



Guideline for instructors

Fee amendment regulations

Introduction

The drafting of fee amendment regulations is sometimes misunderstood as simply an exercise in updating the dollar amounts of fees. However, when drafting a fee amendment regulation, OQPC not only ensures the fee amounts are accurately translated into the draft, we also have a statutory obligation to ensure the fee provisions are lawful, consistent with fundamental legislative principles and of the highest standard, including complying with current drafting styles and practices (see the *Legislative Standards Act 1992*, [section 7\(h\), \(i\) and \(j\)](#)).

To assist OQPC in drafting your fee amendment regulation, please ensure you have considered, and provided instructions on, the following matters.

Matters for instructors to consider and provide instructions on

Authorising provisions
<ul style="list-style-type: none"> Is there an authorising provision (or head of power) in the authorising Act for each fee that is to be charged? (i.e. does the authorising Act allow the fee to be charged?) If a fee provision imposes a fee for a particular type of application or the performance of a particular function, check that the application can be made, or the function performed, under the Act. <i>For example, a fee should not be imposed for an application to renew a licence if there are no provisions in the Act allowing for renewal applications to be made.</i>
References to authorising Act
<ul style="list-style-type: none"> Do the existing fee provisions refer to authorising provisions in the authorising Act? If not, please provide details of the authorising provisions to your drafter. Are existing references to authorising provisions correct? If not, please provide the correct references to your drafter.
Previous amendments
<ul style="list-style-type: none"> Has the authorising Act been amended in a way that affects the fee provisions? <i>For example:</i> <ul style="list-style-type: none"> Have provisions about a particular type of application or function been omitted from the Act, making a fee for the application or function redundant? Do any references to authorising provisions need to be updated as a result of amendments to the Act? Were any of the fees introduced part way through the financial year? If so, please provide your drafter with the details of these fees and a copy of CBRC's decision about when the indexation policy will apply.
Proposed amendments
<ul style="list-style-type: none"> Are you aware of any proposed amendments to the regulation (other than the changes being made as part of the fee amendment regulation) or to the authorising Act? <i>For example:</i> <ul style="list-style-type: none"> Is the authorising Act being repealed? Is the regulation being rewritten?
Implementation and administration
<ul style="list-style-type: none"> Are there any overlaps in the fees? (i.e. is more than one fee being charged for the same thing?) Are there any gaps in the fees? Are the existing fees being charged in practice? If not, can they be omitted from the regulation? Are any fees routinely waived or exemptions routinely given? If so, is there a provision in the regulation or authorising Act that provides a power to waive the fee or give an exemption? (For more information about waivers and exemptions, see below).



Proposed fee amounts and new fees

- Are any existing fees increasing by more than the indexation percentage stated by CBRC in the indexation policy for the year? If so, please give your drafter a copy of the CBRC decision approving the increase.
- For new fees, please give your drafter a copy of the CBRC decision approving the fee.
- Have the fees been rounded in compliance with the rounding policy in Queensland Treasury's [Principles for fees and charges](#)? If not, have you consulted Queensland Treasury in developing an alternative rounding policy?
- Are the proposed fee amounts reasonable? (i.e. do they reflect the cost of providing the product, service etc.?)

For example:

- A charge of \$100 for photocopying a document probably doesn't reflect the cost of making the photocopy.
- A charge for lodging a form may not be a fee if it continues to increase for each day that a person delays in lodging the form and there are no administrative costs associated with processing a late form.

If the amount of a 'fee' does not seem to reflect administrative costs, it may constitute a tax or a levy – in which case, it may require authorisation under an Act. For more information about setting fees, see Queensland Treasury's [Principles for fees and charges](#).

- Are the fee increases effective from the beginning of the financial year? If not, please give your drafter a copy of the Treasurer's approval to change the fee indexation cycle.

Waivers and exemptions

- A power under a law for a statutory instrument to prescribe a fee includes a power for the statutory instrument to exempt a person or matter from paying the fee or waive the payment of the fee (see the *Statutory Instruments Act 1992*, [section 30B](#)).
- If a regulation includes (or you are proposing to include) a provision that gives the chief executive or another officer power to waive a fee or give an exemption (rather than specifically setting out in the regulation when payment of a fee is waived or the circumstances in which a person is exempt from paying a fee), there may be an issue of sub-delegation.

In considering whether the sub-delegation is lawful and appropriate, you should consider the following:

- Does the authorising Act enable the chief executive or other officer to give the waiver or exemption, or enable a regulation to provide for this? If not, it may be possible to rely on the *Statutory Instruments Act 1992*, [sections 26](#) and [30B](#), subject to any contrary intention in the authorising Act.
- Does the provision include clear criteria for the exercise of the power to give an exemption or waiver?
- Does the provision limit the matters to which the power applies?