

Queensland



Regulatory Impact Statement for SL 2003 No. 155

Recording of Evidence Act 1962

RECORDING OF EVIDENCE AMENDMENT REGULATION (No. 1) 2003

1. Introduction

The proposed *Recording of Evidence Amendment Regulation 2003* (the Amendment Regulation) will increase the fee payable for a transcript of legal proceedings from \$2.70 per page to \$4.70 per page.

Under the *Statutory Instruments Act 1992*, if a proposed regulation is likely to impose appreciable costs on the community or part of the community, a regulatory impact statement (RIS) must be prepared, before the regulation is made.

The purpose of this RIS is to explain to the community the need for the Amendment Regulation and to set out the benefits and costs that would flow from its adoption.

Responses to the RIS are welcome and should be lodged no later than 24 January 2003. Submissions may be subject to the *Freedom of Information Act 1992*. Submissions can be forwarded to:

Director
Strategic Policy Division
Department of Justice and Attorney General
GPO Box 149
Brisbane Q 4001

or;

Facsimile: (07) 3239 3046

or;

mailbox@justice.qld.gov.au

2. Background

The *Recording of Evidence Act 1962* (the Act) provides that in proceedings before any court or tribunal, a judicial officer can direct that any evidence to be given, be recorded. Where evidence is taken and recorded under the provisions of the Act it can be received in all courts as prima facie evidence of the matters contained in the transcript.

The Act authorises the recording of evidence by mechanical means and shorthand reporters. From these recordings a transcript of the evidence is produced. In Queensland, the recording of proceedings and their subsequent transcription is conducted by the State Reporting Bureau (the Bureau), which forms part of the Department of Justice and Attorney-General.

The Bureau's services are provided to the Supreme and District Courts, Magistrates Courts (where Depositions Clerks do the recording), Industrial Court, Industrial Relations Commission, Royal Commissions and tribunals headed by a judicial officer.

The Act enables a regulation to be made imposing a fee for a transcript. The *Recording of Evidence Regulation 1992* sets out these fees.

Certain recipients are exempted from payment of this fee. Transcripts are provided to the judicial officers free of charge in both criminal and civil proceedings. In addition, a free copy is provided to the parties to a criminal case, that is the prosecution and defence. All other requests for transcripts are charged at the relevant regulatory fee rate.

While most of the Bureau's income is received through appropriation, approximately 10% of income is generated by non-regulatory recording and transcription services which comprise less than 1% of the Bureau's workload.

Non-regulatory fees are recovered for transcription services provided to:

- In-house clients such as the Office of the Director of Public Prosecutions (for transcripts of police records of interviews);
- Other government departments and statutory bodies such as the Crime and Misconduct Commission and;
- Administered components of this department such as the Anti-Discrimination Commission.

There are various charging regimes in place for these non-regulatory services.

The proposed *Recording of Evidence Amendment Regulation 2003* relates only to the fee for the first copy of each page of regulatory transcript. The current per page fee of \$2.70 has remained static since 1999. Attachment A discloses the chronology of increases in this fee since the inception of the Regulation. Other than increases in line with the Consumer Price Index, the Amendment Regulation will not increase any other fees prescribed in the Regulation.

3. Stakeholders

Stakeholders who will be affected by the increase in transcript fees are any party seeking access to a record of proceedings before Queensland courts and tribunals, other than the parties to a criminal proceeding.

This will include:

- plaintiffs and defendants in civil proceedings;
- parties to proceedings before the Queensland Industrial Relations Commission;
- researchers;
- media outlets; and
- other interested members of the public.

4. Authorising Law

The *Recording of Evidence Act 1962*, section 13, authorises the making of a regulation imposing fees for transcript.

5. Policy Objective

The State Reporting Bureau provides court recording and transcription services throughout Queensland that assists the operation of the court system and supports the administration of justice generally.

Over a number of years there has been an increase in demand for the services provided by the State Reporting Bureau. In addition, the technology utilised for the provision of its services has become increasingly dated. The fee increase will assist the Bureau in the upgrading of technologies and thus will help ensure that the standard of delivery of

court recording and transcription services by the Bureau in Queensland is preserved.

The proposed fee increase will enable the State Reporting Bureau to increase the recovery of the cost of producing a page of transcript. The proposed increase will also make the fee more comparable with similar fees charged in other states.

