

Land Court Regulation 2021

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, 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 *Land Court Regulation 2021* (the Regulation) made under the *Land Court Act 2000* (the Act).

In my opinion, the 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

The Act governs the constitution, composition, jurisdiction and powers of the Land Court and the Land Appeal Court. The Regulation prescribes the relevant fees and costs for the Land Court and the Land Appeal Court:

- issuing a subpoena;
- a copy of a record of the Land Court or a document or exhibit filed with the registrar;
- applying for a proceeding in the Land Appeal Court to be heard or decided at another place; and
- serving a notice of appeal on the registrar of the Land Appeal Court.

The Regulation provides for the same matters as the *Land Court Regulation 2010*, with minor changes, including the removal of a redundant provision concerning the preservation of the rights and entitlements of an acting member of the Land Court.

Human Rights Issues

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

The 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 Regulation as imposing fees to access court exhibits, documents and other services may restrict access to 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 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 may be limited by the Regulation as the imposition of fees may have the effect of depriving a person of additional 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 limitation on the right to recognition and equality before the law and the right to property is for the purpose of providing for the continued collection of fees to contribute to the provision of registry and related services provided by the Land Court and the Land Appeal Court. The cost of providing these services is subsidised by the government, as fees resulting in full cost recovery would be prohibitive. The fees provide a contribution to the delivery of services while operating to encourage appropriate use of the court by members of the public. The provision of important government services in a fiscally responsible way 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 the Land Court and the Land Appeal Court services ensures the provision of these services contribute to their resourcing while operating to encourage appropriate use of the courts by members of the public.

- (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 Regulation. The fees are subsidised by government to reduce the potential impacts on community members.

- (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 the courts' services being provided in a fiscally responsible way outweighs negative impacts on the right to recognition and equality before the law and the right to property.

Conclusion

I consider that the *Land Court Regulation 2021* is compatible with the *Human Rights Act 2019* (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.

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