



Queensland

Health Legislation (Fees) Amendment Regulation (No. 1) 2011

Explanatory Notes for SL 2011 No. 117

made under the

Health Act 1937

Health Services Act 1991

Pest Management Act 2001

Private Health Facilities Act 1999

Radiation Safety Act 1999

General outline

Short title

Health Legislation (Fees) Amendment Regulation (No. 1) 2011.

Authorising law

Sections 132 and 180 of the *Health Act 1937*

Section 68 of the *Health Services Act 1991*

Section 130 of the *Pest Management Act 2001*

Section 151 of the *Private Health Facilities Act 1999*

Section 215 of the *Radiation Safety Act 1999.*

Policy objectives and the reasons for them

The objectives of the regulation are:

- to reflect the increasing cost of services provided, other than services to eligible public patients; and
- to enable the collection of the Goods and Services Tax (GST) on relevant fees in the *Health Regulation 1996*.

In accordance with current Queensland Government policy, all fees and charges for departments and statutory bodies are to be indexed annually by the full movement in the actual Australian Bureau of Statistics Brisbane All-Groups Consumer Price Index (CPI).

However, these annual increases in fees and charges do not take into account some variable costs associated with supplying health care goods and services. Agencies have a responsibility under the *Financial and Performance Management Standard 2009* (the FPM Standard) to set user charges at a rate which accurately reflects the cost of providing the related services.

Queensland Health uses the National Hospital Cost Data Collection (NHCDC) health escalation factor to determine increases for some fees prescribed in the *Health Services Regulation 2002*, specifically health services provided to Medicare ineligible and third party inpatients and outpatients in the public sector. Third party patients are those that receive care and treatment for an injury, illness or disease in a Queensland Health facility, and receive, or establish a right to receive, an amount of compensation or damages for that injury illness or disease. Ineligible persons are those who are not eligible persons under the *Health Insurance Act 1973* (Cwth). The NHCDC is considered a more appropriate index for calculating health service fees and charges as it facilitates taking into account the variable cost of supplying services within the public health sector.

The Goods and Services Tax (GST) is a broad-based tax of 10 per cent on most goods, services and other items consumed in Australia. Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides that the GST applies to payments of taxes, fees and charges, except those taxes, fees and charges that are excluded from the GST by a determination of the Treasurer. Specifically, section 81-5 of the GST Act deems all payments of taxes, fees or charges to be consideration for a supply except for those specified, by legislative instrument, by the Federal

Treasurer. The fees currently prescribed in the *Health Regulation 1996* for drug or article analysis have been determined by the Commonwealth to be fees for the supply of services and are therefore subject to GST.

Achievement of policy objectives

To achieve its objectives, the regulation will increase the fees charged and collected for services provided, by:

- increasing fees by the March 2011 Brisbane All Groups CPI of 3.6 per cent in:
 - the *Health (Drugs and Poisons) Regulation 1996*;
 - the *Health Regulation 1996*;
 - section 7 and Schedule 1, Part 1, clauses 1 - 3 of the *Health Services Regulation 2002*;
 - the *Pest Management Regulation 2003*;
 - the *Private Health Facilities Regulation 2002*; and
 - the *Radiation Safety Regulation 2010*;
- increasing accommodation fees by the health escalation factor of 7.24 per cent in Schedule 1, Part 1, clauses 4 - 15, and Schedule 1, Parts 2 and 3 of the *Health Services Regulation 2002*; and
- providing for GST to be payable in relation to a supply under the *Health Regulation 1996*, so that a person liable to pay a fee for the supply must, in addition to the fee, pay an amount equal to 10% of the fee.

Consistency with policy objectives of authorising law

The regulation is consistent with the main objectives of each of the authorising laws which provide that the Governor in Council may make regulations about the fees and charges for the provision of health services.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the main objectives of other legislation relating to the setting of fees and charges for services provided. Under the *Financial and Performance Management Standard 2009*, agencies have a

responsibility to set user charges at a rate which accurately reflects the cost of providing the related services.

