

Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation (No. 1) 2013

Explanatory Notes for SL 2013 No. 289

made under the

Supreme Court of Queensland Act 1991

General outline

Short title

Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation (No. 1) 2013.

Authorising law

Sections 85 and 92 of the *Supreme Court of Queensland Act 1991* (the Act).

Policy objectives and the reasons for them

Under section 85 of the Act, rules about court practices and procedures and the assessment of costs for the *Legal Profession Act 2007* are made by the Governor in Council, with the consent of the rules committee (a committee of magistrates and judges established by the Chief Justice of Queensland under the Act). Section 92 of the Act provides that the Governor in Council may make regulations under the Act.

The purposes of the amendments to the *Uniform Civil Procedure Rules 1999* include:

- providing for consistency with interstate jurisdictions in respect of the rules relating to Service under the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial matters;
- replacing references to directions conferences with references to settlement conferences;
- clarifying requirements in relation to costs, and information about costs;
- removing the requirement that a notice to apply for a grant of probate or letters of administration must be included in a publication that is sold, in recognition that some rural newspapers are given away free; and
- implementing new opening hours of 8.30am to 4.30pm across Queensland court registries, and providing that court registries may otherwise be opened or closed by direction of a registrar.

The regulation makes consequential amendments to the *Criminal Practice (Fees) Regulation 2010* and the *Uniform Civil Procedure (Fees) Regulation 2009* to ensure consistency in relation to court registry opening hours.

Achievement of policy objectives

The *Uniform Civil Procedure Rules 1999* are amended as follows.

Rule 31(1) is amended to address grammatical defects.

Rule 130B is amended to achieve consistency with interstate jurisdictions in respect of the rules relating to Service under the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial matters. The amendment ensures that the provisions relating to service under the Hague Convention prevail where there is inconsistency with any other rule.

Rules 386 and 692(2) are amended to clarify that, if a document in a court proceeding is amended, the costs to be paid by the party making the amendment are those which are “thrown away”. For example, where an amended defence has been filed, this may require the defendant to file an amended reply. The costs thrown away in that instance would be the cost of drafting the original reply. This reflects the current practice and the common law position in relation to the payment of such costs.

Rule 488 is amended to provide that chapter 13, part 6 (Decision on papers without oral hearing) applies to the Magistrates Courts as well as the Supreme Court and District Court.

The amendment regulation replaces the heading for chapter 13, part 9, division 3 and amends rules 523 to 526, 553 and schedule 3 to replace references to directions conferences with references to settlement conferences. The amendment is intended to highlight that the intended purpose of these conferences in the Magistrates Courts is to encourage settlement of proceedings and not merely provide administrative and case oversight.

Rule 599(3) is amended to remove the requirement that the notice to apply for a grant of probate or letters of administration must be included in a publication that is sold. The amendment recognises that some rural newspapers are only sold outside their main circulation area but, within that area, are given away free of charge. The rule is also amended to remove any reference to the distance of the deceased’s last known address from Brisbane as the basis for prescribing the appropriate newspaper publication to satisfy notification requirements.

Rule 705 is amended to provide more guidance on the required contents of a costs statement to ensure it includes sufficiently specific detail for the information of the party liable to pay costs.

New rule 713A is inserted to require the applicant for an order appointing a costs assessor under rule 713 to serve a copy of the order on the costs assessor at least 14 days after the date the order is made.

Rule 733(3) is amended to clarify that an offer to settle costs made under the rule ends when the copy of the order appointing the costs assessor is served on the costs assessor.

Rule 734 is amended to provide that, if the party who is liable for costs makes an offer to settle costs that is not accepted, the party who is entitled to be paid costs is liable for the costs of the assessment (unless the costs assessor decides otherwise) not only as at present if the assessed costs are less than the amount of the offer but also if they are equal to that amount.

New rule 737A is inserted to provide that, on the written request of a party, a costs assessor must give to that party, at no cost, detailed information about the assessment of costs on an item-by-item basis. This amendment facilitates flexibility in the provision of information relating to the costs assessment process by allowing a copy of the relevant costs statement bearing the assessor's relevant notations to be provided to a party on request.

Rule 738(1) is amended to increase from 14 to 21 days the time allowed for a party, after receiving a copy of a costs assessor's certificate of assessment, to make a request for reasons for any decision in the certificate.

Rule 743I is amended to provide that new rules 713A (Service of order appointing costs assessor) and 737A (Information about outcome of costs assessment) also apply to costs assessed under the *Legal Profession Act 2007*.

Rule 976 is amended to implement new registry opening hours of 8.30am to 4.30pm across Queensland Supreme, District and Magistrates Courts' registries, and provide that they may otherwise be opened or closed by direction of a registrar.

The amendment regulation makes amendments to the *Criminal Practice (Fees) Regulation 2010* and the *Uniform Civil Procedure (Fees) Regulation 2009* as a consequence of changes in relation to registry opening hours under rule 976 of the *Uniform Civil Procedure Rules 1999*.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the objectives of the Act.

Inconsistency with policy objectives of other legislation

The amendment regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The amendments will modernise and introduce greater certainty and consistency around processes and procedural requirements to reflect best practice and will not have any implementation costs.

Consistency with fundamental legislative principles

The amendment regulation is consistent with fundamental legislative principles.

Consultation

The rules committee has consented to the proposed amendments to the *Uniform Civil Procedure Rules 1999*.

The Office of Best Practice Regulation, Queensland Competition Authority, was consulted and has confirmed that the amendment regulation is excluded from Regulatory Impact Statement requirements.