

Land Court Rules 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* (HR Act), I, the Honourable 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 Rules 2022* made under the *Land Court Act 2000* (the Act).

In my opinion, the *Land Court Rules 2022*, as tabled in the Legislative Assembly, are 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

Section 21 of the Act provides that the Governor in Council, with the concurrence of the Chief Justice of Queensland and the President of the Land Court, may make rules about anything necessary or convenient to be prescribed for the Land Court (the Court), including rules governing the procedures of the Court or registry.

Since the *Land Court Rules 2000* (the previous Rules) were made, there have been significant amendments to the Act affecting the powers and procedures of the Court. The Court has also undertaken considerable procedural reform, implemented through practice directions, in areas such as case management, alternative dispute resolution (ADR) and expert evidence.

The Court recently undertook a review of the previous Rules and identified a number of areas where they did not properly reflect or support the amendments to the Act or the procedural reforms implemented by the Court.

The *Land Court Rules 2022* (the new Rules) replace the previous Rules with a new, modernised set of rules to govern the Court's procedures and practices. The main purposes of the new Rules are to ensure that the Court facilitates the just and quick resolution of the issues in a proceeding and avoids undue delay, expense and technicality and that parties undertake to participate in a proceeding in an expeditious way and comply with the rules and any order or direction of the Court.

In particular, the new Rules provide for modernised procedures and practices of the Court in relation to the following matters:

- starting proceedings;
- compliance with rules, orders and directions of the Court, including orders restricting access to a document in a proceeding;
- the filing of a statement of facts and issues by each party to a proceeding;
- applications by a party for the disclosure of documents by another party to the proceeding;
- the establishment of the Land Court ADR panel consisting of appropriately qualified persons (convenors), and the power of the Court to refer matters to ADR by a convenor;

- the giving of evidence by parties and lay witnesses;
- expert evidence, including the making of orders about the use of expert evidence, duties of experts, obligations of parties calling experts, expert reports, meetings of experts, the preparation of joint reports, and the appointment of convenors to manage the expert evidence process;
- ending proceedings early, including failure to prosecute proceedings, discontinuance and withdrawal;
- hearings, including the conduct of hearings by electronic communication, when the Court may dispense with an oral hearing, and the joint preparation of a list of issues in dispute by the parties;
- the giving of judgments and orders by the Court, including costs orders against a party's lawyer or agent where another party incurs costs because of the lawyer's or agent's delay, misconduct or negligence;
- the matters a judicial registrar may hear and decide, and when those matters may be removed or referred to the Court for decision;
- appeals to the Land Appeal Court; and
- the electronic filing, giving, making or issuing of documents and the power of the registrar to issue notices.

The new Rules also provide for the application of rules to recommendatory matters such as mining objection hearings, where the Court is performing an administrative rather than a judicial function.

The new Rules have been drafted to be broadly consistent with the *Uniform Civil Procedure Rules 1999* (UCPR). Where the new Rules do not provide for a matter, the provisions of the UCPR apply in relation to the matter with necessary changes to reflect the specialised jurisdiction of the Court.

Human Rights Issues

The new Rules engage and promote the following human rights under the HR Act:

- the right to recognition and equality before the law (section 15); and
- the right to a fair hearing (section 31).

Section 15 of the HR Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. The new Rules promote the right to recognition and equality before the law by providing a clear set of rules applying equally to all parties in proceedings before the Court.

Section 31 of the HR Act provides that a person who is a party to a civil proceeding has the right to have the proceeding decided by a competent, independent, and impartial court or tribunal after a fair and public hearing. However, 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 new Rules promote the right to a fair hearing by providing a set of updated, modernised rules governing the procedures of the Court in areas such as case management, disclosure, conducting proceedings by electronic communication and the electronic filing of documents. These rules improve access to justice for Court users by facilitating the just and quick resolution of disputes and by avoiding undue delay, expense and technicality.

The new Rules also provide for limitations on how parties may conduct proceedings in the Court. For example, the Court may order parties to disclose certain documents to other parties, nominate experts or direct parties as to the use of expert evidence in a proceeding, or direct parties to prepare a list of issues in dispute in a proceeding. The new Rules also allow the Court to make orders restricting access to documents in a proceeding if the Court considers it is in the interests of justice.

Therefore, while the new Rules promote the right to a fair hearing, that right is balanced against the Court's powers to control the conduct of proceedings in the interests of justice and to ensure the just and quick resolution of disputes.

Conclusion

I consider that the new Rules are compatible with the HR Act because they promote the right to recognition and equality before the law and the right to a fair hearing and do not otherwise raise any human rights issues.

SHANNON FENTIMAN MP
Attorney-General and Minister for Justice
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