



Contested Adoption Fund

Accredited Adoption Service Providers

The contested adoption fund

The contested adoption fund is available to an Accredited Adoption Service Provider (AASP) when it is managing a contested out-of-home care (OOHC) open adoption matter, for a child in the Parental Responsibility of the Minister (or where Parental Responsibility has been delegated to Barnardos).

This fund enables an AASP to refer a contested OOHC open adoption matter to the Crown Solicitor's Office (CSO) to act on their behalf in respect of the adoption application.

What is a contested adoption?

An adoption application is considered contested if there is evidence that a person, usually a child's parent or family member, is likely to formally contest the adoption order being made.

An adoption application is formally contested when a party files a 'notice to appear' in the Supreme Court.

Legal Aid support may be available to eligible parents or family who wish to contest an open adoption. The AASP can refer parents or family to Legal Aid for assistance.

Eligibility to access the fund

An AASP is eligible to access the contested adoption fund after an adoption application is filed when:

- a) a person¹ files a 'notice to appear'
- b) there is a requirement to appear before a Judge.

When an AASP accesses the fund after filing the adoption application, the AASP is paid the *Specialist Package: Legal Adoption* to support their preparation and filing of the adoption application.

Managing the contested adoption fund

DCJ will manage the fund. This includes paying invoices and monitoring program expenditure.

The CSO has experience and expertise managing contested adoption proceedings and as such, where AASPs wish to access the fund for contested matters, it is expected that they will instruct the CSO.

The AASP is the primary contact for the Crown Solicitor's Office (CSO).

¹ A person contesting the adoption is usually a child's parent or family member.

Once the DCJ delegate has consented to the open adoption of the child or young person, the AASP will instruct the Crown Solicitor directly. The Principal Officer of the AASP is the applicant in the legal proceedings and the primary contact for instructions to the CSO.

a) Initial estimate letter – litigation stage

- In the event that a notice of appearance is filed in the Supreme Court by a parent or other person, or there is a requirement to appear before the Judge, the AASP will send a letter of instruction (template attached) to the CSO with a copy to DCJ at gil@facns.nsw.gov.au.
- The CSO will send a cost estimate letter to the AASP and DCJ at gil@facns.nsw.gov.au.

b) Cost revision – changes impacting progress of the legal matter

- During the litigation stage there may be a significant change to the case which impacts on the progress of the legal matter and an update to the initial cost estimate is required. For example, if additional family members or the proposed adoptive parents become parties to the proceedings or if the matter requires expert or other evidence in addition to what is typically required.
- The CSO will send the AASP a revised cost estimate letter which provides a new estimate and the reasons why the estimate is being revised.
- The AASP will review the estimate within five working days. If approved, they will reply to the CSO stating their approval and include DCJ at gil@facns.nsw.gov.au.
- DCJ will review the estimate within two working days. If DCJ is concerned about the estimate DCJ will advise the AASP and the AASP and the CSO should work together to resolve the issue. DCJ can be part of these discussions if required.

c) Payment of invoices

- The CSO will forward each invoice to DCJ. This will generally occur on a monthly basis and payment is required within two weeks.
- DCJ will forward the invoice to the AASP for review. The AASP will review the invoice within one week and respond to DCJ at gil@facns.nsw.gov.au with advice confirming the work has occurred.
- If the AASP disputes what work has occurred, the AASP will liaise with the CSO and reach an agreement. The AASP and the CSO will agree on an amended invoice to send to DCJ.
- The CSO will send the amended invoice to DCJ at gil@facns.nsw.gov.au for payment, noting that the AASP confirms the work has occurred.
- DCJ will confirm the invoice against the estimate and arrange payment of the invoice.
- DCJ will advise AASPs monthly of the accounts which have been paid.

Outstanding invoices not received by DCJ from the AASP, 6 months from date of issue will not be paid and will be the responsibility of the AASP.

Disbursements which may be included in CSO invoicing

- Engaging Senior Counsel
- Photocopying requests (usually larger requests – for example bundles of material and court books required for hearings)
- Experts (to prepare reports to be relied upon in the proceedings)
- Payment of interpreters

- Payment of witnesses (required to pay a conduct fee to witnesses we subpoena to give evidence and/or pay for experts to give evidence if required)
- Process servers (for example serving court documents on birth parents, serving subpoenas)²
- Ordering transcripts
- Costs for subpoena's
- Travel costs
- Filing fees²

Early access to the fund

An AASP may access the contested adoption fund before an adoption application is filed when there is clear evidence that:

1. A person intends to contest the making of an adoption order. This evidence may include:
 - The person has obtained legal representation and their legal representative has indicated that they will contest the open adoption.
 - The person has stated in written correspondence with the AASP or the Independent Assessor that they will contest the open adoption.
 - The person has clearly stated in a meeting, during an assessment or a discussion that they will contest the open adoption and there is documentary evidence, such as file notes, to support this.
2. Casework, where appropriate, has occurred in an effort to resolve or narrow differences between the parties.

OR

3. An AASP requires formal legal representation during mediation related to the adoption application.

In cases where the CSO prepare and file the adoption matter, the AASP is not eligible to be paid the *Specialist Package: Legal Adoption*.

Resolving differences in open adoption through casework

When open adoption is being considered for a child in OOHC, their birth parents are consulted. Parents are asked if they want to consent to their child's adoption and they are invited to participate in the development of the adoption plan. Deciding whether they will consent is a personal decision for a parent. Their decision will be based on many factors.

Where a birth parent chooses not to consent or is not in agreement with the arrangements proposed through the adoption plan, a range of casework is undertaken. This aims to address misunderstanding, resolve areas of disagreement and focus on what is in the best interests of the child. Casework can include building relationships, collaborative case planning and family group conferencing.

Casework with parents which is focused on resolving areas of disagreement will be highlighted and evidenced when the AASP is completing the letter of instruction for the CSO.

² Covered by *Specialist Package: Legal Adoption* unless the fund is accessed early.

Managing early access to the fund

a) Initial estimate letter – preparation

- The AASP will send a letter of instruction (template attached) to the CSO with a copy to DCJ at gil@fac.s.nsw.gov.au.
- The CSO will send an initial cost estimate letter to the AASP and DCJ at gil@fac.s.nsw.gov.au. This estimate will cover the cost of preparing and filing the adoption application in the Supreme Court.

b) Cost revision – litigation stage

- In the event that a notice of appearance is filed in the Supreme Court by a parent or family member, the CSO will send a cost revision letter to the AASP and DCJ at gil@fac.s.nsw.gov.au. This revised estimate will include the initial costs of the preparation stage and the estimated cost of litigating the matter in the Supreme Court including disbursements.

c) Cost revision – changes impacting progress of the legal matter

- During either the preparation or litigation stages there may be a significant change to the case which impacts on the progress of the legal matter and an update to the initial cost estimate is required. For example, if additional family members or the proposed adoptive parents become parties to the proceedings or if the matter requires expert or other evidence in addition to what is typically required.
- The CSO will send the AASP a revised estimate letter which provides a new estimate and the reasons why the estimate is being revised.
- The AASP will review the estimate within five working days. If approved, they will reply to the CSO stating their approval and include DCJ at gil@fac.s.nsw.gov.au.
- DCJ will review the estimate within two working days. If DCJ is concerned about the estimate DCJ will advise the AASP and the AASP and the CSO should work together to resolve the issue. DCJ can be part of these discussions if required.

d) Payment of invoices

This remains the same as the process outlined above for standard access to the fund.

Attachment

Template - Letter of Instruction from an AASP to the Crown Solicitor's Office