

Uniform Civil Procedure (Fees) Amendment Regulation 2025

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 Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, provide this human rights certificate with respect to the *Uniform Civil Procedure (Fees) Amendment Regulation 2025* (Amendment Regulation) made under section 92 of the *Supreme Court of Queensland Act 1991*.

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

Bailiffs play an important role in the civil justice system by performing a range of service and enforcement functions in the Supreme, District and Magistrates Courts. These functions include:

- serving documents on persons or corporations at nominated addresses, including service of foreign legal processes;
- executing enforcement warrants, which may involve the seizure and sale of property and organising the sale of property at auction;
- executing enforcement hearing warrants, including apprehension of persons with police assistance to bring the person before the court; and
- bringing any necessary applications before the court to facilitate the service and enforcement of processes, judgments, and orders according to law.

In the Supreme and District Courts, service and enforcement functions may be performed by a bailiff or by a sheriff, deputy sheriff, marshal or marshal's officer, depending on the type of work required and the jurisdiction in which it is undertaken. In the Magistrates Courts, service and enforcement functions may only be performed by a bailiff. In the Supreme, District and Magistrates Courts, registrars may perform service functions only.

The employment relationship of bailiffs is complex and varies depending on the jurisdiction they are appointed to. In the Supreme and District Courts, bailiffs may be appointed to perform in-court orderly and other administrative functions as well as out-of-court service and enforcement functions. In the Magistrates Courts, bailiffs are appointed to perform out-of-court service and enforcement functions only.

The *Uniform Civil Procedure (Fees) Regulation 2019* (Fees Regulation) prescribes the fees payable for service and enforcement functions performed in the Supreme, District and Magistrates Courts. Where bailiffs are appointed to perform out-of-court functions only, they may only retain the prescribed fees and are not entitled to a wage, salary or other allowance. Where bailiffs are appointed to perform both in-court and out-of-court functions, they may only retain the prescribed fees in respect of out-of-court functions performed outside their normal working hours.

An amount is paid into the court by an enforcement creditor in the form of a security deposit before the service or enforcement functions are performed. The court holds the deposit until the required action is undertaken and disburses fees to the bailiff upon receipt of the bailiff's report detailing the fees claimed and evidence of functions performed. All claims by bailiffs for payment of prescribed fees are administered by a court registrar to ensure the fees are appropriately claimed and paid in accordance with the Fees Regulation. Any residual amount from the deposit is returned to the enforcement creditor.

A review of prescribed service and enforcement fees was recently undertaken to address concerns regarding the sustainability of existing fees, particularly those claimable by bailiffs in the Magistrates Courts. The review recommended that:

- service and enforcement fees in the Magistrates Courts are increased and aligned with corresponding fees in the Supreme and District Courts, so that bailiffs receive the same fees for performing the same service and enforcement functions regardless of the jurisdiction;
- the Consumer Price Index (CPI), rather than the Government Indexation Rate (GIR), is used as the annual indexation measure applying to service and enforcement fees to minimise devaluation of fees over time; and
- superannuation costs are included in relevant service and enforcement fees to ensure full cost recovery and end government subsidisation of services for private benefit.

The Amendment Regulation implements the recommendations of the review by:

- increasing and aligning service and enforcement fees in the Magistrates Courts with those in the Supreme and District Courts;
- applying CPI as the annual indexation measure for all service and enforcement fees instead of the GIR; and
- providing for the adjustment of relevant service and enforcement fees to include the applicable superannuation guarantee charge.

Human Rights Issues

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

The Amendment Regulation engages the following human rights:

- right to recognition and equality before the law (section 15 of the HR Act); and
- property rights (section 24 of the HR Act).

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

(a) the nature of the right

Right to recognition and equality before the law

This right is a stand-alone right that also permeates all human rights. It encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination.

The right to recognition and equality is limited where the right to access a service is indirectly restricted to some sectors of society. This right may be limited by the Amendment Regulation as imposing fees for service and enforcement functions may restrict access to justice for sectors of the community of a lower socio-economic status.

Property rights

Property rights protect the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property.

The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The right includes the protection from the deprivation of property. The term ‘deprived’ is not defined by the HR Act, however, deprivation in this sense 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 (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it). Property is likely to include all real and personal property interests, including money.

The right to property is limited by the Amendment Regulation as the imposition of fees for service and enforcement functions has the effect of depriving a person 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 the limitation is to enable the provision of service and enforcement functions in a fiscally responsible way. This is a proper purpose consistent with a free and democratic society.

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

The imposition of fees for the provision of service and enforcement functions ensures the provision of these functions is appropriately resourced to reflect the cost of their delivery, which in turn ensures that these functions can continue to be delivered and provide access to justice.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation.

- (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 importance of service and enforcement functions being provided in a fiscally responsible way outweighs any negative impacts on the right to recognition and equality before the law and the right to property as, without the provision of those functions, access to justice would be impeded for all sectors of the community.

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 justifiable in accordance with section 13 of the HR Act.

DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
Minister for Integrity

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