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Health Alert

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Living Longer Living Better – the Government's response on recommended Aged Care Reforms

According to the Australian Bureau of Statistics projections, one in four Australians will be aged 65 or older by the year 2056[1]. Enter the Government's 10 year *Living Longer Living Better Plan* (the **Plan**) which includes a reform package of $3.7 billion over five years and which was announced on 20 April 2012.

Some sectors have criticised the announcement on the basis that the majority of these funds are a result of re-direction and re-prioritisation of funding which was already included in budget forecasting. For example, Catholic Health Australia estimates only $577 million of the package represents new funding commitments.

The Plan follows the Productivity Commission's Caring for Older Australians Report, which was released on 8 August 2011. This report followed wide consultation, with over 900 written submissions received, and 13 days of public hearing. The government has released a comprehensive response to the Productivity Commission's recommendations. This document can be viewed here.

The Plan to a great extent reflects the recommendations of the Productivity Commission, however there are a number of recommendations that the government has chosen not to support.

The government has decided that it will **not**:

- Include an older person's former principal residence in means tests for residential care.
- Set up an 'Australian Aged Care Home Credit scheme' where a person would receive a government backed line of credit secured against their principle residence.
- Remove all restrictions on the number of community care packages, and residential bed licences.
- Establish a new Australian Aged Care Commission responsible for conducting regulatory functions, and to have responsibility for recommending scheduled prices, subsidies and rate of indexation for care services, and administering prudential and all other aged care regulation. However, this has been partially adopted by the creation of a new Aged Care Financing Authority, a reformed Australian Aged Care Quality Agency. The current Aged Care Commission will also be given increased powers.
- Increase Medicare rebates for General Practitioners visiting residential aged care facilities to improve access to medical services.
- Amend missing resident reporting requirements to allow a longer time to report missing residents. The government indicated that it is open to improvements to this system, but not to "weakening requirements".

Below is a brief summary of the reforms and funding proposed in the Plan.

Residential Care

The Residential Care reforms are proposed to come into effect from 1 July 2014 and include:

- The maximum supplement that the government will pay for residents who are unable to fund their own accommodation will increase from $32.58 to approximately $52.84 per day. The government hopes that this will attract investment into aged care facilities. In this regard, the government foreshadows residential

[1]3222.0 - Population Projections, Australia, 2006 to 2101 - Click here
http://www.abs.gov.au/Ausstats

care places will increase by around 13%. Importantly, the increased supplement will only apply to facilities built or significantly refurbished from 20 April 2012. The meaning of "significantly refurbished" is not defined.

- Residents will be able to elect to pay their accommodation costs by a lump sum payment, or by periodical payments, or a combination of the two. This will affect the receipt of funds by aged care facilities. Consequently, providers will need to consider how they adapt to the new payment options.
- Aged care providers will be required to insure any lump sum bonds that they hold and it is expected that providers will pass on the cost to residents and providers will not be able to retain any component of the actual bond.
- Residents will have the benefit of a 'cooling off period' (duration of the cooling off period not yet determined) so that they do not have to decide how they will pay until they have moved into their accommodation. Providers will need to seek approval for the level of accommodation payment they intend to charge and will not be allowed to choose between prospective residents on the basis of how they intend to pay.
- Means testing for residential care will be altered so that the income and assets test will be combined. There will be no change in the treatment of a resident's family home which will continue to be exempt from the aged care assets test if occupied by a spouse or other protected person.
- There will be an annual cap for fees of $25,000 per annum and a lifetime cap of $60,000. It has been suggested that this measure may provide stimulus for private insurance to develop products for this sector because individual risk has been reduced.
- The distinction between high care and low care will be removed. This is aimed at achieving a more integrated system of care.

Home Care

To assister older people to stay in their own homes for longer, the government has proposed the following home care reforms:

- Increase the number of home care packages from 59,876 to 99,669 in the next 5 years.
- From 1 July 2014, introduce new means-testing arrangements so that those that can afford to pay will pay what they can for access to home care. The means test will not include the family home.
- Introduce an indexed cap on home care fees. People on income of less than $43,000 will have an annual cap of $5,000. A sliding scale will operate up to an annual cap of $10,000 for self funded retirees. A lifetime cap of $60,000 will apply. Full pensioners will not pay care fees.
- Improve home care packages so that they are tailored to the specific needs of the recipient.

A New Aged Care Financing Authority & an improved Aged Care Funding Instrument

A new Aged Care Financing Authority will provide independent advice on pricing and financing issues and represent taxpayers, aged care providers, consumers and aged care workers.

It will consist of a committee of independent experts from industry and consumer groups, as well as government representatives. It appears this the Aged Care Financing Authority will be a department of government and will not be a separate entity of statutory authority. This has raised some questions around transparency and independence from government and risks of administrative barriers to efficacy.

There are also plans to review and develop a new and comprehensive Aged Care Funding Instrument for both residential care and home care packages.

Developing the Aged Care Workforce

The government has acknowledged the critical state of the aged care workforce and has announced $1.2 billion in funding over 4 years from July 2013 to implement a new initiative "Workforce Compact" to support the objectives of attracting, retaining, and training aged care workers. Workforce Compact is to be developed by an independently chaired Advisory Group in consultation with the aged care sector. The Advisory Group and the Chair will be appointed by the Minister for Employment & Workplace Relations in consultation with the Minister for Mental Health and Ageing and the President of Fair Work Australia.

