Senate Community Affairs Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

INQUIRY INTO THE NATIONAL HEALTH REFORM AMENDMENT (NATIONAL HEALTH PERFORMANCE AUTHORITY) BILL 2011

17 May 2011

Question no: 1

Written Question on Notice

The Committee asked:

Australian Osteopathic Association (AOA) (submission 7) and Council of Procedural Specialists (COPS) (submission 9) question the need for the creation of the Performance Authority. Could the Department explain why a single agency could not be designed to monitor and prepare reports relating to hospital and healthcare service providers such as the Australian Commission for Safety and Quality in Health Care (ACSQHS)?

Answer:

The Commonwealth and all state and territory governments have agreed that the National Health Performance Authority (the Performance Authority) and the Australian Commission for Safety and Quality in Health Care (the Commission) should be established as separate agencies. An advantage of this is that allows the Safety and Quality Commission to develop a body of expertise and focus on safety and quality including clinical standards and clinical governance. It should be noted also that the Safety and Quality Commission's remit extends to taking initiatives with health services to support improvements in safety and quality. The National Health Performance Authority has a remit to report on performance more broadly, at the level of individual services. The different role and focus of the two organisations is briefly set out in schedule E to the National Health and Hospitals Network Agreement.

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17 May 2011

Question no: 2

Written Question on Notice

The Committee asked:

What consultation was undertaken by the Department with stakeholders including the state and territory governments in drafting this Bill?

Answer:

The Bill reflects arrangements already set out in agreements between governments. The focus of consultation has been on the Performance and Accountability Framework (the Framework), which sets out details of what will be reported and how. The Framework has been subject to considerable consultation, including detailed discussions with all states and territories, the Australian Bureau of Statistics, the Australian Institute of Health and Welfare, and the Australian Commission on Safety and Quality in Health Care.

The Bill is a product of the health reform process that included the National Health and Hospitals Reform Commission which undertook extensive consultations, followed by more than 100 consultations around Australia undertaken by the Government.

In March 2010 the Commonwealth released *A National Health and Hospital Network For Australia's Future.* That publication contained a call for the establishment of the authority and standards setting arrangements.

The Commonwealth has been engaged in extensive consultations on the Bill with the states and territories, and these discussions are ongoing.

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17 May 2011

Question no: 3

Written Question on Notice

The Committee asked:

Dr Kathryn Antioch's submission (submission 14) suggests the need for new definitions of terms to be included in the legislation. Why did the Government not adopt the framework and definitions for performance measurement used in the National Health and Hospitals Reform Commission's (NHHRC's) report on performance frameworks when drafting this Bill?

Answer:

The issues raised by Dr Antioch are dealt with in the Performance and Accountability Framework (the Framework). The Committee would be aware that under the National Health and Hospitals Network Agreement and the subsequent Heads of Agreement – National Health Reform (the Agreements), the arrangements for establishing the NHPA were dealt with quite separately to the establishment of the Framework. The Framework should allow for changing priorities and new approaches to understanding and reporting performance that will develop over time. Definitions of terms do not need to be enshrined in law to be adopted and used where relevant and appropriate, and enshrining definitions of terms in legislation would likely impede the adoption of new approaches, due to the need to amend legislation.

The Framework is currently under development and will require Council of Australian Governments agreement before finalisation, as per the terms of the Agreements.

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17 May 2011

Question no: 4

Written Question on Notice

The Committee asked:

Several submissions (submissions 1, 2, 6, 7 and 10) directly raise concerns about clause 60 of the Bill, which relates to the functions of the Performance Authority. Could you explain why there is no detail prescribed in the legislation on the areas of performance to be assessed by the Authority?

a. CHA submission (submission 13) suggests that more detail is required in the legislation about the scope, range and detail of data to be collected by the Authority and adds that this would give Parliament an ability to exercise oversight over the collection of potentially very sensitive information. Why is there not more detail in the Act?

b. The AMA and CHA submissions (submissions 2 and 13) raise the issue of the regulatory and cost impact on smaller private hospitals and health care service providers. Why does the Explanatory Memorandum not include a Regulatory Impact Statement?

    i. What assistance will be provided to entities and providers adversely affected by the introduction of the Bill?

c. Several submissions raise the concern of duplication in reporting. Can the department clarify and set out the role of the Authority in comparison to the data collection and reporting roles of the Commission, the Australian Bureau of Statistics (ABS) and the Australian Institute of Health and Welfare (AIHW)?

    i. Could the Department explain how overlap in roles will be managed?

    ii. Is the aim of the Authority to rationalise the collection of data from health services to ensure that consistent data is collected once, in one format?

    iii. Can the Department clarify if the Authority will consult with relevant experts and health service administrators when formulating its performance indicators and standards and if so, how will this be achieved?

