

Criminal Practice (Subsequent Appeals) Amendment Rule 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, the Honourable 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 *Criminal Practice (Subsequent Appeals) Amendment Rule 2024* (Amendment Rule) made under the *Supreme Court of Queensland Act 1991*.

In my opinion, the Amendment Rule, 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 Criminal Code provides an exception to the double jeopardy rule that allows for a person to be retried following an acquittal of murder or a lesser offence to be retried for murder if there is fresh and compelling evidence against the person and it is in the interests of justice. The Criminal Code also provides for appeals to the Court of Appeal following conviction on indictment, or after conviction of a summary offence under section 651 of the Criminal Code. Once the Court of Appeal has heard and decided an appeal against conviction, it has no jurisdiction to entertain a further appeal against the same conviction. If the Court of Appeal allows an appeal against conviction and orders a new trial, the appellant is entitled under the *Appeal Costs Fund Act 1973* (ACF Act) to be paid from the fund, costs that the board considers were thrown away or partly thrown away in the proceedings.

The *Criminal Code and Other Legislation (Double Jeopardy Exception and Subsequent Appeals) Amendment Act 2024* (Amendment Act) amends the Criminal Code to expand the offences to which the fresh and compelling evidence double jeopardy exception applies and to establish a subsequent appeal framework, allowing a person convicted on indictment, or of a summary offence under section 651 of the Criminal Code, to make a subsequent appeal against the conviction. The Amendment Act also amends the ACF Act to provide that if the Court of Appeal allows a subsequent appeal and orders a new trial, the appellant is entitled to be paid, from the appeal costs fund, costs that the board considers were thrown away or partly thrown away in the proceedings.

The Amendment Rule supports the introduction of the subsequent appeal framework by amending the *Criminal Practice Rules 1999* to prescribe practice and procedure rules for the courts in relation to subsequent appeals. The Amendment Rule generally expands the application of existing rules for original appeals to apply to subsequent appeals.

Consistent with the approach for original appeals the Amendment Rule provides that the registrar must prepare a record book for a subsequent appeal and the number of copies considered necessary, and it makes the appellant responsible for paying the prescribed fees for the preparation and copying of subsequent appeal record book. The Amendment Rule also exempts the requirement for the appellant to pay for the preparation and copying of a subsequent appeal record book if they are not legally represented and provides that if the appellant's lawyer is Legal Aid Queensland (LAQ), or their lawyer is funded by LAQ, the appellant is only responsible for paying for one subsequent appeal record book.

Human Rights Issues

The Amendment Rule 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

The right to recognition and equality before the law is a stand-alone right that also permeates all human rights. It reflects that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group. The right encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right is limited where the right to access a service is indirectly restricted to some sectors of society.

This right will be limited by the Amendment Rule as it makes the appellant responsible for paying the prescribed fees for the preparation and copying of subsequent appeal record book, which may restrict access for persons of a lower socio-economic status who are seeking to make a subsequent appeal against their conviction.

Property rights

Property rights protect the right of all persons to own property and provide that people have a right to 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, transferring it, or deriving profits from it). Property is likely to include all real and personal property interests, including money.

The right to property will be limited by the Amendment Rule as it makes the appellant responsible for paying the prescribed fees for the preparation and copying of a subsequent appeal record book, which has the effect of depriving a person of additional money.

(b) the nature of the purpose of the limitation

The purpose of making the appellant responsible for paying the prescribed fees for the preparation and copying of a subsequent appeal record book is to recognise the need to cover the costs associated with preparing and copying the record books that are necessary for the Court of Appeal to effectively consider a subsequent appeal.

The preparation and copying of subsequent appeal record books 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

Making the appellant responsible for paying the prescribed fees for the preparation and copying of a subsequent appeal record book ensures the provision of the service is appropriately resourced and budgeted and reflects the cost of preparing and copying the book, which in turn ensures registry services can continue to be delivered.

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

There are no less restrictive and reasonably available alternative ways to achieve the purpose. While making the appellant responsible for paying the prescribed fees for the preparation and copying of a subsequent appeal record book may impact access to a subsequent appeal for some convicted persons, this is mitigated by the exemptions and reductions in the requirement. These include legally aided appellants only being required to pay for one copy of the appeal record book, self-represented appellants being wholly exempt from the responsibility to pay for the preparation and copying of the appeal record book, and the power of the court to otherwise order that the costs of preparing and copying the appeal record book be wholly or partially waived

The exemptions are intended to ameliorate the impact on the human rights for convicted persons of a lower socio-economic status.

(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 preparing and copying subsequent appeal record books in a way that is fiscally responsible outweighs any limitations on the right to recognition and equality before the law and the right to property. The Amendment Rule also includes provisions to ameliorate the impacts on human rights providing for by exemptions and reductions in the requirement to pay the prescribed fees for the preparation and copying of a subsequent appeal record book.

Conclusion

I consider that the Amendment Rule 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.

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