



Queensland

Justice Legislation (Fees) Amendment Regulation (No. 1) 2013

Explanatory Notes for SL 2013 No. 122

made under the

Appeal Costs Fund Act 1973

Associations Incorporation Act 1981

Births, Deaths and Marriages Registration Act 2003

Body Corporate and Community Management Act 1997

Building Units and Group Titles Act 1980

Casino Control Act 1982

Charitable and Non-Profit Gaming Act 1999

Collections Act 1966

Cooperatives Act 1997

Coroners Act 2003

Dispute Resolution Centres Act 1990

Electoral Act 1992

Electrical Safety Act 2002

Evidence Act 1977

Funeral Benefit Business Act 1982

Gaming Machine Act 1991

Interactive Gambling (Player Protection) Act 1998

Introduction Agents Act 2001

Jury Act 1995

Justices Act 1886

Justices of the Peace and Commissioners for Declarations Act 1991

Keno Act 1996

Land Court Act 2000

Land Sales Act 1984

Legal Profession Act 2007

Liquor Act 1992

Lotteries Act 1997

Partnership Act 1891

Penalties and Sentences Act 1992

Personal Property Securities (Ancillary Provisions) Act 2010
Property Agents and Motor Dealers Act 2000
Property Law Act 1974
Queensland Civil and Administrative Tribunal Act 2009
Recording of Evidence Act 1962
Relationships Act 2011
Retail Shop Leases Act 1994
Right to Information Act 2009
Second-hand Dealers and Pawnbrokers Act 2003
Security Providers Act 1993
Status of Children Act 1978
Supreme Court of Queensland Act 1991
Tourism Services Act 2003
Travel Agents Act 1988
Wagering Act 1998
Wine Industry Act 1994
Work Health and Safety Act 2011

General outline

Short title

Justice Legislation (Fees) Amendment Regulation (No. 1) 2013.

Authorising law

Section 26 of the *Appeal Costs Fund Act 1973*

Section 134 of the *Associations Incorporation Act 1981*

Section 56 of the *Births, Deaths and Marriages Registration Act 2003*

Sections 319 and 322 of the *Body Corporate and Community Management Act 1997*

Section 134 of the *Building Units and Group Titles Act 1980*

Section 127 of the *Casino Control Act 1982*

Section 186 of the *Charitable and Non-Profit Gaming Act 1999*

Section 47 of the *Collections Act 1966*

Section 468 of the *Cooperatives Act 1997*

Section 99 of the *Coroners Act 2003*

Section 41 of the *Dispute Resolution Centres Act 1990*

Section 392 of the *Electoral Act 1992*

Section 210 of the *Electrical Safety Act 2002*

Section 135 of the *Evidence Act 1977*

Section 88 of the *Funeral Benefit Business Act 1982*

Section 366 of the *Gaming Machine Act 1991*

Section 263 of the *Interactive Gambling (Player Protection) Act 1998*

Section 99 of the *Introduction Agents Act 2001*

Section 74 of the *Jury Act 1995*

Section 266 of the *Justices Act 1886*

Section 40 of the *Justices of the Peace and Commissioners for Declarations Act 1991*

Section 243 of the *Keno Act 1996*

Section 78 of the *Land Court Act 2000*

Section 36 of the *Land Sales Act 1984*

Section 715 of the *Legal Profession Act 2007*

Section 235 of the *Liquor Act 1992*

Section 228 of the *Lotteries Act 1997*

Section 120 of the *Partnership Act 1891*

Section 196 of the *Penalties and Sentences Act 1992*

Section 9 of the *Personal Property Securities (Ancillary Provisions) Act 2010*

Section 600 of the *Property Agents and Motor Dealers Act 2000*

Section 351 of the *Property Law Act 1974*

Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009*

Section 13 of the *Recording of Evidence Act 1962*

Section 36 of the *Relationships Act 2011*

Section 121 of the *Retail Shop Leases Act 1994*

Section 193 of the *Right to Information Act 2009*

Section 115 of the *Second-hand Dealers and Pawnbrokers Act 2003*

Section 54 of the *Security Providers Act 1993*

Section 32 of the *Status of Children Act 1978*

Section 92 of the *Supreme Court of Queensland Act 1991*

Section 100 of the *Tourism Services Act 2003*

Section 57 of the *Travel Agents Act 1988*

Section 312 of the *Wagering Act 1998*

Section 62 of the *Wine Industry Act 1994*

Section 276 of the *Work Health and Safety Act 2011*

Policy objectives and the reasons for them

General indexation of fees and charges

The Department of Justice and Attorney-General (DJAG) is responsible for administering justice in Queensland. It also leads policy development and delivers services to ensure safe, fair and productive work environments which contribute to the social and economic wellbeing of Queenslanders.

