

Explanatory Statement

Public Health (Fees) Determination 2012 (No 1)

Disallowable instrument DI2012—212

made under the

Public Health Act 1997, s 137 (Determination of fees)

Section 137 of the *Public Health Act 1997* (the Act) empowers the Minister to determine, in writing, fees for the purposes of the Act. The provision specifies that the determination is a disallowable instrument, and as such is subject to the provisions in Part 6.3 of the *Legislation Act 2001*. The meaning of a *disallowable instrument* is the subject of section 9 of the *Legislation Act 2001*.

The Act provides for the licensing and registration of public health risk activities. A public health risk activity includes activities that may result in the transmission of disease, or that may otherwise adversely affect the health of individuals in the context of the wider health of the community.

Section 32 of the Act does not impose a maximum duration for an activity licence, however a policy decision has been made requiring licences and registrations to be renewed annually. Accordingly, the fee prescribed is for a licence or registration for one year.

This instrument revokes all previous determinations of fees under this Act, and sets new fees for the application, renewal and transfer of all licensable or registrable public health risk activities. Specifically, fees are determined for the following activities:

- (i) Hairdressing – Schedule 2;
- (ii) Boarding houses – Schedule 3;
- (iii) Infection control – Schedule 4;
- (iv) Health care facilities – Schedule 5;
- (v) Operation of a drinking water facility – Schedule 6;
- (vi) Cooling towers and warm water storage systems – Schedule 7; and
- (vii) Community pharmacies – Schedule 8.

The determination exempts charities and benevolent institutions from having to pay the determined fees for the public health risk activities of (i) to (iii) and (vi) above.

The determination also gives medical practitioners an exemption from the need to pay the determined fees for infection control licences. The meaning of certain terms, such as *medical practitioner* and *charity* are set out in Schedule 1 of the determination.

This fee determination differs from the previous declaration being revoked, DI2011-242, in three key respects. The changes are:

- the inclusion of Schedule 8 pertaining to community pharmacies;
- the introduction of a non-refundable portion of the licence fee; and
- a correction to Schedule 4, so that the fee imposed under section 36 of the Act is per premises rather than per business.

Schedule 8 of this instrument determines fees relating to the operation of a community pharmacy, which has only recently been declared to be a public health risk activity. As this activity has not previously been licensable, no previous fees existed.

This determination now reflects that the fee contains a non-refundable component in order to cover the processing and administrative costs associated with the application. As such, these costs are incurred by the regulator irrespective of whether the licence is granted or refused. Accordingly, in each schedule the fee payable is stated in column 4 of the schedule, and the non-refundable portion of the fee is stated in column 5 of the schedule.

The general approach that has been taken with fees determined for public health risk activity licences has been to require a licence, and thereby to impose a fee, for each premises used by a business. This recognises that although the business running each location may be the same, and therefore similar approaches to work and practices are employed, each location is still assessed and inspected based on its own individual public health risks.

For businesses with multiple premises, this approach will mean multiple fees to be paid. However, it also means that the premises are assessed and inspected as separate entities. This means that should a contravention of the Act or a licence condition be detected at one location, and enforcement action taken, the other premises are not affected as a consequence. If all premises were subject to a single licence, if a contravention at one location warranted a prohibition order, all premises would be subject to the prohibition order and therefore prevented from operating.

Under past fee determinations for the Act the fees for the application, renewal and transfer of an infection control licence were payable per business. This was inconsistent with the approach taken with other public health risk activity licences, which was that the fee was payable per premises. To rectify this inconsistency, a new fee determination was made, DI201-314, in late December 2010. That new fee determination changed the fee payable for a licence application and renewal of an infection control licence to be per premises, rather than per business. However, the new determination failed to correct the fee payable for transfer of an infection control licence, which remained as being per business. This fee determination finally rectifies that situation. Accordingly, all fees determined for the Act are payable per premises.