Answer:

a. The Commonwealth and all state and territory governments have agreed that the scope range and detail of performance information to be reported will be dealt with in a Performance and Accountability Framework (the Framework), to be agreed by COAG.

b. The National Health Reform Amendment (National Health Performance Authority) Bill 2011 establishes the National Health Performance Authority (NHPA). It does not specify data to be collected or how frequently that will occur. As such, it was granted a RIS exemption by the Office of Best Practice Regulation.

   i. The public reporting of nationally standard measures of performance at the level of individual hospitals is expected to be a positive development for health services and those that use them. It is anticipated that organisations will willingly provide the necessary data to enable their performance to be reported.

c. i. There is not an existing body that is charged with national public reporting of the performance of health services at the level of individual hospitals and Medicare Locals, as the National Health Performance Authority is to be. While the Australian Institute of health and Welfare has assisted in the initial establishment of the MyHospital website in anticipation of the establishment of the Authority, it has not, since its establishment more than twenty years ago, sought to report on the performance of health services at the level of individual organisations, such as hospitals. Nor has the Australian Bureau of Statistics, the Review of Government Service Provision or the COAG Reform Council. As such, the Authority will not be duplicating existing outputs or reports by these bodies.

   ii. An aim of the Authority will be to ensure that it collects consistent data. The Authority will not be seeking to prescribe what data other bodies may or may not collect for their purposes. To the extent that the Authority develops new and useful performance indicators and standards for data, these may be adopted by other bodies, where appropriate.

   iii. The Framework, covering the initial performance indicators that the NHPA will report on, is already the subject of consultation. Further data development work will be undertaken by the NHPA, once established, and it is expected that this will include consultation with experts, health service managers and others.

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17 May 2011

Question no: 5

Written Question on Notice

The Committee asked:

The AOA submission (submission 7), and The Royal Australian College of General Practitioners (RACGP) submission (submission 10), both raise concerns about which organisations will fall within the scope of the Performance Authority's performance evaluations. Subclauses 60(1)(a)(iv) and (v) indicate that "primary health care organisations" and "other bodies or organisations that provide health care services" will be examined by the Authority. The RACGP has queried whether general practices are intended to be captured as primary health care organisations, and the definition proposed to be added in section 5 of the Act does not assist in this regard. The AOA likewise believes it is unclear whether they will also be captured by the Act.

a. Does the government intend that the Authority's operations under clause 60 will extend to general practices?

b. While the Act gives the Federal Health Minister the discretion to determine whether a body is a primary health care organisation (clause 26 of the bill), there appears to be no definition (and no federal ministerial discretion) in relation to determining whether a body is a body or organisation that provides health care services. Does this mean that it is a matter for the Authority to determine whether a body, such as the Osteopaths Association or one of its members, falls within the scope of the Authority's work? How will Subclause 60(1)(a)(v) operate?

Answer:

The Committee may have noted that the definition of “primary health care organisation” in the Bill calls on the Minister to specify the bodies or organisations to which the term relates in a legislative instrument. The government has no intention to extend the Authority’s operations to individual general practices.

The Government is considering amendments to 60(1)(a)(v) to require COAG agreement to extensions of the scope of coverage of the NHPA’s monitoring and reporting activities.

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17 May 2011

Question no: 6

Written Question on Notice

The Committee asked:

With reference to clause 60(2), Dr Antioch's submission notes that hospital services in some states may also provide Hospital in the Home programs (e.g. Victoria). Could the Department clarify how these programs will be addressed by the legislation?

Answer:

The performance indicators that hospitals and Local Hospital Networks will be assessed against will be defined in the Performance and Accountability Framework (the Framework) to be agreed by COAG. Hospital in the home services are amongst the services hospitals provide, and as such may be included in the scope of hospital performance reporting.

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17 May 2011

Question no: 7

Written Question on Notice

The Committee asked:

The AMA submission (submission 2) states that subclauses 60(4) and (5) should be removed from the Bill, thereby making the respective instruments subject to disallowance by the Parliament. In regard to 60(5) the committee notes that the Explanatory Memorandum states that the usual purpose of the instruments will be to implement intergovernmental agreements, and that they therefore should not be subject to disallowance.

a. Is there a reason that clause 60(5) is not drafted to limit its scope to implementing intergovernmental agreements?

b. Can the Department explain its view of why instruments giving effect to intergovernmental agreements should not be subject to parliamentary scrutiny through disallowance procedures?

c. Given that clause 60(5) as currently drafted does not have a limited scope, can the Department explain why instruments under 60(5) that are *not* giving effect to intergovernmental agreements should not be subject to parliamentary scrutiny through disallowance procedures?