Alternative ways of achieving policy objectives

The regulation is made in accordance with Queensland Government policy and the amendments contained therein are the only effective means of ensuring the effective application of health service fees and charges. Queensland Treasury's *Principles for Fees and Charges*, issued in April 2011, state that all fees and charges for departments and statutory bodies are to be indexed annually by the full movement in the actual Australian Bureau of Statistics Brisbane All-Groups CPI. Queensland Health has Cabinet Budget Review Committee approval to use the NHCDC health escalation factor to determine fee increases that are not in line with the annual movement in the CPI.

Benefits and costs of implementation

The regulation imposes an obligation on licensees or operators by way of an increase in fees and charges in relation to the following:

- 1) *Health (Drugs and Poisons) Regulation 1996*
 - a) Application fees for licences
- 2) *Health Regulation 1996*
 - a) Additional payment if GST applies
 - b) Fees for the analysis of a drug or article by an analyst by chemical, physical, chemical and physical, or microbiological methods
- 3) *Health Services Regulation 2002*
 - a) Accommodation fees
 - b) Outpatient service fees
 - c) Other fees in relation to third party patients or ineligible persons being treated in an operating theatre.
- 4) *Pest Management Regulation 2003*
 - a) Fees in regard to licences
- 5) *Private Health Facilities Regulation 2000*

- a) Fees in regard to approvals and licences
- 6) *Radiation Safety Regulation 2010*
 - a) Fees in regard to licences, other Act instruments, and other fees.

None of the abovementioned obligations are expected to impose significant financial or other costs on the persons or organisations to which they apply. There is no implementation cost associated with the amendments.

There will be no effect on Medicare eligible public patients, who make up the vast majority of persons treated in Queensland's public hospitals, and they will continue to receive treatment free of charge.

Consistency with fundamental legislative principles

The regulation is consistent with section 4 of the *Legislative Standards Act 1992*.

Consultation

As the regulation does not alter the substantive operation of any legislation, and as the increases in fees and charges are in accordance with current Queensland Government policy, no specific stakeholder consultation beyond regular industry engagement activities conducted by Queensland Health has been undertaken.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides the short title of the regulation.

Commencement

Clause 2 provides the commencement dates for the provisions. The fee increases take effect over various dates from 1 July 2011 and 1 October

2011 to allow for sufficient notice to licence holders and to coincide with applicable Commonwealth legislation.

Parts 2, 5 and 6 commence on 1 October 2011.

Part 3 commences on 1 August 2011.

Part 4, Amendment of *Health Services Regulation 2002* commences on 1 July 2011, except for section 9 which commences on 20 September 2011.

Part 7 commences on 1 July 2011.

Part 2 Amendment of Health (Drugs and Poisons) Regulation 1996

Regulation amended

Clause 3 specifies that Part 2 amends the *Health (Drugs and Poisons) Regulation 1996*.

Replacement of app 2 (Application fees for licences)

Clause 4 amends Appendix 2 by replacing the current application fees for licences with new fees based on the March 2011 All Groups Brisbane Consumer Price Index of 3.6 per cent.

Part 3 Amendment of Health Regulation 1996

Regulation amended

Clause 5 specifies that Part 3 amends the *Health Regulation 1996*.

Insertion of new s 211

Clause 6 inserts new section 211 Additional payment if GST applies.

New section 211 applies if GST is payable in relation to a supply under the Regulation.

Goods and services tax is a broad-based tax of 10 per cent on most goods, services and other items consumed in Australia. Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999* provides that the GST applies to payments of taxes, fees and charges, except those taxes, fees and charges that are excluded from the GST by a determination of the Treasurer. Specifically, section 81-5 of the Goods and Services Act deems all payments of taxes, fees or charges to be consideration for a supply except for those specified, by legislative instrument, by the Federal Treasurer. The fees currently prescribed in the *Health Regulation 1996* for drug or article analysis have been determined by the Commonwealth to be fees for the supply of services and are therefore subject to GST.

