

Uniform Civil Procedure (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* (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 *Uniform Civil Procedure (Expert Evidence) Amendment Rule 2022* (Amendment Rule) made under the *Supreme Court of Queensland Act 1991* (the Act).

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

Section 85 of the Act empowers the Governor in Council to make rules including rules for the practices and procedures of the Supreme Court, the District Court or the Magistrates Courts or their registries or another matter mentioned in Schedule 1. Schedule 1, item 12 (Evidence) specifically refers to expert evidence. Section 85(2) of the Act provides that a rule made by the Governor in Council under section 85 of the Act may only be made with the consent of the Rules Committee.

The Rules Committee has undertaken a review of the expert evidence rules in chapter 11, part 5 of the Uniform Civil Procedure Rules 1999 (UCPR) with a view to aligning the rules with current and best practice.

The Amendment Rule amends the UCPR to remove the express preference for the use of a single expert due to its disuse in practice.

The Amendment Rule provides a direction-making power for the court in matters relating to expert evidence including about: what can and cannot be adduced; limiting the number of experts that may be called; requiring experts to confer in preparing their reports; how and when expert evidence is to be adduced in a proceeding; and requiring experts to hold a conference to identify, and attempt to resolve, any disagreement or jointly prepare a report.

The Amendment Rule affirms the duties of experts including: to assist the court; not advocate for a party; not accept instructions from any person to adopt or reject a particular opinion; and to comply with the code of conduct (also introduced by the Amendment Rule based on the model that exists in New South Wales).

The Amendment Rule also provides for: the required content of an expert report; when a party intending to rely on a report must disclose the report; expert immunity for the contents of the report; and for a supplementary report to be made following a change of expert opinion: the

appointment of experts jointly by parties or by the court; and court orders and directions as to the fees and expenses payable to the expert.

The amendments will apply consistently across the Supreme Court, the District Court and the Magistrates Courts (except for minor civil claims).

Human Rights Issues

In my opinion, the Amendment Rule promotes the following human rights under the HR Act:

- Recognition and equality before the law (section 15);
- Freedom of expression (section 21); and
- 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, as well as equal and effective protection against discrimination.

The Amendment Rule promotes the right to recognition and equality before the law by affirming that experts have a duty to assist the Court, are not an advocate for the party to the proceeding, and must not accept instructions from any person to adopt or reject a particular opinion. This ensures evidence given in a proceeding is not partisan and as such, promotes parties' equality before the law.

Section 21 of the HR Act 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 enables, subject to the oversight of the court, parties to raise expert evidence as part of presenting their case and in doing so, promotes a party's ability to seek and receive the opinions of experts and impart that information to the court. Further, the Amendment Rule, by affirming the duties of experts to the court and providing that parties must not give, and experts must not accept, instructions to adopt or reject a particular opinion, fosters the freedom of experts to express their opinions free of fear or favour.

Section 31 of the HR Act provides the right to a fair hearing, that is that a person has the right to have proceedings decided by a competent, independent, and impartial court or tribunal following a fair, public hearing. This right affirms the right of individuals to procedural fairness when coming before a court or tribunal, including that each party is given a reasonable opportunity to present its case. The right applies to both criminal and civil proceedings and what constitutes a 'fair' hearing will depend on the facts of the case and will require the weighing of various public interest factors including the rights of the accused and the victim (in criminal proceedings) or of all parties (in civil proceedings).

The Amendment Rule promotes the right to a fair hearing by allowing parties to raise expert evidence. Further, the Amendment Rule affirms that experts have a duty to assist the court; are not an advocate for the party to the proceeding; and must not accept instructions from any person to adopt or reject a particular opinion. This ensures evidence given in a proceeding is not partisan and as such, promotes the right to a fair hearing.

The Amendment Rule also provides for limits on the use of expert evidence, in that, a court may make orders and give directions it considers appropriate. Therefore, while the Amendment Rule promotes the right to a fair hearing by allowing the parties to adduce expert evidence, it will be balanced against what is considered appropriate in the circumstances by the court.

Conclusion

I consider that the Amendment Rule is compatible with the HR Act because it promotes recognition and equality before the law, freedom of expression and the right to a fair hearing and does not otherwise engage human rights issues.

SHANNON FENTIMAN MP
Attorney-General and Minister for Justice
Minister for Women and Minister for the
Prevention of Domestic and Family Violence

© The State of Queensland 2022