A number of regulations administrated by DJAG prescribe fees and charges.

In accordance with the *Queensland Government Principles for Fees and Charges*, December 2012 (the Queensland Government Principles), agencies are required to set fees and charges at a rate that accurately reflects the cost of providing the services. Additionally, where regular comprehensive review of fees and charges is not cost effective or no specific indexation method has been approved by the Cabinet Budget Review Committee, agencies are to apply the current Government indexation policy advised by Queensland Treasury and Trade (QTT) each year.

The endorsed factor advised by QTT for the general indexation of fees and charges in 2013-14 is 3.5%. The Queensland Government Principles

provide that, in general, indexation should be applied from the beginning of each financial year and that rounding is permissible. Generally, rounding should be to the nearest coinable amount (i.e. 5 cents). Where the fee or charge is very large, agencies wishing to round to an amount other than the nearest coinable amount may develop an alternative rounding policy, in consultation with QTT, to be adopted consistently.

The primary objective of the Regulation is to index portfolio fees and charges in accordance with the Queensland Government Principles.

Indexation of the offender levy and other amounts

The offender levy, prescribed under section 8A of the *Penalties and Sentences Regulation 2005* for the purposes of Part 10A of the *Penalties and Sentences Act 1992*, applies to all criminal justice matters. The levy is based on the principle that offenders should contribute to the cost of law enforcement and administration.

Other amounts, for example witness and interpreter allowances prescribed under the *Uniform Civil Procedure (Fees) Regulation 2009*, are also prescribed under various subordinate legislation administered by DJAG.

Indexation of the offender levy and these other allowances in line with the government endorsed indexation factor of 3.5% ensures that they retain their relative value over time. It also provides a transparent process by which the amounts can be increased thereby elevating the need for ad hoc increases.

Queensland Civil and Administrative Tribunal staged standardisation of certain application fees

A number of tribunals were amalgamated to form the Queensland Civil and Administrative Tribunal (QCAT) in 2009. These individual tribunals had their own fee structures. These fees varied significantly from tribunal to tribunal. Consistent with the policy underpinning QCAT's creation, it was considered desirable that matters of the same type have the same fee (i.e. a standardised fee structure). This makes the QCAT fee structure easy to understand and apply, and promotes equity for users. However, this would have meant significant increases in fees for some matter types.

Therefore, a staged approach to the standardisation of certain QCAT fee increases has been adopted. This staged approach means that fees for some types of matters will increase over a number of years and above the movement in the consumer price index (CPI) and the Government endorsed indexation factor. This approach is intended to limit the impact of the fee

increases on the community and ultimately ensure that fees for the same matter types will be the same. This process is due to conclude in the 2014-15 financial year.

Indexation of jury amounts

Under section 63 of the *Jury Act 1995* jurors are entitled to allowances and remuneration as prescribed under regulation.

Section 65 provides for fees to be imposed on parties in respect of civil trials for which a jury is required by a court or requested by a party. Section 11 of the *Jury Regulation 2007* provides that the fee prescribed for section 65 is comprised of both of the following:

- (a) the total amount of remuneration payable to jurors and reserve jurors for the day; and
- (b) the total amount payable under section 9 (Juror's allowance after day 20).

The allowances and remuneration for jurors prescribed under the *Jury Regulation 2007* are reviewed annually and adjusted on the basis of the CPI.

Any increase to the allowances and remuneration paid to jurors or reserve jurors under section 63 of the Act also increases the fees payable by the party or plaintiff in a civil trial. Consequently, the fees payable under section 65 also need to be increased.

Fees relating to copying for publication of exhibits in criminal proceedings

Rule 56A of the *Criminal Practice Rules 1999* (CPR) allows non-parties to make an application to a trial judge (which includes a magistrate or another judge or magistrate if the trial judge/magistrate is not available) during or after the trial in criminal proceedings for an order permitting the copying of an exhibit tendered for publication.

Under the *Supreme Court of Queensland Act 1991*, the fees for criminal proceedings are prescribed under the *Criminal Practice (Fees) Regulation 2010*. Specifically, item 5 of the schedule to the *Criminal Practice (Fees) Regulation 2010* sets out the fees payable for copying a document, other than an appeal record. These copying fees are the same as the copying fees applying to civil proceedings prescribed under schedule 1 of the *Uniform Civil Procedure (Fees) Regulation 2009*. There are no filing fees or fees for opening the registry after hours prescribed under the *Criminal Practice*

(Fees) Regulation 2010. Both of these types of fees are prescribed under the *Uniform Civil Procedure (Fees) Regulation 2009*.

