

**Subordinate legislation tabled between  
22 August 2012 and 27 November 2012**

**Report No. 21**

**Legal Affairs and Community Safety Committee**

**February 2013**

## Legal Affairs and Community Safety Committee

<b>Chair</b>	Mr Ian Berry MP, Member for Ipswich
<b>Deputy Chair</b>	Mr Peter Wellington MP, Member for Nicklin
<b>Members</b>	Miss Verity Barton MP, Member for Broadwater Mr Bill Byrne MP, Member for Rockhampton Mr Sean Choat MP, Member for Ipswich West Mr Aaron Dillaway MP, Member for Bulimba Mr Trevor Watts MP, Member for Toowoomba North

<b>Committee Staff</b>	Mr Brook Hastie, Research Director Mrs Sharon Hunter, Principal Research Officer Mrs Ali Jarro, Principal Research Officer Ms Kelli Longworth, Principal Research Officer Ms Kellie Moule, Principal Research Officer Mrs Gail Easton, Executive Assistant
------------------------	---

<b>Technical Scrutiny Secretariat</b>	Ms Renée Easten, Research Director Ms Marissa Ker, Principal Research Officer Ms Tamara Vitale, Executive Assistant
---------------------------------------	---

<b>Contact details</b>	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
------------------------	--

**Telephone** +61 7 3406 7307

**Fax** +61 7 3406 7070

**Email** [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

**Web** [www.parliament.qld.gov.au/lacsc](http://www.parliament.qld.gov.au/lacsc)

### Acknowledgements

The Committee acknowledges the assistance provided by Mr Keiran Rentz during his period of work experience with the Secretariat.

## 1. Introduction

### 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Order of the Legislative Assembly.<sup>1</sup>

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles to the legislation; and
- for subordinate legislation – its lawfulness.

### 1.2 Aim of this report

This report notes the subordinate legislation tabled between 22 August 2012 and 27 November 2012 within its portfolio areas. The report also discusses issues the Committee identified in the course of its inquiries. Unless expressly noted, no issues were identified.

#### Subordinate legislation tabled in the 54<sup>th</sup> Parliament

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
135	Status of Children Regulation 2012	11/09/2012	13/02/2013
136	Guardianship and Administration Regulation 2012	11/09/2012	13/02/2013
137	Uniform Civil Procedure Amendment Rule (No.2) 2012	11/09/2012	13/02/2013
145	Public Trustee Regulation 2012	11/09/2012	13/02/2013
146	Proclamation – <i>Civil Proceedings Act 2011</i>	11/09/2012	13/02/2013
147	Civil Proceedings (Transitional) Regulation 2012	11/09/2012	13/02/2013
148	Jury and Other Legislation Amendment Regulation (No.1) 2012	11/09/2012	13/02/2013
149	Supreme Court of Queensland Regulation 2012	11/09/2012	13/02/2013
150	Uniform Civil Procedure and Another Rule Amendment Rule (No.1) 2012	11/09/2012	13/02/2013
165	Gaming Machine Amendment Regulation (No.1) 2012	30/10/2012	07/03/2013
185	Public Trustee Amendment Regulation (No.5) 2012	30/10/2012	07/03/2013

<sup>1</sup> *Parliament of Queensland Act 2001*, section 88, and Standing Order 194.

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
187	Weapons Legislation Amendment Regulation (No.1) 2012	30/10/2012	07/03/2013
190	Proclamation – <i>Electrical Safety and Other Legislation Amendment Act 2011</i>	30/10/2012	07/03/2013
191	Electrical Safety Amendment Regulation (No.1) 2012	30/10/12	07/03/2013
193	Industrial Relations (Mandatory Code of Practice for Outworkers) Repeal Notice 2012	13/11/2012	21/03/2013
200	Civil Proceedings (Postponement) Regulation 2012	27/11/2012	18/04/2013
201	Drug Court Amendment Regulation (No.1) 2012	27/11/2012	18/04/2013
202	Contract Cleaning Industry (Portable Long Service Leave) Amendment Regulation (No. 1) 2012	27/11/2012	18/04/2013
203	Work Health and Safety Amendment Regulation (No. 1) 2012	27/11/2012	18/04/2013

## 2. Issues identified in particular subordinate legislation

### 2.1 SL 135 - Status of Children Regulation 2012

The objective of the Status of Children Regulation 2012 is to remake the Status of Children Regulation 2002 prior to its automatic expiry under the *Statutory Instruments Act 1992*, part 7 and to support the operation of the *Status of Children Act 1978*.

The Explanatory Notes provide that the Regulation will achieve its objective by:

- prescribing the requirements for the carrying out of a parentage testing procedure;
- prescribing the requirements for the preparation of a parentage testing procedure report; and
- prescribing the fees for filing a document and conducting a search of the indexes with the Registry of Births, Deaths and Marriages.

#### Fundamental legislative principle issues

The issue of whether the subordinate legislation had sufficient regard to the rights and liberties of individuals under sections 4(2)(a) and 4(3) of the *Legislative Standards Act 1992* arose due to an increase in fees under Schedule 1 of this Regulation.

