

# National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012

## Introduction

1.1 On 22 March 2012, on the recommendation of the Selection of Bills Committee, the Senate referred the provisions of the National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012 (the Bill) to the Finance and Public Administration Legislation Committee for inquiry and report by 9 May 2012. The reasons for referral and principal issues for consideration were:

- the role of the National Health Funding Body and the Administrator of the National Health Funding Pool;
- justification for the establishment of additional bureaucracy;
- administrative requirements for the Commonwealth, States, Territories and other parties;
- transparency and efficiency of processes in administering funding; and
- fiscal implications for the Commonwealth.<sup>1</sup>

## Conduct of the inquiry

1.2 The inquiry was advertised in *The Australian* and through the Internet. The committee invited submissions from the Commonwealth and State and Territory Governments.

1.3 The committee received 4 submissions relating to the Bill and these are listed at appendix 1. The committee considered the Bill at a public hearing in Canberra on 1 May 2012. Details of the public hearing are referred to in appendix 2. The submissions and transcript of evidence may be accessed through the committee's website at:

[http://aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=fapa\\_ctte/index.htm](http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_ctte/index.htm).

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1 Senate Selection of Bills Committee, *Report No. 4*, 22 March 2012, Appendix 11.

## Background

### *The National Health Reform Agreement*

1.4 On 2 August 2011, the Council of Australian Governments (COAG) agreed to the National Health Reform Agreement (NHRA). The NHRA builds on principles and objectives for the health system contained in the National Healthcare Agreement (NHA), agreed by COAG in 2008 and amended in July 2011.<sup>2</sup>

1.5 The NHRA 'sets out the shared intention of the Commonwealth, State and Territory governments to work in partnership to improve health outcomes for all Australians and ensure the sustainability of the Australian health system'. It also establishes 'new financial and governance arrangements for Australian public hospital services and new governance arrangements for primary health care and aged care'.<sup>3</sup> The COAG Communiqué of 19 August 2011 stated that the NHRA 'will deliver the funding public hospitals need, with unprecedented levels of transparency and accountability, and less waiting time for patients'.<sup>4</sup>

1.6 The NHRA also heralds a fundamental change in the nature of Commonwealth and State arrangements for public hospital funding. Since 1984, the Commonwealth Government has provided block funding to State governments to support the delivery of free public hospital services while under the NHRA funding will be primarily activity based.<sup>5</sup>

1.7 Despite periodic agreements, tensions between the Commonwealth and States in relation to funding of hospitals have been ongoing. States have disputed the adequacy of the Commonwealth contribution. The Commonwealth, in turn, has found it difficult to determine if States are maintaining levels of service provision appropriate to the population level, and have been concerned that States have shifted public hospital provided services to private practice arrangements that draw subsidies from Commonwealth programs.

1.8 The NHRA addresses these issues through a shift to primarily Activity Based Funding (ABF) and the setting of a national efficient price, while maintaining a provision for block funding where required.<sup>6</sup>

1.9 Three key statutory bodies have already been established to implement the health reforms:

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2 Council of Australian Governments, National Health Reform Agreement, August 2011, p. 4.

3 Council of Australian Governments, National Health Reform Agreement, August 2011, p. 4.

4 Council of Australian Governments Meeting, Canberra 19 August 2011, *Communiqué*, <http://www.coag.gov.au> (accessed 30 August 2011).

5 Department of Health and Ageing, *Submission 1*, p. 1.

6 Department of Health and Ageing, *Submission 1*, p. 1.

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- the Australian Commission on Safety and Quality in Healthcare (ACSQHC);
  - the National Health Performance Authority (NHPA); and
  - the Independent Hospitals Pricing Authority (IHPA).

1.10 The Administrator of the National Health Funding Pool (Administrator) and the National Health Funding Body (Funding Body) are the last bodies to be established to give effect to the NHRA with all governments committed to having the new arrangements in place by 1 July 2012.<sup>7</sup> The Administrator and Funding Body are central to a new approach to activity based funding of public hospitals.

