

Uniform Civil Procedure (Access to Exhibits) Amendment Rule 2022

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 (Access to Exhibits) Amendment Rule 2022* (Amendment Rule) made under the *Supreme Court of Queensland Act 1991* (the 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

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, which follows an application by a journalist for access to, and copies of, 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 Amendment Rule inserts new part 9 into chapter 11 of the UCPR, to introduce rules for regulating party and non-party access to exhibits for the purposes of inspecting, copying or photographing an exhibit tendered during a proceeding

Human Rights Issues

The Amendment Rule promotes the right to a fair hearing. Section 31 of the HR Act provides that a person has the right to have criminal charges or civil proceedings decided by a competent, independent, and impartial court or tribunal following a fair, public hearing. This right to a public hearing is part of the broader concept of open justice, that is, that justice must not only be done, but seen to be done'. Section 31 also provides that a court or tribunal may exclude members of media organisations, other persons or the general public from all or part of a hearing in the public interest or the interests of justice.

The Amendment Rule also provides for limits on applications by parties and non-parties on access to exhibits, in that, a court may make orders and give directions it considers appropriate in relation to the exhibit.

For non-party applications, there is also a process for giving notice to parties to the proceeding and persons affected by the order sought. The court, when considering granting non-party access, will take into consideration whether access:

- may help the applicant provide a fair and accurate report of the proceeding;
- enables the business of the court to be seen to be conducted in open court; and
- is in, or is contrary to, the public interest or interests of justice.

Therefore, while the Amendment Rule promotes transparency and open justice, it will be balanced against what is considered appropriate in the circumstances by the court.

Conclusion

I consider that the Amendment Rule is compatible with the *Human Rights Act 2019* because it promotes the right to a fair hearing and does not otherwise engage human right issues.

SHANNON FENTIMAN MP
Attorney-General and Minister for Justice
Minister for Women and Minister for the
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