

# **Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation (No. 2) 2024**

Explanatory notes for SL 2024 No. 204

Made under the

*Supreme Court of Queensland Act 1991*

## **General Outline**

### **Short Title**

*Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation (No. 2) 2024*

### **Authorising law**

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

### **Policy objectives and the reasons for them**

Section 85 of the *Supreme Court of Queensland Act 1981* (SCQ Act) provides that the Governor in Council may make rules of court under the SCQ Act for certain matters 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. The rules of court are contained in the *Uniform Civil Procedure Rules 1999* (UCPR).

Section 85(2) of the SCQ Act provides that a rule may only be made with the consent of the Rules Committee (a committee of magistrates and judges established by the Chief Justice of Queensland under the SCQ Act).

Section 92 of the SCQ Act provides that the Governor in Council may make regulations under the SCQ Act, including to prescribe fees and costs for the Supreme Court, District Court, Magistrates Courts or Planning and Environment Court. The regulation prescribing these matters is the *Uniform Civil Procedure (Fees) Regulation 2019* (UCPF Regulation).

The policy objectives of the *Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation (No. 2) 2024* (Amendment Regulation) are to:

- clarify when the costs referred to under rules 386 and 692 of the UCPR should be assessed and recovered;
- expand the application of the automatic approval for reduced filing fees under section 8 of the UCPF Regulation to, in effect, include a party to a proceeding who has been given legal assistance under the Civil Law Legal Aid Scheme (CLLA Scheme); and

- rectify the unintended omission of an adjustment to certain fee units under the UCPF Regulation pursuant to the *Justice and Other Legislation Amendment Act 2023* (JOLA Act).

### ***Costs of amending pleadings and documents under the UCPR***

The UCPR sets out the procedures applicable to amendments of claims, applications, pleadings, or other documents in proceedings. Under rules 386 and 692, unless otherwise ordered by the court, a party who amends a document must pay the costs of and caused by the amendment.

The amendments to rules 386 and 692 of the UCPR clarify that the costs referred to are not assessed and recoverable until the proceeding ends.

### ***Eligibility criteria for reduced fee in a proceeding under the UCPF Regulation***

Under section 8 of the UCPF Regulation, a registrar must approve an application for reduced fees for court proceedings where the applicant has been given legal assistance under the *Legal Aid Queensland Act 1997* (LAQ Act), or the applicant is the recipient of social security assistance.

The CLLA Scheme provides assistance to financially disadvantaged persons in civil law matters that do not meet the eligibility criteria for legal assistance under the LAQ Act. The CLLA Scheme is funded by the Public Trustee of Queensland (under the *Public Trustee Act 1978* (PT Act)) and is administered by Legal Aid Queensland (LAQ).

Where a CLLA Scheme recipient is not eligible to apply for a reduced filing fee under section 8 of the UCPF Regulation, an alternative application to pay the reduced filing fee may be made under section 9 of the UCPF Regulation. Under section 9 of the UCPF Regulation, a registrar may approve an application for reduced fees if the registrar reasonably believes there is a ground of financial hardship.

Preparing and submitting an application for reduced fees on the ground of financial hardship creates a duplicative process for CLLA Scheme recipients having already undertaken comprehensive means testing under the CLLA Scheme's eligibility guidelines, and an additional workload, which is commonly undertaken by lawyers acting on behalf of the applicant.

### ***Rectifying unintended omissions under the UCPF Regulation***

On 1 July 2024, the JOLA Act amended the *Appeal Costs Fund Act 1973* (ACF Act) to modernise the ACF Act generally and to improve the efficiency of the fee and administrative arrangements under the ACF Act.

The amendments to the ACF Act streamlined the fees under the, now repealed, *Appeal Costs Fund Regulation 2010* by combining them with general originating process fees under the UCPF Regulation and a complaint and summons fee under the *Justices Regulation 2014*.

Items 3 and 4 of schedule 2, part 1 of the UCPF Regulation are originating process fees in the Magistrates Court to which a fee under the ACF Act would normally apply. However, these fees were unintentionally omitted from the amendments made by the JOLA Act, and therefore were not increased to include the appeal costs fee component as intended.

## **Achievement of policy objectives**

The Amendment Regulation will achieve its policy objectives by:

- amending rules 386 and 692 of the UCPR to provide that, unless a court orders otherwise or the parties otherwise agree, such costs are not assessed and recoverable until the proceeding ends;
- amending section 8 of the UCPF Regulation to provide that a registrar must also approve an application for a reduced fee where the applicant has been given aid or other legal assistance under the PT Act for the proceeding; and
- adjusting the fee units under items 3 and 4 of schedule 2, part 1 of the UCPF Regulation to absorb the removal of fees from the ACF Act.

The Amendment Regulation also makes other minor and technical drafting amendments to the UCPR.

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

The Amendment Regulation is consistent with the policy objectives of the authorising law. Under sections 85 and 92 of the Act broad powers are conferred on the courts through rules and regulations governing court practice and procedure.

## **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 will provide regulatory benefits to court users, and their legal representatives, through the clarification of requirements and terminology under the UCPR, and simplifying the reduced fee application process for certain financially disadvantaged court users under the UCPF Regulation. Implementation costs are not considered to be significant and will be met from existing resources, noting the amendments will also result in administrative efficiencies.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with the fundamental legislative principles.

## **Consultation**

The Rules Committee has consented to the making of the amendments to the UCPR in the Amendment Regulation.