



## Health Alert June 2010

This alert contains information on the following topics:

- **National Health & Hospitals Network Agreement**
- **Pathology case tests anti-bribery provisions under the Health Insurance Act**
- **Legislation update**

### National Health & Hospitals Network Agreement

On 20 April 2010, the Council of Australian Governments (COAG) agreed, with the exception of Western Australia, to sign the National Health and Hospitals Network Agreement (**Agreement**).

The Agreement sets out the shared intention of the Commonwealth, State and Territory governments to implement a National Health and Hospitals Network for Australia. It is a significant agreement because the reforms set out in the Agreement are intended to shape the foundations of Australia's future health system.

There is a clear recognition that the Commonwealth injection of \$7.3 billion in funding under the reforms was needed in the public health system as the Commonwealth's share of public hospital funding has slowly declined over the past two decades. However, some of the key issues coming out the reforms are:

- Will the reforms really reduce the blame shifting and cost shifting between different levels of government? There is definite conjecture as to whether the reforms as contemplated will achieve this given there are still shared funding responsibilities between the Commonwealth and State in relation to public hospitals.
- What impact will these changes have on the private hospital sector? There is no clear reference in the documents as to how the private sector might be appropriately utilised to help cope with increasing demands in public hospitals?
- What will these changes do to control the demand in public hospitals? There is no cap on the overall funding to be provided by the Commonwealth (as it will depend on service demand) and as outlined above there are no detailed

links as to how the private sector or other services could be utilised?

- What is the extent of involvement that state bureaucracies will have in this structure? There is a lack of detail about how Local Hospital Networks will work including how the Government will ensure that directors on the local boards have the appropriate skills?
- How will the reform agenda address the current 'siloed' model of health care delivery? There needs to be greater consideration of the structures underpinning hospital connections with private care and preventative care.

The reforms coming out of the Agreement are detailed in the Australian Government's document entitled '*A National Health and Hospitals Network for Australia's Future – Delivering Better Health and Better Hospitals*' and can be located on the [Department of Health and Ageing Website](#). A full copy of the Agreement can be found on the [COAG website](#).

Some of the key reforms outlined in the above documents are:

- An overall investment from the Commonwealth Government of \$7.3 billion as part of establishing the National Health and Hospitals Network.
- The Commonwealth Government will become the majority funder of Australian public hospitals. The Commonwealth Government will fund 60 per cent of the efficient price for all public hospital services, and 60 per cent of capital, research and training in public hospitals. The Government will also take full funding and policy responsibility for GP and primary care services, and for aged care services.



- The Commonwealth's contribution is to be based on a national efficient price, to be determined by a new, independent national umpire – the Independent Hospital Pricing Authority.
- Responsibility for hospital management will be devolved to Local Hospital Networks.
- Local Hospital Networks will be paid on the basis of each service they provide to public patients under service agreements negotiated with the states.
- Public hospital services will be provided under service agreements between each Local Hospital Network and states.
- The Commonwealth will make payments to states for system wide matters such as research and training payments, and block grants, including for small rural and regional hospitals to recognise 'Community Service Obligations'.
- Both Commonwealth and State funding for public hospital services will be delivered directly to Local Hospital Networks through a National Health and Hospitals Network Funding Authority in each state. Jointly governed by the Commonwealth and the relevant state these funding authorities will report on the number of services provided and paid for. This is intended to introduce a greater level of transparency in funding for public hospitals.
- Regular Hospital Performance Reports are intended to provide for transparent reporting on the performance of every Local Hospital Network and the hospitals within it, and every private hospital. They are intended to show how Australian hospitals perform against new national standards and other performance indicators.
- Independent primary health care organisations – to be called 'Medicare Locals' will be established. They are intended to improve access to care and drive integration across GP and primary health care services.
- An investment of \$467 million is being made into establishing an electronic health record system.

