

## Health Alert September 2010

This alert contains information on the following topics:

- NSW Health discussion paper on health reform released
- Senate Committee report on health reform package
- Making health more private
- Legislation update.

### NSW Health discussion paper on health reform released

As we continue to await the outcome of the federal election, NSW Health is pushing ahead with implementing the National Health and Hospitals Network (NHHN) Agreement, and has released a discussion paper which provides more detail about the proposed implementation of the NHHN in New South Wales.

#### Proposed LHN boundaries

The discussion paper sets out the criteria for creating Local Hospital Network (LHN) boundaries, which are based on the requirements set out in the NHHN Agreement and feedback received by NSW Health in consultation forums held between May and July.

The criteria are:

#### 1. Consistency with requirements in NHHN Agreement

- Build LHNs around principal referral or specialist hospitals;
- Some LHNs may be built around unique geographical circumstances, a specific functional focus, or on the basis of logical network linkages or patient catchments;
- A flexible approach should be taken.

#### 2. Alignment with Medicare Local boundaries

- Medicare Local boundaries have not yet been determined, but a draft proposal for Medicare Locals has been released. NSW Health took the draft proposal into consideration in determining its proposed LHN boundaries.

#### 3. Population Health

- Metropolitan LHNs should desirably have coverage of a population of at least 500,000;
- Rural and regional LHNs may have population coverage of less than 500,000.

#### 4. Self-sufficiency

- Ideally, each LHN should include a principal referral hospital, a clinical school, and high level Emergency Department Services.
- The LHN should be self-sufficient in a number of complex services such as cancer services, maternity services, cardiac services, paediatric surgery and mental health services.

#### 5. Economies of scale

- LHNs should have appropriate economies of scale to ensure that administrative overheads are not excessive (less than 4 percent of budget).

#### 6. Maintain clinical service networks

- LHN boundaries should seek to maintain existing clinical service networks that have developed under the current structures and build on the gains already delivered to communities across NSW in terms of enhanced access, quality and sustainability of clinical services.

#### 7. Cater for growth

- LHN boundaries should take into account whether the proposed network area is part of a growth corridor or region.

Based on these criteria, NSW Health proposes to establish:

- Metropolitan LHNs in Central Coast, Sydney, Nepean Blue Mountains, Northern Sydney, South East Sydney, South West Sydney, Western Sydney and Illawarra;
- Regional LHNs in Central West, Far West, Hunter New England, Southern NSW, Mid North Coast, Murrumbidgee, Northern NSW; and
- Specialist networks, being the Sydney Children's Hospital Network (Randwick and Westmead) and Forensic Mental Health.

Maps of each proposed LHN and a list of the hospitals that fall within each proposed LHN are set out in the discussion paper.

## Governance structure

The discussion paper highlights some key points about how NSW Health sees the proposed new governance structure of the public health system in New South Wales working, such as:

- The State will be responsible for system-wide public hospital planning, system-wide public hospital performance, capital planning and the purchasing of hospital services.
- The Governing Council of each LHN will be appointed by the Minister following a public merit selection process. The advertisements for the chair position were published on 30 August.
- The Minister will have the power to appoint or remove the Chair and members of each Governing Council.
- The Governing Council will make a recommendation for the appointment or removal of the LHN's Chief Executive, which will be approved by the Minister or a delegate.
- The State will be held accountable to the Commonwealth for the financial management and audits of LHNs.
- LHNs will be required to deliver the services outlined in their respective Service Agreements with the State and meet the standards and performance targets which are agreed.
- The Minister and Director General will have the authority to audit the performance of the LHN.
- The Chair will provide leadership to the Governing Council, and will be responsible for communicating with the Minister and Director General as well as with staff, patients, Medicare Locals and the local community.
- The Governing Council of each LHN will be responsible for establishing and maintaining effective systems to ensure health services meet the needs of the community and the obligations of the LHN as detailed in the Service Agreement with the State.
- The Chief Executive of each LHN will be responsible for developing and implementing all of the plans required for the LHN to meet its obligations under the

Service Agreement with the State and all other policy directions from the Minister, Director General and Governing Council.

