

The National Health Reform Amendment (National Health Performance Authority) Bill 2011

Referral of the Inquiry

- 1.1 The National Health Reform Amendment (National Health Performance Authority) Bill 2011 (the Bill) was introduced in the House by the Minister for Health and Ageing, the Hon Nicola Roxon MP, on 3 March 2011. In her second reading speech, the Minister explained that the purpose of the Bill was to establish the National Health Performance Authority (the Performance Authority) as ‘the new watchdog for Australia’s health system’.¹ The Minister summarised the work of the Authority as follows:

The performance authority will work to:

- open up the performance of the health and hospital system to new levels of national transparency and accountability;
- allow for the identification of high-performing parts of the health system so those successes can be transferred to other areas;
- identify areas of the health system that require improvement so that action can be taken; and
- improve the health choices of Australians in making key decisions about their own healthcare needs.²

1 House of Representatives, Hansard Debate, 3 March 2011.

2 House of Representatives, Hansard Debate, 3 March 2011.

- 1.2 Following the introduction of the Bill, the House of Representatives Selection Committee referred the Bill to the House of Representatives Standing Committee on Health and Ageing under the provision of standing order 222(a)(iii).³

Overview of Australian Health Reform

- 1.3 The Commonwealth Government began its health reform campaign soon after taking office in late 2007. It established the National Health and Hospitals Reform Commission to map out a blueprint for reform in February 2008. The Commission produced an interim report in December of that year and a final report in June 2009. The Government then undertook an extensive round of public consultations before announcing a reform package to be negotiated through the Council of Australian Governments (COAG).
- 1.4 At the April 2010 COAG meeting the Commonwealth Government and all states and territories, except Western Australia, agreed to the National Health and Hospitals Network (NHHN) Agreement. The NHHN Agreement provides that the NHHN will be a nationally unified and locally controlled health system that will ensure future generations of Australians enjoy world class, universally accessible health care. The Commonwealth Governments posits that this reform represents:
- ... the most significant reform to Australia's health and hospitals system since the introduction of Medicare.⁴
- 1.5 Under the NHHN Agreement, the Commonwealth Government committed to:
- increase its health and hospital funding to become the majority funder of the public hospital system;
 - take full funding and policy responsibility for general practice and primary health care; and
 - take full funding, policy, management and delivery responsibility for aged care services.⁵

3 House of Representatives, Votes and Proceedings, 3 March 2011, p 389.

4 COAG Communiqué, 19–20 April 2011, Council of Australian Governments Meeting, p 1.

5 Council of Australian Governments (COAG), National Health and Hospitals Network Agreement, p 4.

- 1.6 The NHHN Agreement also provided for the establishment of a national performance and accountability framework. The NHHN Agreement indicated that implementation of the national framework would be achieved through the establishment of the following statutory bodies to perform oversight and governance:
- the Australian Commission on Safety and Quality in Health Care⁶ as a permanent independent statutory body to develop new national clinical and safety standards;
 - a new National Performance Authority to monitor the performance of Local Hospital Networks⁷ under the NHHN; and
 - a new Independent Hospital Pricing Authority, which will calculate and determine the national efficient price for public hospital services, as well as calculating the Commonwealth's block funding payments under the NHHN.⁸
- 1.7 At the February 2011 COAG meeting the Commonwealth Government and all states and territories met again to renegotiate national health reform. This resulted in the Heads of Agreement - National Health Reform, signed by every Australian government and with a further commitment to sign off on a full National Health Reform Agreement by 1 July 2011. The COAG Heads of Agreement reconfirmed the commitment of Commonwealth, state and territory governments to work in partnership to:
- ... improve health outcomes for patients and ensure the sustainability of the Australian health system ... by:
 - a. helping patients receive more seamless care across sectors of the health system;
 - b. improving the quality of care patients receive through higher performance standards, unprecedented levels of transparency and improved engagement of local clinicians; and

6 The Australian Commission on Safety and Quality in Health Care already exists. It was established in 2006 and current operates under the auspices of the Australian Government Department of Health and Ageing. The current operating arrangements are due to expire on 30 June 2011.

7 Local Hospital Networks will be made up of a small group of hospitals that will work together to provide a range of hospital services and manage their own budgets. They will be established by state governments as separate legal entities.