## Pathology case tests anti-bribery provisions under the Health Insurance Act

There is a case currently before the Supreme Court of Victoria which, once decided, will hopefully give members of the health industry greater clarity and guidance on the anti-bribery provisions of the *Health Insurance Act 1973* (Cth) (**HIA**).

Most members of the health industry are aware of the anti-bribery provisions under the HIA. These provisions can potentially render what is an attractive commercial transaction into a potential criminal nightmare. Section 129AA of the HIA prohibits private hospitals giving benefits to doctors (without reasonable excuse) which may influence that doctor to refer patients into the private hospital. Conversely, doctors are also prohibited from receiving any benefits from private hospitals which could induce them to refer their patients.

In 2002 the HIA was amended to include more detailed anti-bribery provisions relating specifically to the professions of diagnostics and pathology. The concept under these provisions is similar to s129AA of the HIA in that any benefit which a provider of pathology or radiology services gives to a requester (such as a doctor), must have a valid commercial basis and cannot be seen to be an inducement to refer patients.

To date, no cases have been determined which test the anti-bribery provisions under

the HIA and private hospitals and doctors have been left to draw assistance from the guidelines published by the Department of Health and Ageing. However, there is a case currently before the Supreme Court of Victoria which raises allegations of breaches of the HIA.

### Background of case

In late 2005 Healthscope Limited (**Healthscope**) acquired the John Fawkner Hospital (**Hospital**). Primary Health Care operates a pathology in the Hospital known as Symbion Pathology (**Symbion**). At the time of acquisition, Healthscope took assignment of a lease with Symbion which contained provisions preventing Healthscope from allowing a competing pathology service to operate within the Hospital.

Within months of acquisition, Healthscope opened the Gribbles Pathology (**Gribbles**) next door to the Hospital and started promoting Gribbles to Hospital staff and doctors. In addition to claims for breaches of its lease, Symbion is alleging Healthscope has breached the anti-bribery provisions of the HIA. Symbion's allegations of inducement against Healthscope include:

- Healthscope relocating and paying for the refurbishment costs of a specialist's office.

- Healthscope handing out movie tickets and free meals to nurses whose departments regularly made referrals to Gribbles.
- Healthscope donating to one Hospital department \$50,000 each year for its chosen charity.
- Healthscope providing new equipment for doctors.
- Healthscope reducing rent paid by doctors for offices within the Hospital grounds.
- Healthscope contributing \$5,000 to a Hospital department's staff education program.

Healthscope is denying the allegations of inducement and it is expected that Healthscope will be calling a number of doctors to give evidence to support its defence. The case also includes claims of similar conduct at Hills Private Hospital and Lady Davidson Private Hospital in Sydney.

The matter is presently being heard and it is unsure when judgment will be given. However, it will be interesting to understand the nature of the evidence before the Court and the position the Court takes in its interpretation of the HIA. We will keep you updated through this alert of the outcome of the trial.



## Legislation update

### **Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010 (Cth)**

This Bill was introduced into the House of Representatives and received its second reading speech on 12 May 2010.

It proposes to amend the *National Health Act 1953* (Cth) to extend the application of the Australian Community Pharmacy Authority and Ministerial Rules to 30 June 2015.

### **Health Practitioner Regulation Amendment Bill 2010 (NSW)**

This Bill was introduced into the Legislative Assembly and received its second reading speech on 20 May 2010.

It proposes to repeal the following legislation:

