

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

Explanatory notes for SL 2021 No. 11

made under the

*Supreme Court of Queensland Act 1991*  
*COVID-19 Emergency Response Act 2020*  
*Retail Shop Leases Act 1994*

## General Outline

### Short Title

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

### Authorising law

Sections 85 and 92 of the *Supreme Court of Queensland Act 1991* (the Act)

Section 23 of the *COVID-19 Emergency Response Act 2020*

Section 121 of the *Retail Shop Leases Act 1994*

### Policy objectives and the reasons for them

Section 89 of the Act 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 practices and procedures of the Supreme Court, the District Court and the Magistrates Courts or their registries. The rules of court for civil law matters are contained in the *Uniform Civil Procedure Rules 1999* (UCPR).

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.

The second objective of the Amendment Regulation is to amend section 9(2) of the *Uniform Civil Procedure (Fees) Regulation 2019* (Fees Regulation) to address an issue in relation to applications for reduced fees.

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 relevant regulation prescribing these matters is the Fees Regulation.

Under section 7 of the Fees Regulation, a party may apply for an order that the party pay a reduced fee for a proceeding instead of the fee that would normally apply. The registrar is obliged to approve the application if the applicant falls into one of the categories listed in section 8. If the applicant does not fall within one of the categories listed in section 8, the applicant may apply for an order on the grounds of financial hardship under section 9.

The Amendment Regulation amends section 9 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 third objective of the Amendment Regulation is to clarify the transitional provisions in part 5 division 2 of the *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020* (Leases Regulation).

## **Achievement of policy objectives**

The first policy objective (to address the overlap between rules 380 and 470 of the UCPR) is achieved by the Amendment Regulation omitting rules 380 and 465 of the UCPR and inserting a note in rule 378 which refers to rule 470.

The amendment to section 9 of the Fees Regulation, to require information provided in support of an application for a reduced fee on the grounds of financial hardship to be verified by statutory declaration, will strengthen the integrity of court fee reduction applications fulfilling the second policy objective of the Amendment Regulation.

The clarification of part 5 division 2 of the Leases Regulation, the third policy objective of the Amendment Regulation, is achieved by amending the transitional provisions to: remove ambiguity in references to the commencement of provisions; clarify that section 51(3) does not limit section 51(2); and clarify that for section 51(3)(a) the relevant time for which the lessor refrained from taking a prescribed action is during, or after, the extension period under the Leases Regulation.

## **Consistency with policy objectives of authorising law**

The Amendment Regulation is consistent with the policy objectives of the authorising law.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

The Amendment Regulation will clarify the rules in relation to the amendment of pleadings following a request for trial date and will assist in the effective and expeditious completion of court business by improving the integrity of court fee reduction applications. There are no costs associated with the implementation of the Amendment Regulation.

The technical amendments to the Leases Regulation will clarify the transitional provisions under part 5 division 2 reducing the scope for disputes between lessors and lessees under ineligible leases.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with the fundamental legislative principles.

## **Consultation**

The Rules Committee was consulted and has consented to the making of the amendments to the UCPR in the Amendment Regulation.

The Queensland Law Society, the Shopping Centre Council of Australia and the Property Council of Australia (Queensland) were consulted on the amendments to the Leases Regulation. Comments made by the stakeholders were taken into consideration during drafting.

The Department of Justice and Attorney-General has self-assessed the Amendment Regulation to be excluded from further regulatory impact analysis under *The Queensland Government Guide to Better Regulation*: for part 2 of the Amendment Regulation under exclusion categories (e) and (f), as a regulatory proposal clarifying the drafting of provisions of a transitional nature; and for parts 3 and 4 of the Amendment Regulation, under exclusion category (j) as a regulatory proposal relating to the administration of courts and tribunals.

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