

Health Alert

December 2011

A Busy Festive Season – Add making submissions to your New Year's Resolutions

Just when you thought the year was slowing down and coming to a relaxing end, a variety of Government agencies request your input into reviews of their programs and arrangements.

In the upcoming festive period, the NSW Planning Review, the Independent Hospital Pricing Authority, the Federal Treasury's Not-For-Profit Reform Review, the Exposure Draft *Australian Charities and Not-for-profits Commission Bill 2012* and a Joint Parliamentary Committee reviewing the Health Care Complaint Commission all call for public submissions. The submissions are required within short time frames, all due dates falling within January and February 2012.

Meanwhile, on a national level, the Department of Health and Ageing has released details of the new streamlined funding applications system and a report outlining comprehensive changes regulating the Therapeutic Goods Administration. The Department's Office of Aged Care Quality and Compliance have made recommendations to reduce the risk of residents going missing from aged care premises. And the Federal Parliament has established the Independent Hospital Pricing Authority in passing the *National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011 (Cth)*. Last but not least, the Commonwealth government released Issue 2 of its Not-For-Profit Newsletter, outlining a range of topics and a revised public consultation timetable.

Thomsons Lawyers Health Team

Charities and not-for-profits update

Recently, the Commonwealth Government released a number of documents affecting charities and some other not-for-profit (**NFP**) entities.

NFP Newsletter – Issue 2

On 21 November 2011, the Treasury released the second issue of its NFP newsletter.

The newsletter looks at the following topics:

- Improving transparency – the information portal
- Tax concessions for charities and NFPs
- Consultation on the legislation for the Australian Charities and Not-for-Profits Commission (**ACNC**)
- Release of the ACNC Taskforce Website
- ACNC Implementation Taskforce
- What happened in the last month
- What's coming up in the next 12 months.

The Treasury revised the timetable for public consultation as follows:

- Review of NFP governance arrangements – December 2011 (see below)
- Legislation to establish the ACNC: exposure draft consultation – December 2011 (see below)
- Second exposure draft of 'In-Australia' special conditions and definition of not-for-profit – expected late 2011

- A national approach to fundraising regulation: discussion paper – expected late 2011
- Better targeting of tax concessions: exposure draft – expected January 2012
- Review of corporations limited by guarantee – expected early 2012
- Introducing a statutory definition of ‘charity’: exposure draft legislation – expected first half of 2012.

[Click here](#) for the NFP newsletter – Issue 2.

Consultation Paper - Review of not-for-profit governance arrangements

On 8 December 2011, the Treasury released a Consultation Paper on what should be the core organisational governance principles applying to registered NFPs.

The Government announced in the 2011-12 Budget a number of further reviews of aspects of the regulation of the NFP sector, including a review of the governance obligations appropriate for not-for-profit entities.

Governance refers to the practices and procedures in place to ensure that an entity operates in such a way that it achieves its objectives in an effective and transparent manner.

The proposed governance principles are grouped into the following areas:

- duties and minimum standards of responsible individuals, including rules for proper organisational management and running of the entity;
- disclosure requirements and managing conflicts of interest;
- risk management procedures, including external reviews and auditing requirements;
- the minimum requirements for governing rules; and
- relationships with members (where applicable).

The process for consultation on governance arrangements is as follows:

- Submissions on the consultation paper are due 6 January 2012.
- The Government will undertake targeted confidential consultation on the governance draft law before implementation.

- The outcome of the governance review will help form the governance requirements for registered entities in the ACNC legislation, starting from 1 July 2012.

[Click here](#) for the Consultation Paper, and the Treasury’s NFP Reform Factsheet.

Exposure Draft – Australian Charities and Not-for-Profits Commission Bill 2012

On 9 December 2011, the Treasury released an exposure draft of legislation to establish the ACNC and a national regulatory framework for the NFP sector, and for related purposes. The exposure draft covers areas including registration of NFP entities, the ACNC, and the Advisory Board.

The exposure draft does not include all provisions which are expected to be in the final Bill. The Treasury released a number of factsheets which outline these provisions.

