



Jenny Mikakos MP

Minister for Families and Children
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Subordinate Legislation Act 1994

HUMAN RIGHTS CERTIFICATE

(Section 12A)

Adoption Regulations 2019

I, Jenny Mikakos MP, Minister for Families and Children, and Minister responsible for administering the **Adoption Act 1984** certify that, in my opinion the proposed Adoption Regulations 2019 limit the following human right set out in the **Charter of Human Rights and Responsibilities Act 2006**.

Section 15 Freedom of expression

Section 15(2) of the Charter provides that every person has the right to freedom of expression, which includes the freedom to impart information and ideas of all kinds. Section 15(3) further provides that special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary –

- (a) to respect the rights and reputation of other persons; or
- (b) for the protection of national security, public order, public health or public morality.

This right is engaged by Schedule 1, clause 5(1) of the Regulations. Schedule 1 prescribes the code of conduct for accredited bodies and staff for the purposes of section 690(2)(c) of the **Adoption Act 1984**. Clause 5(1) provides that ‘staff members of an accredited body have the right to make public comment and to enter into public debate on political and social issues’, however, ‘they must refrain from public comment where that comment is sufficiently strong to undermine the accredited body, the State Central Authority or the Commonwealth Central Authority’.

This clause limits the right to freedom of expression of staff members of accredited bodies, preventing them from publicly expressing information and ideas that may adversely affect the reputation of the accredited body, the State Central Authority or the Commonwealth Central Authority. The purpose of this limitation is to protect public confidence in the work undertaken by accredited bodies, the State Central Authority and the Commonwealth Central Authority.

Clause 5(1) does not arbitrarily limit staff members' freedom of expression, or their freedom of expression other than in respect of the adoption work undertaken by accredited bodies, the State Central Authority and the Commonwealth Central Authority. It appears to be the least restrictive approach to protecting both the reputation of, and public confidence in, adoptions.

Section 15(3) of the Charter recognises that the right to freedom of expression is not absolute, and entails special duties and responsibilities. It recognises that this right may be lawfully limited by the reasonable need to respect the rights and reputation of others and to protect public order. Accordingly, the limitation of this right by Schedule 1, clause 5(1) of the regulations is reasonable.

Dated: 17/10/18



Jenny Mikakos MP
Minister for Families and Children