



**Is there life for Additional Services  
after the BUPA ruling?**

# Bupa Aged Care ordered to pay \$6 million for services not provided, Federal Court rules

## and someone said all press is good!

With headlines like these Providers might rightly ask whether there is a future for Extra Services or Additional Services in Residential Aged Care.

When you get into the detail of the BUPA case, it is clear there is a future for Additional Services and Extra Services for Providers who understand and manage the risks. It's also very clear from the BUPA case that the provision of Aged Care has accountability much broader than the Aged Care Act. The reality is the ultimate regulator is ***“the court of public opinion”***. The best proxy for this is validated customer satisfaction. Justice Mortimer made a similar finding in his statement

***“the evidence reveals that it (Bupa) has acted in a way, in respect of its own residents, a vulnerable group, which is deserving of the Court’s public disapproval”.***

In this Pride Living Insight, we explore the facts behind the headlines and provide valuable insights on how to use Additional Services and Extra Services to underpin the viability and sustainability of your facilities.

At Pride Living we want to help our clients make decisions with confidence; this Insight uses the Bupa case to highlight issues Providers should be aware of where they provide Extra Services or Additional Services to their residents.

## Where it all went wrong

Based on our reading of the Notice of Filing and the judgement, three key factors lead to the failures at Bupa:

### 1. A lack of systems

“what let it – and the affected residents down was that **it had “insufficient” compliance systems in place to monitor the delivery of the extra services** for which residents had paid.... Bupa’s systems must have been highly inadequate.”

### 2. Inappropriate systems where they existed

“notwithstanding the existence of those systems and controls, Bupa Aged Care accepts that **they were not sufficient to enable Bupa Aged Care to ensure that the Relevant Extra Services were in fact provided** to the applicable residents on a consistent basis and were therefore inadequate”.

### 3. A lack of compliance (auditing) of system compliance

**“the availability of extra services was not incorporated into Bupa Aged Care’s register of compliance obligations.”**



## The silver lining from the Bupa case

Having considered the issues Bupa faced and the traps for the unwary, the Federal Court has identified four great pointers on how to manage the risks when introducing and operating an AS or ES offer in your facility.

If you follow these simple steps you can have confidence you will not incur the wrath of the ACCC;

- 1 • Tailor the program to the facility
- 2 • Deliver what you promise
- 3 • Be open to feedback and continuously monitor customer satisfaction
- 4 • Independently verify the efficacy of policies and procedures

At Pride Living, we are proud of the Additional Service's Program we have developed and deployed to ensure our clients meet their obligations to regulators while providing excellent value to their customers and reaping high satisfaction rates with their Additional Services Programs.

You can learn more from [James](#) or read about our program [here](#).



## Traps and tips for Providers

On our reading of the statement of claim and the judgement, the pitfalls that Providers face include:

Trap	Mitigation
<b>Over promising</b> - Where your offer specifies that discrete services will be “provided” in a time context then any failure of the resident to use the service in the time frame means you cannot charge for it. Such an approach imposes both a high risk on the Provider and a high burden of proof and compliance to ensure that you only charge for services consumed.	Be careful with the language, “available” is different to “provide.”
<b>Standardised or Template approaches</b> - Multi-site Providers manage risk and create efficiencies by standardising their business model. However, it's common for facilities to be either acquired from different owners or built at different times. This means it's unlikely that all facilities can deliver the same services. This was clearly the situation in the Bupa case.	It's important to specify the characteristics in a facility that are necessary for a particular suite of services to be provided. One large provider has three classifications for its facilities. The classification determines which suite of Additional Services are provided.
<b>Relying on self-reporting</b> - As the saying goes “turkeys don’t vote for Christmas”. It’s unrealistic to expect those who are not fulfilling their obligations and who will be held to account for this to acknowledge this. This was a major factor in the Bupa case.	Implement a program of independent review and reporting – External Audit.
<b>Not demonstrating and providing value</b> - To maximize loyalty and profitability, a Provider must deliver value to its best customers.	To know whether you are achieving this is as simple as asking. Customer satisfaction research will tell you in advance whether you have a problem with customer value perception. This avoids complaints.
<b>Failure to understand product lifecycle</b> - Many Providers enthusiastically embrace ES or AS models; however, they fail to review, refine, and update the inclusions to reflect current expectations and standards. Over time the value of most benefits declines in the eyes of recipients and consumer preferences change.	Embrace the concept of the lifecycle for your ES & AS offers and have a specific program to ensure your services meet or exceed current consumer expectations.
<b>Failure to realise that consumers are heterogeneous</b> - When you create an offer, it is implicit that you are assuming all consumers have the same preferences, this is simply not reality.	Membership to a club with access to a range of facilities/services is one way to cater to the preferences of individual consumers.

