

Legislative Council—No 127

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South Australia

Legislation (Fees) Bill 2019

A BILL FOR

An Act to provide for the prescription and variation of fees for the purposes of various Acts, and for other purposes.

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Schedule 1—Repeal of *Fees Regulation Act 1927*

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Legislation (Fees) Act 2019*.

2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

fee means an amount payable to the Crown or another person or body, but does not include—

- 10 (a) an expiation fee or expiation reminder notice fee; or
- (b) an amount that a court or tribunal has ordered to be paid to the Crown, or to an agency or instrumentality of the Crown; or
- (c) any other fee, or fee of a kind, declared by the regulations to be excluded from the ambit of this definition;

15 *fee notice* means a fee notice made in accordance with section 4;

relevant Act, in relation to a fee, means the Act under which the fee is payable;

relevant authority, under an Act, means—

- 20 (a) if the Act authorises a specified person or body other than a Minister to prescribe a fee—that person or body; or
- (b) if the Act authorises both a Minister and a specified person or body to prescribe a fee—the Minister to whom the administration of the Act is committed and that person or body; or
- (c) in any other case—the Minister to whom the administration of the Act is committed.

- 25 (2) For the purposes of this Act, a reference in any other Act or regulations to fixing, determining or setting a fee, or any other similar term or phrase, will be taken to be a reference to prescribing the fee.

- (3) For the purposes of the *Acts Interpretation Act 1915*, a fee notice (whether made by a Minister or another person or body) will be taken to be a statutory instrument within the meaning of that Act.
- (4) For the purposes of section 14C of the *Acts Interpretation Act 1915*, a reference in that section to a power expressed to be conferred by a provision will be taken to include a reference to the prescription, substitution or variation of a fee by a provision of a fee notice.

4—Relevant authority may prescribe fees by fee notice

- (1) Where an Act—

- (a) authorises the making of regulations to prescribe fees; or
- (b) authorises a Minister or other specified person or body to prescribe fees by notice under this Act; or
- (c) prescribes a fee but makes no express provision for varying the fee; or
- (d) makes no provision for the prescription of fees in respect of a service or act done by the Crown, or an agency or instrumentality of the Crown, under that Act,

the relevant authority under the Act may, from time to time, prescribe fees by fee notice for the purposes of that Act.

- (2) If an Act referred to in subsection (1)(a) sets a maximum amount for a fee that may be prescribed by regulations under that Act, that maximum amount will be taken not to apply to the prescription of fees by fee notice.
- (3) The relevant authority under an Act may from time to time, vary a fee prescribed by fee notice by publishing a new fee notice in substitution for the current fee notice (and in such a case the earlier fee notice will be taken to be revoked by the later fee notice).
- (4) The relevant authority under an Act may, by subsequent fee notice, revoke a fee notice.
- (5) Any requirement or limitation under an Act relating to fees under that Act will be taken to apply in respect of the prescription, variation or revocation of fees under this section (including, to avoid doubt, a requirement that the approval or recommendation of a specified person or body be obtained before such action may be taken).
- (6) For the purposes of subsection (1)(c), an Act will not be taken to make provision for the variation of a fee merely because the fee is determined by reference to the value of particular land or some other variable factor.

5—Fee notices

- (1) A fee notice—

- (a) must be made by notice in the Gazette; and
- (b) must comply with any other requirements set out in the regulations.

- (2) Subject to this Act, a fee notice has effect according to its terms and may (except where the relevant Act provides otherwise)—

- (a) prescribe a specific fee, or a maximum or minimum fee; or

- (b) prescribe different fees according to the matters or circumstances to which they are expressed to apply; or
- (c) be conditional or unconditional; or
- (d) be of general or limited application; or
- (e) make provisions of a saving or transitional nature.

(3) A fee notice has effect—

- (a) if the fee notice specifies a day on which it is to have effect (not being a day earlier than the day on which the fee notice is published in the Gazette)—from that day; or
- (b) if the relevant Act authorises a fee notice to have effect from a specified day earlier than the day on which the fee notice is published in the Gazette and the fee notice specifies such a day on which it is to have effect—from that day; or
- (c) in any other case—from the day on which it is published in the Gazette.

(4) Sections 10 (other than subsection (1)) and 10A of the *Subordinate Legislation Act 1978* apply in relation to a fee notice (and a reference in those provisions to a regulation will be taken to be a reference to a fee notice).

(5) A fee notice will, for all purposes, be taken to be made under the relevant Act to which the fees prescribed by the fee notice relate.

6—Saving provisions

- (1) Nothing in this Act limits or affects the operation of a provision under any other Act that authorises the making of regulations to prescribe or otherwise provide for fees.
- (2) In the case where a particular fee is prescribed both by regulation and fee notice, the fee is to be determined by reference to the later in time of the instruments.

7—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The regulations may—
 - (a) be of general or limited application; and
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) make provisions of a saving or transitional nature; and
 - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Chief Executive or any other specified person or body.

Schedule 1—Repeal of *Fees Regulation Act 1927*

The *Fees Regulation Act 1927* is repealed.