#### *The Administrator and Funding Body*

1.11 A single National Health Funding Pool (Funding Pool), comprising a Reserve Bank of Australia account for each State and Territory (States), will be established for the purposes of receiving all Commonwealth and activity based State public hospital funding. Payments will be made from the Funding Pool to Local Hospital Networks (LHNs) and State managed funds in accordance with service agreements to be agreed between the States and LHNs.<sup>8</sup> The Commonwealth will not have ownership or control of money in a State Pool account.<sup>9</sup>

1.12 The Administrator will oversee the payment of Commonwealth funding determined under the NHRA into State accounts established at the Reserve Bank of Australia under State and Territory legislation. Additional streams of funding could be incorporated into the National Health Funding Pool, once agreed by COAG, with the aim of optimising transparency and efficiency of all public hospital funding flows.<sup>10</sup> The National Health Funding Body will assist the Administrator in the performance of the Administrator's functions.<sup>11</sup>

1.13 The Minister for Health, the Hon. Tanya Plibersek, MP, in the second reading speech for the Bill, concluded:

The [NHRA] will result in vastly improved transparency about the performance of the health system at a local level, through the operations of the National Health Performance Authority. It provides for Commonwealth hospital funding based on an efficient price for hospital services, developed

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7 Explanatory Memorandum, National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, p. 2.

8 Council of Australian Governments, National Health Reform Agreement, August 2011, p. 35.

9 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, section 238.

10 Council of Australian Governments, National Health Reform Agreement, August 2011, pp 31-32.

11 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, sections 252 and 264.

by the Independent Hospital Pricing Authority at arm's length from the Commonwealth and State governments.

And the legislation I am introducing today will allow for complete transparency about funding flows from the Commonwealth and the States down to local hospital networks.

As the Prime Minister said when the outline of these changes was agreed at COAG in February last year:

People want to know what is happening with the money that goes in to fund health. They do not want it beyond their line of sight; they do not want to wonder whether when one level of government is stepping up to putting more in, perhaps another level of government is taking some out.

This legislation addresses that problem.<sup>12</sup>

## **Overview of the Bill**

1.14 The National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012 amends the *National Health Reform Act 2011* to provide for consequential and other amendments in view of the inclusion of provisions relating to the Administrator and the National Health Funding Body.

### ***Appointment of the Administrator***

1.15 The Bill will formally establish in legislation the Standing Council on Health to be constituted only by a single Minister for the Commonwealth and a single Minister for each of the States. The Standing Council on Health will nominate individuals for appointment as Administrator, and will be able to suspend or remove the Administrator.<sup>13</sup>

1.16 Based on the Standing Council on Health's agreed nomination of an individual, the Administrator would be appointed for a period not exceeding 5 years by written instrument by a Commonwealth Minister who is a member of the Standing Council on Health. The remuneration of the Administrator will be set by the Remuneration Tribunal.<sup>14</sup>

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12 The Hon. Tanya Plibersek, MP, Minister for Health, *House of Representatives Hansard*, 22 March 2012, p. 3950.

13 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, sections 230, 234, 235.

14 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, sections 232 and 233.

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### ***Functions, powers, operation of the Administrator***

1.17 The main function of the Administrator of the National Health Funding Pool, will be to administer the National Health Funding Pool,<sup>15</sup> including to:

- calculate and advise the Treasurer of the Commonwealth's contribution to the National Health Funding Pool; and
- make, monitor and report publicly on payments into and from State pool accounts.<sup>16</sup>

1.18 While the Administrator and officials of the Funding Body will not be subject to the control or direction of any Commonwealth Minister, the Administrator will be subject to:

- directions given by COAG regarding the manner in which the Administrator exercises or performs his or her functions; and
- directions given by a State Minister.<sup>17</sup>

1.19 Part 5.2 of the Bill 'establishes the office of the Administrator and setting out its functions and obligations are intended to appear in the same way in the laws of all jurisdictions, and it is important that it be interpreted in the same way in each case'.<sup>18</sup>

1.20 A range of Constitutional limits are set out in proposed section 247. Proposed sections 248 to 250 set out circumstances in which States will be able to confer functions, powers and duties on the Administrator.

### ***Funding Body***

1.21 The Bill also proposes to formally establish the National Health Funding Body as a statutory agency to assist the Administrator in the performance of the Administrator's functions.<sup>19</sup>

1.22 The Bill also provides for the appointment of a Chief Executive Officer (CEO) by written instrument by the Minister. The CEO will be responsible for the day-to-day administration of the Funding Body and the CEO's remuneration will be set by the Remuneration Tribunal. The Funding Body is intended to be staffed under

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15 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, section 228.