- *Chiropractors Act 2001* (NSW)
- *Chiropractors Regulation 2007* (NSW)
- *Dental Practice Act 2001* (NSW)
- *Dental Practice Regulation 2004* (NSW)
- *Dental Technicians Registration Act 1975* (NSW)
- *Dental Technicians Registration Regulation 2008* (NSW)
- *Medical Practice Act 1992* (NSW)
- *Medical Practice Regulation 2008* (NSW)
- *Nurses and Midwives Act 1991* (NSW)
- *Nurses and Midwives Regulation 2008* (NSW)
- *Optometrists Act 2002* (NSW)
- *Optometrists Regulation 2004* (NSW)
- *Osteopaths Act 2001* (NSW)
- *Osteopaths Regulation 2007* (NSW)
- *Pharmacy Practice Act 2006* (NSW)
- *Pharmacy Practice Regulation 2008* (NSW)
- *Physiotherapists Act 2001* (NSW)
- *Physiotherapists Regulation 2008* (NSW)
- *Podiatrists Act 2003* (NSW)
- *Podiatrists Regulation 2005* (NSW)
- *Psychologists Act 2001* (NSW)
- *Psychologists Regulation 2008* (NSW)

It also proposes to make a number of amendments to other legislation.

The repeals and amendments proposed by the Bill are a consequence of the adoption of the Health Practitioner Regulation National Law by New South Wales.

### **Health Practitioner Regulation National Law (South Australia) Bill 2010 (SA)**

This Bill was introduced into the House of Assembly and received its second reading speech on 11 May 2010.

It proposes to repeal the following legislation:

- *Chiropractic and Osteopathy Practice Act 2005* (SA)
- *Dental Practice Act 2001* (SA)
- *Medical Practice Act 2004* (SA)
- *Nursing and Midwifery Practice Act 2008* (SA)
- *Optometry Practice Act 2007* (SA)
- *Pharmacy Practice Act 2007* (SA)
- *Physiotherapy Practice Act 2005* (SA)
- *Podiatry Practice Act 2005* (SA)
- *Psychological Practices Act 1973* (SA)

The repeal of this legislation is a consequence of the adoption of the Health Practitioner Regulation National Law by South Australia.

### **Health Practitioner Regulation National Law (Tasmania) Bill 2010 (Tas)**

This Bill was introduced into the House of Assembly on 5 May 2010.

The object of the Bill is to implement the Intergovernmental Agreement for a National Registration and Accreditation Scheme for Health Professions, which the Commonwealth and the States entered into on 26 March 2008.

### **Health Practitioner Regulation National Law (WA) Bill 2010 (WA)**

This Bill was introduced into the Legislative Assembly and received its second reading speech on 5 May 2010.

The object of the Bill is to implement the Intergovernmental Agreement for a National Registration and Accreditation

Scheme for Health Professions, which the Commonwealth and the States entered into on 26 March 2008.

### **National Health Amendment (Contenance Aids Payment Scheme) Bill 2010 (Cth)**

This Bill was introduced into the House of Representatives and received its second reading speech on 12 May 2010.

It proposes to amend the *National Health Act 1953* (Cth) to provide the Minister with the legislative authority to formulate the 'Contenance Aids Payments Scheme'. It is proposed that this scheme would replace the Contenance Aids Assistance Scheme and provide payments to eligible persons to assist them in purchasing products that help manage incontinence.

### **Pharmacy Regulation Bill 2010 (Vic)**

This Bill was introduced into the Legislative Assembly on 4 May 2010 and received its second reading speech on 6 May 2010.

It proposes to:

- establish the Victorian Pharmacy Authority (VPA) to take over the role of regulating pharmacies previously performed by the Pharmacy Board of Victoria under the *Health Professions Registration Act 2005* (Vic)
- make provisions in relation to the requirements of pharmacy business ownership, including caps on the growth of pharmacy ownership and requirements of establishment and operation
- provide for licensing for carrying on a pharmacy business or department, and for the registration of premises.

### **Voluntary Euthanasia Bill 2010 (WA)**

This Bill was introduced into the Legislative Council and received its second reading speech on 20 May 2010.

It proposes to provide for the administration of voluntary euthanasia, and includes a process which requires (among other things) the person seeking the administration of euthanasia signing a request form which is assessed by two independent medical practitioners.

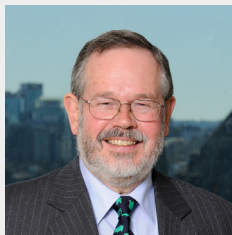




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