The mitigation strategies we have described above are the same as highlighted either as failures or requirements in the judgement of the Federal Court; you can read more about this [here](#)

## The difference between Additional Services and Extra Services

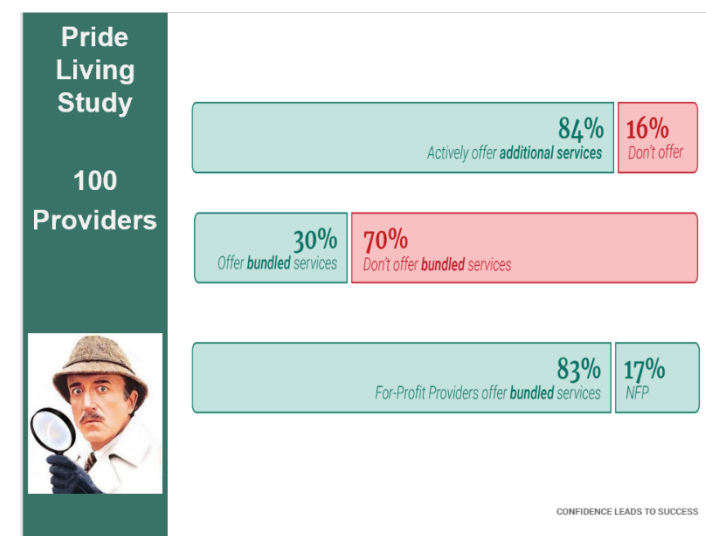
### Regulatory Framework

While both are controlled under the Aged Care Act, there are some key differences. Importantly and crucially neither Extra Services nor Additional services are intended to improve the quality of care. Care is governed by the specified care and services in the Aged Care Act 1997, Quality of Care Principles 2014, User Rights Principles 2014.

Extra Services	Additional Services
Extra Service Status (ESS) is legislated in the Extra Services Principles 2014	Limited legislative control and not subject to regulation
Designed for the luxury market	Designed for the wider community
Services are specifically prescribed from a list of benchmarks provided by the Dept. Providers had to achieve a minimum score of 60/100 to achieve ESS status	Services are designed by the Provider
Approval of places, benchmarks and fees are assessed and approved by Government	Negotiated between the consumer and the Provider
Limited to 15% of homes in an Aged Care Local Government Area (LGA)	Open to all facilities
Not open to supported residents. Providers who accepted supported residents incurred daily fee penalties and lost their accommodation supplement	Open to supported residents
There haven't been any new ESS homes approved since July 2014. Additional Services were designed to replace ES	Rapidly increasing number of providers implementing offers

### Differences at the consumer end

- Being established in 1997, the ES Principles are now seen as not meeting the needs of consumers
- Additional services' focus on lifestyle choices and options rather than luxuries or status
- AS target Australia's growing middle class
- Greater choice, control and flexibility over Quality of Life (QoL) with a customer focus, e.g. wellness centres, fitness programs, bespoke activities.



## Why are Additional Services and Extra Services Important?

The pursuit of viability and sustainability means Providers have the following available sources of income. There are five sources of income to a Provider.