The Regulation increases fees for filing a document and conducting a search of the indexes within the Registry of Births Deaths and Marriages. No information has been provided on the approach, or whether the increases have been approved with applicable government policy.

In particular, the fees for filing a document within the Registry increased under the Regulation from \$10 to \$16 (60% increase) while the fee for conducting a search of the Registry increased from \$10 to \$20 (100% increase).

The current Queensland government policy provides for fees and charges to be indexed annually by the full movement in the actual Australian Bureau of Statistics (ABS) Brisbane All-Groups CPI, as published by the ABS. (Queensland Government, *Principles for fees and charges*, April 2011).

Changes to fees and charges that are not in line with the annual movement in the Consumer Price Index (CPI) require Cabinet Budget Review Committee (CBRC) endorsement. According to advice from Queensland Treasury, CBRC has determined that fee increases from 1 July 2012 will be 3.5%.

The Committee notes that the fees provided for under Schedule 1 of the Regulation (referred to above) significantly exceed the Queensland Government endorsed indexation factor of 3.5%. The Explanatory Notes tabled with the Regulation do not satisfactorily explain why the fee increases exceed the Government endorsed indexation factor. Accordingly, the Committee queried the fee increases with the Department of Justice and Attorney-General (Department).

The Honourable Lawrence Springborg MP, Acting Attorney-General and Minister for Justice responded to the Committee's concerns in correspondence dated 21 January 2013 as follows:

*The Committee has raised concerns that the explanatory notes for the regulation do not sufficiently explain the basis for an increase in fees. The regulation prescribes a fee of \$16 (increased from \$10), to be charged by the Registrar-General of Births, Deaths and Marriages (the registrar), for filing a document with the registrar that acknowledges paternity under section 9 of the Act. The regulation also prescribes a fee of \$20.00 (increased from \$10) that is payable on searching the index of the documents held in the registrar's office under section 9 of the Act.*

*These fees have not been increased since 2002. The amount of the fee increases was set to ensure that the fees under the Status of Children Regulation 2012 were the same as other fees for filing documents and searching the indexes of documents contained in the Births, Deaths and Marriages Registration Regulation 2003. This streamlines the fee charging regime for the registrar and accurately reflects the administrative costs incurred by the registry in filing and searching documents, regardless of their content.*

A copy of the letter from the Acting Attorney-General dated 21 January 2013 is **attached**.

### **Committee comment**

The Committee has raised issues in relation to the increase of fees with the Department in its examination of previous subordinate legislation and has brought to the attention of the Department the need for an explanation to be provided where the increase in fees exceeds the Government policy.

The Committee has taken the view that unexplained increases in fees that exceed the CBRC endorsed indexation factors will continue to be raised with the Department as potential issues of non-compliance with the fundamental legislative principles under sections 4(2)(a) and 4(3) of the *Legislative Standards Act 1992*.

The Committee has considered the objective of the Regulation, the Explanatory Notes and the further information provided in the Acting Attorney-General's response.

While the Committee was satisfied there were no issues in relation to the lawfulness of the Regulation, the Committee considers that a fuller explanation in the Explanatory Notes would have been desirable setting out the basis for the significant percentage increase in fees. After considering the further explanation, the Committee is satisfied with the explanation provided however makes the following recommendation.

### **Recommendation 1**

The Attorney-General and Minister for Justice ensure that adequate explanation is set out in the Explanatory Notes for subordinate legislation addressing fundamental legislative principles where increases in fees and charges significantly exceed the Cabinet Budget Review Committee endorsed indexation factors.

## **2.2 SL 137 - Uniform Civil Procedure Amendment Rule (No.2) 2012**

The objective of this amendment rule is to adjust the scales of costs for the Magistrates, District and Supreme Courts under Schedules 1, 2 and 3 of the *Uniform Civil Procedure Rules 1999* for the movement in the Consumer Price Index since the scales were last adjusted in 2010.

The Explanatory Notes provide that the Regulation will achieve its objective by adjusting for the movement in the Consumer Price Index since the scales were last set or adjusted in 2010, using an indexation factor of 4.9%.

### **Fundamental legislative principle issues**

The issue of whether the subordinate legislation had sufficient regard to the rights and liberties of individuals under sections 4(2)(a) and 4(3) of the *Legislative Standards Act 1992* arose due to an increase in fees under Schedules 2 and 3 of this Regulation.

As noted above, the amendment rule states an indexation factor of 4.9% has been applied. The Explanatory Notes advise that this indexation factor was calculated on the basis of changes in the CPI since March 2010.

The Committee notes that the fees provided for under Schedules 2 and 3 of the Regulation are not consistent with the proposed indexation factor of 4.9%. The Committee considers the Explanatory Notes do not satisfactorily explain why the fee increases exceed the proposed indexation factor.

