

TASMANIA

FEE UNITS AMENDMENT BILL 2023

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FEE UNITS AMENDMENT BILL 2023

*(Brought in by the Treasurer, the Honourable Michael Darrel
Joseph Ferguson)*

A BILL FOR

An Act to amend the *Fee Units Act 1997*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Fee Units Amendment Act 2023*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Fee Units Act 1997** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

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- (a) by omitting the definition of *amendment notice*;
- (b) by inserting the following definition after the definition of *CPI figure for Hobart*:

disallowed or rescinded means –

- (a) disallowed in accordance with section 47 of the *Acts Interpretation Act 1931*; or
- (b) rescinded in accordance with section 9 of the *Subordinate Legislation Committee Act 1969*;
- (c) by omitting the definitions of *notified fee* and *tabled notice*.

5. Section 5 amended (Calculation of value of fee unit and determination of fee unit adjustment factor)

Section 5 of the Principal Act is amended as follows:

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2) “On 1 July in the year 1998 and in each following year, the value of a fee unit during the financial year commencing on that day is to be calculated” and substituting “The Minister is to calculate the value of a fee unit in relation to a financial year”;

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- (c) by inserting “as determined in accordance with section 6(3)” after “year” in the definition of F_0 in subsection (2);
- (d) by omitting from subsection (4) “Treasurer” twice occurring and substituting “Minister”.

6. Sections 6 and 7 substituted

Sections 6 and 7 of the Principal Act are repealed and the following sections are substituted:

6. Setting of value of fee unit

- (1) On or before 1 April in each calendar year, the Minister is to publish in the *Gazette* notice of –
 - (a) the value of a fee unit, calculated in accordance with section 5, in respect of the financial year commencing on 1 July in that calendar year; and
 - (b) the fee unit adjustment factor, determined in respect of the financial year in accordance with section 5(4), that is used in the calculation of the value of the fee unit, together with a brief description of the matters taken into consideration in determining

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under section 5(4) the fee unit adjustment factor.

- (2) Section 8, and section 47(3), (3A), (4), (5), (6) and (7), of the *Acts Interpretation Act 1931* apply to a notice published under subsection (1) as if it were regulations within the meaning of that Act.
- (3) In each financial year, the value of a fee unit in respect of that financial year (the *relevant year*) is –
 - (a) subject to paragraph (b), the value of a fee unit specified in the notice that is published under subsection (1) in respect of the relevant year; or
 - (b) the value of a fee unit in respect of the financial year that immediately precedes the relevant year if –
 - (i) no notice is published under subsection (1) in respect of the relevant year; or
 - (ii) the notice that is published under subsection (1) in respect of the relevant year is disallowed or rescinded before, or during, the relevant year.

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- (4) For the avoidance of doubt, the disallowance or rescission of a notice published under subsection (1) in respect of a financial year does not affect the validity of a fee collected in respect of that financial year before the disallowance or rescission occurred.
- (5) A notice under subsection (1) –
 - (a) is a regulation within the meaning of the *Subordinate Legislation Committee Act 1969*; and
 - (b) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

7. Calculation of fee

- (1) The amount of a fee provided for by an enactment, in respect of a financial year, is to be calculated by multiplying the applicable number of fee units by the value of a fee unit in respect of the financial year as determined in accordance with section 6.
- (2) Subject to subsection (3), the amount of a fee calculated under subsection (1) is to be rounded down to the nearest cent.
- (3) If an amount of goods and services tax is payable in respect of a fee calculated under subsection (1) –

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- (a) the amount of the fee so calculated is not to be rounded down to the nearest cent in accordance with subsection (2); and
- (b) the sum of the fee so calculated and the amount of goods and services tax payable in respect of the fee is to be rounded down to the nearest cent.

7. Section 8 amended (Notification of fees)

Section 8 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:
 - (a) before each financial year, publish in a notice on a website of the Agency –
 - (i) the amount of the fee in respect of that financial year, excluding the goods and services tax if applicable; and
 - (ii) whether or not the goods and services tax applies to the fee in respect of that financial year; and

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- (iii) if the goods and services tax applies to the fee in respect of that financial year –
 - (A) the amount of the goods and services tax payable in respect of the fee for that financial year; and
 - (B) the total fee payable, inclusive of the goods and services tax, in respect of that financial year; and
- (b) by omitting from subsection (1)(b) “the next” and substituting “that”;
- (c) by omitting subsections (2), (2A), (3) and (4) and substituting the following subsections:
 - (2) Subject to subsection (3), the Head of an Agency is to ensure that the information specified in subsection (1), for each fee that the Head of an Agency is responsible for collecting in a financial year, is –
 - (a) freely available for viewing by members of

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the public on the website
of the Agency; and

- (b) made freely available to a member of the public in another format if requested by the member of the public –

at all times during that financial year and the immediately following financial year.