Answer:

a. & c. 60(5) applies to 60 (1) (f). An instrument under 60(1)(f) is not stating the law as it applies generally, nor imposing rights, duties or obligations on the public, but simply conferring an additional function on a body that already exists, and which will be subject to scrutiny through the budget and annual reporting processes.

b. The Legislative Instruments Act at section 44 specifically provides for the exemption from disallowance of instruments giving effect to intergovernmental agreements.

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17 May 2011

Question no: 8

Written Question on Notice

The Committee asked:

Clause 62 sets out additional provisions about reports.

a. Will written comments provided by poor performing entities and healthcare providers be reflected in the final report that is released publicly and if so, how does the Department envisage that they will be incorporated?

b. The Western Australian Premier's submission (submission 6) states that the Bill with respect to clause 62(2) is inconsistent with the COAG agreements because the Authority does not have a performance management role under the National Health and Hospitals Network Act (NHHNA). Could the Department respond to Western Australia's concerns?

c. The WA Premier's submission also states that provisions that prescribe contact between the Authority and Local Hospital Networks (LHNs) and the individual hospitals should be removed from the Bill and be addressed through ongoing performance arrangements with the States and Territory's rather than the Authority. What is the Department's response to this statement?

Answer:

a. They may be. Whether and to what extent this is the case will be for the NHPA to determine, in each instance.

b. & c. The intent of the relevant provision is to deliver natural justice to an entity that might be the subject of a report indicating poor performance. The Commonwealth is discussing this matter with Western Australia, and the other states and territories, in order to resolve their concerns around this provision.

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17 May 2011

Question no: 9

Written Question on Notice

The Committee asked:

Mrs Kerr's submission (submission 12) raises concern that a prescribed timeframe for the Authority to report is not included in the Bill.

a. Will a timeframe for reporting by the Authority be prescribed or included in a legislative instrument?

Answer:

The timeframes for reporting will not be prescribed in the Act establishing the National Health Performance Authority (NHPA). The exact timeframes are not yet settled. The National Health and Hospitals Network Agreement, and, by incorporation, the Heads of Agreement – National Health Reform, call for the NHPA to publish quarterly reports.

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17 May 2011

Question no: 10

Written Question on Notice

The Committee asked:

CHA's submission (submission 13) raises concern about clause 62(2) in relation to poor performance. CHA suggest a system based on or similar to the Australian Council on Healthcare's system of a 60 Day Survey for underperforming hospitals to remedy accreditation failures before having accreditation downgraded.

a. How was the policy of 30 days for a written response from poor performing entities or facilities determined?

b. Submissions raise concerns about the application of the authority for the Federal Health Minister to publicly name poor performing entities and healthcare providers. Does the Bill provide authority for the Federal Health Minister to publicly name poor performing entities and healthcare providers?

    i. If so, what effect does the Department envisage this would have on poor performing entities and healthcare providers if they were named publicly?

    ii. Will any additional resources be provided to poor performing entities and healthcare providers to assist with the remedy?

c. In the development of its performance indicators, will the Authority consider intrinsic factors that may contribute to poor performance? E.g. IT systems, industrial instruments and mandated use of existing state services such as pathology?

Answer:

a. The 30 day response time is designed to provide sufficient opportunity to entities to respond to a potential report of poor performance, in line with natural justice concerns, whilst still allowing the National Health Performance Authority (NHPA) to meet its quarterly reporting obligations as set out in the National Health and Hospital Network Agreement and the Heads of Agreement – National Health Reform.
b. Under the Bill, the NHPA will publish reports on every hospital, Local Hospital Network and Medicare Local. These reports will publicly identify the

performance of each of these entities. It is important for the public to have access such information. Providing the public with such information will create powerful incentives for poor performing entities to improve.

The NHPA is a performance monitoring and reporting agency. It will not have responsibility for providing funding or making funding decisions. However, the Commonwealth is providing significant additional funding for public hospitals and Medicare Locals as part of the overall reforms.

c. Initial performance indicators will be included in the Performance and Accountability Framework to be agreed by COAG. The scope of performance indicators and what factors affecting performance they may cover is to be determined.

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INQUIRY INTO THE NATIONAL HEALTH REFORM AMENDMENT (NATIONAL HEALTH PERFORMANCE AUTHORITY) BILL 2011

17 May 2011

Question no: 11

Written Question on Notice

The Committee asked:

With reference to clause 63, the AMA submission (submission 2) states that there should be an open and transparent process to develop performance indicators that includes consultation with providers of data.

a. What will be the process for developing performance indicators?

b. Could the Department clarify the purpose of clause 63(2)?

c. When would the Authority use this provision?

Answer:

a. The National Health and Hospitals Network Agreement and the Heads of Agreement – National Health Reform call for the development of a Performance and Accountability Framework (the Framework).

