

Health Alert March 2011

Caring For Older Australians: The Productivity Commission report to change the face of aged care

On 21 January 2011, the Productivity Commission released its draft report 'Caring For Older Australians'. In light of Australia's ageing population it is a widely held view in the aged care sector that reform is necessary, and the findings of the report support that view.

The report contains a number of recommendations that represent a significant departure from the existing legislation and include some interesting innovations. Some of the key recommendations in the draft report include:

- Establishing an Australian Pensioners Bond Scheme under which aged pensioners would be able to purchase a bond from the government with the proceeds of the sale of their primary residence. The bond would be exempt from Centrelink means testing, like funeral bonds taken out to cover funeral expenses, and could be used to fund the person's living expenses and aged care costs.
- Establishing an Aged Care Equity Release Scheme (**Scheme**) under which older Australians will be able to draw down on the equity in their home to contribute to the cost of their aged care. The report recognises the nervousness displayed by consumers towards private products such as reverse mortgages, so it proposes that the Scheme be Government-backed. The Scheme is likely to encourage the provision of care in the home to persons who would otherwise enter a residential aged care facility as it will enable them to pay for such care and retain their home.
- Setting a means test for care recipients' co-contributions and have a "lifetime stop-loss limit", which would operate as a cap to the amount of

co-contributions which a care recipient would be required to make.

- Abolishing extra service bed licences and removing the distinction between residential high care places and residential low care places.
- Removing regulatory restrictions on the number of community care packages and residential bed licences.
- Removing the cap on accommodation bonds in high care and other regulatory restrictions around accommodation bonds.
- Encouraging nationally consistent retirement villages legislation (which would remain the responsibility of the States) through the Council of Australian Governments (**COAG**). However the report has not recommended the alignment of the regulation of retirement villages with the regulation of aged care.

One of the main themes of the report is the separation of the major cost components of aged care, being care (which is further divided into personal care and health care), everyday living expenses and accommodation. The report proposes that Government subsidies be directed towards the health care component, which would encourage flexibility in terms of the setting in which such care is provided.

A full copy of the report is available on the Productivity Commission's [website](#).

Aid/Watch Incorporated v Commissioner of Taxation [2010] HCA 42

In a recent High Court case, it was held by majority that an organisation involved in promoting and campaigning for effective foreign aid policies through the generation of public debate was a charitable institution for tax exemption purposes.

Background

Aid/Watch Incorporated (**Aid/Watch**) promotes the effectiveness of Australian and multinational aid provided overseas by investment programs, projects and policies.

Aid/Watch was endorsed as a charitable institution by the Commissioner of Taxation. In October 2006, the Commissioner of Taxation revoked Aid/Watch's endorsements as a charitable institution. Aid/Watch lodged an objection to the revocations that was disallowed by the Commissioner.

In July 2008, the Administrative Appeals Tribunal (**AAT**) set aside the decision of the Commissioner, and determined that Aid/Watch was a charitable institution. On appeal by the Commissioner, the Full Federal Court set aside the decision of the AAT and affirmed the objection decision of the Commissioner.

High Court's decision

The High Court by majority held that Aid/Watch was a charitable institution, allowed Aid/Watch's appeal, and set aside the Full Federal Court decision.

The Court stated that the lawful generation of public debate concerning the efficiency of foreign aid directed to the relief of poverty is a purpose beneficial to the community.

The majority also stated that there is no broad general rule excluding "political objects" from charitable purposes. As Aid/Watch's activities contributed to the public welfare, it was entitled to be regarded as a charitable institution.

Implications

The High Court decision will have implications for charities involved in influencing the public and government opinion.

It seems that so long as a charitable institution's purpose falls within one of the four heads of charity, even if it also carries out political activities, this should not affect its entitlement to its endorsement as a charitable institution.

An institution should be able to be endorsed as a charitable institution even if the institution carries out campaigning and advocacy activities, so long as these activities are lawful and aimed at purposes that are beneficial to the community.

Our tax team advises charities on tax endorsements, and obtaining endorsements for them. If you wish to determine the implications of the High Court decision for your organisation, please contact our [tax team](#).

Consultation paper for a national not-for-profit regulator

On 21 January 2011 the assistant treasurer released a public consultation paper as part of the scoping study for a national not-for-profit (**NFP**) regulator. The consultation questions include:

- Which goals, such as minimising cost, removing regulatory duplication, streamlining reporting and other requirements and providing a "one stop shop" for NFP entities, are most appropriate and which goals should be given priority?
- What entities should be regulated and do any of them need to be treated differently?
- Should the supervision of charitable trusts be moved from state attorney generals to a national regulator?
- What impact would simplifying and streamlining mechanisms in relation to concessional tax treatment, have on the NFP sector?

The paper includes considerable detail on options for future reporting and monitoring of NFPs including the possibility of a single source of public information on the activities of charities and other concessional taxed entities, with reference to a number of existing overseas models.

The [full paper](#) may be accessed on the Treasury website.

Transformation of the Private Patient's Hospital Charter

The Private Patient's Hospital Charter (**Charter**) provides information to consumers about their rights and responsibilities as a private patient in hospital.

It was previously a requirement of the *National Health Act 1953* (Cth) that the Charter be distributed by the Department of Health and Ageing to the Private Health Insurance Ombudsman and the Private Health Insurance Administration Council.

However since the introduction of the *Private Health Insurance Act 2007* (Cth) this is no longer the case. The Department has recently summarised the Charter into an electronic two page factsheet, available in 19 different languages on the Department's [website](#).

Legislation Update

Poisons Amendment (Midwives) Act 2010 (Tas)

The *Poisons Amendment (Midwives) Act 2010 (Tas)* commenced on 14 December 2010. This Act amends the *Poisons Act 1971 (Tas)* to enable eligible midwives to prescribe certain narcotics to their patients, bringing Tasmanian Law in line with recent Commonwealth changes. Prior to the amendments, the *Poisons Act 1971 (Tas)* prevented midwives from prescribing the certain substances which was inconsistent with the *Health Legislation Amendment (Midwives and Nurse Practitioners) Act 2010 (Cth)*.

Not long after the amending Act was passed, the *Poisons (Midwifery Substances) Order 2011 (Tas)* was made under the authority of the *Poisons Act 1971 (Tas)*. The Order declares certain "midwifery restricted substances", including Amoxicillin, Benzylpenicillin and Cephalexin and "midwifery narcotic substances", including Morphine injection 10mg and 15mg. The Order commenced on 5 January 2011.

Policy Directive – Clinical Trials, Insurance and Indemnity

This policy directive was published on 25 January 2011. It requires external not-for-profit sponsors and commercial sponsors of clinical trials as well as individuals involved in clinical trials at NSW Public Health Organisations to have adequate insurance and indemnity arrangements in place.

The policy also sets out when the treasury managed fund will provide coverage.

The policy prescribes specific insurance requirements for commercial sponsors by requiring the indemnity be on a no fault basis, and that the insurances include professional indemnity insurance, a product liability policy and clinical trials cover. However, the policy provides the discretion to accept non-complying insurance arrangements.

The policy is available on the NSW Department of Health [website](#).

The Health Insurance Amendment (Pathology Requests) Bill 2010 (Cth)

The *Health Insurance Amendment (Pathology Requests) Bill 2010 (Cth)* commenced on 12 December 2010. As a result of the passage of the Act, patients now have a choice in regards to what pathology provider they use. The old requirement that a request be made to a particular practitioner or laboratory proprietor to gain a Medicare benefit for a pathology service by or on behalf of that practitioner has now been removed.

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