

Planning and Environment Court (Expert Evidence) Amendment Rule 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*, I, Steven Miles, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure provide this human rights certificate with respect to the *Planning and Environment Court (Expert Evidence) Amendment Rule 2022* (Amendment Rule) made under the *Planning and Environment Court Act 2016*.

In my opinion, the Amendment Rule, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Planning and Environment Court Rules 2018* (PEC Rules) is subordinate legislation authorised under section 13 of the *Planning and Environment Court Act 2016* (the Act). The PEC Rules apply to a Planning and Environment Court proceeding and its role as a specialised court hearing and deciding matters relating to planning and development, and environment disputes.

Section 13 of the Act also provides that the PEC Rules can only be changed with the concurrence of the Chief Judge and a Planning and Environment Court Judge.

Separately, the *Uniform Civil Procedure Rules 1999* (UCPR) were amended to align those rules with current practice about expert evidence. The UCPR are for general civil litigation and apply consistently across the Supreme, District and Magistrates Courts. The PEC Rules specifically apply to a Planning and Environment Court proceeding. If a matter in relation to a Planning and Environment Court proceeding is not covered by the PEC Rules, then the UCPR apply.

The purpose of the amendments to the PEC Rules generally align with the amendments to the UCPR, except where the amendments may lead to disruptions to the practices and procedures of the Planning and Environment Court. The amendments to the PEC Rules:

- set out requirements for the preparation of expert reports, including provision for the preparation of a supplementary report and actions relating to the supplementary report where there is a change of opinion by the expert;
- clarify that particular rules about costs in the UCPR do not apply to the P&E Court as the UCPR provisions are contrary to the intent of the costs rules that apply in the P&E Court, noting there is no change to the costs rules that apply in the P&E Court as a result of the proposed amendments;

- provide for specific rules about evidence, including that expert evidence must be given in person before the P&E Court unless required to be given by audio visual link or audio link in particular circumstances, to negate the effect of section 39PB of the Evidence Act 1977 as that provision is not followed in the P&E Court; and
- include an expert witness code of conduct consistent with the new schedule in the UCPR.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the *Human Rights Act 2019* that are relevant to the PEC Rules amendment are:

- Recognition and equality before the law (section 15)
- Freedom of expression (section 21)
- Fair hearing (section 31).

For the reasons outlined below, I am of the view that the Amendment Rule is compatible with each of these human rights.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Recognition and equality before the law (section 15)

(a) the nature of the right

Section 15 of the *Human Rights Act 2019* provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination, as well as equal and effective protection against discrimination.

The Amendment Rule provides clarity and consistency to the way the Planning and Environment Court hears appeals and disputes and supports its function as a specialised court that provides fair hearings to parties bringing a proceeding.

(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 Amendment Rule does not limit this human right, but rather will ensure all parties who bring proceedings to the Planning and Environment Court have equitable procedures applied to their issues that align with current practice. The Amendment Rule does not include any provisions that change the entitlements for equal protection of the law without discrimination, or equal and effective protection against discrimination.

Freedom of expression (section 21)

(a) the nature of the right

Section 21 of the *Human Rights Act 2019* 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 Rule provides clarity and consistency to the way the Planning and Environment Court hears appeals and disputes and supports its function as a specialised court that provides fair hearings to parties bringing a proceeding.

- (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 Amendment Rule does not limit this human right and will ensure there is an alignment with current practice about expert evidence except where the amendments may lead to disruptions to the practices and procedures of the Planning and Environment Court. It is noted that the cost regime for the Planning and Environment Court will remain unchanged due to specific provisions contained within the Amendment Rule. The Amendment Rule does not include any provisions which may impact upon the right to freedom of expression.

In addition, it provides for the opportunity for expert witnesses to present via electronic means rather than in person, where there is an order or direction of the Planning and Environment Court to do so, or a direction of general application made by the Chief Judge. This allows for contemporary methods as well as allowances where it may not be possible to appear in person before the court.

Fair hearing (section 31)

- (a) the nature of the right

Section 31 of the *Human Rights Act 2019* provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court after a fair and public hearing. It also provides for the court to exclude people from all or part of a hearing in the public interest or the interests of justice, however the judgements or decisions by the court in a proceeding must be publicly available.

The Amendment Rule provides clarity and consistency to the way the Planning and Environment Court hears appeals and disputes and supports its function as a specialised court that provides fair hearings to parties bringing a proceeding.

- (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 Amendment Rule will ensure all parties who bring proceedings to the Planning and Environment Court have equitable procedures applied to their issues that align with current practice. The Amendment Rule supports a fair hearing for parties in a proceeding.

Conclusion

I consider that the *Planning and Environment Court (Expert Evidence) Amendment Rule 2022* is compatible with the *Human Rights Act 2019* because it raises human rights issues but does not limit human rights.

STEVEN MILES MP
Deputy Premier and Minister for State Development,
Infrastructure, Local Government and Planning
Minister Assisting the Premier on Olympics Infrastructure

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