

NOT-FOR-PROFIT NEWSLETTER

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Aged Care: The Dilemma for Providers

Conflict of Duties under the Aged Care Act, 1977 and Work Health & Safety Act, 2011.

The Aged Care Act 1997 imposes on providers a set of rules known as the User Rights Principles. The Principles list not only residents' rights, but also their responsibilities.

Amongst the responsibilities imposed on a resident is the need to:

- a. respect the rights and needs of other people within the facility; and
- b. respect the rights of staff and the proprietor to work in an environment free from harassment.

A care provider has clear duties under the Workplace Health and Safety legislation to ensure that at all times its staff and other persons working at an aged care facility have a safe work place. If a resident breaches any responsibility, then a care provider can find itself needing to balance the observance of a resident's rights and the priority of ensuring the resident's care is not compromised against its conflicting duties owed to the care providers under the Work Health and Safety Act, 2011.

Sometimes, staff may feel threatened, intimidated, harassed and impeded in their duties as a consequence of a resident's behaviour, or the behaviour of a resident's family member, friend or representative.

In such circumstances, a prudent care provider is called upon to act promptly to:

- eliminate any behaviour of the resident, or their family member, which may impede delivery of necessary care
- roster on those staff who can best manage the situation
- allow staff to change rostered shifts to avoid a dangerously stressful situation

- limit the occasions when interaction between a resident and staff, or a resident and other residents can occur
- keep talking openly and frankly to the resident or family member
- call on mediators or counsellors (with the agreement and co-operation of the resident) to diffuse any confrontation before it occurs

When taking such action a care provider must at all times continue to observe the resident's rights of:

- full and effective use of his or her personal civil, legal and consumer rights
- quality care
- full information on his or her state of health and available treatments
- dignity and respect, living without exploitation
- living without discrimination or victimisation
- being treated as an individual
- continuing religious or cultural practices
- maintaining social and personal relationships
- freedom of speech
- maintaining personal independence
- taking actions which may involve personal risk ie not to be overly protective of a resident
- maintaining control over personal aspects of daily life, financial affairs and possessions
- be involved in associations and friendships, within and outside the care facility
- access to community services
- being consulted on living arrangement decisions
- access to information about rights, care, accommodation
- ability to complain
- access to advocates

- feeling free from reprisal or fear of reprisal

A care provider is faced with the challenge of managing each specific situation that arises to ensure all of its duties are adequately satisfied. Transferring the resident in question is not really an available option unless the resident agrees and an alternative equivalent care place can be located for the resident.

Auditors and Charities

An auditor is engaged by companies limited by guarantee to prepare audited financial statements for presentation at the annual general meeting. The company is obliged to appoint an auditor because it is classified as a public company and the auditor holds a significant role as a company officer.

Incorporated associations are only obliged to appoint an auditor if they fall within the Tier 1 category ie their gross annual turnover is above \$250,000 or their current assets have value greater than \$500,000. Otherwise, an incorporated association need only present a financial statement comprising a balance sheet and income and expenditure statements but it need not be audited.

This will remain so even after the Charities Commission begins its operations.

There is confusion with some auditors who may believe that their appointment to an incorporated association is equivalent to their appointment to a company limited by guarantee.

There is no statutory constraint upon an incorporated association to remove its auditor. There may be some provision in the rules of the association specifying how a removal is to be done, but more likely than not, a decision by the members of an association's committee, taken at any time during a financial year, can effectively remove an auditor.

This is not so for an auditor appointed to a company limited by guarantee. In that case, if the board determined to remove the auditor, and the auditor was not willing to go, the board must convene a general meeting to which the auditor must be invited, and at which the auditor can speak to any reasons notified by the company, for his removal: then the members must pass a special resolution (75%) to vote the auditor out: a new auditor should be simultaneously appointed by the members.

Recent Enactment Roman Catholic Church Communities' Lands Regulation, 2012

The Roman Catholic Church Communities' Lands Regulation, 2012 commenced on 1 September 2012. This new Regulation replaces the previous 2004 regulation which ended on 1 September 2012.

Like the previous regulation, the new Regulation deals with the procedures for the winding up of body corporates incorporated under the Roman Catholic Church Communities' Lands Act NSW (1942). The 2004 regulation made reference to voluminous sections of the Corporations Act 2001 (Cth) and potentially had to be

revised each time the Corporations Act was amended. The aim of the redrafting of the new Regulation into more simplified language, including the exclusions of references to specific sections of the Corporations Act, is to avoid the need to revise the regulation as other laws evolve and to simplify the process of winding up a body corporate.

A copy of the new Regulation can be found [here](#).

Good News

It's a long struggle and you're often on your own.

The winner of the first Melbourne cup was the legendary 'Archer' who, the story goes, trotted from his training base in Nowra to the Flemington racetrack and proceeded to blow the field away.

Ed Fernon, renowned Pentathlete who recently competed in the London Olympics, is following in the gallop of 'Archer' in order to raise awareness for depression.

Ed, 24, will undertake the 1100km journey with the aim of raising \$50,000 for the Black Dog Institute, which is an educational, research, clinical and community-oriented facility offering specialist expertise in mood disorders - a range of disorders that include depression and bipolar disorder.

Ed commenced his journey on October 2 and hopes to arrive at the outskirts of Melbourne by the weekend before the esteemed cup on Nov 6.

New Date

Charity Law Seminar

Wednesday 28th November

Half Day Seminar 9:00am - 1:00pm (lunch provided)

Legal Issues for Religious, Educators & Churches

Australian Catholic University

More information available soon.