### **Increase of Fees**

#### Schedule 2

The amendments to Schedule 2 (Scale of Costs – District Court) state that the cost for issuing a claim (Item 20) is increased from \$585 to \$615, equivalent to a 5.12% increment. Similarly, the cost for obtaining a judgement under chapter 9, part 1, division 2 (Item 21) is increased from \$275 to \$290, equivalent to a 5.45% increment.

#### Schedule 3

The previous fee amendment to Schedule 3 (Scale of Costs – Magistrates Courts) was made by SL No. 282 of 2010 (Justice Legislation (Costs and Fees) Amendment Regulation (No. 1) 2010), which commenced on 1 November 2010. Therefore an indexation factor calculated on the basis of changes to the CPI since March 2010 does not seem appropriate.

Even if it is assumed that a 4.9% indexation factor is appropriate, 75 of the fees calculated in Schedule 3 have increased by more than 4.9%. The increases range from 5% to 6.48%. For example, item 17 (1) (Correspondence) has increased from \$10.80 to \$11.50 – or 6.48%.

It is not clear why the amendments to Schedules 2 and 3 are inconsistent with the proposed 4.9% indexation factor. It is also not explained why the indexation factor for Schedule 3 has been calculated with reference to March 2010 when the last increase occurred in November 2010.

In correspondence dated 14 November 2012, the Committee requested the Department to provide a more detailed explanation concerning the increase and indexation calculation.

The Acting Attorney-General responded to the Committee's concern regarding the increase in fees in correspondence dated 21 January 2013 as follows:

*As identified by the Committee, some fees in Schedules 2 and 3 have been increased by amounts that are marginally higher than the stated 4.9% indexation factor. However, these individual increases should not be considered in isolation, as marginal increases above the stated indexation rate are offset by smaller increases to other fees to achieve an overall average indexation of 4.9%.*

*The indexation factor, which in this particular instance was based on March 2010 figures, has been calculated in accordance with indexation rates provided annually by Treasury to all Government agencies. To ensure effective indexation, this consistent methodology, based on March indexation rates, is applied across Government. The use of any alternate reference point for indexation would be inconsistent and require Cabinet Budget Review Committee approval.*

*I note that the Committee has recently asked the Department of Justice and Attorney-General to review the process by which its fees and charges are indexed to ensure that it is consistent with government policy.*

As noted above, a copy of the letter from the Acting Attorney-General dated 21 January 2013 is **attached**.

No other issues of fundamental legislative principle were detected.

### **Committee comment**

The Committee considered the objective of this Regulation, Explanatory Notes and the further information provided by the Acting Attorney-General. The Committee has also had the opportunity to review the Attorney's response to the Committee's earlier Report No. 13 which raised issues in relation to the indexation of fees and charges above the approved indexation factor.

The Committee notes the Attorney-General's advice in his response to Report No. 13 that the Department is using the following rounding protocols in its indexation of fees:

- amounts up to and including \$10 are rounded to the nearest 10 cents;
- amounts up to and including \$50 are rounded to the nearest 50 cents;
- amounts up to and including \$100 are rounded to the nearest \$1; and
- amounts over \$100 are rounded to the nearest \$5.

Further, the Attorney-General has advised in his response to Report No. 13 that the Department is working with Queensland Treasury and Trade to review the indexation of fees and charges processes to ensure the approach the Department takes is consistent with applicable Government Policy.

The Committee considers that the application of the above rounding protocols by the Department is the basis for the consistent increase in fees over the authorised indexation factor as the protocols do not appear to take into consideration an attempt to keep the increase within the authorised limit.

The Committee looks forward to the outcome of the Department's discussions with the Department of Treasury and Trade to ensure the applicable Government policy authorised by the CBRC is adhered to. The Committee will continue to monitor fee increases in future subordinate legislation.

### **2.3 SL 150 - Uniform Civil Procedure and Another Rule Amendment Rule (No.1) 2012**

The objective of this amendment Rule is to amend references in the *Uniform Civil Procedure Rules 1999* (Rules) to reflect consolidation of civil proceedings into the *Civil Proceedings Act 2011* and consequential amendments to other Acts including the *Supreme Court of Queensland Act 1991*, the *District Court of Queensland Act 1967* and the *Magistrates Courts Act 1921*.

The amendment Rule also makes consequential and minor technical amendments to the *Criminal Practice Rules 1999* and makes minor technical amendments to the Rules.

### **Fundamental legislative principle issues**

#### Sufficient regard to the rights and liberties of individuals; retrospective operation

Clause 32 amends Rule 452 'Registrar's powers to hear and decide applications'. As a result of this clause, it appeared to the Committee that it was no longer possible for a registrar of a Central Registry of the Supreme Court to constitute the court to hear and decide an unopposed application

for an order for passing accounts and allowing commission in probate and administration matters. Therefore, this clause appeared to abrogate a person's right to make an unopposed application to a registrar of a central registry of the Supreme Court for an order for passing accounts and allowing commission in probate and administration matters.