Submissions on the Exposure Draft are due on 20 January 2012. The ACNC legislation is expected to be introduced into Parliament in the Autumn Sittings 2012 (first quarter 2012).

[Click here](#) for the Exposure Draft and the factsheets.

ACNC Implementation Taskforce Discussion Paper

On 9 December 2011, the Treasury released the ACNC Implementation Taskforce Discussion Paper. The Discussion Paper discusses the design and implementation of the new reporting framework for charities that will be administered by the ACNC and is a central platform for the Government’s vision of ‘report-once use-often’ reporting for the NFP sector. It also describes the staged establishment of the ACNC public information portal and the educational role of the ACNC.

Consultation on the Discussion Paper closes on 27 February 2012.

[Click here](#) for the Discussion Paper.

Philip De Haan
Partner

+61 2 9020 5703

pdehaan@thomsonslawyers.com.au

Yat To Lee
Senior Associate

+61 2 9020 5742

ylee@thomsonslawyers.com.au

'Once-in-a-generation planning review'. Make a submission now to participate in the future reform of NSW planning law!

On 6 December 2011, the Planning Minister released an Issues Paper which forms a key part of the current review of the NSW planning system. The Issues Paper is entitled 'The way ahead for planning in NSW?'

[Click here](#) to view the complete December 2011 Environment & Planning Alert on this topic, to obtain copies of relevant planning review documents, and to view earlier alerts about the review in 2011.

A review of the NSW planning system commenced in July 2011. The initial 'listening and consultation' phase of the review has culminated in the release of the Issues Paper. The Issues Paper sets out a range of comprehensive questions about the planning system in NSW which the Planning Review Panel believes need further consideration.

The Planning Review Panel is now seeking further public response and feedback to the questions raised in the Issues Paper. The Panel is also happy to receive comments on additional relevant matters not contained in the Issues Paper.

Written submissions are to be received by midnight on Friday, 17 February 2012 either:

- online at - www.planningreview.nsw.gov.au; or
- by mail to - Planning System Review GPO Box 39, Sydney NSW 2001.

Following the conclusion of this second round of written submissions the Panel, in collaboration with a working group, will release a 'green paper' by the end of April 2012. Thereafter, a 'white paper', which will set out the Government's framework for the new planning laws of NSW and draft legislation, will be released for public exhibition before a Bill is submitted to the NSW Parliament in the Spring session of 2012.

The current review of the NSW planning system has the potential to bring about far reaching changes to planning laws in NSW which will affect all of industry, including the health and aged care sectors.

The review presents industry with an immense opportunity to actively participate in replacing the present (multifaceted, expensive, time consuming and overly complicated) planning system with a simpler, efficient, certain, cost-effective and accessible planning framework for the future of NSW.

It is recommended that a submission be made where the questions posed in the Issues Paper affect your future business operations, due to their interaction with the NSW planning system.

Craig Tidemann
Senior Associate

+61 2 8248 3404

ctidemann@thomsonslawyers.com.au

Calls for submissions for the Australian Hospital Patient Costing Standards regarding the National Hospital Cost Data Collection

The Department of Health and Ageing, on behalf of the Interim Independent Hospital Pricing Authority, is calling for submissions from interested private sector parties outlining areas of improvement, refinement and recommended changes to Versions 1.1 and 2.0 of the Australian Hospital Patient Costing Standards (the Costing Standards).

[Click here](#) for Versions 1.1 and 2.0.

Submissions close 13 January 2012. For further information, such as the appropriate format submissions should take, please [click here](#).

Inquiry into Health Care Complaints and Complaints Handling in NSW

A Joint Parliamentary Committee has been established to report on Health Care Complaints and Complaints Handling in NSW undertaken by the Health Care Complaints Commission. The Committee will examine and report on the Commission's functions and report on any necessary changes required. Its report will investigate a variety of functions of the Commission and make particular reference to:

- complaints lodged with the Health Care Complaints Commission by regional and metropolitan consumers, including the quantity and nature of complaints and consumer satisfaction, with a comparative analysis to be undertaken; and
- consumer awareness and understanding of the complaints handling systems and processes available both within the hospital system and in relation to external systems.

