

Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2021* (Amendment Regulation) made under the *Supreme Court of Queensland Act 1991* (SCQ Act), the *COVID-19 Emergency Response Act 2020* and the *Retail Shop Leases Act 1994*.

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Under section 85 of the SCQ Act, rules of court for the Supreme Court, District Court and Magistrates Courts or their registries may be made by Governor in Council, with the consent of the Rules Committee (a committee of magistrates and judges established by the Chief Justice of Queensland under section 89 of the SCQ Act). The rules of court for civil matters are contained in the *Uniform Civil Procedure Rules 1999* (UCPR). The UCPR provide for uniform court procedures across the court hierarchy.

Under section 92 of the SCQ Act, the Governor in Council may make regulations to prescribe court fees and costs for the Supreme Court, District Court, Magistrates Courts or Planning and Environment Court including how fees, costs and fines are to be received and dealt with. The relevant regulation prescribing these matters is the *Uniform Civil Procedure (Fees) Regulation 2019* (Fees Regulation).

The first objective of the *Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2021* (Amendment Regulation) is to amend the UCPR to remove duplication in the rules in relation to the amendment of pleadings following a request for trial date.

In this regard, rule 470 provides that, after filing the request for trial date, a party may do the following only with the court's leave: amend a pleading; request particulars; or make an application in the proceeding and rule 380 also provides that an amendment after filing the request for trial date may only be made with the leave of the court.

In order to address the overlap between rules 380 and 470, the Amendment Regulation omits rules 380 and 465 and inserts a note in rule 378 referring to rule 470.

The second objective of the Amendment Regulation is to amend section 9(2) of the Fees Regulation to require an applicant to verify any information which they provide in support of an application for a reduced fee in a proceeding on the grounds of financial hardship by the provision of a statutory declaration attesting to the truth of the information.

The Amendment Regulation also includes amendments to the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (Leases Regulation). The amendments to the Leases Regulation are technical in nature for clarifying the operation of transitional provisions and do not engage or limit a human right.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Amendment Regulation limits the following human rights:

- right to recognition and equality before the law (section 15 of the HR Act);
- right to privacy and reputation (section 25 of the HR Act); and
- right to a fair hearing (section 31 of the HR Act).

Consideration of reasonable limitations on human rights (section 13 of the HR Act)

(a) nature of the right

The **right to recognition and equality before the law** (section 15 of the HR Act) encompasses the right to enjoy rights without discrimination and reflects that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group. This right is engaged where the right to access a service is indirectly restricted to some sectors of society and not others. The Amendment Regulation requires an applicant for a reduced fee in a proceeding on the grounds of financial hardship to verify any information which they provide in support of the application by the provision of a statutory declaration attesting to the truth of the information. The requirement to find a suitable person to witness a statutory declaration may disproportionately impact vulnerable groups, for example, where language and communication barriers exist. It is also possible that individuals, for example, persons whose first language is not English, may not appreciate the gravity of making a declaration or the consequences of making a false statement.

The **right to privacy and reputation** (section 25 of the HR Act) reflects the underlying value of the ‘protect[ion] and enhance[ment of] the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere.’ The scope of the right to privacy is very broad, but at its most basic is concerned with notions of personal autonomy and dignity. For example, the right to privacy protects the individual against interference with their physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home, and individual identity (including appearance, clothing and gender). The Amendment Regulation, in requiring an applicant for a reduced fee in a proceeding to provide statutory declaration, may increase the risk of confidential information contained in the application being made available to a person through that person witnessing the declaration.

The **right to a fair hearing** (section 31 of the HR Act) affirms the right of individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that such matters must be heard by a competent, impartial and independent court or tribunal. The right includes that each party is given a reasonable opportunity to present its case. Mere inconvenience is not enough to show that the right to a fair hearing has been limited. What constitutes a 'fair' hearing will depend on the facts of the case and will require the weighing of a number of public interest factors including the rights of the accused and the victim (in criminal proceedings) or of all parties (in civil proceedings). The Amendment Regulation may limit an applicant's right to a fair hearing if, despite meeting requisites for financial hardship, they are unable to commence proceedings because they are unable to provide, or find a suitable person to witness, a supporting statutory declaration.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the Amendment Regulation is to strengthen the integrity of court fee reduction applications.

The purpose of the Amendment Regulation is consistent with a free and democratic society based on human dignity, equality and freedom and insofar as it will ensure that relief in relation to court fees is provided to the intended class of recipients as legislated.

(c) the relationship between the limitation to be imposed by the provisions if enacted, and the purpose, including whether the limitation helps to achieve the purpose

The Amendment Regulation will achieve the purpose by requiring an applicant for a reduced fee in a proceeding on the grounds of financial hardship to verify any information which they provide in support of the application by the provision of a statutory declaration attesting to the truth of the information. This requirement for verification will assist in achieving the purpose of strengthening the integrity of court fee reduction applications.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available alternatives to achieve the purpose of strengthening the integrity of court fee reduction applications.

The Amendment Regulation is likely to only result in a minor inconvenience for most affected persons. There are various services available at Queensland Courts to assist potentially affected applicants.

(e) the balance between the importance of the purpose of the provisions, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the need to strengthen the integrity of court fee reduction applications is considered to outweigh any impact on a person's human rights, taking into account the safeguards provided in the form of available services to assist potentially affected applicants and requirements applicable to Justices of the Peace.

(f) any other relevant factors

Not applicable.

Conclusion

I consider that the Amendment Regulation is compatible with the *Human Rights Act 2019*. To the extent that the Amendment Regulation does limit, restrict or interfere human rights, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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