The Committee considered an application of this nature would now have to be made to a single Judge of the Supreme Court which would be likely to be a more expensive option. As there was no justification or explanation for this amendment provided in the Explanatory Notes, the amendment appeared to fail to have sufficient regard to the rights and liberties of individuals.

#### Minor technical amendments to Rules not explained (clauses 14 and 32)

Clause 14 of the amendment Rule amends Rule 249 'Costs of production'. This Rule provides that an applicant must pay the respondent's reasonable costs and expenses of producing a document. The amendment to Rule 249:

- introduces a proviso, 'unless the court otherwise orders', which did not appear in the previous version of the rule; and
- removes the reference to 'assessment of costs and expenses under chapter 17A' and simply refers to 'assessment of costs and expenses'.

The amendment rule introduces discretion for the court to make a different order. Therefore, the Committee considered this amendment to be potentially significant.

The Explanatory Notes state that this amendment Rule made changes consequential on the enactment of the *Civil Proceedings Act 2011*. Officer-level verbal enquiries with the Department indicated that these amendments were minor technical amendments however these amendments do not appear to be consequential on the enactment of the *Civil Proceedings Act 2011*.

As the Explanatory Notes did not offer any explanation of these amendments and given the potentially significant nature of these amendments, the Committee wrote to the Attorney-General by letter, dated 14 November 2012, and invited the Department to provide comment on, or explanation of, the issues identified above.

The Acting Attorney-General responded to these concerns of the Committee in correspondence dated 21 January 2013 as follows:

*The Committee has queried the inclusion of two minor technical amendments to the Uniform Civil Procedure Rules 1999 (UCPR), namely to rules 249 and 452.*

*The amendment to rule 249(3) was a minor, technical amendment intended to address concerns that the previous wording of the rule was potentially misleading.*

*Under rule 249(3), a party may apply to the registrar for an assessment of the costs and expenses associated with producing a document.*

*The amendment to rule 249(3), which inserted the words 'unless the court orders otherwise', clarifies the operation of the rule. Under the common law, the court has a broad discretion and inherent powers to make orders necessary to avoid injustice and achieve the smooth running of matters before it. Similarly, under existing rule 658(1) the court may at any stage of a proceeding on the application of a party, make any order, including a judgment, that the nature of the case requires. The inclusion of the additional words in rule 249(3) has not broadened the discretion of the court – it has merely amended the rule to reflect the existing law in this area by confirming that the court can make an order that the assessment be dealt with in another way.*

*With regard to the amendment to rule 452, this amendment was also a minor, technical amendment to court procedures which has not abrogated nor altered the rights of parties.*



*By way of background, the UCPR were amended extensively in 2007 to create a new outsourced regime for costs assessments. In December 2011, the rules relating to estate (probate) account assessments were amended to create a similar model of outsourcing. Both costs assessments and estate account assessments, which require high level knowledge and expertise of litigation and estate administration, were outsourced due to a lack of suitably experienced and available registry staff.*

*The amendment to rule 452 was inadvertently overlooked during the collation of the December 2011 amendments. Once the omission of that amendment was discovered, it was included in the next available rule amendment vehicle, being the Uniform Civil Procedure and Another Rule Amendment Rule (No. 1) 2012.*

*With regard to the Committee's particular concern that the amendment to rule 452 has abrogated a person's right to make unopposed application to a registrar of a central registry of the Supreme Court for an order for passing accounts and allowing commission in probate and administration matters, I note that under the old system of estate account assessments, an unopposed application for an order requiring the examination and passing of an executor's or administrator's accounts of the estate required an application to a judge (refer to previous rule 644). Further, a potential conflict between previous rule 452, which was restricted to orders giving effect to the assessment of accounts, and previous rule 650(7) has resulted in registrars refusing to make any orders under previous rule 452. Matters were instead referred to a judge for an order, as required by previous rule 650(7).*

*It is important to note that an unopposed application under current Chapter 15 part 10 may still proceed under rule 666. Under this rule, a registrar may give judgment or make another order if the parties consent in writing. Also, parties need not even undertake the assessment process. Rule 657F(b) codifies a longstanding practice wherein parties can make an agreement about an estate account or the amount of commission without resort to the court.*

The Acting Attorney-General further noted in this correspondence that:

*As is the case with all amendments to the UCPR, the amendments to rules 249 and 452 were considered and approved by the Supreme Court Rules Committee.*

A copy of the letter from the Acting Attorney-General dated 21 January 2013 is **attached**.

No other issues of fundamental legislative principle were detected.

#### **Committee comment**

The Committee considered the objective of this Regulation, Explanatory Notes and the Acting Attorney-General's response. The Committee is now satisfied that there are no fundamental legislative principle issues raised in this Regulation.

#### **2.4 SL 187 - Weapons Legislation Amendment Regulation (No.1) 2012**

The objective of this amendment Regulation is to amend the *Weapons Regulation 1996* to enable a firearms licence to be endorsed with up to two category D firearms if the licence-holder has a business or employment need for a category D weapon to cull animals. Previously only one category D weapon was allowed.