Calls for submissions are currently open and close on 3 February 2012. Submissions may be submitted online, [click here](#).

Written submissions may also be sent to:

Committee on the Health Care Complaints Commission
Parliament House
Macquarie St
Sydney NSW 2000
Fax: (02) 9230 3309

For further information please [click here](#).

Score! Gillard team kicks a goal as Roxon manages to get independent hospital funding umpire laws passed

On 21 November 2011, Federal Parliament passed the *National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011 (Cth) (the Act)*, amending the *National Health Reform Act 2011* and establishing the Independent Hospital Pricing Authority (IHPA) as a statutory body. The Act received Royal Assent on 29 November 2011.

The passing of the Act is a further step towards the national health reforms initiated by the Federal Government in establishing Local Hospital Networks and introducing Activity Based Funding (ABF). As outlined in our October 2011 edition of the Health Alert, the Commonwealth agreed to fund 45 per cent of the efficient growth of hospital services (from 1 July 2014), rising to 50 per cent (by 1 July 2017) under the National Health Reform Agreement (NHRA). The IHPA's primary role within the NHRA is to determine the 'nationally efficient price' for the payment of public hospital services distributed with ABF. The Commonwealth will use the nationally efficient price to determine the Commonwealth's contribution to growth funding for public hospitals.

The IHPA has been established with the aim of giving independent and transparent advice in relation to funding for public hospitals. It is to operate at arm's length from the Government's Department of Health and Ageing, similar to the Reserve Bank's monetary policy role, according to the former Minister Nicola Roxon. It is important to note, however, that the Act prevents the IHPA from publicly releasing its findings unless the report, and a period of 45 days in which to comment on the report, has been given to the Federal and State/Territory Health Ministers.

Shane Solomon and Jim Birch have been announced as Inaugural Chair and Deputy Chair respectively. The work carried out by the interim IHPA, operational since September 2011 and led by Dr Tony Sherbon as Acting CEO, will now transfer to the new statutory body. Specifically, the passing of the Act establishes a variety of powers and functions of the IHPA, which include:

- the power to make binding determinations about cost-shifting and cross border issues in the health and hospital system;
- the calculation of block funding amounts for hospitals not funded by ABF (primarily regional and rural based hospitals); and
- the provision of advice on loadings to the efficient price to take into account variations in the cost of delivery.

Furthermore, in carrying out its functions, the IHPA is required to have regard to:

- relevant expertise and best practice within Australia and internationally;
- submissions made at any time by the Commonwealth, a State or Territory government;
- the need to ensure that specified qualities apply in relation to health care services and the public hospital system; and
- the range of public hospitals and the variables affecting the actual cost of providing health care services in each of the hospitals.

Ruth Hood

Associate

+61 2 8248 3459

rhood@thomsonslawyers.com.au

Finally: The long-awaited Therapeutic Goods Administration reforms are here

On 8 December 2011, the Gillard government released a report entitled 'The TGA reforms: A blueprint for TGA's future'. This report is the Government's response to a number of reviews into an array of issues over the past 18 months, and outlines planned changes to a variety of aspects of Therapeutic Goods Administration (TGA) legislation and the operation of this statutory body, with particular focus upon increasing the transparency and public confidence in the TGA.

The report deals with a range of issues including the effectiveness of complementary medicines, the adequacy of evaluation of medical devices along with the advertising and promotion of therapeutic products.

Varying viewpoints have emerged from the release of the report, with some key industry players, such as the branded medicines sector, expressing a perception that the Government's response to the seven reviews was not strong enough and did not bring about enough changes. These criticisms related to, among others, to the Government's position in not accepting a recommendation to implement an industry standard code of conduct for the promotion of medical products and a failure to introduce labelling explaining that the TGA does not evaluate the effectiveness and cannot guarantee that listed complementary medicines work. Conversely, other stakeholders such as Australia's Generic Medicines Industry Association strongly support the report and the Government's response to a variety of recommendations.

For further information, [click here](#) to access the detailed report.

Ruth Hood

Associate

+61 2 8248 3459

rhood@thomsonslawyers.com.au

Applying for Government funding? Understand the new application system

Last month the former Minister for Health and Ageing, Nicola Roxon, released a new, streamlined system for funding applications designed to be 'easier to access' than the previous system.