8 COAG, National Health and Hospitals Network Agreement, pp 7-8.

c. providing a secure funding base for health and hospitals into the future.⁹

- 1.8 The COAG Heads of Agreement also reiterated the commitment of all governments to the establishment a national performance and accountability framework, with the three statutory bodies, that is the Australian Commission on Safety and Quality in Health Care, the National Performance Authority and the Independent Hospital Pricing Authority, as key components.¹⁰

The National Health and Hospitals Network Bill 2010

- 1.9 The National Health and Hospitals Network Bill 2010 (the NHHN Bill 2010) was the first bill seeking to deliver one of these components by establishing the Australian Commission for Safety and Quality in Health Care (the Commission) as a permanent independent statutory body. As stated in the text of the NHHN Bill 2010:

The object of this Act is to implement the National Health and Hospitals Network, in so far as the network involves the establishment of the Australian Commission on Safety and Quality in Health Care.¹¹

- 1.10 As summarised in the NHHN Bill's explanatory memorandum, the functions of the Commission include:

... promoting, supporting and encouraging the implementation (by the Commonwealth and the States and Territories) of arrangements, programs and initiatives relating to health care safety and quality matters; collecting, analysing interpreting and disseminating information relating to health care safety and quality matters; formulating standards, guidelines and indicators relating to health care safety and quality matters; advising and reporting on safety and quality across health settings; monitoring the implementation and impact of standards and guidelines for health care safety and quality; formulating model national accreditation schemes that provide for accreditation of

9 COAG Communiqué: 13 February 2011, Attachment A, Heads of Agreement – National Health Reform, pp 5–7.

10 COAG Communiqué: 13 February 2011, Attachment A, Heads of Agreement – National Health Reform, pp 5–7.

11 National Health and Hospitals Network Bill 2010, Clause 3, p 2.

organisations that provide health care services and relate to safety and quality matters; promoting, supporting, encouraging, conducting and evaluating training and research for purposes in connection with the Commission's other functions.¹²

1.11 Notes under the object of the NHHN Bill 2010, indicate that:

Note 3: The implementation of the National Health and Hospitals Network will also involve the following:

- (a) provisions establishing the Independent Hospital Pricing Authority;
- (b) provisions establishing the National Performance Authority;
- (c) provisions amending the Federal Financial Relations Act 2009.

Note 4: It is intended that provisions to establish the Independent Hospital Pricing Authority and the National Performance Authority will be included in this Act.¹³

1.12 The NHHN Bill 2010 was itself the subject of a Senate Committee inquiry.¹⁴ While the November 2010 report recommended that the NHHN Bill 2010 proceed with some minor amendments, it also noted a number of concerns expressed in evidence. In brief, these concerns relate to the fragmented way in which the components of the proposed NHHN Agreement were being implemented; perceived deficiencies in governance and accountability mechanisms; and the potential for duplication of bureaucratic processes and monitoring. The report also included a Coalition minority report.

1.13 The NHHN Bill 2010 was introduced in the House of Representatives on 29 September 2010 and was subsequently referred to the Senate on 27 October 2010. During passage through the Senate, the Australian Greens moved eight amendments broadly reflecting the amendments suggested by the Senate Committee's report and addressing the following issues:

- clarification of the place of carers and consumers in the Commission's functions, including consultation;

12 National Health and Hospitals Network Bill 2010, Explanatory Memorandum, pp 6-7.

13 National Health and Hospitals Network Bill 2010, Clause 3, p 2.

14 Senate Standing Community Affairs Legislation Committee, National Health and Hospitals Network Bill 2010, November 2010.

- the appointment of board members to ensure there is expertise in primary health care services and management of general practice; and
 - clarification, particularly for consumers, of the obligations of health providers around informed consent.
- 1.14 On 3 March 2011, the Senate passed the NHHN Bill 2010 with the amendments. The Bill will now be referred back to the House of Representatives.

