

National Injury Insurance Scheme (Queensland) Regulation 2016

Explanatory notes for SL 2016 No. 89

made under the

Motor Accident Insurance Act 1994

National Injury Insurance Scheme (Queensland) Act 2016

Queensland Civil and Administrative Tribunal Act 2009

Statutory Bodies Financial Arrangements Act 1982

General Outline

Short title

National Injury Insurance Scheme (Queensland) Regulation 2016

Authorising law

Sections 37(1)(a), 37(1)(b), 37(1)(c), 92 and 100 of the *Motor Accident Insurance Act 1994*

Sections 9(2)(b), 12(1)(b), 15(b), 19(1)(b), 19(3), 25(4), 26(1)(f), 99, 131(2)(c) and 140 of the *National Injury Insurance Scheme (Queensland) Act 2016*

Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009*

Sections 33, 42, 53 and 78 of the *Statutory Bodies Financial Arrangements Act 1982*

Policy objectives and the reasons for them

The principle objective of the *National Injury Insurance Scheme (Queensland) Regulation 2016* (NIIS(Q) Regulation) is to prescribe matters necessary to support the implementation and operation of the *National Injury Insurance Scheme (Queensland) Act 2016* (NIIS(Q) Act). The NIIS(Q) Act will commence, in large part, on 1 July 2016. In order for the NIIS(Q) Regulation to achieve its principle objective, it is necessary for most of its provisions to commence on 1 July 2016.

The NIIS(Q) Act ensures that certain people who sustain particular serious personal injuries as a result of a motor vehicle accident in Queensland, will receive necessary and reasonable treatment, care and support, regardless of fault. It achieves this by establishing:

- the National Injury Insurance Scheme, Queensland (NIIS(Q));
- the National Injury Insurance Scheme Fund, Queensland (NIIS(Q) Fund); and
- the National Injury Insurance Scheme Agency, Queensland (NIIS(Q) Agency).

The NIIS(Q) Regulation supports the implementation and operation of the NIIS(Q) Act, by:

- prescribing eligibility criteria for serious personal injuries relevant to an injured person's entry into the NIIS(Q);
- setting requirements for using the functional independence measure instrument or childrens functional independence measure instrument to assess a person's injuries;
- prescribing requirements for applications to enter into the NIIS(Q);
- prescribing entities the NIIS(Q) Agency may exchange information with or give personal information to;
- prescribing matters to be considered by the NIIS(Q) Agency in deciding whether a person's treatment, care and support needs are necessary and reasonable in the circumstances;
- prescribing treatment, care and support that must be provided by a registered provider; and
- setting the intervals for carrying out assessments for support plans and matters to be considered for certain assessments.

The NIIS(Q) Regulation also fixes the levy for the NIIS(Q), for the 2016-2017 financial year. This levy will apply from 1 October 2016.

The NIIS(Q) Regulation makes consequential amendments to the *Motor Accident Insurance Regulation 2004*, the *Queensland Civil and Administrative Tribunal Regulation 2009* and the *Statutory Bodies Financial Arrangements Regulation 2007*, associated with implementation and operation of the NIIS(Q) Act.

The consequential amendments to the *Motor Accident Insurance Regulation 2004*:

- alter the requirements for notices of claim, to take account of the introduction of the NIIS(Q);
- make the NIIS(Q) Agency an entity which a notice of claim must permit an insurer to have access to, and make copies of records of, documents about the claimant;
- make the NIIS(Q) Agency an entity with whom CTP insurers, the Motor Accident Insurance Commission and the Nominal Defendant can exchange information.

The consequential amendment to the *Queensland Civil and Administrative Tribunal Regulation 2009* allows fees to be charged by the Queensland Civil and Administrative Tribunal in relation to applications under section 127(1) of the NIIS(Q) Act.

The consequential amendments to the *Statutory Bodies Financial Arrangements Regulation 2007* prescribe borrowing and investment powers of the NIIS(Q) Agency.

