

Appeal Costs Fund Regulation 2024

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, Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence provide this human rights certificate with respect to the *Appeal Costs Fund Regulation 2024* (Regulation) made under the *Appeal Costs Fund Act 1973* (ACF 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 *Appeal Costs Fund Act 1973* (ACF Act) establishes, and provides for the administration of, the Appeal Costs Fund (Fund) to assist in the payment of legal costs incurred by litigants through no fault of their own, for example, where:

- any civil or criminal proceedings are rendered abortive by the death or illness of the relevant judicial officer; and
- an appeal on a question of law, or on the ground of a miscarriage of justice, against the conviction of a person convicted on an indictment succeeds and a new trial is ordered.

The Fund is administered by an Appeal Costs Board (Board), constituted under the ACF Act.

Recent amendments to the ACF Act, made under the *Justice and Other Legislation Amendment Act 2023* (JOLA Act) (which received assent on 20 September 2023), modernise the Act and improve its current fee and administrative arrangements.

The *Appeal Costs Fund Regulation 2010* (2010 Regulation) prescribes various matters to support the operation of the ACF Act and to provide for how the provisions of the ACF Act are to be applied. The 2010 Regulation prescribes: how to make a claim; the maximum amounts payable from the Fund; and the requirement that applications to the Board for payment from the Fund must be in the approved form and accompanied by the prescribed documents. The 2010 Regulation also contains provisions relating to the functions of the Board, including allowing the Board to require further information from a claimant and a court's registrar that it reasonably requires to decide a claim; and prescribing the fees payable to Board members.

The 2010 Regulation is due to expire on 31 August 2024 under section 54 of the *Statutory Instruments Act 1992*.

The *Appeal Costs Fund Regulation 2024* (Regulation) repeals and replaces the 2010 Regulation in substantially the same form, with minor changes to reflect current drafting practices and administrative processes, and to clarify existing provisions. The Regulation also incorporates consequential amendments arising from the changes to the ACF Act under the JOLA Act.

Human Rights Issues

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

In my opinion, the human right under the HR Act relevant to the Regulation is the right to privacy and reputation (section 25).

The right to privacy and reputation provides that every person has the right to their privacy, family, home and correspondence, which must not be unlawfully or arbitrarily interfered with. The right to privacy can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The right to privacy of claimants and individual solicitors will be limited to the extent that the information required to be provided to the Board is personal information that is not otherwise publicly available. Including, for example, a copy of any costs agreement between a claimant and the claimant's solicitor.

(b) the nature of the purpose of the limitation

Information (including personal information) is required under the Regulation to support an application for payment from the Fund. The purpose of the limitation on the right to privacy is to enable the Board to assess whether a payment from the Fund is authorised and that the provisions relating to a claim for the payment have been complied with. The limitation supports the responsible management of the Fund. The information requested is directly related to the purpose, and the handling of the information is limited to Board members and staff of the Board who are employed under the *Public Sector Act 2022*.

(c) the relationship between the limitation and its purpose

Limiting a person's right to privacy by requiring certain information to support a claim for payment from the Fund is necessary to ensure the provision of information needed for the proper assessment of a claim by the Board.

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

The purpose cannot be achieved in a way that is less restrictive on an individual's right to privacy. Without the information prescribed under the Regulation, the Board could not properly assess whether the provisions relating to the claim for the payment have been complied with.

(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 purpose of ensuring the proper assessment of a claim by the Board to support the responsible management of the Fund is considered to outweigh the extent to which potential claimants and individual solicitors are impacted by the limitation on the right to privacy.

Conclusion

In my opinion, the *Appeal Costs Fund Regulation 2024* is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*.

YVETTE D'ATH MP
Attorney-General and Minister for Justice and
Minister for the Prevention of Domestic and Family Violence

© The State of Queensland 2024