

# Uniform Civil Procedure (Preliminary Disclosure) Amendment Rule 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 (Preliminary Disclosure) Amendment Rule 2021* (Amendment Rule) made under the *Supreme Court of Queensland Act 1991* (SCQ Act).

In my opinion, the Amendment Rule, 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.

The objective of the Amendment Rule is to amend the UCPR to provide for preliminary disclosure orders in the Supreme Court.

Preliminary discovery provides a mechanism by which a prospective applicant can obtain relevant documents prior to the commencement of substantive proceedings in order to assess the merits of the potential claim and/or identify the proper defendant.

## 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 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 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 Rule, in requiring a potential defendant to disclose relevant documents prior to the commencement of substantive proceedings, may increase the risk of confidential information being made available to a prospective applicant. The Amendment Rule, in requiring a person to disclose relevant information about the identity or whereabouts of the proper defendant, will also limit the proper defendant’s right to privacy.

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 Rule may limit a potential defendant’s right to a fair hearing if they are required to disclose relevant documents prior to the commencement of substantive proceedings.

### (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 assist in the effective and expeditious completion of court business by ensuring that meritorious claims proceed against the proper defendant. This is consistent with a free and democratic society based on human dignity, equality and freedom.

### (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 providing for preliminary disclosure orders in the Supreme Court.

### (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 court process by ensuring that meritorious claims proceed against the proper defendant.

The Amendment Regulation is likely to only result in a minor inconvenience for potential defendants.

- (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 court process outweighs any impact on a person's human rights, taking into account the safeguards provided under the Amendment Rules in relation to security for costs and privilege.

- (f) any other relevant factors

Not applicable.

## **Conclusion**

I consider that the *Uniform Civil Procedure (Preliminary Disclosure) Amendment Rule 2021* (Amendment Rule) 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.

**SHANNON FENTIMAN MP**  
Attorney-General and Minister for Justice  
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