

I certify that this is a copy of the authorised version of this Act as at 1 January 2024, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 January 2024.

K Woodward
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Dated 2 January 2024



TASMANIA

FEE UNITS ACT 1997

No. 47 of 1997

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FEE UNITS ACT 1997

No. 47 of 1997

An Act to provide for the introduction of a fee units system in legislation

[Royal Assent 11 December 1997]

Be it enacted by His 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 Act 1997*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act –

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CPI figure for Hobart means the Consumer Price Index: All Groups Index Number for Hobart published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth;

disallowed or rescinded means –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- (b) rescinded in accordance with section 9 of the *Subordinate Legislation Committee Act 1969*;

enactment means an Act, but does not include –

- (a) a regulation, rule or by-law unless it is –
 - (i) made by the Governor; or
 - (ii) made by a person or body other than the Governor and is required by law to be approved, confirmed or assented to by the Governor; or
- (b) any other instrument of a legislative character unless it is –
 - (i) made under the authority of an Act; and

- (ii) declared by the Minister under subsection (2) to be an enactment for the purposes of this Act;

fee means a fee or charge that is payable under any enactment;

goods and services tax means the GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth;

Head of an Agency means –

- (a) a Head of a State Service Agency; and
 - (b) a chief executive officer within the meaning of the *Government Business Enterprises Act 1995*;
- (2) The Minister, by notice published in the *Gazette*, may declare an instrument of a legislative character to be an enactment for the purposes of this Act.

4. Use and interpretation of fee units

- (1) If an enactment sets or adjusts a fee, the fee or adjusted fee must be expressed in fee units.
- (2) If a fee is specified as a number of dollars in an enactment, the fee is to be read as the same number of fee units.

5. Calculation of value of fee unit and determination of fee unit adjustment factor

(1)

(2) The Minister is to calculate the value of a fee unit in relation to a financial year in accordance with the following formula:

$$F_1 = F_0 \times \left(\frac{B}{C} - X \right)$$

where –

F_1 is the value in dollars of one fee unit during the relevant financial year;

F_0 is the value in dollars of one fee unit during the previous financial year as determined in accordance with section 6(3);

B is the average CPI figure for Hobart in respect of the 4 quarters ending on 31 December immediately preceding the financial year in which the value of a fee unit is to apply;

C is the average CPI figure for Hobart in respect of the 4 quarters immediately preceding the 4 quarters referred to in the definition of **B** ;

X is the fee unit adjustment factor, expressed as a decimal, determined under subsection (4).

- (3) The value of “X” in subsection (2) must be greater than or equal to zero.
- (4) The Minister is to determine annually an amount, to be known as the fee unit adjustment factor, representing the amount by which the ratio of “B” to “C” should be adjusted to reflect any matters the Minister considers relevant for the purposes of the fee unit calculation.
- (5) Where the value of a fee unit calculated in accordance with subsection (2) contains a fraction of a cent that value is to be –
 - (a) rounded up to the nearest cent, if the remainder is 0.5 of a cent or more; or
 - (b) rounded down to the nearest cent, if the remainder is less than 0.5 of a cent.

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

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consideration in determining 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.
- (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) –
 - (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.

8. Notification of fees

- (1) A Head of an Agency responsible for collecting a fee is to –
 - (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
 - (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) give any other notification specifying the amounts and matters referred to in paragraph (a) that the Head of an Agency considers appropriate for that financial year.

- (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 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.

(2A)

- (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;
 - (b) if the notice is disallowed or rescinded before the commencement of the relevant year but after a notice has been published

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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 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 the disallowance or rescission took effect and the immediately following financial year.

8A. Requirement to correct published fees

If a Head of an Agency becomes aware that –

- (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 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.

8C. Refund for overpayment 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

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- (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 –
 - (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 –
 - (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

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financial year and that the excess amount has not already been refunded to the person.

9. Exemptions

- (1) The Minister, by notice published in the *Gazette*, may specify certain fees to be exempt from the application of this Act.
- (2) This Act does not apply if a fee is levied by a Government Business Enterprise, within the meaning of the *Government Business Enterprises Act 1995*, unless the fee relates to a public regulatory function or power of that Government Business Enterprise.
- (3) The Minister, by written notice to a Government Business Enterprise, may determine whether a fee relates to a public regulatory function or power of the Government Business Enterprise.

10. Effect of exemption

If a fee is exempted from the application of this Act by a notice under section 9(1), the amount of the fee after the commencement of the exemption, and subject to any adjustment in accordance with any other arrangement applying under the Act under which the fee is levied, is the same as it was immediately before the commencement of the exemption.

10A. Effect of Act on right to adjust fees

Nothing in this Act prevents the setting or adjustment, at any time, of a fee in accordance with the arrangements for setting or adjusting fees applying under the Act under which the fee may be, or is, levied.

11. Notices not statutory rules

A notice under this Act is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

**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 –

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- (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, 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 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.

12. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

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- (a) the administration of this Act is assigned to the Minister for Finance; and
- (b) the Department responsible to the Minister for Finance in relation to the administration of this Act is the Department of Treasury and Finance.

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NOTES

The foregoing text of the *Fee Units Act 1997* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 January 2024 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Fee Units Act 1997</i>	No. 47 of 1997	15.5.1998
<i>National Taxation Reform (Commonwealth-State Relations) Miscellaneous Amendments Act 2000</i>	No. 21 of 2000	31.5.2000
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Fee Units Amendment Act 2002</i>	No. 21 of 2002	1.1.2003
<i>Fee Units Amendment Act 2023</i>	No. 34 of 2023	1.1.2024

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 21 of 2000, s. 4, No. 86 of 2000, Sched. 1, No. 21 of 2002, s. 4 and No. 34 of 2023, s. 4
Section 4	Substituted by No. 21 of 2002, s. 5
Section 5	Amended by No. 21 of 2002, s. 6 and No. 34 of 2023, s. 5
Section 6	Subsection (2) substituted by No. 21 of 2000, s. 5 Substituted by No. 34 of 2023, s. 6
Section 7	Amended by No. 21 of 2002, s. 7 Substituted by No. 34 of 2023, s. 6
Section 8	Amended by No. 21 of 2000, s. 6, No. 21 of 2002, s. 8 and No. 34 of 2023, s. 7
Section 8A	Inserted by No. 21 of 2002, s. 9 Substituted by No. 34 of 2023, s. 8
Section 8B	Inserted by No. 21 of 2002, s. 9 Substituted by No. 34 of 2023, s. 8
Section 8C	Inserted by No. 21 of 2002, s. 9 Substituted by No. 34 of 2023, s. 8
Section 10	Substituted by No. 21 of 2002, s. 10

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Provision affected	How affected
Section 10A	Inserted by No. 21 of 2002, s. 10
Section 11A	Inserted by No. 34 of 2023, s. 9