The Amendment Regulation also clarifies requirements for the lawful carriage of firearms when moving across paddocks divided by a road and amends the *Weapons Categories Regulation 1997*.

## **Fundamental legislative principle issues**

### Legislation unambiguous and drafted in a sufficiently clear and precise way

Section 2(3) of the Amendment Regulation states that part 2 (amendment of Weapons Categories Regulation 2007) commences immediately after the commencement of the *Weapons and Other Legislation Amendment Act 2012*, section 10. The Committee was concerned that section 10 did not appear to create a head of power for the amendments to the Weapons Categories Regulation 1997 contained in part 2 of the Amendment Regulation. Accordingly, it appeared to the Committee that the reference to section 10 was possibly an error.

The Committee also noted that the Explanatory Notes tabled with the Amendment Regulation provided that consultation with key government and non-government stakeholders was undertaken during the preparation of the Regulation however no details were included as to who those stakeholders were.

The Committee wrote to the Minister for Police and Community Safety (Minister) and requested that he provide comment on, or explanation of, the issues identified. The Minister responded to the Committee by way of letter dated 4 February 2013.

The Minister advised that he had sought clarification on this matter from the Queensland Police Service and confirmed that the reference to section 10 of the Bill was correct. It was explained that it was necessary to ensure that the amendments did not commence on notification, as information technology system changes were needed to be in place prior to the commencement of the Regulation amendments. To achieve this, the amendments to the Weapons Categories Regulation were drafted to commence at the same time as a section of the Bill that was to commence by proclamation.

Accordingly, the commencement of part 2 of the Amendment Regulation was tied to the commencement of section 10 of the Bill, simply as a drafting mechanism, to ensure control was retained over the timing of commencement. The Minister confirmed it was not reflective of any connection between the content of the two sections.

The Minister also noted the Committee's comments in relation to setting out the identity of individual stakeholders consulted during the development of the Regulation.

A copy of the letter from the Minister for Police and Community Safety dated 4 February 2013 is **attached**.

### **Committee comment**

The Committee is satisfied after receiving the Minister's reply that there are no fundamental legislative principle issues raised with this Regulation.

## **2.5 SL 191 - Electrical Safety Amendment Regulation (No.1) 2012**

The objective of this amendment Regulation is to amend the Electrical Safety Regulation 2002, section 204 to increase the total contribution amount for electrical safety contributions from electrical distribution entities to reflect the value calculated for the 2012–2013 financial year, from \$12,861,300 to \$13,067,100.

### **Unexplained fee increase**

Section 3 of the Amendment Regulation increased the total contribution amount by 1.6%. The Committee noted that the increase was not consistent with the Queensland Government endorsed indexation factor of 3.5%. The Queensland Government's *Principles for Fees and Charges*, April 2011, states that CBRC approval is required for changes to fees and charges that are not in line with the annual movement in the CPI.

The Committee considered that the Explanatory Notes did not satisfactorily explain why this increase was not consistent with the government endorsed indexation factor and wrote to the Attorney-General for further comment.

The Attorney-General responded to the concerns raised by the Committee, in correspondence dated 20 December 2012 as follows:

*The electrical safety contribution is payable by electricity distribution entities (e.g. Energex and Ergon Energy) to fund arrangements for ensuring compliance with the Electrical Safety Act 2002 and promoting electrical safety in the community. The Electrical Safety Regulation 2002 (the Regulation) provides the method for fixing the contribution for each entity for the current financial year. This includes a growth factor which provides for growth:*

- *attributed to salaries and wages (based on the Enterprise Bargaining Increase);*
- *attributed to supplies and services (based on Brisbane's Consumer Price Index); and*
- *growth to meet increased demand for services (based on increase to network connections).*

*The amount of the electrical safety contribution for 2012-2013 is \$13,067,100, which represents a 1.6 per cent increase over the 2011-2012 figure of \$12,861,300. This amount was calculated using a modified growth factor which excluded the Enterprise Bargaining Increase and the Consumer Price Index increase, but included growth to meet increased demand for services (based on the increase to network connections).*

*I agree that the 2012-13 increase is lower than the approved indexation factor of 3.5 per cent. However, it is in line with the Government's key election commitment regarding lowering the cost of living for families - in particular the 12 month freeze on tariff 11 electricity costs.*

A copy of the letter from the Attorney-General dated 20 December 2012 is **attached**.

### **Committee comment**

The Committee is satisfied with the explanation provided by the Attorney-General and that the fee increase is consistent with the Government's key policy commitment to lower the cost of living for Queensland families.

## **2.6 SL 203 - Work Health and Safety Amendment Regulation (No.1) 2012**

The objective of this amendment Regulation is to amend the *Work Health and Safety Regulation 2011* to achieve the following:

- make minor technical amendments correcting cross referencing and typographical errors.
- extend transitional arrangements made to implement the national model Work Health and Safety laws in the *Work Health and Safety Act 2011* pending a review of the work health and safety laws. This is to avoid a situation where industry is required to adapt to one change followed by another.
- delay commencement of changes to high risk work licences until 1 January 2014 to allow time for training packages to become available and be adopted by Registered Training Organisations.
- extend current arrangements for annual registration of plant until 1 January 2014 to allow time for the completion of the required systems changes and a review of the fee structure.
- delay commencement of provisions relating to remote and isolated work to allow industry time to prepare for the new requirements.
- remove the requirement for lifts in private residences to be registered.