The National Health Reform Amendment (National Health Performance Authority) Bill 2011

- 1.15 The introduction of the National Health Reform Amendment (National Health Performance Authority) Bill 2011 (the Bill) into the House of Representatives on 3 March 2011 represents the next stage of introducing measures to improve the delivery of health services. The explanatory memorandum broadly outlines the objectives of the Bill as follows:
- This Bill is intended to establish the National Health Performance Authority (the Performance Authority) envisaged by the National Health and Hospitals Network Agreement as settled by the Council of Australian Governments (COAG) meeting in April 2010 and reconfirmed in the Heads of Agreement – National Health Reform of 13 February 2011.¹⁵
- 1.16 The explanatory memorandum further maintains that:
- The Performance Authority is an important part of the national health reform agenda, and will provide independent monitoring and reporting of the performance of important elements of the health system.¹⁶
- 1.17 The Bill seeks to establish the Performance Authority by amending the *National Health and Hospitals Network Act 2011*, as the NHHN Bill 2010 will become if enacted. The explanatory memorandum summarises the proposed amendments as follows:

15 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Explanatory Memorandum, p 2.

16 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Explanatory Memorandum, p 8.

The current Bill amends that Act to change the title, divide the Act into chapters and add several new chapters. Broadly, the changes will involve:

- changing the title of the Act to the *National Health Reform Act 2011*, reflecting the outcomes of the COAG meeting of 13 February 2011;
- amending Chapter 1 to change the objects of the Act to include reference to the Performance Authority, and to include a number of new definitions related to the new authority;
- amending Chapter 2 dealing with the Commission to distinguish between provisions relating to the members and Chief Executive Officer of the Commission and the new authority, and to introduce provisions relating to secrecy and disclosure of information by the Commission;
- adding a new Chapter 3 to establish the Performance Authority; and
- adding a new Chapter 4 with miscellaneous machinery provisions.¹⁷

1.18 It is through the addition of Chapter 3 that the Performance Authority will be established. Chapter 3 also provides for the Performance Authority's functions, powers, membership, committees, staffing and some elements of its procedures.¹⁸

1.19 The simplified outline provided in the introduction to Chapter 3 of the Bill represents the main function of the Performance Authority as follows:

... to monitor and report on the performance of the following:

- local hospital networks;
- public and private hospitals;
- primary health care organisations; and
- other bodies that provide health care services.¹⁹

1.20 The Bill stipulates that the Performance Authority also has the role of formulating performance indicators, collecting, analysing and interpreting performance information, and promoting, supporting, encouraging, conducting and evaluating research. Furthermore, the Bill allows for the

17 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Explanatory Memorandum, p 2.

18 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Explanatory Memorandum, p 8.

19 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Clause 58, p 24.

Minister to specify functions for the Performance Authority, and request advice about particular matters.²⁰

- 1.21 Other elements of the Bill establish the constitution and membership of the Performance Authority²¹, prescribe the Authority's reporting and strategic planning obligations²² and address a range of other issues, including issues of patient confidentiality.²³

Conduct of the Inquiry

- 1.22 As noted earlier in this report, the National Health Reform Amendment (National Health Performance Authority) Bill 2011 was referred to the House of Representatives Standing Committee on Health and Ageing on 3 March 2011. The Committee formally adopted the reference on 4 March 2011 and called for submissions to be made by 11 March 2011. The Committee received eight submissions and these are listed in Appendix A.
- 1.23 In view of the short reporting timeframe for the inquiry, it was not feasible to conduct an extensive program of public hearings. However the Committee did conduct a public hearing with representatives from the Commonwealth Department of Health and Ageing. The hearing was held in Canberra on 8 March 2011 (see Appendix B). The purpose of the hearing was to seek clarification on a technical issue relating to reporting requirements for the Performance Authority.

Support for the Bill

- 1.24 Submissions were largely supportive of the need to establish a national framework of health service standards, monitoring and reporting, and recognised the Performance Authority as an integral component. Much of the support for establishing a National Health Performance Authority was

20 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Clause 60, p 24.

21 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Clauses 70–74, pp 30–35.

22 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Clauses 108–112 pp 45–47.

23 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Clause 128, pp 53–54.

premised on the belief that the collection of robust and meaningful data is an important mechanism to drive improvement in the quality and efficiency of health services at a national level.²⁴ The Committee is encouraged by the level of in principle support for the Performance Authority.

