



Health Alert February 2009

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Amendments to Aged Care Legislation

In the legislation update of our [November Health Alert](#) we mentioned that the *Aged Care Amendment (2008 Measures No. 2) Bill 2008* (Cth) (**Bill**) proposes amendments to the *Aged Care Act 1997* (Cth) (**Act**) and *Aged Care (Bond Security) Act 2006* (Cth). On 4 December 2008 the Commonwealth Parliament passed the Bill. The amendments came into effect on 1 January 2009, with a six month transitional period.

The Bill was introduced to parliament after extensive consultation by the Government which revealed a number of problems with the then current legislation. The main problems that were identified during the consultation process, and the initiatives introduced in the amended Act to address those problems, are set out below.

Problem 1: The legislation does not reflect the corporate structures often used by modern day aged care providers

The amended Act aims to address this problem by:

- > Linking approved provider status with an allocation of places. An entity's approved provider status is not effective until it has been allocated Commonwealth funded places, and the status is specific to which service(s) the entity has allocated places. The status of an existing approved provider will now lapse if it is not allocated Commonwealth funded places within six months of the commencement of the amended Act. New applicants

must have places allocated to them within two years of receiving approved provider status.

- > Providing that the Secretary may impose a wider range of conditions on the grant of approved provider status, such as the continued engagement of a management company with appropriate expertise, to ensure the ongoing suitability of the provider.
- > Expanding the definition of key personnel so that an approved provider now needs to provide details to the Department of Health and Ageing (**Department**) for anyone who has authority or responsibility (or a significant influence over) planning, directing or controlling the activities of the approved provider.
- > Providing that the Secretary may take into account the conduct of approved providers with common key personnel when assessing applications for various approvals under the Act.

Problem 2: The Accommodation Bond Guarantee Scheme does not provide equal and fair protection of accommodation bonds for all residents

The amended Act aims to address this problem by:

- > Expanding the application of the Accommodation Bond Guarantee Scheme to cover the following payments made by residents (where it did not previously):
 - Accommodation bonds paid by residents where the provider's approved provider status subsequently lapses or is revoked



- before the refund declaration for the accommodation bond is made.
- Unregulated lump sums. Unregulated lump sums are similar in nature to accommodation bonds but they were collected by a provider, who is an approved provider immediately before 1 January 2009, before that provider had approved provider status.
 - > Giving the Secretary the power to impose a condition on the allocation of places to an approved provider (where the allocation is made after 1 January 2009) that requires the provider to refund the balances of any pre-allocation lump sums. Pre-allocation lump sums are amounts that are similar in nature to accommodation bonds but they were collected by a provider, who was not an approved provider immediately before 1 January 2009, before that provider had approved provider status. The Secretary may also determine the conditions and entry into force of any accommodation bond agreement entered into as a consequence of the refund of a pre-allocation lump sum.

Problem 3: The sanctions under the legislation do not provide sufficient protection to the health, welfare or interests of existing and future care recipients and need clarification

The amended Act aims to address this problem by:

- > Expressly providing that the Secretary's paramount consideration in deciding whether it is appropriate to impose sanctions on an approved provider for non-compliance with one or more of its responsibilities is whether the non-compliance threatens or would threaten the health, welfare or interests of current and future care recipients.

- > Introducing a new sanction to enable the Secretary to suspend approved provider's eligibility for subsidies for any person entering the service of the approved provider or for any service of the approved provider.

Problem 4: Some of the assessments conducted by the Aged Care Assessment Team (ACAT) are unnecessary or too frequent

The amended Act aims to address this problem by:

- > Exempting approvals for residential respite care from the lapsing provision (that provides for the lapsing of approvals after 12 months).
- > Exempting approvals for high level residential care, extended aged care at home and extended aged care at home (Dementia) from the lapsing provision.
- > Providing that the approval of a person approved as a recipient of a high level of residential care does not prevent the person receiving residential care at any classification level, including low level.

These amendments only affect ACAT approvals granted from 1 July 2009.

Problem 5: The Accountability Principles need to be strengthened

The amended Act aims to address this problem by:

- > Requiring approved providers to notify the Department if there is an unexplained absence of a care recipient from a residential aged care service in cases where the provider has notified police.
- > Making police checks mandatory for all staff, regardless of whether they have supervised or unsupervised access to

residents (the previous legislation did not require police checks for staff who only have supervised access to care recipients).

Problem 6: The hardship provisions are not sufficiently flexible

Under the previous legislation a resident who is unable to access some of their assets, but still has \$65,000 worth of other assets would not be allowed to pay a reduced accommodation bond or accommodation charge, and the provider would not be eligible to receive an accommodation supplement.

The amended Act aims to address this problem by:

- > Providing that a resident with access to few assets may pay a small bond or charge and the Government will provide an accommodation supplement to cover the shortfall.

Guidance

The Department has released a useful document called 'Guide to the changes to the Regulatory Framework for Aged Care' to assist approved providers to understand the amendments. The guide can be downloaded from the [Department's website](#). Approved providers should ensure that they are familiar with the amendments and the potential effect the amendments might have on their businesses.

