

Queensland Civil and Administrative Tribunal (Fees) Amendment Regulation 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, Minister for 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 *Queensland Civil and Administrative Tribunal (Fees) Amendment Regulation 2022* (Amendment Regulation) made under the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

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 242 of the QCAT Act, the Governor in Council may make regulations under the Act.

Amendments to increase the prescribed fees for MCD matters

The Queensland Civil and Administrative Tribunal's (QCAT) Minor Civil Dispute (MCD) application and counter-application fees vary depending on the amount claimed. The lowest application fee is 27.90 fee units for a claim under \$500 or where no amount is claimed. Compared to other jurisdictions, this is the lowest fee charged for an application of a similar nature. QCAT's highest MCD application fee is 358.00 fee units for a claim over \$10,000. This 'higher fee' sits within the average range payable in other Australian jurisdictions.

QCAT's fees and charges do not reflect the complexities involved with resolving matters nor are they comparable to the fees levied in other jurisdictions. There has been a continuous upward trend in lodgements since QCAT's inception in 2009. Lodgements for MCD matters have increased by an average of 22% from 2011-12 to 2019-20 (except for 2020-21 due to COVID-19 impacts). This, combined with an increase in the complexity of matters being lodged, has resulted in the need for more dedicated registry and tribunal resources to resolve these matters.

The Amendment Regulation will amend section 7(2) of the *Queensland Civil and Administrative Tribunal Regulation 2019* (QCAT Regulation) to increase fees to improve cost recovery and better align QCAT's fees with similar fees in other jurisdictions.

Amendments to increase the prescribed fees for witness hearing notices

QCAT currently has the lowest fee for an application for a notice to produce and/or witness to attend compared to other jurisdictions.

The Amendment Regulation will amend schedule 1 (Other fees) of the QCAT Regulation to increase the fees for these applications from 22.10 to 40.00 fee units, which is still below the average fee in other jurisdictions.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 HR Act)

Under the Amendment Regulation, the increase to QCAT's fees for MCD applications and notices to produce/witnesses to attend engages the right to property outlined in section 24 of the HR Act.

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

(a) the nature of the right

Property rights protect the right of all persons to own property and provide that people have a right to not be arbitrarily deprived of their property. Property is likely to include all real and personal property interests, including money. In a human rights context, 'arbitrary' refers to conduct that is capricious, unpredictable, unjust, or unreasonable in the sense of not being proportionate to a legitimate aim. The term 'deprived' in the context of property rights is considered to include the substantial restriction on a person's use or enjoyment of their property to the extent it substantially deprives a property owner of the ability to use their property or part of their property (including enjoying exclusive possession of it, disposing of it, transferring it, or deriving profits from it).

The Amendment Regulation will limit the right to property as increasing the prescribed fees for MCD applications and notices to produce/witnesses to attend will result in a deprivation of property in the form of money.

(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 limiting property rights in this context is to enable QCAT to offset a portion of its service delivery costs and improve finalisation rates by allowing QCAT to conduct additional hearings. Since QCAT's inception, the increases to QCAT's fees and charges have been tied to Consumer Price Index (CPI). QCAT's fees and charges do not reflect the complexities involved with resolving matters nor are they comparable to the fees levied in other jurisdictions. There has been a continuous upward trend in lodgements since QCAT's inception in 2009. This, combined with an increase in the complexity of matters being lodged, has resulted in the need for more dedicated registry and tribunal resources to resolve these matters.

The proposed fee increases will assist to address some of QCAT's workload demands and improve service delivery to Queenslanders.

The purpose of the limitation is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation on property rights will achieve its purpose by enabling QCAT to offset a portion of its service delivery costs and improve finalisation rates by allowing QCAT to conduct additional hearings. In this way, the limitation to the right to property supports QCAT to provide access to justice services and is essential to community justice, safety and wellbeing. The provision of services by QCAT contributes to the effectiveness of the justice system, and improvements in its efficiency will increase public confidence.

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

There are two broad alternatives to increasing the prescribed fees for MCD applications and notices to produce/witnesses to attend: increasing the fees by a lesser amount or retaining the current fee values. Neither of these alternatives offers a less restrictive way to achieve the proper purpose of the limitations as they would not appropriately enable QCAT to offset a portion of its service delivery costs or improve finalisation rates by allowing QCAT to conduct additional hearings.

The proposed fee increases are not considered significant and are not expected to restrict access to QCAT's services. The proposed fee increases are also not expected to have any significant adverse impacts on the community or a disproportionate impact on any particular stakeholder group.

(e) the balance between the importance of the purpose of the limitation and the purpose of preserving the human right, taking into account the nature and extent of the limitation

In my opinion, the Amendment Regulation strikes an appropriate balance between the importance of the purpose of the amendments and the importance of preserving the human right that is limited. The importance of protecting property rights must be balanced against the need to ensure QCAT can provide access to justice services.

The limitation on property rights associated with the increase in fees is not arbitrary and any deprivation of property as a result of the increase is on balance considered to be outweighed by the importance of improving service delivery to Queenslanders.

(f) any other relevant factors

Nil.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it limits human rights only to the extent that is 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 AND
MINISTER FOR THE PREVENTION OF DOMESTIC AND FAMILY VIOLENCE