The variety of smaller funding programs (numbering up to 159) have been consolidated into 18 larger, more flexible funds. The purpose of these changes is to allow for aged care and health providers who are recipients under a variety of the smaller funding programs to gradually move to holding just one agreement with the Department of Health and Ageing, restricting administrative burdens on health providers associated with the variety of different guidelines and reporting requirements of the previous system.

The call for applications issued in mid-November relates to six of the new flexible funds:

- Chronic Disease Prevention and Service Improvement Fund;
- Communicable Disease Prevention and Service Improvement Grants Fund;
- Health Systems Capacity Development Fund;
- Aged Care Service Improvement and Healthy Ageing Grants Fund;
- Substance Misuse Prevention and Service Improvement Grants Funds; and
- Substance Misuse Service Delivery Grants Fund.

Of particular note is the following:

Aged Care Service Improvement and Healthy Ageing Grants Fund

'This fund will support activities that promote healthy and active ageing, respond to existing and emerging challenges including dementia care, and better support those services targeting Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds.'

Ruth Hood

Associate

+61 2 8248 3459

rhood@thomsonslawyers.com.au

Missing residents and compulsory reporting – reducing the incidence of at-risk patients wandering from aged care facilities

The Office of Aged Care Quality and Compliance recently undertook a "What we can learn?" review into the requirement of compulsory reporting to the Department of Health and Ageing (DOHA) of aged care residents who go missing. The purpose of this review was to analyse data on a specific risk factor, namely residents walking off site or going missing, and offering potential suggestions that aged care facilities may wish to review within their operations.

As aged care service providers are aware, since 1 January 2009, reporting the incidence of a missing resident to the DOHA within 24 hours of contacting police has become compulsory. This compulsory requirement

was introduced as a measure to reduce and mitigate the incidence of missing residents from aged care facilities, with resident health and safety the primary focus.

The report offers a detailed analysis of the data collected since the compulsory reporting standards were introduced in January 2009. From this date to June 2010, 1107 missing resident reports were filed with DOHA, reflecting the significance of this issue to aged care providers.

The report outlines that at risk residents are likely to have cognitive impairments, a history of wandering or have recently entered a new service for permanent residence or to receive respite care. The report also reiterates the importance of *User Rights Principles 1997*, where approved aged care providers need to balance supporting residents' rights to freedom and quality of life with ensuring the safety of residents.

There are a variety of suggestions in the report that aged care service providers may wish to adopt in reducing the

incidence of missing residents. Close monitoring and assessment on first entry, with a concerted, personalised effort to ensure the patient settles into their new environment, is noted as important. Ongoing monitoring is also essential to preventing the instances of wandering. Increasing education of caregivers and employees may further reduce incidences.

Furthermore, specific interventions may be reasonable and effective in reducing the chances of patients wandering off site. These may include technological assistance such as security bracelets and CCTV monitoring of exits, environmental modifications including site layout, along with physical and psychological activities.

For more information, [click here](#) to access the full report.

Ruth Hood

Associate

+61 2 8248 3459

rhood@thomsonslawyers.com.au

For further information, please contact:

Lucinda Smith

Partner

+61 2 9020 5748

lsmith@thomsonslawyers.com.au

Jim Baillie

Special Counsel

+61 2 9020 5746

jbaille@thomsonslawyers.com.au

Ken Ramsay

Consultant

+61 2 8248 3460

kramsay@thomsonslawyers.com.au

Kathie Sadler

Special Counsel

+61 7 3338 7515

ksadler@thomsonslawyers.com.au

Samantha Culshaw

Senior Associate

+61 2 9020 5712

sculshaw@thomsonslawyers.com.au

Marc Wylid

Senior Associate

+61 2 9020 5708

mwylid@thomsonslawyers.com.au

Ruth Hood

Associate

+61 2 8248 3459

rhood@thomsonslawyers.com.au

Sophie Parker

Lawyer

+61 2 8248 3403

sparker@thomsonslawyers.com.au

www.thomsonslawyers.com.au