

Health Alert

December 2012

National Disability Insurance Scheme – ‘once in a generation’ opportunity

At the end of November, Prime Minister Julia Gillard introduced into Parliament the *National Disability Insurance Scheme Bill 2012* (Cth) (**the Bill**).

The National Disability Insurance Scheme (**NDIS**) which will be established under the Bill (once enacted) is based on the recommendations of the Productivity Commission’s (**Commission**) 2011 report *Disability Care and Support*. It is expected that upon maturity in 2018, the NDIS will provide total net funding for disability care of around \$6.5 billion annually. It can arguably be described as one of the most significant additions to the Australian healthcare landscape since the establishment of Medibank (the precursor to Medicare) in 1975.

The timeframe for establishing the NDIS was announced by the Commonwealth Government on 30 April 2012. After receiving ‘in principal’ bi-partisan support in federal parliament, the planned commencement of the NDIS is 1 July 2013 with around 10,000 Australians to receive funding support from that date.

By 2018 it is anticipated that about 140,000 Australian residents living with a disability will be receiving full NDIS funding.

A national insurance scheme for people with disabilities is long overdue. Nearly 1.2 million Australians are living with substantial disabilities. Under the current system, the majority of Australian disability insurance and care provision schemes are targeted at compensating victims of motor vehicle, public liability and workplace accidents

and largely ignore people born with significant disabilities or those who acquire them through illness or incompensable accidents. Services that are provided to Australians with these disabilities are largely crisis-driven and, to quote the Commission, “underfunded, unfair, fragmented, and inefficient”.

Key features of the NDIS include:

- insurance cover for all Australians for the costs associated with managing disabilities that meet the eligibility requirements;
- new definitions of when a person will be eligible for care funding focussing on permanency of disability, permanency of care requirements and impairment of ability to participate in society both socially and economically;
- the establishment of a new National Disability Transition Agency to oversee the NDIS and provision of funding and care under the NDIS;
- integration with current private insurance schemes and established federal income support systems, including requiring contribution from existing liability and indemnity insurers; and
- enabling people with a disability to exercise a greater level of choice regarding the care services they receive. Under the NDIS, eligible persons will be able to select their own types of care and providers, request that an intermediary assemble an appropriate care package on their behalf, cash out their allocated funding and direct it to other compensable areas of need or choose a combination of these options.

As with any new and emerging health-based legislative initiative, the NDIS will necessarily create new market

conditions and opportunities as well as regulatory burdens and teething problems for businesses operating in the healthcare industry. Criticisms have already been levelled at the NDIS regarding what some view as restrictive eligibility criteria for care, as well as concerns being raised that the wave of new funding will place extreme strain on service providers, who may be unable to cope with demand in the short to medium term.

The Bill will now be subject to review by the Commonwealth Parliament, various focus groups and the public before it is finalised in 2013.

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Government seeking input on legislation for aged care reform

The Department of Health and Ageing (**DOHA**) has released a paper which provides an overview of proposed changes to aged care legislation to implement the "Living Longer Living Better" aged care reform package announced in April 2012.

The paper sets out a summary of the current position and also includes detail on the changes that will be made to all forms of aged care services, noting that some of the reforms require legislative change but others require only changes to administrative or funding arrangements. For example, in relation to the proposed changes to residential care (which will apply from 1 July 2014):

- the *Aged Care Act 1997* (Cth) (the **Act**) will be amended to remove the distinction between approval of care recipients for high level residential care or low level residential care. There will only be one type of approval for permanent residential care.
- the Act will continue to provide for the granting of residential care places on an extra service basis, but will also enable care recipients, whether or not in an extra service place, to opt in and out of additional amenities offered by the provider.
- there will be key changes to residential care subsidies and resident fees, including a new combined income and assets test and new annual and lifetime caps on means tested care fees. These are spelt out in great detail in the paper – for example, there are 12 steps to be taken to identify the relevant means tested amount for a particular care recipient with further multiple

steps to then calculate the residential care subsidy for that resident.

- all care recipients entering care on or after 1 July 2014 who can afford to contribute to their accommodation costs will have the choice of paying for their accommodation through a fully refundable lump sum, a rental style periodic payment or a combination of both. The maximums of the lump sum and the periodic payment will be set by determination of the Minister. Providers will no longer be able to deduct a retention amount from a lump sum accommodation payment received on or after 1 July 2014.
- providers will continue to have to meet prudential requirements; they will be entitled to use income from investing lump sum accommodation payments for any purpose and the permitted uses of lump sum accommodation payments will be the same as that which currently applies for accommodation bonds.
- people in care on 30 June 2014 will continue under their current arrangements unless they leave care for more than 28 days (and subsequently re-enter care) or they move services and choose to have the new rules apply to them as if they entered care on or after 1 July 2014. It's clear that providers will be working with both the current rules and the new rules for some period after 30 June 2014.