- (3) If a notice published under section 6(1) in relation to a fee unit in respect of a financial year (the *relevant year*) is disallowed or rescinded, the Head of an Agency is to ensure that, for each fee that the Head of an Agency is responsible for collecting in the relevant year, the following statements are made in accordance with subsection (4) as soon as practicable after the disallowance or rescission:

- (a) in all cases, a statement that the notice published under section 6(1) in respect of the relevant year has been disallowed or rescinded, as the case may be;

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- (b) if the notice is disallowed or rescinded before the commencement of the relevant year but after a notice has been published under subsection (1)(a), a statement that specifies –
 - (i) the total amount of the fee as published under subsection (1)(a); and
 - (ii) the total amount of the fee that is to apply at the start of the relevant year as a result of the disallowance or rescission;
- (c) if the notice is disallowed or rescinded after the commencement of the relevant year, a statement that specifies –
 - (i) the total amount of the fee as at the start of the relevant year; and
 - (ii) the date on which the disallowance or rescission, as

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the case may be,
of the notice took
effect; and

(iii) the total amount of
the fee that applies
in respect of such
part of the relevant
year as remains
after the
disallowance, or
rescission, took
effect.

(4) Each statement under
subsection (3) in respect of a
financial year is to be made
available to members of the
public, in accordance with
subsection (2), for such part of
the financial year as remains after
disallowance or rescission took
effect and the immediately
following financial year.

8. Sections 8A, 8B and 8C substituted

Sections 8A, 8B and 8C of the Principal Act are
repealed and the following sections are
substituted:

8A. Requirement to correct published fees

If a Head of an Agency becomes aware
that –

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- (a) a fee, published by that Head of an Agency under section 8(1) or (3) in relation to a financial year, is incorrect; or
- (b) an enactment under which a fee that that Head of an Agency is responsible for collecting has been amended to reduce or increase the number of fee units to which the fee relates; or
- (c) a fee that that Head of an Agency is responsible for collecting has not been published in accordance with section 8(1) or (3) –

that Head of an Agency must, as soon as practicable after becoming aware of the error, amendment or omission, publish the correct fee in accordance with section 8(1).

8B. Amount of fee payable

- (1) Subject to subsections (2), (3) and (4), the amount of a fee payable at any time in a financial year is –
 - (a) if the goods and services tax is not applicable to the fee, the amount for that fee that is published in accordance with section 8(1) in respect of the financial year; or

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- (b) if the goods and services tax is applicable to the fee, the total fee payable, inclusive of the goods and services tax, that is published in accordance with section 8(1) in respect of the financial year.
- (2) Despite subsection (1), if a notice published under section 6(1) in relation to a fee unit for a financial year is disallowed or rescinded, the fee payable in respect of such part of the financial year as remains after the disallowance or rescission is the amount for the fee that is specified in respect of that part of the year in the statement by the Head of an Agency under section 8(3).
- (3) Despite subsection (1), if a fee is incorrectly published in accordance with section 8(1) or (3) in respect of a financial year, or is not published in accordance with section 8(1) in respect of a financial year, the fee payable for that financial year is –
 - (a) subject to paragraph (b), the fee that was payable in the immediately preceding financial year; and
 - (b) if the Head of an Agency publishes the correct fee, or omitted fee, under section 8A during the financial year to which the fee relates, the fee as

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published in respect of such part of the relevant financial year as remains after the correct fee, or omitted fee, is so published under that section.

- (4) Despite subsection (1), if an enactment is amended, during a financial year, in a manner which results in a reduction or increase in the number of fee units to which a fee relates, the fee payable for that financial year is –
- (a) if the fee is payable before the enactment is amended, the fee payable for that part of the financial year in accordance with this section; and
 - (b) if the fee is payable on or after the enactment is amended, the fee published under section 8A in respect of such part of the relevant financial year as remains after the enactment is so amended.
- (5) For the purposes of this section, a fee published under section 8(1) is not incorrect solely on the basis that the enactment under which the fee is payable is amended to reduce or increase the number of fee units to which the fee relates.