The amendment aligns the Regulation with section 18 of the FPM Standard which provides the authority to set fees and charges for goods and services provided by government departments and statutory bodies.

Replacement of sch 3 (Fees)

Clause 7 amends Schedule 3 by replacing the current fees for the analysis of a drug or article by an analyst with new fees based on the March 2011 All Groups Brisbane Consumer Price Index of 3.6 per cent.

Part 4 Amendment of Health Services Regulation 2002

Regulation amended

Clause 8 specifies that Part 4 amends the *Health Services Regulation 2002*.

Amendment of s 7 (Accommodation fees - nursing home type patient)

Clause 9 amends section 7(5) by replacing the current accommodation fees for nursing home type patient accommodation with new fees based on the March 2011 All Groups Brisbane Consumer Price Index of 3.6 per cent.

Replacement of sch 1 (Fees)

Clause 10 amends Schedule 1 (Fees), Part 1 Accommodation fees, Part 2 Outpatient services fees and Part 3 Other services.

Queensland Health uses the NHCDC health escalation factor to determine increases for some fees prescribed in the *Health Services Regulation 2002*, specifically health services provided to Medicare ineligible and third party inpatients and outpatients in the public sector. Third party patients are those that receive care and treatment for an injury, illness or disease in a Queensland Health facility, and receive, or establish a right to receive, an amount of compensation or damages for that injury illness or disease. Ineligible persons are those who are not eligible persons under the *Health Insurance Act 1973* (Cwth). The NHCDC is considered a more appropriate index for calculating health service fees and charges as it facilitates taking into account the variable cost of supplying services within the public health sector.

Amendments to Schedule 1, Part 1 Accommodation fees, Clauses 1-3 replace the current accommodation fees with new fees based on the March 2011 All Groups Brisbane Consumer Price Index of 3.6 per cent.

Amendments to Schedule 1, Part 1 Accommodation fees, Clauses 4-15 replace the current accommodation fees with new fees based on the National Hospital Cost Data Collection Health Escalation Factor of 7.24 per cent.

Amendments to Part 2 replace the current fees for Outpatient services with new fees based on the Health Escalation Factor of 7.24 per cent.

Amendments to Part 3 replace the current fees for Other services with new fees based on the Health Escalation Factor of 7.24 per cent.

Part 5 Amendment of Pest Management Regulation 2003

Regulation amended

Clause 11 specifies that Part 5 amends the *Pest Management Regulation 2003*.

Replacement of sch 2 (Fees)

Clause 12 amends Schedule 2 by replacing the current licensing fees with new fees based on the March 2011 All Groups Brisbane Consumer Price Index of 3.6 per cent.

Part 6 Amendment of Private Health Facilities Regulation 2000

Regulation amended

Clause 13 specifies that Part 5 amends the *Private Health Facilities Regulation 2000*.

Replacement of sch 3 (Fees)

Clause 14 amends Schedule 3 by replacing the current fees for approvals and licences with new fees based on the March 2011 All Groups Brisbane Consumer Price Index of 3.6 per cent.

Part 7 Amendment of Radiation Safety Regulation 2010

Regulation amended

Clause 15 specifies that Part 7 amends the *Radiation Safety Regulation 2010*.

Replacement of sch 8 (Fees)

Clause 16 amends Schedule 8, Parts 1 to 4 by replacing the current fees with new fees based on the March 2011 All Groups Brisbane Consumer Price Index of 3.6 per cent.

Part 1 amends fees on the possession of licences. Part 2 amends fees on a use or transport licence. Part 3 amends fees on other Act instruments. Part 4 amends various other fees.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Health.

© State of Queensland 2011
Authorised by the Parliamentary Counsel
and printed by the Government Printer