

Recording of Evidence Amendment Regulation 2023

Explanatory notes for SL 2023 No. 18

Made under the

Recording of Evidence Act 1962

General Outline

Short title

Recording of Evidence Amendment Regulation 2023

Authorising law

Section 13 of the *Recording of Evidence Act 1962*

Policy objectives and the reasons for them

The *Recording of Evidence Act 1962* (the RE Act) requires the recording of all relevant matters in legal proceedings heard in a Queensland court or tribunal. Proceedings may be recorded by a public service employee in the Department of Justice and Attorney-General (the Department) or under a service delivery arrangement. Since 2013, Auscript has provided recording and transcription services for Queensland courts and the Queensland Civil and Administrative Tribunal (QCAT). Copies of audio recordings and transcriptions produced by Auscript are purchased from Auscript at a commercial price.

Following a comprehensive review of recording and transcription services, a new service delivery model is being introduced. Under the new model, the Department will be responsible for recording the majority of proceedings, while transcription services will continue to be outsourced. The new model will commence on 18 April 2023.

The policy objective of the *Recording of Evidence Amendment Regulation 2023* (the Amendment Regulation) is to support the introduction of the new service delivery model. The Amendment Regulation, in conjunction with new commercial arrangements, information technology systems and business practices, aims to ensure the provision of high quality, timely audio recordings and transcriptions for the best value for money, and to improve equity and promote access to justice.

Fee structure

The new service delivery model includes a new fee structure for copies of audio recordings and transcriptions. Under the new fee structure, the fees prescribed by the *Recording of Evidence Regulation 2018* (RE Regulation) will apply to all copies of audio recordings,

however there will be different fees for copies of transcriptions based on whether it is the first request for a transcription or second or subsequent request.

Under the new fee structure, a commercial price will be paid to one of the transcription service providers for the first copy of a transcription of a proceeding or part of a proceeding. The first requestor may in some instances be the Department, arranging for the provision of a free copy of a transcription under the RE Act or RE Regulation. Parties to a proceeding who collectively request the first copy of a transcription (multiple copies requested by the parties in one transaction) will pay a discounted commercial price.

The fee prescribed by the fee schedule of the RE Regulation will then apply to all second or subsequent requests for copies of a transcription of a proceeding or part of a proceeding. The second or subsequent request must relate to a proceeding or a part of a proceeding that has previously been transcribed.

The new fee structure will apply to all requests for a copy of an audio recording or transcription made on or after 18 April 2023 irrespective of when the legal proceeding to which the request relates occurred.

Fee exemptions

The RE Act provides that arrangements for the purchase, or otherwise, of copies of records and transcriptions must include providing copies to judicial persons at no cost and to other persons at no cost or a reduced cost in accordance with a regulation.

Under the RE Regulation, copies of audio recordings or transcriptions are to be given to parties to a legal proceeding at no cost or a reduced cost if the chief executive reasonably believes there is a ground of financial hardship. A copy of an audio recording or transcription is also given at no cost to other prescribed persons, such as the industrial registry, a defendant in a criminal proceeding in the Supreme or District Courts, and a victim of a personal offence the subject of a criminal proceeding in the Supreme or District Courts.

To improve equity and promote access to justice, the categories of persons entitled to a free copy of an audio recording or transcription are being expanded to include the family of a deceased person whose death is being investigated by the Coroner or is the subject of an Industrial Magistrates Court proceeding. The family will be entitled to a free copy of an existing transcription or a copy of an audio recording. Providing a free copy of an audio recording or transcription may ease a significant financial burden at a difficult time for the family.

The new fee exemptions will apply to all requests for a copy of an audio recording or transcription made on or after 18 April 2023 irrespective of when the legal proceeding to which the request relates occurred.

Achievement of policy objectives

The Amendment Regulation achieves the policy objective by:

- introducing a new fee structure for copies of audio recordings and transcriptions of legal proceedings;

- providing that the family of a deceased person whose death is being investigated by the coroner or is the subject of an Industrial Magistrates Court proceeding is entitled to one free copy of an existing transcription or a free copy of an audio recording.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the RE 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 Amendment Regulation supports the introduction of a new service delivery model for the delivery of recording and transcription services. The new model was chosen to ensure the quality and timeliness of the production of copies of audio recordings and transcriptions, while providing the best value for money.

The Amendment Regulation also improves equity and promotes access to justice by providing that the family of a deceased person whose death is being investigated by the coroner or is the subject of an Industrial Magistrates Court proceeding is entitled to a free copy of an existing transcription or a copy of an audio recording.

Costs associated with implementing the new service delivery model and new fee structure have been funded as part of the recording and transcription project. The ongoing costs to government associated with the provision of copies of audio recordings and transcriptions will be met from departmental budget allocations.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

Consultation was undertaken with legal and other interested stakeholders, including on an exposure draft of the Amendment Regulation. The Chief Justice, Chief Judge, Chief Magistrate, President of QCAT, President of the Mental Health Review Tribunal, President of the Industrial Court of Queensland, President of the Land Court, and the State Coroner were also consulted. The Amendment Regulation was broadly supported and feedback received was taken into account in finalising the Amendment Regulation.

The Office of Best Practice Regulation was also consulted on the changes in the Amendment Regulation. The Office of Best Practice Regulation advised that no further regulatory impact analysis was required under the *Queensland Government Guide to Better Regulation* as it considered that the proposed amendments to the RE Regulation appear unlikely to result in significant adverse impacts.