

Uniform Civil Procedure (Access to Exhibits) Amendment Rule 2022

Explanatory notes for SL 2022 No. 24

Made under the

Supreme Court of Queensland Act 1991

General Outline

Short Title

Uniform Civil Procedure (Access to Exhibits) Amendment Rule 2022

Authorising law

Section 85 of the *Supreme Court of Queensland Act 1991* (the Act)

Policy objectives and the reasons for them

Section 85(1)(a) of the Act empowers the Governor in Council to make rules including rules for the practices and procedures of the Supreme Court, the District Court or the Magistrates Courts or their registries.

Section 85(2) of the Act provides that a rule made by the Governor in Council under section 85 of the Act may only be made with the consent of the Rules Committee.

The Rules Committee has considered the *Uniform Civil Procedure Rules 1999* (UCPR) as they relate to access to exhibits following the decision of Her Honour Judge Catherine Muir (Muir DCJ) in *Brose v Baluskas & Ors (No.8) [2020] QDC 98*, in relation to an application by a journalist for access to, and copies of, various exhibits tendered during a defamation trial. The main issue for consideration was whether the Court had the power (either express or implied) to make orders relating to the inspection and copying of exhibits in civil proceedings.

Muir DCJ held that the court did not have power to make orders relating to the inspection and copying of exhibits in civil proceedings. Further, she held that rule 981 of the UCPR only permits the court or registrar to allow a search or inspection of documents filed under the UCPR and therefore exhibits, which are tendered during a trial or hearing, are not captured by that rule.

The *Uniform Civil Procedure (Access to Exhibits) Amendment Rule 2022* (Amendment Rule) is proposed to address this identified gap in the UCPR regarding access to exhibits.

Achievement of policy objectives

The Amendment Rule inserts a new part 9 into chapter 11 of the UCPR, to introduce rules providing for how a party or non-party can apply for access to exhibits for the purposes of inspecting, copying or photographing an exhibit tendered during a proceeding.

Consistency with policy objectives of authorising law

The Amendment Rule is consistent with the policy objectives of the authorising law. Section 85 of the Act confers a broad power on the courts to govern their practices and procedures.

Inconsistency with policy objectives of other legislation

The Amendment Rule is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Amendment Rule will address a gap in the rules, as there are currently no rules dealing with party, and non-party, access to exhibits. The Amendment Rule provides that a fee may be prescribed for inspecting, copying or photographing an exhibit. The cost of any prescribed fee would be borne by party and non-party requesting the search or inspection.

Consistency with fundamental legislative principles

The Amendment Rule is consistent with the fundamental legislative principles.

Consultation

The Rules Committee has consented to the making of the Amendment Rule. In formulating proposed amendments the Rules Committee consulted with the Queensland Law Society and the Bar Association of Queensland.

The Department of Justice and Attorney-General has self-assessed the Amendment Rule to be excluded from further regulatory impact analysis under *The Queensland Government Guide to Better Regulation* under category (j) - administration of courts and tribunals.