16 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, section 238.

17 Explanatory Memorandum, p. 5.

18 Explanatory Memorandum, p. 3.

19 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, sections 239 to 246.

the *Public Service Act 1999*, with assistance from other officers of the Commonwealth or States or consultants.<sup>20</sup>

### ***Secrecy***

1.23 Proposed Part 5.4 of the Bill contains provisions related to secrecy. As the Explanatory Memorandum explains, a person would commit an offence if that person is (or has been) an Administrator or an official of the Funding Body discloses or uses the protected information related to another person, obtained in the course of their work. Exceptions are made where the disclosure or use is authorised under Part 5.4 or is compliant with Commonwealth or prescribed State law (proposed subsections 268(2) and 269(2)).<sup>21</sup>

1.24 In addition, under proposed subsections 268(3) and 269(3) an Administrator or an official of the Funding Body is not to be required to produce or disclose protected information to a court or tribunal except where it is necessary for giving effect to the Act.<sup>22</sup> A range of other people or bodies (such as ministers, agency heads, COAG bodies and researchers) to whom officials of the Funding Body would be able to disclose information to under certain circumstances are set out in proposed sections 270 to 277.

### ***Chapter 6 Miscellaneous***

1.25 Proposed Chapter 6 includes several provisions relating to privacy and confidentiality, a statement of the relationship between the Act and State laws, the non-application of the *Commonwealth Authorities and Companies Act 1997* and regulation making power. The provisions largely exist already as Chapter 5 in the Act, which is being repealed and remade to allow for easier numbering.<sup>23</sup>

### ***Part 2 Transitional Provisions***

1.26 Item 28 provides for circumstances in which not all jurisdictions have passed a National Health Reform law, including allowing for the appointment of an Administrator in all jurisdictions even where a particular jurisdiction had not enacted the legislation.<sup>24</sup>

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20 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, sections 253 to 266.

21 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, sections 268 to 269.

22 National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012, Schedule 1, item 27, sections 268 to 269.

23 Explanatory Memorandum, p. 10.

24 Explanatory Memorandum, p. 11.

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**Financial impact**

1.27 The explanatory memorandum indicates that the Government would allocate funding for the Administrator and Funding Body in the 2012–13 Budget.<sup>25</sup>

**Statement of compatibility with human rights**

1.28 The explanatory memorandum states that the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Related inquiries**

1.29 The following Senate committee reports have been tabled in relation to the COAG health and hospital reforms:

- Senate Finance and Public Administration References Committee, *Council of Australian Governments reforms relating to health and hospitals*, June 2010;
- Senate Economics Legislation Committee, *Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010*, January 2011;
- Senate Community Affairs Legislation Committee, *National Health and Hospitals Network Bill 2010*, November 2010;
- Senate Community Affairs Legislation Committee, *National Health Reform Amendment (National Health Reform Amendment (National Health Performance Authority) Bill 2011*, June 2011; and
- Senate Finance and Public Administration References Committee, *National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011*, September 2011.

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25 Explanatory Memorandum, p. 2.

## Issues

### *The role of the Funding Body and the Administrator*

1.30 The Department of Health and Ageing (the department) noted that the role of the Administrator is to:

- calculate Commonwealth funding and advise the Commonwealth Treasurer of payments to be made into the Funding Pool;
- monitor payments into State Pool Accounts within the Funding Pool;
- make payments from State Pool Accounts at the direction of State Ministers; and
- report on the operations of State Pool Accounts and State Managed Funds.<sup>26</sup>

1.31 The Administrator will be an independent statutory officer appointed by the Commonwealth and each State. The same person is to occupy nine separate statutory offices. The Minister for Health, the Hon. Tanya Plibersek, commented that 'this position was agreed to address the concerns of some States that only an officer of that State should deal with State money'.<sup>27</sup>

1.32 The Minister commented on the financial management regime and stated that:

The existing financial management regimes of the Commonwealth or the States will not apply to the administrator. Instead, he or she is required under the amended act to develop and apply appropriate financial management policies and procedures, and keep proper records of the operation of the State pool accounts.<sup>28</sup>

1.33 The sole purpose of the Funding Body is to support the Administrator in carrying out his or her functions under Commonwealth and State legislation. The Minister noted that the Administrator is not entitled to delegate any functions. The Funding Body staff will undertake the calculations but the Administrator must approve the calculations before transmitting them to the Commonwealth minister.<sup>29</sup>

1.34 The department commented that the staff of the Funding Body will 'operate under employment relationships which are common to many statutory agencies and will be subject to the usual accountability mechanisms which apply under the

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26 Department of Health and Ageing, *Submission 1*, p. 2.