   After the initial Framework has been agreed by COAG, indicators will need to be agreed by health ministers before they are incorporated into the Hospital Performance Reports or Healthy Communities Reports. It is expected that the NHPA will consult on the development and application of performance indicators.

   In the development of the Framework there have been considerable targeted consultations with key stakeholders and provider of data.

b. Subsection 63(2) will provide a clear power to allow the NHPA to adopt existing performance indicators, in whole or part, without needing to engage in an arduous redevelopment of existing material.

c. Subsection 63(2) would be used to allow the potential adoption, pending the agreement of health ministers, of an indicator developed by another body, where the NHPA feels that the indicator would have value to health reporting in Australia.

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INQUIRY INTO THE NATIONAL HEALTH REFORM AMENDMENT (NATIONAL HEALTH PERFORMANCE AUTHORITY) BILL 2011

17 May 2011

Question no: 12

Written Question on Notice

The Committee asked:

With regard to Clause 72, relating to the appointment of Authority members, the Committee is concerned about what safeguards are in place to ensure that appropriate expertise is included in the membership. The Committee notes that membership of the Australian Commission on Safety and Quality in Health Care (ACSQHC) is restricted to individuals with expertise in one of a wide range of areas specified in the legislation (see Section 20 of the National Health and Hospitals Network Act 2011). In contrast, the current Bill does not place any general restriction on the skills of Performance Authority members, other than one must have expertise or standing in relation to health care in regional and rural areas. This has caused concern for submitters to this inquiry, who want to see a number of key stakeholders, such as consumers, represented on the Authority.

a. Why does the Authority membership provision not reflect the approach taken for the Commission?

b. Is there any intention for clause 72(4) to make explicit reference to indigenous health representation to ensure consistency with all Federal-State financing agreements which include indigenous health as an overarching priority for Australian governments?

Answer:

a. The National Health Performance Authority (NHPA) membership provisions reflect the intergovernmental agreements under which the NHPA is established. Both the National Health and Hospital Network Agreement and the Heads of Agreement – National Health Reform include the requirement for one member to have regional and rural health expertise. They also set out the other provisions reflected in the Bill: that the Commonwealth will nominate the Chair of the NHPA, the states the Deputy Chair, and that COAG will agree the 5 members.

b. Membership of the NHPA can be expected to be drawn from a range of appropriately skilled, experienced and qualified persons. Attempting to specify, in detail, who should hold membership of the NHPA may in practice restrict, rather than enhance, member selection.

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17 May 2011

Question no: 13

Written Question on Notice

The Committee asked:

In her second reading speech, the minister referred to the Authority as an independent body. Can the Department explain how the Performance Authority will be an independent body given the Ministerial control prescribed in clauses 60, 65, 72, 74, 81, 112 and 125?

Answer:

Given that the National Health Performance Authority (NHPA) will be expending public moneys it is important to ensure that it is subject to appropriate ministerial oversight and direction. The availability of mechanisms for ministerial oversight is fairly standard across agencies established under the Financial Management and Accountability Act 1997 (the FMA Act). Many of the provisions in question are quite similar to those applying to other agencies established under the FMA Act, including such bodies as the Australian Prudential Regulation Authority, and to those with multi-jurisdictional roles, for instance Safe Work Australia.

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INQUIRY INTO THE NATIONAL HEALTH REFORM AMENDMENT (NATIONAL HEALTH PERFORMANCE AUTHORITY) BILL 2011

17 May 2011

Question no: 14

Written Question on Notice

The Committee asked:

Dr Kerr's submission (submission 3) suggests that clauses 76 and 77, related to disclosure of interests, could be enhanced if the major financial interests of the Authority's members are published where they can be seen, on an accessible website. Is it envisaged that the financial interests of the Authority's members will be publicly accessible?

Answer:

The National Health Performance Authority will not be involved in determining government expenditure on health services and will not be involved in the purchase or provision of improved drugs or services. The requirements to disclose interests to the minister and the authority, and for a member to not be present or take part in any discussion or decisions in which a member has an interest, and for this to be minuted, are thought to be sufficient.

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17 May 2011

Question no: 15

Written Question on Notice

The Committee asked:

CHF's submission (submission 1) argues that the clause 122, related to disclosure with consent, should be amended to specify *informed* consent. The Committee draws attention to Section 58(2) of the National Health and Hospitals Network Act 2011, which uses the term 'informed consent'. Does the Department see any issues with such an amendment?

Answer:

It is not clear that the term “informed consent” in any way enhances the processes that would need to be undertaken to satisfy the National Health Performance Authority that the disclosure of information is appropriate. It should also be noted that this provision, unlike subsection 58(2) of the *National Health and Hospitals Network Act 2011*, is not about information which could identify a patient but relates to a much broader range of material which relates to the affairs of a person.