



DLW Health Services decision - Federal Court says Aged Care ACFI documents are “riddled with ambiguous, uncertain and inconsistent language”



24 Aug 2016

Published by: Anita Courtney and Victor Harcourt

The Full Court of the Federal Court has made a number of comments about the poor quality of the ACFI documents in a decision handed down on 23 August concerning an appeal from the Administrative Appeals Tribunal.

DLW Health Services Pty Ltd v Secretary, Department of Social Services [2016] FCAFC 108

The Court recommended that the instruments be reviewed “to make them more readily understandable” after it said that they were “riddled with ambiguous, uncertain and inconsistent language” and contain “significant inconsistencies”.

The case concerned decisions made to change the classification levels for five aged care residents at Footscray Aged Care. The Secretary’s delegates determined to change the classifications on the basis that treatment was being provided by a physiotherapy assistant who was supervised by a qualified physiotherapist. The delegates determined that as the treatment was not being provided by the qualified physiotherapist personally, the care recipients did not satisfy Item 4b of ACFI 12. The effect of the delegates’ decisions was to reduce the subsidy payable to the approved provider.

After DLW successfully challenged the delegates’ decisions at the Tribunal, the Department appealed the Tribunal’s decision to the Federal Court. The Federal Court found that the Tribunal had made an error of law and ordered the matter be sent back to the Tribunal to reconsider.

In its decision, the Full Federal Court issued some guidance on how an appraisal of a care recipient’s needs should be undertaken. The Full Court agreed with DLW that in categorising whether a care recipient falls within Item 4b, the “categorisation is not undertaken by reference to the treatment actually provided to the care recipient, but by the care recipient’s need for treatment.” The Court also stated that, to the extent that the ACFI User Guide categorises “care recipients by reference to the treatment actually provided to them, rather than the treatment that they need”, that construction would be beyond power of the Secretary.

People that can help



Libby Pallot
Principal
+61 3 9609 1668
lpallot@rk.com.au

Libby is the head of Russell Kennedy’s Work Relations, Employment and Safety practice a

[Learn More](#)

In coming to its decision the Full Court rejected much of the Secretary's arguments in favour of DLW. The Full Court also acknowledged that the case *"has served to bring some clarity to difficult issues created by anomalies in the drafting of a part of the Classification Principles. In that way, the litigation, which involves an area of concern to a wide section of the public, has served the public interest."*

In summary, the Full Federal Court's judgment has brought some clarity to the ACFI funding instrument and has recommended the documents be re-written to provide greater clarity to the industry and ACFI auditors.

More significantly, for providers who have undergone an ACFI downgrade because of a lack of documentation/evidence that treatment was actually provided in accordance with the assessment and directive, the Federal Court's decision may also give the provider grounds to challenge the downgrade.

Russell Kennedy acted for *DLW Health Services Pty Ltd* in the case against the [Secretary, Department of Health](#). The Full Court has ultimately sent the matter back to the [AAT](#) for a new decision.

If you have any further questions regarding your ACFI documents, please contact [Victor Harcourt](#) (03) 9609 1693 or [Anita Courtney](#) (03) 8602 7211.

If you'd like to keep updated with Russell Kennedy's insights, please sign up [here](#).

Related Services

[Aged Care](#)

[Corporate & Commercial Advisory](#)

[Dispute Resolution](#)

[Property & Development](#)

[Property & Development Sales and Acquisitions experience](#)

[Prosecutions](#)

[Public & Administrative Law](#)

[Retirement Living](#)

[Royal Commissions](#)

[Wills and Estate Planning](#)

[View all services](#)

View related insights



[Beware: associate, advisory or non-voting directors as members of an approved provider governing body](#)

29 Nov 2023

As we help our approved provider clients prepare their governing bodies to include a majority of ind ...

[View](#)



[Understanding Voluntary Assisted Dying: A Guide for Physicians and Psychologists](#)

17 Nov 2023

Voluntary assisted dying ("VAD") has been a topic of sig discussion and legislat ...

[View](#)



- [Our Firm](#)
- [International](#)
- [Leadership Team](#)
- [Awards](#)
- [Community](#)
- [Diversity and inclusion](#)
- [Russell Kennedy Women's Network](#)

- [Available positions](#)
- [Law Graduates](#)
- [Seasonal Clerkship Program](#)
- [Paralegal Pathway Program](#)