27 The Hon. Tanya Plibersek, MP, Minister for Health, *House of Representatives Hansard*, 22 March 2012, p. 3948.

28 The Hon. Tanya Plibersek, MP, Minister for Health, *House of Representatives Hansard*, 22 March 2012, p. 3949.

29 The Hon. Tanya Plibersek, MP, Minister for Health, *House of Representatives Hansard*, 22 March 2012, p. 3949.



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*Financial Management and Accountability Act 1997* and the *Public Service Act 1999*.<sup>30</sup>

### ***Justification for the establishment of additional bureaucracy***

1.35 The department noted that pursuant to Clause 17 of the NHRA there is to be no net increase in the bureaucracy across Commonwealth and State governments as a proportion of the ongoing health workforce. The department indicated that the statutory authorities established under the NHRA will require a staff of approximately 120 persons. However, given that the department's strategic review will result in a decrease of 520 staff over two years, 'there will still be an overall reduction in staff across the health portfolio'.<sup>31</sup>

### ***Administrative requirements for the Commonwealth, States and other parties***

1.36 The department summarised the sharing of administrative activities between the Commonwealth and States as follows:

In relation to public hospital services, the Commonwealth and the States will be jointly responsible for funding public hospital services, using ABF where practicable and block funding in other cases, and funding growth in public hospital services and the increasing cost of public hospital services. They will also be jointly responsible for establishing and maintaining nationally consistent standards for healthcare and reporting to the community on the performance of health services.

The States will be solely responsible for system management of public hospitals, including:

- establishment of governance arrangements, including establishing, and managing relationships with, LHNs;
- system-wide public hospital service planning and performance;
- purchasing of public hospital services and monitoring of delivery of services;
- planning, funding and delivering capital;
- planning and delivering teaching, training and research; and
- state-wide public hospital industrial relations functions.<sup>32</sup>

### ***Transparency and efficiency of processes in administering funding***

1.37 The Minister and the department both emphasised that the arrangements under the NHRA will improve the transparency of the performance and funding of the

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30 Department of Health and Ageing, *Submission 1*, p. 3.

31 Department of Health and Ageing, *Submission 1*, p. 3.

32 Department of Health and Ageing, *Submission 1*, p. 3.

public hospital system and the funding flows from the Commonwealth and States down to a local hospital level. The department stated:

For the first time, Australians will be able to access transparent and nationally comparable performance data and information on their local hospital services. These increased transparency measures will allow for ready identification of high-performing hospitals, support sharing of innovative practices across LHNs, and help to create continuous improvement within the hospital system.<sup>33</sup>

1.38 Improved transparency will be achieved through:

- the publication of monthly reports from Administrator showing how much has gone into the Funding Pool and how much has been paid out to each LHN and the basis of the payments;
- reporting and auditing of each separate State account in the Funding Pool;
- the provision of the advice provided by the Administrator to the Commonwealth Treasurer on the calculation of Commonwealth payments to each State minister;
- preparation of special purpose financial statements on the operation of each State pool account;
- auditing of each State pool account by State auditors-general; and
- inclusion of the special purpose financial statements in the Administrator's annual report.

### ***Fiscal implications for the Commonwealth***

1.39 The department in its submission set out the fiscal implications for the Commonwealth. The department indicated that the Commonwealth:

- will bear the costs association with the establishment and ongoing function of the Administrator and Funding Body with the cost to be announced in the 2012–13 Budget;
- will increase its contribution to efficient growth funding for hospitals to 45 per cent in 2014–15 and to 50 per cent from 2017–18 onwards;
- has guaranteed that it will provide at least \$16.4 billion in additional efficient growth funding over the period 2014–15 to 2019–20, in addition to the contribution the Commonwealth would otherwise have made to base funding under the National Health Specific Purpose Payment arrangements. If this funding is less than \$16.4 billion, the Commonwealth will provide the remainder to the States as top-up funding.<sup>34</sup>

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33 Department of Health and Ageing, *Submission 1*, p. 4.