Achievement of policy objectives

The NIIS(Q) Regulation prescribes matters, and makes consequential amendments, necessary to support implementation and operation of the NIIS(Q) Act.

The objectives of the NIIS(Q) Regulation can only be achieved by making the regulation.

Consistency with policy objectives of authorising law

The NIIS(Q) Act ensures that certain people who sustain particular serious personal injuries as a result of a motor vehicle accident in Queensland, will receive necessary and reasonable treatment, care and support, regardless of fault. It achieves this by establishing:

- the NIIS(Q);
- the NIIS(Q) Fund; and
- the NIIS(Q) Agency.

The NIIS(Q) Regulation is consistent with the policy objectives of the NIIS(Q) Act in that it prescribes matters, and makes consequential amendments, necessary to support implementation and operation of the NIIS(Q) Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The NIIS(Q) Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The NIIS(Q) Regulation will ensure a regulation is in place which is essential to support the effective operation of the NIIS(Q) Act.

It is not anticipated there will be any significant increases in the administrative costs associated with implementing the NIIS(Q) Act, as a result of making the NIIS(Q) Regulation.

Consistency with fundamental legislative principles

The NIIS(Q) Regulation is generally consistent with fundamental legislative principles.

Some provisions in the NIIS(Q) Regulation relating to the eligibility criteria for serious personal injuries potentially breach section 4(3)(k) of the *Legislative Standards Act 1992* – legislation should be unambiguous and drafted in a sufficiently clear and precise way. Several provisions, in particular section 11 which relates to the eligibility criterion for permanent blindness caused by trauma, use technical medical terms.

A review of the guidelines and subordinate legislation used in other jurisdictions, relating to the eligibility requirements for their schemes, shows that such terms are also used in those guidelines and subordinate legislation. Although the terms used in the NIIS(Q) Regulation are technical, they are understood by practitioners in the medical profession who will be applying the criteria.

Consultation

The following entities were consulted on the NIIS(Q) Regulation:

- Queensland Law Society;
- Australian Lawyers Alliance;
- Allianz Australia Limited;
- QBE Insurance Group;
- Royal Automobile Club of Queensland Limited;
- Insurance Council of Australia;
- Youngcare;
- Spinal Life Australia;
- Vision Australia;
- Recover Injury Research Centre, Griffith University;
- Headway ABI Australia;
- Australian Pain Management Association;
- Actuaries Institute;
- Doctors from the Princess Alexandra Hospital;
- Australian Medical Association Queensland;
- Queensland Paediatric Rehabilitation Service;
- Royal Australasian College of Surgeons;
- Department of Premier and Cabinet;
- Department of Communities, Child Safety and Disability Services;
- Office of Industrial Relations;
- Department of Justice and Attorney-General;
- Taylor Fry Consulting Actuaries, in regards to the levy for the national injury insurance scheme, Queensland for the 2016-2017 financial year.

The Office of Best Practice Regulation (OBPR) was also consulted regarding the need for a Regulatory Impact Statement (RIS).

Stakeholders were, in general, supportive of the making of the Regulation.

Some stakeholders requested changes to the eligibility criteria for serious personal injuries, which would increase the scope of coverage of the NIIS(Q) beyond the requirements of the nationally approved Minimum Benchmarks and result in increased scheme costs. Hence those suggested changes have not been made.

Some comments highlighted the need for further engagement by the Motor Accident Insurance Commission to improve stakeholder understanding of the operation and interaction of the NIIS(Q) Act and the NIIS(Q) Regulation, and the requirements of the Minimum Benchmarks. These issues will be addressed through written responses to the stakeholder submissions and ongoing meetings and discussions associated with implementation of the NIIS(Q).

The Queensland Law Society raised concerns about the scope of powers to share information with entities prescribed in the NIIS(Q) Regulation and requested that a review of the application of the regulation take place after 12 and 24 months. The NIIS(Q) Regulation now confirms any information sharing must relate to the Agency's functions under the NIIS(Q) Act. Consideration will be given to conducting a review of the regulation's operation in 12 months.

OBPR advised that a RIS is not required.