The long-standing practice of the Queensland Courts' Registry has been to charge, where applicable, copying, filing and registry opening fees in respect of rule 56A. Fees under the civil jurisdiction pursuant to the *Uniform Civil Procedure (Fees) Regulation 2009*, rather than the *Criminal Practice (Fees) Regulation 2010*, have been charged on the basis that the party making the application is a third party (not representing the defendant or the prosecution) and therefore their application is unrelated to the criminal charges and any indictment before the court.

The Regulation amends the *Criminal Practice (Fees) Regulation 2010* to clarify and increase transparency of the fees applicable under rule 56A of the *Criminal Practice Rules 1999*.

Removal of redundant fee provisions and consequential amendments arising from the Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013

The *Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013* was passed by the Legislative Assembly on 22 May 2013 and received Royal Assent on 3 June 2013.

The *Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013* contains amendments which provide for:

- the removal or modification of references to the Queensland-based approved training courses and trainer approvals for approved training courses in the Responsible Service of Alcohol (RSA) and Responsible Service of Gambling (RSG), to reflect the transfer of the regulation of vocational education and training (VET) from the State jurisdiction to the Commonwealth;
- the removal of the requirement to renew gaming machine licences every five years, as a means to reducing the regulatory burden on licensees; and
- the removal of the requirement that clubs and hotels must apply to the Commissioner to be able to acquire or dispose of gaming machines.

As a result of the regulation of trainer approvals transferring to the Commonwealth, the fees for application for approval as a trainer, or renewal of approval as a trainer, for RSA and RSG need to be omitted from the *Liquor Regulation 2002* and *Gaming Machine Regulation 2002*.

Similarly, the fees charged under the *Gaming Machine Regulation 2002* for the renewal of a gaming machine licence and the approval to acquire or dispose of gaming machines need to be omitted. Some minor technical amendments are also required to other fees arising from the changes.

A further fee provision in the *Gaming Machine Regulation 2002* is to be omitted. This fee relates to an application for an exemption by a gaming licensee or employee of the licensee from holding a current responsible service of gambling course certificate. As this exemption is set to expire on 1 July 2013, the fee will be obsolete.

Achievement of policy objectives

The main policy objective of the Regulation is achieved by making amendments to index the majority of fees and charges prescribed in subordinate legislation administered under the DJAG portfolio. In accordance with the Queensland Government Principles, the endorsed indexation figure of 3.5% has been applied to current fees and charges.

The Regulation also increases various other amounts, that are not fees and charges, prescribed under regulation, in line with the government endorsed indexation figure of 3.5%. These include various witness allowances (for example witness and interpreter allowances under the *Uniform Civil Procedure (Fees) Regulation 2009*) and the levy prescribed in section 8A of the *Penalties and Sentences Regulation 2005*.

For amounts below \$1000 rounding has been applied to the nearest coinable amount. For amounts of \$1000 and above rounding has been applied to the nearest dollar. This rounding policy was developed in consultation with QTT in accordance with the Queensland Government Principles and has been applied consistently across the agency. The application of rounding rules means that some of the new amounts vary marginally from the 3.5% indexation factor.

A small number of fees or charges have not been adjusted in the Regulation as the current fee is below a value for the indexation factor to affect any actual increase. Also, some fees and charges have not been indexed for various reasons including, for example, because they are part of a separate review or are an administrative charge.

Other policy objectives of the Regulation are achieved by making the following amendments:

- increasing the fees prescribed for applications and referrals under sections 6(1)(b),(c),(d) and (e) of the *Queensland Civil and Administrative Tribunal Regulation 2009* as part of a staged approach to standardising QCAT fees which has been applied since it was established in 2009;
- increasing the juror remuneration and allowances and the associated fee payable for a jury in civil cases based on the movement in the Brisbane All Groups CPI published by the Australian Bureau of Statistics for the year to March 2013 of 2.1% and also taking into account agency rounding rules;
- amending schedule 5 of the *Gaming Machine Regulation 2002* and schedule 1 of the *Liquor Regulation 2002* to omit certain fees and update references to the relevant legislation; and
- prescribing under the *Criminal Practice (Fees) Regulation 2010* the fees applicable for rule 56A of the *Criminal Practice Rules 1999*.

All amendments take effect on 1 July 2013.

Consistency with policy objectives of authorising law

The Regulation is consistent with the main policy objectives of each of the authorising laws.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with policy objectives of other legislation.

Benefits and costs of implementation

The Regulation will not substantially increase the financial burden on the community.

There are no anticipated implementation costs associated with the amendments.

Consistency with fundamental legislative principles

The Regulation does not conflict with the fundamental legislative principles.

The justification for the increase in certain QCAT fees above the Government endorsed indexation factor is provided above.

Consultation

The Queensland Competition Authority's Office of Best Practice Regulation (OBPR) has been consulted with regard to the obligations imposed under the Regulatory Impact Statement (RIS) System. OBPR has advised that with regards to the obligations imposed by the RIS system, a RIS is not required.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

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