34 Department of Health and Ageing, *Submission 1*, p. 4.

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## *Other issues raised by submitters*

### *Privacy of consumer health information*

1.40 Consumers Health Forum of Australia (CHF) commented on the privacy of health consumer information. CHF pointed to proposed sections 277 and 279 which provide for the disclosure of information about the affairs of a person if the person has consented.<sup>35</sup>

1.41 CHF was of the view that the proposed sections should be strengthened to 'clearly outline that the consent that is sought must be *informed* consent, which would include providing the consumer with all the information that could be relevant to their decisions, including both short and long-term implications'.<sup>36</sup>

1.42 The committee notes that CHF raised similar concerns in relation to the Australian Commission on Safety and Quality in Health Care, the National Health Performance Authority and the Independent Hospital Pricing Authority. In relation to the National Health and Hospitals Network Bill 2011, the Community Affairs Legislation Committee recommended that clause 58(2) be amended to read 'informed consent'.<sup>37</sup> This amendment was agreed to by the Senate and House of Representatives.

1.43 The Community Affairs Legislation Committee did not recommend amending the National Health Reform Amendment (National Health Performance Authority) Bill 2011 to include 'informed consent', nor did this committee in relation to the similar provision in the National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011 in its report on the provisions of that Bill.<sup>38</sup>

1.44 In the Bill Second Reading Speech, the Minister also commented on disclosure of information:

The [National Health Reform Act] currently contains provisions ensuring that information relating to the affairs of a person held by the existing statutory bodies is handled appropriately. These provisions are replicated in part 5.4 of the amended act to apply to the administrator and to officials of the funding body.

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35 Explanatory Memorandum, p. 10.

36 Consumers Health Forum of Australia, *Submission 2*, p. 2.

37 Senate Community Affairs Legislation Committee, *National Health and Hospitals Network Bill 2010*, November 2010.

38 Senate Finance and Public Administration Legislation Committee, *National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011 [Provisions]*, September 2011.

I should say that the inclusion of these provisions is essentially precautionary, as it is highly unlikely that the administrator or the funding body will hold information about the affairs of a person.<sup>39</sup>

1.45 Mr Charles Maskell-Knight, Department of Health and Ageing, noted that under Australia law consent is interpreted as being informed, in all but a small number of cases:

The general legal view is that consent that is not informed is not consent; you cannot agree to anything unless you understand what it is. The Consumer Health Forum has made the same point, I think, several times in relation to this legislation, in relation to the tranche setting up the Independent Hospital Pricing Authority and the tranche setting up the National Health Performance Authority. The answer is exactly the same: consent has to be informed, otherwise it is not.<sup>40</sup>

### ***Interaction between States' and Commonwealth legislation***

1.46 The Western Australia Government raised some concerns regarding the interaction between the States' and Commonwealth legislation providing for:

- the appointment of the Administrator; and
- exercise of the Administrator's powers and functions under the proposed Commonwealth legislation.<sup>41</sup>

1.47 The concerns related to consistency with the NHRA and ensuring that there is a clearer differentiation between the functions exercised by the Administrator under Commonwealth law and the functions exercised under State law. Mr Wayne Salvage, Department of Health Western Australia, stated:

There should be a clearer differentiation between the functions bestowed on the Commonwealth administrator by Commonwealth legislation and on the state's administrator by state legislation, consistent with clauses B26 and B27 of the National Health Reform Agreement. Of particular concern to the state is the conferral of the function of making payments from each state pool account in accordance with the direction of the state concerned, which is identified in clause 238(1)(c) of the Commonwealth bill. In Western Australia's view, this is a function that should be exercised solely and exclusively by the administrator acting under the authority of state legislation and in his or her capacity as a state officeholder.<sup>42</sup>

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39 The Hon. Tanya Plibersek, MP, Minister for Health, *House of Representatives Hansard*, 22 March 2012, p. 3949.