6. Legislative intent

The proposed *Recording of Evidence Amendment Regulation 2003* will increase the fee payable for copies of transcripts from \$2.70 to \$4.70 per page (representing an overall 74% increase in price).

The fees per page for obtaining transcripts in NSW, and Victoria are \$6.90 (\$7.90 for cases over 3 months) and \$6.50 respectively. In South Australia the comparable fee is \$5.00 per page. The proposed fee increase will achieve greater parity between the fees charged in Queensland and fees charged in other states.

Currently, the total cost to the Bureau of preparing a page of transcript is in the vicinity of \$18.00 - \$20.00, depending on the jurisdiction. The proposed fee increase will therefore represent an approximate 25% recovery of the cost of producing a page of transcript. Subject to current demand levels remaining static, the proposed fee increase will also produce additional administered revenue of \$0.162M, \$0.494M, \$0.501M and \$0.509M in years 2002-2003¹, 2003-2004, 2004-2005 and 2005-2006 respectively (see attachment B).

This projected additional funding will assist the Bureau in the replacement of technologies, including audio recording equipment, printers, photocopiers and computer assisted transcription equipment. Improvements to the Bureau's asset base will assist in ensuring the service levels are maintained.

7. Consistency with the authorising law

The proposed regulation is consistent with the authorising law. Section 13 of the *Recording of Evidence Act 1962* authorises the making of a regulation imposing fees for transcript.

¹ 2002-2003 revenue has been calculated on the basis of the proposed Amendment Regulation commencing on 1 March 2003.

8. Consistency with other legislation

The proposed regulation does not conflict with any other legislation.

9. Options and alternatives

The RIS evaluates three possible alternatives under the *Recording of Evidence Act 1962*. The first option considers the costs and benefits of the proposed fee increase. The second considers the costs and benefits of a fee increase with certain exemptions. The third option considers the costs and benefits of not implementing the proposed increase.

Option 1 – Fee increase

The cost of the proposed fee increase will be borne by the stakeholders. Stakeholders who will be affected by the proposed increase in transcript fee include anyone seeking access to a record of proceedings before Queensland courts and tribunals, other than the parties to a criminal proceeding.

Plaintiffs and defendants in civil proceedings probably represent the largest stakeholder group affected by the proposed fee increase. The 74% fee increase will be a significant impact upon them. However the following factors may lessen the impact on this class of stakeholder:

- the successful party in a civil proceeding will in most circumstances be entitled to recover the cost of the fee from the unsuccessful party.
- If the plaintiff or defendant in a civil matter is a corporate or commercial entity, any fee payable for a transcript is tax deductible.
- For most non-corporate plaintiffs and defendants in civil proceedings, the purchase of a transcript will be an extraordinary or one-off purchase in the course of their lives.

Additionally, the cost of transcript has to be considered in the context of total costs expended in civil litigation. Transcript fees represent only a small proportion of overall legal costs incurred during the course of litigation. As a transcript in a civil case is generated primarily for the use of the parties, it is reasonable to expect that they should make a significant contribution toward the cost of production.

Another stakeholder group affected by the proposed fee increase includes parties in proceedings before the Queensland Industrial Relations

Commission. In 2001-2002 the Bureau received \$123 220 from transcript sales to this group. This figure represents about 15.5% of the total receipts from transcript sales for all courts. A 74% increase in transcript costs will have an impact on these groups.

Researchers, media outlets and other interested members of the public represent smaller groups of stakeholders that will be affected by the proposed fee increase. Again members of these groups are likely to be purchasing transcript on an irregular or infrequent basis. Additionally the Bureau provides facilities enabling these stakeholders to read the transcripts free of charge. Although under this arrangement people cannot take a copy of the transcript away from the Bureau with them, they still have access to the transcript of proceedings.

There are a number of benefits arising from the adoption of the fee increase. The additional revenue from the fee increase will assist the Bureau in replacing and upgrading technologies eg: audio recording equipment, printers, photocopiers and computer assisted transcription equipment. This will contribute to the Bureau's ability to maintain their current level of service. The maintained standard of delivery of Court Recording and Transcription Services by the State Reporting Bureau in locations throughout Queensland would ensure the justice system operates as effectively as possible. This will ultimately be of benefit to not only the stakeholders but to the population at large. As a result, maintained performance contributes to the Government priorities of:

- Safer and More Supportive Communities;
- Community Engagement and Better Quality of Life; and
- Building Queensland's Regions.

