRA). The compatibility of this determination with the HRA was considered during its development.

Section 28(1) of the HRA provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28(2) of the HRA contains a framework that is used to determine the acceptable limitations that may be placed on human rights.

The limitations in this determination on rights protected in the HRA are considered demonstrably justifiable pursuant to section 28 of the HRA.

The right to protection of family and children is engaged by this determination by virtue of the subject matter being adoption. The fees are considered a reasonable and justifiable limitation on this right, given that the fees are nominal and only partially fund the infrastructure necessary to maintain an overseas adoption program. Further, the fees are not applicable to known adoptions, when the child or young person is in out of home care and a range of alternative options are available to step-parents of children through Family Law provisions.