Comments on the paper must be received by DOHA no later than 21 December 2012. [Click here](#) to access the paper.

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Review of tax breaks for the not-for-profit sector

On 2 November 2012, the Commonwealth Government released the 'Not-for-profit sector tax concession working group' discussion paper (**Discussion Paper**).

The Discussion Paper identifies specific issues that the Tax Concession Working Group (**Group**) believed important to consider, and asks 57 specific consultation questions. It presents as a genuine discussion paper, in that issues are raised and feedback and comments are sought. It is not a position paper and the options raised are not recommendations. Accordingly, it would be worthwhile

exercise for NFPs to carefully consider the issues raised, the effect those issues will have on them, and to participate in the consultation process.

The closing date for submission is Monday 17 December 2012.

The key issues in the Discussion Paper are:

- who should be exempt from income tax;
- who should be eligible for refunds of franking credits, and should the ability to claim refunds be limited;
- who should be entitled to receive deductible gifts (ie who should be a 'deductible gift recipient' (**DGR**));
- what tax concessions should be given to persons who make donations to DGRs (eg deductions or tax offsets (ie rebates));
- what should the minimum donation be before the donor is entitled to a tax concession;
- should fringe benefits tax (**FBT**) concessions continue, or be replaced with something else;
- if FBT concessions were to be replaced with something else, what should that be;
- should changes be made to the goods and services tax (**GST**) concessions, and if so, what; and
- how should clubs be taxed?

[Click here](#) to view our Charities Alert, which examines in more detail what we consider to be the more interesting and important aspects of the Discussion Paper. Our comments are not intended to be exhaustive and each NFP should carefully consider how the issues raised will affect them.

We recommend that NFPs carefully consider the issues raised in the Discussion Paper.

We believe that submissions, particularly with concrete examples illustrating the issues and likely impact on NFPs, will improve the eventual recommendations. Making submissions in support of certain reforms should also lead to a better result.

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Open for Business - Australian Charities and Not-for-profits Commission

Australia's first charity regulator, the Australian Charities and Not-for-profits Commission (**ACNC**) has officially opened its doors for business following royal assent of the ACNC legislation on 3 December 2012.

At this time, only registered charities will be affected by the new regulator. The government foreshadows extending operation to other not-for-profits, but not until after 2014.

The ACNC is a radical change for regulation of charities, including areas where they have not before been regulated. There are many matters for charities to consider such as, whether they need to register or to update their initial registered details, and what reporting requirements they have under the ACNC.

Thomsons Lawyers will publish a special Charities Alert in the near future featuring tips on how to prepare for regulation under the ACNC.

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Privacy reforms passed

We reported on the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012 (Cth)* (**the Bill**) in our June 2012 edition of the Health Alert, [click here](#).

On 29 November 2012, the *Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)* (**the Act**) was passed and of the 21 recommendations made by the Parliamentary Committee which reviewed the Bill, 10 were accepted in full, 10 were accepted in principle and 1 was noted.

Some of the key amendments to Privacy law contained in the Bill are as follows:

- **Deferred commencement**

Most of the new provisions will commence 15 months

from the day after the Act receives assent. This will provide entities affected by the new legislation with sufficient time to prepare for the changes in the law.

It is anticipated that the Australian Information Commissioner will use this extended period to develop new guidelines to assist entities with compliance.

- **Cross border obligations**

Entities that disclose personal information outside of Australia must take reasonable steps to ensure the recipient does not breach privacy provisions. Such steps may include establishing contractual obligations between the discloser and the recipient. The Australian discloser will generally be liable for the privacy breaches committed by overseas recipients of information.

This is an area that is likely to have significant focus in guidelines produced by the Australian Information Commissioner.

- **Credit reporting**

The credit reporting regime has been comprehensively reviewed with the introduction of additional data collection options. One of the new data sets is "repayment history" and this information can be disclosed to lenders who are subject to responsible lending obligations, which now includes mortgage insurers.

- **Enforcement**

The Australian Information Commissioner will have additional powers, including the ability to:

- Seek penalties from the Federal Court of up to \$1.1 million for serious and repeated interferences with privacy;
- Accept written undertakings by entities to ensure compliance with the Act which may be enforced in Court;
- Conduct an assessment of an entities (both government and private) maintenance of personal information; and
- Deal with the conciliation of complaints, and recognise alternative dispute resolution schemes.

We will report on the implications of relevant guidelines and codes as they are reviewed and released.

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For further information, please [click here](#) to contact our national Health, Aged Care and Retirement Villages team