There is still a lot to be done before the reforms can be implemented in New South Wales. Some of the outstanding issues are:

- The legislative framework is still not clear;
- The specific responsibilities of the members of Governing Councils are still not clear; and
- The personal liability of the members of Governing Councils is not known.

The full discussion paper can be accessed on the NSW Health [website](#).

## Senate Committee report on health reform package

The Senate has released the report of its Finance and Public Administration References Committee on COAG's health reform package. Government members were in the minority on the Committee and not surprisingly the report is highly politicised. However, the report is interesting in the way that it recites the substance of a number of the submissions that were put to the Committee. In this note, we focus only on the parts of the report relating to local hospital networks and hospital funding.

Many submitters to the Committee were concerned about the lack of detail about how the new system would operate and how it was going to contribute to improved patient care. Some particular submissions that were highlighted in the report include:

- The Commonwealth paying 60% of efficient cost is likely to leave the States with paying much more than 40% of the actual cost;
- Whether nationally consistent reporting processes from both the public and private sectors avoid replication or just serve as another layer of bureaucracy?
- Will the local hospital networks (LHNs) create the right balance between local decision making and effective strategic planning at a wider level, and to what extent the States will pursue structure of their LHNs in different ways;
- That the new structure will leave plenty of room for blame shifting, with State Health Department roles supplementing new Federal Health bureaucracies;
- Doubts about the Commonwealth Auditor General's powers to audit LHNs;
- Doubts about the location and size of LHNs (the Department indicated up to 150). Will they be serving a sufficiently large population base to provide a critical mass of services?

The full report may be accessed on the Australian Parliament House [website](#).

## Making health more private

Recently released draft Australian Privacy Principles (APPs) are expected to be followed by national health privacy principles later this year. The APPs will form part of a new national Privacy Act to commence later this year. Health principles are likely to be set out in separate legislation.

Broadly, 13 APPs will replace both the Information Privacy Principles (IPPs) (for the Commonwealth public sector) and the National Privacy Principles (NPPs) (for the private sector).

Health-specific changes flagged in the Federal Government's first stage response to the Australian Law Reform Commission's Privacy Report, 'For Your Information: Australian Privacy Law and Practice', include:

- extending the definition of 'health' to incorporate 'physical, mental and psychological health';
- extending the definition of a 'health service' to include aged care, surgical services and others but to exclude activities such as life or health insurance;
- allowing a health service provider to collect health information about third parties when necessary to provide a health service to a person if it relates to their family, social or medical history; and
- a requirement for information to be transferred between health service providers on an individual's request within a reasonable time.

An Australian Information Commissioner will oversee the Privacy Commissioner from 1 November 2010 and provide guidance on complying with the APPs.

## Legislation Update

### *Assisted Reproductive Treatment Regulations 2010 (SA)*

These Regulations are made under the *Assisted Reproductive Treatment Act 1988* (SA) and commenced on 1 September 2010.

The Regulations provide for a system of authorising providers of assisted reproductive treatment. Only a registered person can provide assisted reproductive treatment, requiring a current Reproductive Technology Accreditation Committee licence, along with other conditions. However, the Regulations provide that a registered person does not have to provide assisted reproductive treatment.

### *Cancer (Registration) Regulations 2010 No. 11 (NT)*

These Regulations list the prescribed details which the person in charge of:

- a hospital where a patient is diagnosed with cancer or has died from cancer; or

- a place where a specimen is collected that indicates that a person has or had cancer,

must give the Registrar within 7 days, unless they are not "reasonably available". Failing to give these details to the Registrar for entry onto the Register is a strict liability offence and a maximum fine of \$550 will apply.

These Regulations will commence when the *Cancer (Registration) Act 2009* commences.

### *Disability (Mandatory Reporting) Bill 2010 (SA)*

The second reading speech of the Bill was delivered on 21 July 2010, with the Bill sponsored by Kelly Vincent MLC. The Bill seeks to protect those with intellectual and physical disabilities from physical and emotional abuse or neglect, as well as those who report such abuse.

