

Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2024

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 Yvette D'Ath MP, Attorney-General and Minister for Justice 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 2024* (Amendment Regulation) made under the *Supreme Court of Queensland Act 1991* (the Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the Act.

Overview of the Subordinate Legislation

Section 89 of *Supreme Court of Queensland Act 1991* provides for the establishment of a Rules Committee (a committee of magistrates and judges established by the Chief Justice of Queensland).

Under section 85 of the Act, the Governor in Council, with the consent of the Rules Committee, may make rules of court for the admission of persons to the legal profession under the *Legal Profession Act 2007*, including fees relating to admission. Part 3 of the *Supreme Court (Admission) Rules 2004* (the Admission Rules) provides for the process for admission to the legal profession. Further, under section 85, practice and procedure rules for Queensland courts or their registries may also be made by Governor in Council with the consent of the Rules Committee. 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 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 regulation prescribing these matters is the *Uniform Civil Procedure (Fees) Regulation 2019* (Fees Regulation).

The *Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2024* (the Amendment Regulation) amends the Admission Rules to extend the period for admission application material to be provided to the Court and the Legal Practitioners Admissions Board to allow adequate time for proper consideration of applications and the associated processes. The Amendment Regulation provides that these amendments will commence on 1 May 2024.

The Amendment Regulation also amends the UCPR to:

- address anomalies in the rules which provide for the payment of conduct money for subpoenas to give evidence where the witness will give evidence by audio link or audio visual link from the person's place of employment, practice or residence. Consequential amendments are made to the UCPR to provide a mechanism for the recipient of a subpoena to be notified that they are required to give evidence by audio link or audio visual link and the Fees Regulation to ensure that a witness who gives evidence from the witness's place of employment, practice or residence is still entitled to an attendance allowance (although not a travelling allowance or accommodation allowance);
- replace rules 980 and 981 with a new rule dealing with inspection and copying of documents on the court file, restricting the approach particularly in relation to non-parties' access, ahead of electronic filing and following consultation with key stakeholders. Provided that there is no court order restricting access to documents, these rules currently permit open access to inspect and copy documents filed under the UCPR, subject to the payment of prescribed fees;
- extend existing rules in relation to preliminary disclosure to the District Court and the Magistrates Courts to assist the effective and expeditious completion of court business by facilitating meritorious claims proceeding against the proper defendant. 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; and
- amend rule 660 to ensure that the rule reflects common court practice, which is for a broad outline of the proposed order to be discussed in open court, the parties to prepare an order consistent with the proposed order and the judge to make the order by signing the order in chambers.

Human Rights Issues

In relation to Amendment Regulation, I consider the following human rights to be relevant:

- Right to freedom of expression (section 21 of the HR Act);
- Right of protection of reputation (section 25 of the HR Act); and
- Right to a fair hearing (section 31 of the HR Act).

(a) the nature of the right

The **right to freedom of expression** (section 21 of the HR Act) provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The Amendment Regulation, in limiting the documents in a civil proceeding that a non-party can inspect to those read or relied upon in open court; relied on in an application decided without a hearing; or subject to an order under new section 975I (Application for order permitting inspection of particular documents filed in proceedings), may limit the right to freedom of expression of non-parties. Additionally, the Amendment Regulation also provides that in certain instances there may be documents which no person can inspect, such as documents which the court has ordered confidential or otherwise restricted.

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 limiting the documents on the court file to which non-parties to a civil proceeding can inspect to those read or relied upon in open court; relied on in an application decided without a hearing; or subject to an order under new section 975I (Application for order permitting inspection of particular documents filed in proceedings), promotes the privacy of parties to the proceeding by limiting the potential for personal information contained within documents from being disclosed. The Amendment Regulation also provides that no person may inspect documents which the court has ordered confidential or otherwise restricted. However, the Amendment Regulation, may limit the right to privacy by:

- providing for preliminary disclosure and requiring a potential defendant to disclose relevant documents prior to the commencement of substantive proceedings, increasing the risk of confidential information being made available to a prospective applicant; and
- requiring a person to disclose relevant information about the identity or whereabouts of the proper defendant.

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 following a fair, public hearing.

The right to a fair hearing includes that each party is given a reasonable opportunity to present their 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).

Additionally, this right is also 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 Regulation provides for when parties, particularly non-parties can inspect documents filed in a civil proceeding, however, there is no such limitation on documents read or relied upon in open court or relied on in an application decided without a hearing. This is consistent with the concept of open justice. Further, those not otherwise entitled to inspect a document filed in a proceeding may apply to the court for an order permitting inspection. The Court may also make orders or give directions it considers appropriate in relation to inspection of the document.

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

Further, the Amendment Regulation 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

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'. The Amendment Regulation, by improving practice and procedures in Courts relating to admissions, payment of conduct money, preliminary disclosure and orders, promotes the right to a fair hearing.

Additionally, the purpose of the amendments relating to access to documents on the court file and preliminary disclosure is to more appropriately balance relevant rights including the right to freedom of expression, the right to privacy and reputation and the right to a fair hearing.

(c) the relationship between the limitation and its purpose

The purpose of the Amendment Regulation is to assist in the effective and expeditious completion of court business including 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.

In relation to accessing documents on the court file, "*the principle of open justice does not require that all documents on the court file should be open to inspection to any person. The principle applies to the judicial process not to the court file.*" (*Broad Construction Services (WA) Pty Ltd v CFMEU* [2007] WASC 133 by Le Miere J at [46]). Information filed in court proceeding can include personal information. Whilst the changes to access to documents on the court file may limit freedom of expression on non-parties, they do promote the right to privacy and reputation and the right to a fair hearing.

(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 and achieving a more appropriate balance between conflicting rights. Further, the amendments in the Amendment Regulation relating to preliminary disclosure are likely to only result in a minor inconvenience for potential defendants.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, 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 Regulation.

(f) any other relevant factors

Not applicable.

Conclusion

I consider that the Bill is compatible with the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the HR Act.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
and Minister for the Prevention of Domestic and Family Violence

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