- 1.25 Although supportive of the Performance Authority as an initial step leading to improved oversight of the health sector, the Business Council of Australia suggested the need for an additional mechanism with the capacity for broader systemic oversight of the sector to improve productivity.²⁵ However, the Committee does not provide further comment, as the proposal is beyond the scope of the current inquiry.

Issues

- 1.26 Notwithstanding in principle support for the Performance Authority, submissions also raised a number of concerns and issues.

Staged Introduction of Legislation

- 1.27 The Australian Medical Association (AMA) has previously expressed concern over the staged introduction of legislation to establish the Australian Commission for Safety and Quality in Health Care, the Performance Authority and the proposed Independent Hospital Pricing Authority.²⁶ In its submission to this inquiry, the AMA states:

We are also concerned that the legislation does not provide for appropriate interaction between the Authority and the Australian Commission on Safety and Quality in Health Care (the Commission) or the proposed Independent Hospital Pricing Authority. There will be important synergies between these organisations that should be reflected in the legislation.²⁷

24 Australian Private Hospitals Association (APHA), Submission No 1, p 3; Consumers Health Forum of Australia (CHF), Submission No 2, p 1; The Australian Council on Healthcare Standards (ACHS), Submission No 3, p 1; National Primary Healthcare Partnership (NPHP), Submission No 6, p 1; Australian General Practice Network (AGPN), Submission No 7, p 2; Catholic Health Australia (CHA), Submission No 8; pp 1–2.

25 Business Council of Australia, Submission No 4, pp 6–7.

26 Senate Standing Community Affairs Legislation Committee, National Health and Hospitals Network Bill 2010, Submission No 11.

27 Australian Medical Association (AMA), Submission No 5, p 2.

- 1.28 The Committee notes that the implications of the staged introduction of legislation were considered in detail during the Senate Standing Community Affairs Legislation Committee's inquiry into the NHHN Bill 2010. In brief, the Committee concurs with the outcomes of the Senate Committee's report which concluded that while it would be preferable for legislation to establish the three statutory bodies to be considered at the same time, this was not practical in view of the need to expedite transitional arrangements to establish the Australian Commission on Safety and Quality in Health Care as a permanent independent statutory body by 31 June 2011.²⁸

Functions of the Performance Authority

- 1.29 The majority of issues raised in submissions relate to the proposed functions of the Performance Authority. Some have commented on the lack of detail provided in the legislation, noting specifically that there is no indication on the scope and type of information to be collected by the Performance Authority.²⁹
- 1.30 Others have called for the legislation to provide more comprehensive information on the range of health services to be monitored by the Performance Authority. For example, submissions from the Consumers Health Forum of Australia (CHF), the National Primary Health Care Partnership (NPHCP) and the Australian General Practice Network (AGPN) have sought clarification of the definition of terms used in the legislation such as 'other bodies or organisations that provide health care services'³⁰ and specifically whether general practice and allied health services will be monitored.³¹
- 1.31 Most submissions have also commented on the Performance Authority's capacity, if need be, to devise its own performance indicators. Without exception, those that have commented in this regard have called upon the legislation to include provision for adequate consultation with relevant stakeholders, including public and private providers of healthcare services, and consumers.³² The AMA noted that the NHHN Bill 2010,

28 Senate Standing Community Affairs Legislation Committee, National Health and Hospitals Network Bill 2010, Report, pp 7-10.

29 CHF, Submission No 2, p 2; AMA, Submission No 5, p 2.

30 National Health Reform Amendment (National Health Performance Authority) Bill 2011, Clause 60(1)(a)(v), p 25.

31 CHF, Submission No 2, p 2; NPHCP, Submission No 6, p 2; AGPN, Submission No 7, p 3.

32 APHA, Submission No 1, p 3; CHF, Submission No 2, p 2; AMA, Submission No 5, p 3; NPHCP, Submission No 6, pp 2-3; AGPN, Submission No 7, p 3; CHA, Submission No 8, p 4.

which establishes the Commission, includes a provision for this type of consultation.³³

- 1.32 Another issue raised relates to the Performance Authority's reporting function, and clarification on the precise nature and content of the information to be made available to the public, particularly where poor performance has been identified. While the CHF advocates for access to 'complete and uncensored information on health care facilities'³⁴, the NPHCP and AGPN call for the reporting benchmarks to be appropriately contextualised to assist with interpretation.³⁵