By providing services that fundamentally support the operations of Courts, Tribunals and Commissions, the Court Recording and Transcription Services also link with the following whole-of-Government outcomes:

- A fair, socially cohesive and culturally vibrant society – by ensuring justice services are accessible, equitable, timely and meet their reasonable expectations.
- Safer and secure communities – by enabling agencies in the justice system (e.g. the Courts, Office of the Director of Public Prosecutions, Legal Aid Queensland) to undertake and resolve matters efficiently

This option is the preferred option for achieving the policy objectives.

Option 2 – A fee increase with certain exemptions

This option entails the proposed fee increase for all stakeholders other than those disadvantaged by financial hardship. In order to achieve this, a person seeking a transcript would make application to the chief executive of the Bureau seeking an exemption from the fee. The application would set out particulars of their financial circumstances. Upon considering of the applicant's financial position, the chief executive of the Bureau would then determine whether or not to grant the exemption. The main benefit of this proposal would be an increase in the access to justice by individuals of a low socio-economic status.

This option provides the benefit of ensuring that the proposed fee increase does not compromise access to transcripts for people in an impecunious position. However this option has not been found to be viable. Given that the Bureau has offices throughout Queensland, the determination of whether a person complies with the financial hardship criteria would have to be delegated in some instances to Court Registrars. Because decision making will be decentralised there is scope for inconsistency in those decisions. In addition the added burden upon the Bureau inherent in taking on this responsibility would take human resources away from where they are currently required to deliver service.

The cost of this proposal would be that any person not suffering financial hardship would have to bear the increased fee cost. The costs discussed in Option 1 apply here.

Option 3 - No fee increase

The benefit in no fee increase is that current stakeholders will continue to pay for transcripts at the current price (excepting increases in line with the CPI).

Over a number of years there has been an increase in demand for the services provided by the State Reporting Bureau. In addition, the technology utilised for the provision of its services has become increasingly dated.

The cost of maintaining the current fees would be that additional revenue would not be recovered. This would result in the Bureau having less revenue capable of being utilised to upgrade and replace ageing equipment. The quality of the technology utilised by the Bureau affects the service that they provide. Any inability to upgrade technology could have a potential affect on the level of efficiency with which the justice system operates.

Therefore this option would not be the best method of achieving the policy objectives.

10. Consistency with fundamental legislative principles

The legislation is consistent with fundamental legislative principles.

11. National Competition Policy

The legislation is consistent with national competition policy.

ATTACHMENT A

Chronology of Fee Increases for the First Copy of a Transcript

Fee (per page transcript)	Instrument by which fee imposed	Date of Commencement of instrument
\$2.10	Recording of Evidence Regulation 1992	1 July 1992
\$2.40	Recording of Evidence Amendment Regulation (No 1) 1993	2 October 1993
\$6.50	Justice Legislation (Variation of Fees) Regulation 1997	19 January 1998 (however was disallowed by resolution of the Legislative Assembly 22 April 1998)
\$2.70	Recording of Evidence Amendment Regulation (No 1) 1999	26 March 1999

ATTACHMENT B

Regulatory Fees (a)	2002/03*	2003/04	2004/05	2005/06
Anticipated number of transcript pages sold#	81, 108	246,974	250,679	254,439
Proposed charge per page	\$4.70	\$4.70	\$4.70	\$4.70
Anticipated revenue to Bureau for sale of transcripts @\$4.70 per page	\$0.381m	\$1.161m	\$1.178m	\$1.196m
Revenue to Bureau for sale of transcripts based on current charge of \$2.70 per page	\$0.219m	\$0.667m	\$0.677m	\$0.687m
Increased revenue to Bureau from sale of transcripts after fee increase	\$0.162m	\$0.494m	\$0.501m	\$0.509m

Anticipated number of pages sold has been calculated on the basis of current trends indicating increases in demand from year to year.

*2002-2003 revenue has been calculated on the basis of the proposed Amendment Regulation commencing on 1 March 2003.

ENDNOTES

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