It was noted that Employers would also be expected to contribute to the development of Workforce Compact.

Additional funding will be provided to aged care providers who take steps to improve terms and conditions of their workers.

Improving Access to Aged Care Services

One of the goals of the government's reform package is to improve access to health care for older Australians. As part of this, a new website will be developed called 'My Aged Care'. This website will provide a platform for residents, families and friends to share information and feedback about aged care facilities.

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Better Health Care Connections

Funding commitments have been made to develop and support end of life and palliative care planning between providers and general practitioners. The Plan espouses a multidisciplinary approach in support of better practice and partnerships to target priority areas through grants to develop innovative models of care. These measures have been allocated $80.2 million under the Plan and Medicare Locals have been mentioned as a key component in the government's primary health care reforms. The government's proposed role for Medicare Locals in the Plan has not been detailed.

Managing Dementia

Dementia is recognised in the reforms as a significant health problem and challenge for Australia going forward. It is estimated that by 2050 there will be almost 950,000 Australians living with dementia[2].

With this in mind, the government's reform package refers to $268.4 million worth of investment to address this rising epidemic.

A new dementia supplement in home care package and a new Very High Level of funding package in the Behaviour Domain are to be included to recognise the additional costs of caring for residents with dementia. Australians receiving home care packages or who are in residential care will be eligible to receive the new dementia supplement. The Plan states that these two new packages are worth $164.3 million. There is commentary that there is in fact only about $29 million of new funding for these initiatives with the remainder off set from savings which will result to other changes to other parts of the packages.

Implementation of the Reforms and Further Developments

Implementation of the reforms is proposed to be overseen by a new Aged Care Reform Implementation Council that will implement changes in stages.

The proposed reforms will need to go through parliament before coming to fruition, and so in this regard we expect further details and continued debate regarding the proposals.

Click here for further details of the Plan or visit the Commonwealth Government website.

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[2]Deloitte Access Economics, Dementia Across Australian 2011-2050.

Tax concession entities – important changes to essential conditions

On 17 April 2012, the Treasury issued a revised exposure draft of the *Tax Laws Amendment (2012 Measures No.4) Bill 2012*: tax exempt body 'in Australia' requirements, and associated explanatory materials and fact sheet. This follows a round of public consultations on an earlier version of the exposure draft and explanatory materials.

Below are some important points from the revised exposure draft.

Income tax exempt entities – 'in Australia' special condition

The revised exposure draft restates the 'in Australia' special condition that applies to income tax exempt entities, ie the condition that these entities generally must operate and pursue their objectives principally in Australia, and for the broad benefit of the Australian community.

Proposed change to 'in Australia' special condition

The current law essentially contains an 'expenditure' based test to determine whether an entity meets the 'in Australia' special condition. This will be replaced with an 'operates' and 'pursues its purposes' based test.

Income tax exempt entities – making distributions overseas

The revised exposure draft tightens the exception for distributions that an income tax exempt entity may make overseas which are disregarded when considering whether the entity meets the 'in Australia' special condition.

Deductible gift recipients (DGRs) – 'in Australia' special condition

The revised exposure draft codifies the 'in Australia' special condition that applies to deductible gift recipients (**DGRs**), including the requirement that these entities must generally operate **solely** in Australia, and pursue their purposes **solely** in Australia. For international affairs DGRs (eg overseas aid funds), they are not required to meet the condition of operating solely, and pursuing purposes solely, in Australia.

Complying with its governing rules and purposes

An entity must comply with **all** the substantive requirements in its governing rules (eg constitution for a company and trust deed for a trust) and use its income and assets **solely** for the purposes for which it is established and operated and for which it is entitled to be exempt from tax. If it breaches this requirement it will not be exempt from tax.

Definition of 'not-for-profit'

The revised exposure draft standardises the definition of 'not-for-profit' (**NFP**). The new definition allows a NFP to gift surpluses and assets to other NFPs, even if those entities are owners or members, if the purpose of those entities is similar.

Timing

The Government is seeking consultation on the revised exposure draft. Submissions on the revised exposure draft are due on 11 May 2012.

Click here for the revised exposure draft, explanatory materials and fact sheet.

The proposed new law will apply to determine whether an entity is entitled to be or remain income tax exempt/ DGR for income years following Royal Assent. It is expected that the draft legislation will be introduced into Parliament in mid-2012.

A more comprehensive article about these changes will be published by Thomsons Lawyers featuring suggested action. If you would like to receive this more detailed Alert or for assistance in preparing a submission, please contact Philip de Haan or Yat To Lee.

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National Business Names Register

The new national system for registration of business names, currently regulated by state legislation, is expected to commence on 28 May 2012, subject to all necessary state legislation being passed. A snapshot on the new system, can be accessed on the ASIC website, click here.

Existing state business names will automatically transfer to the new register. The legislation as passed is in line with exposure draft Commonwealth Bill we commented on in the October 2011 edition of our Health Alert, click here. Registration of a business name can be necessary to comply with legislation, but registration does not give any proprietary rights to a name – registration of a trade mark remains the best protection to achieve that.

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