## **Fundamental legislative principle issues**

### Legislation unambiguous and drafted in a sufficiently clear and precise way

The Committee in its examination of the Regulation noted that section 44 of the amendment Regulation inserted a new definition of 'commencement' into Schedule 19 of the Work Health and Safety Regulation 2011 as follows:

(a) for part 13.1- means the commencement of the section in which the term is used.

The term 'commencement' was used in a number of sections throughout the Regulation including 716 - 723, 727 - 733, 735 - 743, 745 - 746, 748 - 750, 752 - 753, 755, 762, and 763 - 765.

The Committee was concerned that the definition did not appear to be clear and precise because to find out the relevant date, a reader must refer to the annotations to the Regulation and the relevant Amendment Regulation in the '*subordinate legislation as made series*'.

The Committee considered this was not a simple task as the Regulation applied to many workplaces across Queensland and many non-lawyers are required to understand it so that they may comply with its requirements. The Committee considered it would be preferable if the commencement date of the relevant sections was expressly stated and the sections to which this paragraph of the definition applies were also stated.

The Committee wrote to the Attorney-General for further comment. The Attorney-General responded to the concerns raised by the Committee, in correspondence dated 20 December 2012 as follows:

*I am advised that SL203 was prepared by the Office of the Queensland Parliamentary Council, adhering to current drafting practices. However, I do acknowledge that there may be inadequate clarity regarding commencement of the relative transitional provisions for some duty holders. I note the Committee's suggested remedies and will request the Department of Justice and Attorney-General to raise these with the Office of the Queensland Parliamentary Council in conjunction with the next amendment to the Work Health and Safety Regulation 2011.*

A copy of the letter from the Attorney-General dated 20 December 2012 is **attached**.

### **Committee comment**

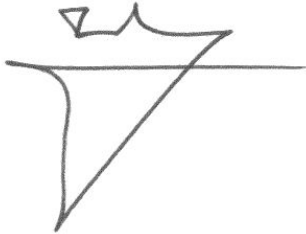
While the Committee does not consider that there is a need to disallow the amendment Regulation, the Committee remains concerned that the current drafting practices do not allow a simpler method in which to determine the relevant commencement date, particularly for the Work Health and Safety Regulation which is used in many workplaces.

While the Committee appreciates the amendment Regulation has been drafted succinctly and is technically correct in its application, the Committee considers that future amendments should be drafted taking into account the needs of the users of the Regulation and consider ease of reading as an additional factor.

The Committee thanks the Ministers and relevant Departmental staff for assisting it with its scrutiny of subordinate legislation function.

**Recommendation 2**

The House note the contents of this report.



Mr Ian Berry MP

**Chair**

February 2013

**Letter from the  
Acting Attorney-General and Minister for Justice  
dated 21 January 2013**



Office of the Attorney-General  
and Minister for Justice

In reply please quote: 548728/1, 2058962

Your ref: 11.7.c

21 JAN 2013

Mr Ian Berry MP  
Member for Ipswich  
Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000



Level 18 State Law Building  
50 Ann Street Brisbane 4000  
GPO Box 149 Brisbane  
Queensland 4001 Australia  
Telephone +61 7 3247 9068  
Facsimile +61 7 3221 4352  
Email attorney@ministerial.qld.gov.au

Dear Mr Berry

I refer to the letter from the previous Chair of the Legal Affairs and Community Safety Committee dated 14 November 2012 requesting comment on issues raised by the Committee in relation to subordinate legislation 135, 137 and 150 of 2012.

The issues raised by the Committee are addressed as follows.

**SL No 135 - Status of Children Regulation 2012**

Fees in the Status of Children Regulation 2012

The Committee has raised concerns that the explanatory notes for the regulation do not sufficiently explain the basis for an increase in fees. The regulation prescribes a fee of \$16 (increased from \$10), to be charged by the Registrar-General of Births, Deaths and Marriages (the registrar), for filing a document with the registrar that acknowledges paternity under section 9 of the Act. The regulation also prescribes a fee of \$20.00 (increased from \$10) that is payable on searching the index of the documents held in the registrar's office under section 9 of the Act.

These fees have not been increased since 2002. The amount of the fee increases was set to ensure that the fees under the *Status of Children Regulation 2012* were the same as other fees for filing documents and searching the indexes of documents contained in the *Births, Deaths and Marriages Registration Regulation 2003*. This streamlines the fee charging regime for the registrar and accurately reflects the administrative costs incurred by the registry in filing and searching documents, regardless of their content.