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8C. Refund for overpayments of certain fees

- (1) This section applies in relation to a fee in respect of a financial year if –
 - (a) the fee (the *incorrect fee*) –
 - (i) was incorrectly published in accordance with section 8(1) or (3) in respect of the financial year; or
 - (ii) was not published in accordance with section 8(1) in respect of the financial year; and
 - (b) the Head of an Agency who is responsible for collecting the fee publishes the correct fee, or the omitted fee, in respect of the financial year under section 8A (the *correct fee*); and
 - (c) the correct fee in respect of the financial year was less than the incorrect fee collected for any part of that financial year.
- (2) If this section applies in relation to a fee in respect of a financial year, the Head of an Agency who is responsible for collecting the fee must –
 - (a) publish a statement on the website of the Agency –

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- (i) setting out the reason for the reduction of the amount of the fee; and
 - (ii) advising that any person who paid the incorrect fee in respect of that financial year, may be entitled to a refund of so much of the fee paid by the person that is greater than the correct fee in respect of that financial year; and
 - (b) make all reasonable efforts to contact all such persons, who paid the incorrect fee in respect of that financial year, so as to advise them that they may be entitled to a refund under this section.
- (3) A person who has paid an incorrect fee in respect of a financial year may apply to the Head of an Agency, who is responsible for collecting the fee, for a refund of the amount of the fee that was paid by the person in respect of the financial year that was in excess of the correct fee in respect of the financial year.
- (4) The Head of an Agency who is responsible for collecting a fee to which this section relates –

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- (a) may, on the Head of an Agency's own initiative, refund to a person the amount of the fee that was paid by the person, in respect of a financial year, that is in excess of the correct fee in respect of the financial year if the Head of an Agency is satisfied that the person paid the incorrect fee in respect of the financial year; or
- (b) must refund the amount of the fee that has been paid by a person in a financial year that is in excess of the correct fee in respect of the financial year if –
 - (i) the person has applied to that Head of an Agency for the refund; and
 - (ii) that Head of an Agency is satisfied that the person paid the incorrect fee in respect of the financial year and that the excess amount has not already been refunded to the person.

9. Section 11A inserted

After section 11 of the Principal Act, the following section is inserted:

11A. Transitional provisions consequent on enactment of *Fee Units Amendment Act 2023*

(1) In this section –

commencement day means the day on which the *Fee Units Amendment Act 2023* commences;

current financial year means the financial year in which the commencement day occurs;

next financial year means the financial year commencing immediately at the end of the current financial year.

(2) This Act, as in force immediately before the commencement day, applies to –

(a) a notice that –

(i) relates to the current financial year; and

(ii) is published under section 7, 8 or 8A, as in force before the commencement day; and

(b) a fee payable in respect of the current financial year including, but not limited to –

(i) the calculation of the fee, and the total fee payable,

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- in respect of the current financial year; and
- (ii) a refund in respect of an overpayment of the fee payable in respect of the current financial year; and
 - (iii) if required, the publication of a notice under section 8A, as in force immediately before the commencement day, in relation to the fee payable in respect of the current financial year.
- (3) A fee payable on the last day of the current financial year is taken, on and after the commencement of the next financial year, to be the fee published under section 8(1), as in force immediately after the commencement day, in respect of the current financial year.
- (4) If the commencement day occurs after 15 February in the current financial year, but before 1 July in the next financial year –
- (a) the notice, that is published under section 7 as in force immediately before the commencement day, in respect of the next financial year is taken to be a notice that is published under section 6(1), as

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- in force immediately after the commencement day, in respect of the next financial year; and
- (b) this Act, as in force immediately after the commencement day, applies to the notice.
- (5) If the commencement day occurs after 31 March in the current financial year, but before 1 July in the next financial year –
- (a) the fees specified in a notice in respect of the next financial year published by a Head of an Agency under section 8, as in force immediately before the commencement day, are taken to have been published in respect of the next financial year in accordance with section 8(1), as in force immediately after the commencement day; and
- (b) this Act, as in force immediately after the commencement day, applies to the fees.

10. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.