40 Mr Charles Maskell-Knight, Department of Health and Ageing, *Committee Hansard*, 1 May 2012, p. 7.

41 Western Australian Government, *Submission 4*, p. 2.

42 Mr Wayne Salvage, Department of Health Western Australia, *Committee Hansard*, 1 May 2012, p. 1.

1.48 The Western Australia Government also indicated that in its view the provisions in the Bill, allowing State law to confer functions and powers on the Administrator, are unnecessary in relation to the Administrator's appointment.

...Western Australia considers that clause 248 of the Commonwealth Bill is unnecessary in relation to the Administrator's appointment. This clause is intended to address the consequence of the High Court's decision in the *Hughes* case, where the High Court ruled that an officer of the Commonwealth may only be conferred with powers and functions under a State Act with the express agreement of the Commonwealth Parliament.

In Western Australia's view, the inclusion of this provision is inconsistent with the NHRA which clearly contemplates that the Administrator will be appointed jointly and severally by all jurisdictions in their own right. It is clearly within the legislative competence of the Western Australian Parliament to provide for the appointment and conferral of powers and functions on the Administrator of the Western Australia State pool account. Such legislation does not involve conferring powers or functions on a Commonwealth officer...<sup>43</sup>

1.49 During the hearing the Western Australia Government noted that the issues had been resolved through further interaction with the Commonwealth Government:

Amendments have been prepared to clauses 238 and 248 of the Commonwealth Bill, which substantively addresses Western Australia's concerns and Western Australia has confirmed its agreement to them.

The specific amendment is the deletion of clause 238(1)(c) which goes to the issue of conferring jurisdiction to control payments from the state pool account.<sup>44</sup>

1.50 In addition, Mr Salvage commented that 'the amendment that we agreed to is essentially to remove the reference to the administrator in clause 248(1)(a)'.<sup>45</sup> Mr Salvage concluded:

...there was a process over the last couple of weeks where amendments to address the concerns raised by Western Australia and other jurisdictions were shared. I can confirm that Western Australia was in agreement with those amendments to the Commonwealth bill and that they substantively deal with the issues that we have raised and that the minister has raised in his submission.<sup>46</sup>

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43 Western Australian Government, *Submission 4*, p. 3.

44 Mr Wayne Salvage, Department of Health Western Australia, *Committee Hansard*, 1 May 2012, p. 2.

45 Mr Wayne Salvage, Department of Health Western Australia, *Committee Hansard*, 1 May 2012, p. 3.

46 Mr Wayne Salvage, Department of Health Western Australia, *Committee Hansard*, 1 May 2012, p. 3.

1.51 The Department of Health and Ageing also commented on the outcome of the discussions. Mr Maskell-Knight indicated that:

...we have had a number of discussions with states and territories about what amendments would be necessary to address those issues, including amendments to sections 238 and 248. We have reached agreement at officer level about those. We are now seeking clearance within government processes for those amendments.

There are consequential flow-on effects but not very many. Section 231, I think, refers to the functions that are expressed in 238. As well as section 248, sections 249 and 250 are the suite of provisions that make up the anti-Hughes legislation.<sup>47</sup>

## Conclusion

1.52 The establishment of the Administrator and the Funding Body represents a key part of the Government's health reforms. The Bill reflects the historic agreement concluded by the Council of Australian Governments on 2 August 2011 and will allow the National Health Reform Agreement to begin operation on 1 July 2012.

1.53 The committee considers that the reforms will improve transparency in the funding and operation of the health system while ensuring that the unique features of funding Australia's hospital sector will be adequately addressed.

1.54 The committee concludes that amendments to the Bill to split the functions of the Administrator between Commonwealth and State and Territory law would address the concerns raised by Western Australia, and would not alter the policy intent underlying the Bill. The committee therefore recommends that the Bill be amended to remove the 'State' functions of the Administrator, noting that these functions would be conferred on the Administrator under State laws.

## Recommendation 1

**1.55 The committee recommends that the National Health Reform Amendment (Administrator and National Health Reform Funding Body) Bill 2012 be passed with amendments to remove the 'State' functions of the Administrator.**

**Senator Helen Polley**  
**Chair**

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47 Mr Charles Maskell-Knight, Department of Health and Ageing, *Committee Hansard*, 1 May 2012, pp 4–5.