

Energy and Public Works Legislation (Fee Unit Conversion) Amendment Regulation 2022

Explanatory notes for Subordinate Legislation 2022 No.78

made under the

Architects Act 2002

Building Act 1975

Building Industry Fairness (Security of Payment) Act 2017

Electricity Act 1994

Gas Supply Act 2003

Plumbing and Drainage Act 2018

Professional Engineers Act 2002

Queensland Building and Construction Commission Act 1991

General outline

Short title

Energy and Public Works Legislation (Fee Unit Conversion) Amendment Regulation 2022

Authorising law

Section 143 of the *Architects Act 2002*

Section 261 of the *Building Act 1975*

Section 201 of the *Building Industry Fairness (Security of Payment) Act 2017*

Section 263 of the *Electricity Act 1994*

Section 323 of the *Gas Supply Act 2003*

Section 157 of the *Plumbing and Drainage Act 2018*

Section 144 of the *Professional Engineers Act 2002*

Section 116 of the *Queensland Building and Construction Commission Act 1991*

Policy objectives and the reasons for them

The Queensland Treasury's Principles for Fees and Charges (Principles) requires agencies to set fees and charges to accurately reflect the cost of providing their services and to ensure these fees and charges maintain their value over time. Where a regular comprehensive review of fees and charges is not cost effective or no specific indexation method has been otherwise approved, agencies are required to annually apply the Government Indexation Rate to their fees and charges.

The Department of Energy and Public Works (DEPW) administers various Acts which provide for the prescription of fees and charges.

On 1 January 2022, the *Acts Interpretation Act 1954* was amended to insert a new Part 12B, which introduced a fee unit model to streamline the annual process for indexing regulatory fees. Part 12B provides that an Act may express a fee as a number of fee units rather than dollar amounts and the monetary value of a fee unit is \$1, or another amount prescribed by regulation.

The objective of the Energy and Public Works Legislation (Fee Unit Conversion) Amendment Regulation 2022 (Amendment Regulation) is to convert the fees and charges prescribed in following regulations from dollar amounts to number of fee units, in accordance with Government policy:

- *Architects Regulation 2019*
- *Building Industry Fairness (Security of Payment) Regulation 2018* (BIF Regulation)
- *Building Regulation 2021*
- *Electricity Regulation 2006*
- *Gas Supply Regulation 2007*
- *Plumbing and Drainage Regulation 2019*
- *Professional Engineers Regulation 2019*
- *Queensland Building and Construction Commission Regulation 2018*

These amendments will significantly reduce the administrative burden associated with annual indexation because indexation of the fees will be achieved automatically when the value of a fee unit under the *Acts Interpretation Act 1954* is updated.

The fees under the BIF Regulation (Schedule 2) are charged based on the amount of the progress payment being claimed. The fees increase incrementally based on certain thresholds of progress payment values. The highest category of fee is a percentage of the progress payment amount, up to a maximum value. The progress payment thresholds and percentage in the BIF Regulation are also required to be increased annually by the Government Indexation Rate to ensure the fees are not eroded over time and remain proportional to the progress payment value. The automated fee unit conversion approach cannot be applied to these progress payment thresholds and percentage, as they are not in themselves a fee. Rather, they enable the appropriate category to be selected for determining the applicable fee. In this case, a manual amendment is required annually to reflect indexation.

The *Gas Supply Regulation 2007* contains a formula that is used to calculate the annual distribution fee payable by distribution authorities. The formula contains a multiplier figure that is not expressed as a dollar amount so is therefore not suitable to be converted to a fee unit value. It is therefore proposed to increase that figure in accordance with the Government Indexation Rate through the Amendment Regulation.

Achievement of policy objectives

The Amendment Regulation will achieve its objective by converting the within scope fees and charges under the Acts administered by DEPW from dollar values to fee units. To reflect the applicable indexation rate, the Amendment Regulation also

achieves its objectives by amending the fee schedule in the BIF Regulation to increase the progress payment thresholds and percentage and the formula that is used to calculate the annual distribution fee payable by distribution authorities in the *Gas Supply Regulation 2007*.

In the case of section 1(h) of the BIF Regulation, the existing formula (which uses a percentage of the progress payment amount) has been converted to 'fee units equal to' the dollar value calculated using the formula. For example, if an adjudication application is made on 1 July 2022 for a progress payment with a value of \$1,300,000, the actual fee would be \$965.66. The fee unit equivalent of this fee would be 942.11 fee units.

Consistency with policy objectives of authorising law

The amendments are consistent with the policy objectives of the authorising laws.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with any policy objectives of any legislation.

Alternative ways of achieving policy objectives

This Amendment Regulation is the only effective means of achieving the policy objective.

Benefits and costs of implementation

The conversion of fees to fee units will achieve efficiencies and cost savings to DEPW as the annual indexation of fees will no longer require regulations to be amended. There are no additional costs associated with implementing the Amendment Regulation.

In the case of the BIF Regulation, an amendment will be required every year to manually increase the progress payment thresholds and percentage to reflect the applicable indexation rate, however the maximum cap under section 1(h), column 3 has been converted to fee units so will be indexed automatically alongside the fee unit values for sections 1(a) – (g). This imposes a minor administrative burden on DEPW but is the only way of achieving the indexation approach for the thresholds.

The amendment to the formula used to calculate the annual distribution fee in the *Gas Supply Regulation 2007* will ensure the fee is in line with government policy and will not substantially increase the financial burden on the community.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

The Office of Best Practice Regulation has advised that where agencies are amending their regulations pursuant to the *Acts Interpretation Act 1954* to adopt the fee unit model (i.e. comply with the requirements of the Principles), they can rely on agency assessed exclusion category (a) 'Regulatory proposals that make consequential amendments'. For amendments to the BIF Regulation and the *Gas Supply Regulation 2007* to implement the Government Indexation Rate, agency assessed exclusion category (h) 'Regulatory proposals that put forward standard annual fee variations in line with or below a government endorsed indexation factor', has been applied.

Given its machinery nature, there was no external consultation on this Amendment Regulation.