Reporting will be mandatory for medical practitioners, pharmacists, police officers, social workers and others, who will face a \$10,000 fine if they do not report suspected abuse or neglect. Reporting will be confidential and reporters will enjoy immunity from penalties for breaching the law or professional codes by disclosing their suspicions. Threatening or intimidating a professional listed in the Bill in relation to their reporting could lead to a \$10,000 fine.

### *Health Administration Regulation 2010 (NSW)*

This Regulation, which replaces the *Health Administration Regulation 2005* (NSW), was made under the *Health Administration Act 1982* (NSW).

It provides for:

- the procedures and functions of quality assurance committees;
- root cause analysis teams;
- the institutions, colleges, associations or other bodies that are "prescribed establishments" under the Act;
- the circumstances in which the disclosure of certain information will not constitute an offence under the Act; and
- savings and transitional matters.

The Regulation commenced on 1 September 2010.

### *Health Insurance Amendment Regulations 2010 (No. 1) 2010 (Cth)*

These Regulations amend the *Health Insurance Regulations 1975* (Cth) to allow midwives and nurses to provide services attracting Medicare benefits. The amendments are in keeping with recent changes to the *Health Insurance Act 1973* (Cth).

The amended Regulations commenced on 22 July 2010.

## *Health Practitioner Regulation National Law Regulation 2010 (NSW)*

This Regulation commenced on 1 July 2010. It sets out modifications to the *Privacy Act 1988* (Cth) *Freedom of Information Act 1982* (Cth) and *Ombudsman Act 1976* (Cth) as they apply to the laws of New South Wales for the purposes of the national registration and accreditation scheme.

## *Hospitals Act 1918 (Tas)*

The Minister's powers of delegation under the *Hospitals Act 1918* (Tas) have been repealed in the lead up to its replacement with the *Health Service Establishments Act 2006* (Tas) later this year. The *Hospitals Act* provided for functions in the *Health Services Act 1960* (Tas) could be delegated to medical practitioners in the Department. However those specific powers of delegation have been rendered obsolete, with Health Ministers choosing to carry out those functions themselves.

## *National Health (Pharmaceutical Benefits) Amendment Regulations 2010 (Cth)*

These Regulations amend the *National Health (Pharmaceutical Benefits) Regulations 1960* (Cth) to allow midwives and nurses to prescribe medicines for supply under the Pharmaceutical Benefits Scheme (PBS). The amendments are in keeping with recent changes to the *National Health Act 1953* (Cth).

The amended Regulations commenced on 22 July 2010.

## *Pharmacy Act 2010 (WA)*

This Act received assent on 26 August 2010.

The Act:

- establishes the Pharmacy Registration Board of Western Australia (Board);
- provides for transitional matters, including that the Board is a continuation of the former Pharmaceutical Council of Western Australia in relation to certain matters;
- prescribes matters relating to funding, financing and reports of the Board;
- prescribes the process of applying for registration of pharmacy premises and grounds for refusal, and provides the Board with powers of entry and inspection;
- prescribes matters relating to ownership and interests in pharmacy businesses.

## *Retirement Villages Regulation 2010 (QLD)*

This Regulation, made under the *Retirement Villages Act 1999* (Qld), commenced on 6 August 2010.

It sets out:

- the particulars for an application for registration of a retirement village scheme;
- the details for a residence contract; and
- fees payable, including for applications for registration and inspection of relevant documents.

For further information, please contact:

### **Lucinda Smith**

Partner

+61 2 9020 5748

lsmith@thomsonslawyers.com.au

### **Jim Baillie**

Special Counsel

+61 2 9020 5746

jbaillie@thomsonslawyers.com.au

### **Ken Ramsay**

Consultant

+61 2 8248 3460

kramsay@thomsonslawyers.com.au

### **Samantha Culshaw**

Senior Associate

+61 2 9020 5712

sculshaw@thomsonslawyers.com.au

### **Elyse Jeffress**

Senior Associate

+61 2 9020 5738

ejeffress@thomsonslawyers.com.au

### **Marc Wyld**

Senior Associate

+61 2 9020 5708

mwyld@thomsonslawyers.com.au