**SL No 137 - Uniform Civil Procedure Amendment Rule (No. 2) 2012**

Fees in the Uniform Civil Procedure Amendment Rule (No. 2) 2012

As identified by the Committee, some fees in Schedules 2 and 3 have been increased by amounts that are marginally higher than the stated 4.9% indexation factor. However, these individual increases should not be considered in isolation, as marginal increases above the stated indexation rate are offset by smaller increases to other fees to achieve an overall average indexation of 4.9%.

The indexation factor, which in this particular instance was based on March 2010 figures, has been calculated in accordance with indexation rates provided annually by Treasury to all Government agencies. To ensure effective indexation, this consistent methodology, based on March indexation rates, is applied across Government. The use of any alternate reference point for indexation would be inconsistent and require Cabinet Budget Review Committee approval.

I note that the Committee has recently asked the Department of Justice and Attorney-General to review the process by which its fees and charges are indexed to ensure that it is consistent with government policy.

**SL No 150 - Uniform Civil Procedure and Another Rule Amendment Rule (No. 1) 2012**

Minor technical amendments in the Uniform Civil Procedure and Another Rule Amendment Rule (No. 2) 2012

The Committee has queried the inclusion of two minor technical amendments to the *Uniform Civil Procedure Rules 1999* (UCPR), namely to rules 249 and 452.

The amendment to rule 249(3) was a minor, technical amendment intended to address concerns that the previous wording of the rule was potentially misleading.

Under rule 249(3), a party may apply to the registrar for an assessment of the costs and expenses associated with producing a document.

The amendment to rule 249(3), which inserted the words 'unless the court orders otherwise', clarifies the operation of the rule. Under the common law, the court has a broad discretion and inherent powers to make orders necessary to avoid injustice and achieve the smooth running of matters before it. Similarly, under existing rule 658(1) the court may at any stage of a proceeding on the application of a party, make any order, including a judgment, that the nature of the case requires. The inclusion of the additional words in rule 249(3) has not broadened the discretion of the court – it has merely amended the rule to reflect the existing law in this area by confirming that the court can make an order that the assessment be dealt with in another way.



(3)

With regard to the amendment to rule 452, this amendment was also a minor, technical amendment to court procedures which has not abrogated nor altered the rights of parties.

By way of background, the UCPR were amended extensively in 2007 to create a new outsourced regime for costs assessments. In December 2011, the rules relating to estate (probate) account assessments were amended to create a similar model of outsourcing. Both costs assessments and estate account assessments, which require high level knowledge and expertise of litigation and estate administration, were outsourced due to a lack of suitably experienced and available registry staff.

The amendment to rule 452 was inadvertently overlooked during the collation of the December 2011 amendments. Once the omission of that amendment was discovered, it was included in the next available rule amendment vehicle, being the *Uniform Civil Procedure and Another Rule Amendment Rule (No. 1) 2012*.

With regard to the Committee's particular concern that the amendment to rule 452 has abrogated a person's right to make unopposed application to a registrar of a central registry of the Supreme Court for an order for passing accounts and allowing commission in probate and administration matters, I note that under the old system of estate account assessments, an unopposed application for an order requiring the examination and passing of an executor's or administrator's accounts of the estate required an application to a judge (refer to previous rule 644). Further, a potential conflict between previous rule 452, which was restricted to orders giving effect to the assessment of accounts, and previous rule 650(7) had resulted in registrars refusing to make any orders under previous rule 452. Matters were instead referred to a judge for an order, as required by previous rule 650(7).

It is important to note that an unopposed application under current Chapter 15 part 10 may still proceed under rule 666. Under this rule, a registrar may give judgment or make another order if the parties consent in writing. Also, parties need not even undertake the assessment process. Rule 657F(b) codifies a longstanding practice wherein parties can make an agreement about an estate account or the amount of commission without resort to the court.

As is the case with all amendments to the UCPR, the amendments to rules 249 and 452 were considered and approved by the Supreme Court Rules Committee.

I trust this information is of assistance.

Yours sincerely

  
**LAWRENCE SPRINGBORG MP**  
Acting Attorney-General and Minister for Justice

**Letter from the  
Minister for Police and Community Safety  
dated 4 February 2013**

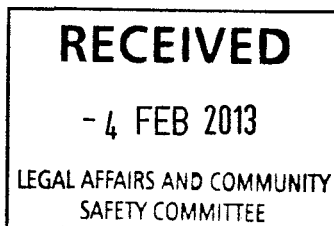


## Minister for Police and Community Safety

Ref: 12558 P3 TMc BJ

04 FEB 2013

Mr Ian Berry MP  
Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000



Level 24 State Law Building  
50 Ann Street  
PO Box 15195 City East  
Queensland 4002 Australia  
Telephone: +61 7 3239 0199  
Facsimile: +61 7 3221 9987  
Email: [police@ministerial.qld.gov.au](mailto:police@ministerial.qld.gov.au) or  
[communitysafety@ministerial.qld.gov.au](mailto:communitysafety@ministerial.qld.gov.au)

ABN 65 415 158

Dear Mr Berry

I refer to recent correspondence from the Legal Affairs and Community Safety Committee (the Committee) regarding its consideration of Subordinate Legislation Number 187 of 2012 – the *Weapons Legislation Amendment Regulation (No.1) 2012* (the Amendment Regulation).

