

Your Ref:

Quote in reply: Litigation Rules Committee: 21000342/90

25 January 2012

Mr Paul Lucas MP
Attorney-General and Minister
for Local Government and
Special Minister for State
PO Box 15009
CITY EAST QLD 4002

Dear Attorney

COST ASSESSMENTS IN QCAT

I write in relation to the cost assessment provisions contained within the *Queensland Civil and Administrative Tribunal Act 2009*.

This letter is written with the assistance of the Litigation Rules Committee of the Queensland Law Society.

As you will be aware, should a costs assessor be appointed to assess costs by QCAT they are not afforded any protection from liability. An assessor appointed pursuant to an order would deem to be an official pursuant to Section 238(4) of the *Queensland Civil and Administrative Tribunal Act 2009* as they are acting under the direction of the Tribunal. An official has no civil liability for an act done, or omission made, honestly and without negligence. An official is therefore liable in negligence.

Presently costs assessors who undertake a cost assessment in the Supreme, District and Magistrates Courts are protected from suit as s93LA(1) of the *Supreme Court of Queensland Act 1991* relevantly states:

93LA Ordinary protection and immunity allowed

(1) In performing the functions of costs assessor, the person appointed as a costs assessor has the same protection and immunity as a judge performing the functions of a judge.

The cost assessment is then undertaken pursuant to Part 7 of the *UCPR*.

Whilst the *Queensland Civil and Administrative Tribunal Act 2009* does provide a mechanism for the Governor in Council to make rules for the assessment of costs,¹ r87 of the *Queensland Civil and Administrative Tribunal Rules 2009* and indeed the Rules in toto do not make a reference to cost assessor immunity nor to the cost assessment procedures under the *UCPR*.² Unless a QCAT Member

¹ Ss 224(1)(b) and cl17 of Schedule 2 of the *QCAT Act*.

² Which by virtue of s93LA of the *Supreme Court of Queensland Act 1991* would afford the costs assessor immunity from suit.

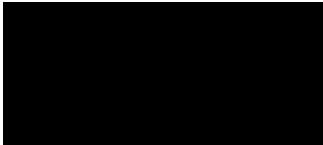
specifically orders that the cost assessment be pursuant to the UCPR, a costs assessor does not have immunity from suit. We trust that this is a mere oversight, as it would be inconsistent to provide costs assessors immunity in the Queensland Courts and to deny the same immunity in the Tribunal.

The Society therefore recommends that s107 of the *QCAT Act 2009* or alternatively r87 of the *Queensland Civil and Administrative Tribunal Rules 2009* be amended so that any order for a cost assessment is deemed to be an order pursuant to the UCPR. Such an amendment would not only provide costs assessors immunity from suit when undertaking a cost assessment (which is consistent with the procedure in the Courts), but would also provide costs assessors and Registry Tribunal staff with certainty as to the procedures involved for cost assessments.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Louise Pennisi on [REDACTED] or [REDACTED]

For your information, a copy of this letter will also be provided to the President of QCAT, the Honourable Alan Wilson J.

Yours faithfully



Dr John de Groot
President