

South Australia

Legislation (Fees) Act 2019

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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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

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

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—

- (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;

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—

- (a) if the Act authorises a specified person or body other than a Minister to prescribe a fee (other than by regulation)—that person or body; or
- (b) if the Act authorises both a Minister and a specified person or body to prescribe a fee (other than by regulation)—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.
- (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 *Legislation Interpretation Act 2021*, a fee notice (whether made by a Minister or another person or body) will be taken to be a legislative instrument within the meaning of that Act.
- (4) For the purposes of section 38 of the *Legislation Interpretation Act 2021*, a reference in that section to a function 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 *Legislative Instruments 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.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Legislation (Fees) Act 2019* repealed the following:

Fees Regulation Act 1927

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2019	30	<i>Legislation (Fees) Act 2019</i>	7.11.2019	19.3.2020 except Sch 1—1.7.2020 (<i>Gazette 19.3.2020 p546</i>)
2021	5	<i>Statutes Amendment and Repeal (Budget Measures) Act 2021</i>	25.2.2021	Pt 7 (s 16)—19.3.2020: s 2(3)
2021	36	<i>Legislation Interpretation Act 2021</i>	30.9.2021	Sch 1 (cll 6 & 7)—1.1.2022 (<i>Gazette 23.12.2021 p4619</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2022</i>
s 3		
s 3(1)		
relevant authority	amended by 5/2021 s 16	19.3.2020
s 3(3)	amended by 36/2021 Sch 1 cl 6(1)	1.1.2022
s 3(4)	amended by 36/2021 Sch 1 cl 6(2)	1.1.2022
s 5		
s 5(4)	amended by 36/2021 Sch 1 cl 7	1.1.2022
<i>Sch 1</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2022</i>

Historical versions

19.3.2020 (electronic only)

1.7.2020