



Queensland

# Uniform Civil Procedure and Another Rule Amendment Rule (No. 1) 2013

## Explanatory Notes for SL 2013 No. 123

made under the

*Supreme Court of Queensland Act 1991*

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## General outline

### Short title

*Uniform Civil Procedure and Another Rule Amendment Rule (No. 1) 2013.*

### Authorising law

Section 85 of the *Supreme Court of Queensland Act 1991*

### Policy objectives and the reasons for them

The *Uniform Civil Procedure Rules 1999* commenced on 1 July 1999 to provide for uniform court procedures across the court hierarchy and facilitate the just and expeditious resolution of civil proceedings at a minimum of expense.

Chapter 17A of the *Uniform Civil Procedure Rules 1999* sets out the rules for the award and assessment of legal costs for court proceedings. Under the *Uniform Civil Procedure Rules 1999*, costs are at the discretion of the court. Unless the court orders otherwise, costs will follow the event, with the unsuccessful party being liable for the successful party's costs. Costs can be ordered by the court, or ordered by the court to be assessed by an assessor, on either a 'standard basis' or on an 'indemnity basis'.

The standard basis is followed unless the court orders otherwise. The standard basis means that a costs assessor must allow all costs necessary or proper for the attainment of justice or for enforcing of defending the rights of the party whose costs are being assessed. When assessing costs 'on the standard basis', a lawyer is entitled to charge and be allowed the costs under the scales of costs for the Supreme Court, the District Court and the Magistrates Courts as set out in Schedules 1, 2 and 3 to the *Uniform Civil Procedure Rules 1999*, respectively. If the nature and importance, or the difficulty and urgency, of a proceeding and the justice of the case justify it, the costs allowable on assessment may be increased by not more than 30%.

The purpose of the Rule is to adjust the scales of costs in the *Uniform Civil Procedure Rules 1999* to ensure that they maintain their real value.

The *Criminal Practice Rules 1999*, which apply to criminal proceedings, also commenced on 1 July 1999.

Chapter 12 of the *Criminal Practice Rules 1999* contains provisions relating to the custody and inspection of exhibits and access to court files. Chapter 12 applies to criminal proceedings in all courts, including a Magistrates Court.

Rule 56A, which is contained in Chapter 12, allows non-parties to make an application to a trial judge (including a magistrate or another judge or magistrate if the trial judge/magistrate is not available) during or after the trial for an order permitting the copying of an exhibit tendered at the trial for publication. A 'trial' is defined to include a proceeding in which a person is sentenced. Applications are also currently made under this rule in committal and bail proceedings.

An extensive list of matters is outlined in rule 56A(4) that the judge or magistrate may have regard to in deciding whether to make an order. These matters include the likely cost of copying the exhibit and whether the applicant offers to bear the cost of the copying.

Under the *Supreme Court of Queensland Act 1991*, the fees for criminal proceedings are prescribed in 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 for rule 56A 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 considered unrelated to the criminal charges and any indictment before the court.

Amendments are proposed to the *Criminal Practice (Fees) Regulation 2010* in the *Justice Legislation (Fees) Amendment Regulation (No. 1) 2013* to clarify and increase transparency of the fees applicable under rule 56A of the *Criminal Practice Rules 1999* consistent with current practice.

The other main objective of the Rule is to amend the *Criminal Practice Rules 1999* to clarify that fees may be prescribed under regulation for rule 56A and that it applies to bail and committal proceedings. Some other minor and technical amendments to Chapter 12 are also included.

### **Achievement of policy objectives**

The policy objectives of the Rule are achieved by applying an indexation factor of 3.5% to the amounts prescribed in the scales of costs under schedules 1, 2 and 3 of the *Uniform Civil Procedure Rules 1999*. This indexation factor is the same as the annual indexation figure advised by Queensland Treasury and Trade under the *Queensland Government Principles for Fees and Charges*, December 2012 (Queensland Government Principles) for general indexation of fees and charges in 2013-14.

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 Department of Justice and Attorney-General.

The policy objectives are also achieved by amending the *Criminal Practice Rules 1999* to provide that:

- chapter 12 (which includes rule 56A) applies to bail and committal proceedings; and
- fees may be prescribed under regulation for rule 56A and deleting the specific reference in rule 56A(4)(n) to whether the applicant will bear the costs of copying.

Rules 55 and 56 of the *Criminal Practice Rules 1999* are also amended to remove an unnecessary reference to a court of trial (which is defined in schedule 6), given the application of these provisions to a Magistrates Court.

All amendments commence on 1 July 2013.

### **Consistency with policy objectives of authorising law**

The Rule is consistent with the objectives of the *Supreme Court of Queensland Act 1991*. Section 85 of that Act provides that the Governor in Council may make rules of court with the consent of the Rules Committee established under the Act.

### **Inconsistency with policy objectives of other legislation**

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

### **Benefits and costs of implementation**

There are no anticipated costs associated with implementation.

### **Consistency with fundamental legislative principles**

The Rule does not conflict with the fundamental legislative principles.

### **Consultation**

The Rules Committee has consented to the amendments contained in the Rule.

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.

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#### ENDNOTES

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

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