1. Care income ACFI - highly regulated with no discretion as to the price charged
2. Basic Daily Fee - no discretion as to the price charged
3. Accommodation charge –
  - a. Accommodation supplement - no discretion as to the price charged
  - b. RAD/ DAP – consumer decides, excess RAD reduces EBITDA
4. Extra Service Fees – some price regulation and regulation on service provision
5. Additional Service Fees – a contract between provider and consumer unregulated price, regulation on service provision.

At a time when it is acknowledged that increases in Govt revenue are insufficient to offset increases in costs and consumer expectations, generating additional revenues are key for Providers to obtain the additional revenue they need to provide higher standards of service demanded by consumers. Within the current regulatory framework, Additional and Extra Services are the most significant means of generating this additional income.

### Existing services

Basic packages are services provided for free by most other providers.

Most facilities provide 50-80 additional services for free

The cost of providing non-prescribed services:  
\$700-\$2,000 p.a. per resident.

## *Providing these services is not an option - it's a matter of survival!*

We have worked with many Providers to develop, implement, and monitor their Additional Services offers. In our experience, a well-constructed offer can avoid the traps, and generate between \$2,000 and \$4,400 EBITDA per bed per annum.

The greatest stumbling blocks to delivering an effective Additional Service model include:

- Failure to understand what constitutes an additional service
- Failure to understand what additional service consumers value
- Failure to understand the change management involved in introducing AS
- Failure to effectively promote the benefits and value of the AS to staff and consumers
- Failure to monitor and modify offers to maximise consumer satisfaction
- Not having an up to date facility.



Foxtel



Menu choice



Hairdressing



Alcohol with meals



Events and outings



Wi-Fi



In-room TV



Garment labelling



Telephone



Premium toiletries

## Some key facts in the Bupa Case

Based on the “Notice of Filing” the ACCC thought the following facts were particularly important to its decision to pursue its action:

- Bupa acknowledged that certain elements of the extra services were simply not available to residents. You can get a summary of these [here](#)
- The situation persisted for approximately 10 years (2007 – 2018)
- Bupa represented that all the services in its Extra Service offer were available and would be provided to residents
- Not all the services were available or not for all the relevant period
- There were reasonable grounds for believing that Bupa would not supply all of the specified services and
- That Bupa ought to have been aware of the absence of these reasonable grounds.



In its judgement, the Federal Court made the following findings/rulings:

- Bupa represented that each of the extra services "would be provided"
- There was reasonable ground for believing that Bupa would not be able to supply the extra services
- That Bupa ought to have been aware of the non-supply or the lack of capacity to supply the services
- That Bupa establish a Consumer and Competition Compliance program and operate this for three years that includes a complaint handling and whistle-blower protection programs
- Bupa repay residents for fees related to services either not provided or provided only in part (plus interest)
- To implement an annual broad, rigorous, and independent review program
- Bupa admitted to many of the contraventions of its ES program
- Bupa admitted it did not have sufficient compliance programs to allow it to have grounds to believe it was providing the services as set out in the agreements.



## Examples of what Bupa failed to provide

Here is a list of some key instances of failure to provide Extra Services that residents were billed for as part of the extra service fee:

- a) telephone handset in each resident's room;
- b) individually controlled heating and cooling in residents' rooms;
- c) recognised superior brand name toiletries;
- d) separate external buildings available for residents' leisure activities (e.g. workshop, garden shed, gazebo);
- e) computer and internet education;
- f) escort to outside appointments;
- g) choice of three hot dishes, excluding porridge, at each breakfast;
- h) each resident to receive their favourite meal at least twice a week;
- i) personalised printed menus on dining tables;
- j) dedicated harmony room with Snoezelen equipment;
- k) dedicated massage room with massage chair;
- l) dedicated equipped physiotherapy room; and
- m) cocktail hour at least three times a week.

Bupa has since ceased to provide Extra Services in its facilities.