Members of our health and aged care team are happy to discuss how we can assist with documentary, procedural and compliance issues arising from these changes.



National E-Health Strategy

In 2008 the Australian Health Ministers, through the Australian Health Ministers' Advisory Council, commissioned Deloitte to develop a national E-Health strategy to coordinate the various E-Health frameworks across Australia.

The National Strategy for E-Health was released in December 2008. The overall aim of the strategy is to increase and reinforce E-Health collaboration across the country through a common framework while maintaining flexibility in the way that individual States and Territories implement it. The strategy is guided by seven main strategic principles and four major streams of activity.

The strategic principles are:

- > **National infrastructure** – Deliver core elements of enabling national E-Health infrastructure once, rather than duplicating development costs and efforts and increasing the likelihood of rework
- > **Stakeholder engagement** – Actively engage key health care stakeholders in the design and delivery of E-Health solutions
- > **Incremental approach** – Build long-term national E-Health capability in an incremental and pragmatic manner, focusing initial investment in those areas that deliver the greatest benefits for consumers, care providers and health care managers
- > **Recognising different starting points** – Balance active support for care providers with less developed capability, while not constraining the ability for more advanced participants to progress

- > **Leverage** – More effectively leverage and scale E-Health activity across the country
- > **Balancing alignment and independence** – Drive alignment of national E-Health activities whilst not unnecessarily limiting the ability of health care participants and vendors to implement locally relevant solutions
- > **Relevant skills** – Ensure sufficient numbers of skilled practitioners are available to support delivery of the national E-Health strategy.

The streams of activity are:

- > **Foundations** – Establishing the core foundations for electronic information exchange across the health sector. This work stream is fundamental, as without the basic ability to securely share health information, there will effectively be no national E-Health capability.
- > **E-Health Solutions** – Stimulating the delivery of E-Health solutions to the key users of health information. This work stream facilitates the delivery of specific computing systems and tools to address the high priority needs of consumers, care providers and health care managers.
- > **Change and Adoption** – Fostering consumer, care provider and health care manager adoption of E-Health. The aim of this work stream is to focus efforts on achieving a 'tipping point' of stakeholder adoption of E-Health solutions as quickly as possible.
- > **Governance** – Ensuring the effective leadership, coordination and oversight of the national E-Health work program. This work stream focuses on the establishment of appropriate national E-Health governance structures and mechanisms.

A summary of the strategy is available at the [Department of Health and Ageing website](#). We will monitor any legislative developments to implement the strategy.

Disclosure regimes for charities and not-for-profit organisations

As we outlined in the last edition of Health Alert, the Senate Standing Committee on Economics (**Committee**) has released its report on the "Disclosure regimes for charities and not-for-profit organisations (NFPs)".

The Committee undertook an examination into the not-for-profit sector within Australia, with particular reference to:

- > The relevance and appropriateness of current disclosure regimes for charities and all other NFPs
- > Models of regulation and legal forms that would improve governance and management of charities and NFPs and cater for emerging social enterprises, and
- > Other measures that can be taken by government and the NFP sector to assist the sector to improve governance, standards, accountability and transparency in its use of public and government funds.

Some of the key recommendations made by the Committee in the report are:

- > Develop common terminology when referring to the size of charities and NFPs (such as micro, small, medium and large). All government departments should use this common terminology.
- > Establish a unit within the Department of Prime Minister and Cabinet to



manage issues in relation to NFPs.

- > Establish a single independent national regulator for NFPs which is modelled on similar overseas regulators (such as in the UK). Some of the key responsibilities of the national regulator should be:

- Developing and maintaining a register of all NFPs in Australia
- Developing standards of best practice for NFPs
- Advising and educating NFPs on these standards
- Investigating complaints about NFPs
- Educating the public about NFPs.

- > Adopt a mandatory, single legal structure for NFPs after full consultation with existing NFPs.
- > Conduct a full taxation review for NFPs with a view to simplification to reduce confusion and compliance costs.
- > Develop a National Fundraising Act (which will require a referral of powers from the states and territories to the Commonwealth).
- > Implement a standard chart of accounts for use by all NFPs and

government departments.

- > Establish a Taskforce which will be responsible for implementing the Committee's recommendations.

The Committee was well aware of the complexity of the current fundraising legislation. Organisations which fundraise nationally face separate registration and differing regulations in each State and Territory, contributing to significant confusion and expense particularly for small and medium sized NFPs. A multi-State fundraising campaign under a National Act would be subject to a single piece of legislation and would result in reduced expenses for NFPs.

The full report (which includes a list of the full 15 recommendations) is available on the [Parliament House of Australia website](http://www.parliament.gov.au).

Legislation Update

The *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008* (NSW), was assented to on 10 December 2008.

The Act will:

- > Increase licence fees for day procedure centres, so that application fees for licenses, annual licence fees and application fees for the transfer of licenses are charged on a full cost recovery basis.
- > Increase license fees for private hospitals, so that application fees for licenses, annual licence fees and application fees for the transfer of licences are charged on a full cost recovery basis.

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