Membership of the Performance Authority

- 1.33 Several submissions have raised issues in relation to the composition of the Performance Authority. While noting that the Bill requires at least one of the Performance Authority's members to have expertise and knowledge relevant to the health needs of people living in rural and regional Australia, submissions have proposed that the membership should also include:
- expertise in primary health care systems and services;³⁶
 - representation of a practicing medical practitioner;³⁷ and
 - expertise in the measurement of consumer experiences of health care.³⁸

Regulatory and Financial Impact

- 1.34 A common issue raised in the evidence was concern about the regulatory and financial impact of additional reporting requirements. Submissions noted the potential compliance burden for health service providers when required to report performance data for multiple jurisdictional frameworks, particularly if the information sought by different authorities is not standardised.³⁹ Submissions recommended that the Performance Authority work collaboratively with other jurisdictions and agencies to

33 AMA, Submission No 5, p 3.

34 CHF, Submission No 2, p 2.

35 NPHCP, Submission No 6, p 4; AGPN, Submission No 7, p 4.

36 NPHCP, Submission No 6, p 5; AGPN, Submission No 7, p 5.

37 AMA, Submission No 5, p 4.

38 CHF, Submission No 2, p 3.

39 APHA, Submission No 1, pp 1–3; CHF, Submission No 2, p 2; AMA, Submission No 5, p 2; NPHCP, Submission No 6, p 3; AGPN, Submission No 7, p 3; CHA, Submission No 8, p 3.

rationalise and standardise data collection. The APHA suggested that a single national system of data collection would be preferable,⁴⁰ while the AMA called for a full assessment of the regulatory and cost impact of the Bill on health services.⁴¹

Conclusion

- 1.35 While acknowledging concerns raised, the Committee is of the view that the Bill to establish the Performance Authority adequately sets out the Authority's essential operational and structural parameters. Although a significant element of concern has centred on the perceived lack of detail in relation to the Authority's functions, there are inherent risks in establishing legislation that is unduly prescriptive. Instead, and to allow the Authority to develop a *modus operandi* that has the capacity to be both flexible and responsive to the needs of the health care sector, the Committee considers that many of the details would more appropriately be addressed either through legislative instruments, or in a policy context or through the development of organisational operating practices.
- 1.36 Nevertheless, the Committee was particularly interested in considering mechanisms to enhance the Performance Authority's reporting requirements with a view to improving the overall transparency of the data collected on the performance of health care services. Therefore, in addition to publishing information and reports on the performance of health care services on the internet, the Committee recommends that the Performance Authority should also be required to present a compilation of this data in a concise, consolidated and comprehensive way to the Parliament on an annual basis.
- 1.37 To this end, the Committee sought clarification from representatives of the Department of Health and Ageing on the feasibility of this mechanism of reporting. While noting that the Bill as it stands does not currently require the Performance Authority to present information in the Parliament on the performance of the bodies it monitors, Mr Graeme Head (Chief Executive Officer, Health Reform Transition Office, Department of Health and Ageing) observed that there was nothing to preclude this from happening.⁴² Additional questions indicated that no impediments were
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40 APHA, Submission No 1, p 3.

41 AMA, Submission No 5, p 2.

42 Mr Graeme Head (Australian Government Department of Health and Ageing), Transcript of Evidence, p 3.

envisaged should the Committee wish to recommend mandating such a reporting requirement.⁴³

- 1.38 Accordingly, the Committee has recommended the following additional requirements be incorporated into clause 60(1)(b) of the Bill to require that an annual report on the performance of local hospital networks, public hospitals, private hospitals, primary healthcare organisations and other organisations that provide health care services be compiled by the Performance Authority and presented to the Minister for Health and Ageing for presentation to the Parliament. The Committee concludes that the Bill should be passed with the amendment as recommended.

Recommendation 1

- 1.39 **The Committee recommends that the House of Representatives pass the National Health Reform Amendment (National Health Performance Authority) Bill 2011 with a minor amendment to clause 60(1)(b) relating to reporting requirements.**

Mr Steve Georganas MP
Chair

43 Mr Graeme Head (Australian Government Department of Health and Ageing), Transcript of Evidence, pp 3–4.