The Committee is concerned that the reference to section 10 of the Weapons and Other Legislation Amendment Bill 2012 (the Bill) in section 2 of the Amendment Regulation appears to be in error as section 10 does not appear to create a head of power for the amendments to the *Weapons Categories Regulation 1997*.

I sought clarification on this matter from the Queensland Police Service (QPS) which advises the reference to section 10 of the Bill is correct.

I understand it was necessary to ensure that the amendments did not commence on notification, as information technology system changes were needed to be in place prior to the commencement of the Regulation amendments. To achieve this, the amendments to the Weapons Categories Regulation were drafted to commence at the same time as a section of the Bill that was to commence by proclamation.

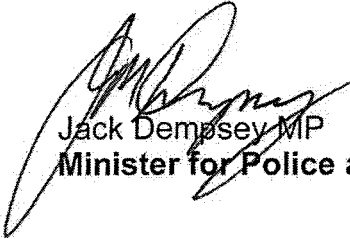
Accordingly, the commencement of Part 2 of the Amendment Regulation was tied to the commencement of section 10 of the Bill, simply as a drafting mechanism, to ensure control was retained over the timing of commencement. It is not reflective of any connection between the content of the two sections.

I am further advised that the QPS has raised this issue identified by the Committee with drafters from the Office of Queensland Parliamentary Counsel, who confirm the current drafting of the commencement provisions achieves the policy objectives relating to the commencement of the Amendment Regulation.

I also note the Committee's preference for future explanatory notes to identify individual stakeholders consulted during the development of an Amendment Regulation.

I trust this information is of assistance. Should you or the Committee members have any further enquiries regarding this matter, Sergeant Andrew Wilson from the QPS Legislation Development Unit is available on telephone 3364 4456 and would be pleased to assist.

Yours sincerely



Jack Dempsey MP  
Minister for Police and Community Safety

**Letter from the  
Attorney-General and Minister for Justice  
dated 20 December 2012**



The Hon Jarrod Bleijie MP  
Attorney-General and Minister for Justice

In reply please quote: 548994/1

20 DEC 2012



Level 18 State Law Building  
50 Ann Street Brisbane 4000  
GPO Box 149 Brisbane  
Queensland 4001 Australia  
Telephone +61 7 3247 9068  
Facsimile +61 7 3221 4352  
Email attorney@ministerial.qld.gov.au

Mr Ian Berry MP  
Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Berry

I refer to the letter dated 28 November 2012 from Dr Alex Douglas MP, former Chair of the Legal Affairs and Community Safety Committee (the Committee), regarding scrutiny of the *Electrical Safety Amendment Regulation (No. 1) 2012* (SL191) and the *Work Health and Safety Amendment Regulation (No. 1) 2012* (SL203).

I note the issues arising from the Committee's examination of SL191, particularly in relation to the application of fundamental legislative principles for the 2012-13 electrical safety contribution amount.

The electrical safety contribution is payable by electricity distribution entities (e.g. Energex and Ergon Energy) to fund arrangements for ensuring compliance with the *Electrical Safety Act 2002* and promoting electrical safety in the community. The *Electrical Safety Regulation 2002* (the Regulation) provides the method for fixing the contribution for each entity for the current financial year. This includes a growth factor which provides for growth:

- attributed to salaries and wages (based on the Enterprise Bargaining Increase);
- attributed to supplies and services (based on Brisbane's Consumer Price Index); and
- growth to meet increased demand for services (based on increase to network connections).

The amount of the electrical safety contribution for 2012-2013 is \$13,067,100, which represents a 1.6 per cent increase over the 2011-2012 figure of \$12,861,300. This amount was calculated using a modified growth factor which excluded the Enterprise Bargaining Increase and the Consumer Price Index increase, but included growth to meet increased demand for services (based on the increase to network connections).

(2)

I agree that the 2012-13 increase is lower than the approved indexation factor of 3.5 per cent. However, it is in line with the Government's key election commitment regarding lowering the cost of living for families - in particular the 12 month freeze on tariff 11 electricity costs.

I also note the issues arising from the Committee's examination of SL203 in relation to the application of fundamental legislative principles for the definition of 'commencement' under part 13.1 in Schedule 19.

I am advised that SL203 was prepared by the Office of the Queensland Parliamentary Council, adhering to current drafting practices. However, I do acknowledge that there may be inadequate clarity regarding commencement of the relative transitional provisions for some duty holders. I note the Committee's suggested remedies and will request the Department of Justice and Attorney-General to raise these with the Office of the Queensland Parliamentary Council in conjunction with the next amendment to the *Work Health and Safety Regulation 2011*.

I trust this information addresses the issues raised by the Committee.

Yours sincerely



**JARROD BLEIJIE MP**  
Attorney-General and Minister for Justice