Chapter 3

Relevant Issues

Proportion of dedicated GST for individual states

3.1 One of the most contentious issues relating to the COAG health reforms has been the proportion of GST for each state or territory that is to be retained by the Commonwealth as dedicated GST for healthcare spending under the NHHN Agreement.

3.2 The Government's Mid-Year Economic and Fiscal Outlook 2010-11 (MYEFO) contained estimates of the GST revenue dedicated to healthcare for each state for the years 2011-12 to 2013-14, which were calculated using data from the Australian Institute of Health and Welfare (AIHW), as shown in Table 1.

Table 1: Total GST payments and dedicated healthcare GST payments ($ millions)[1]

Year/State		NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Total
2010-11	Total GST	14,468	10,977	8,711	3,314	4,427	1,723	868	2,462	**46,950**
2011-12	Total GST	15,810	11,697	8,853	3,452	4,724	1,821	917	2,726	**50,000**
	GST dedicated to healthcare	4,774	2,874	3,549	0	1,229	367	456	388	**13,636**
	Dedicated GST as % of total	**30**	**25**	**40**	**0**	**26**	**20**	**50**	**14**	**27**
2012-13	Total GST	16,847	12,663	9,048	3,651	4,979	1,937	1,000	2,876	**53,000**
	GST dedicated to healthcare	5,178	3,130	3,880	0	1,330	397	496	424	**14,833**
	Dedicated GST as % of total	**31**	**25**	**43**	**0**	**27**	**20**	**50**	**15**	**28**
2013-14	Total GST	17,817	13,413	9,701	3,977	5,217	2,006	1,045	2,972	**56,150**
	GST dedicated to healthcare	5,599	3,398	4,229	0	1,434	427	537	462	**16,068**
	Dedicated GST as % of total	**31**	**25**	**44**	**0**	**27**	**21**	**51**	**16**	**29**

3.3 In addition to the MYEFO data, Treasury confirmed during the inquiry what the percentage of GST dedicated to healthcare would be for Western Australia if it

1 Source: Australian Government, *Mid-Year Economic and Fiscal Outlook 2010-11*, pp 113-114.

were to sign up to the NHHN Agreement; 60 per cent in 2011-12, 62 per cent in 2012-13 and 63 per cent in 2013-14.[2]

3.4 The significant variation between the amounts of GST to be dedicated for each state has been the subject of much public commentary,[3] and during the inquiry Treasury officials outlined the process by which these estimates were calculated. They stated that the two main factors in determining the dedicated GST amounts are individual state health spending and each state's share of the total GST pool:

> The share of GST dedicated depends on how much a state or territory spends on a per capita basis on health items that will be transferred to the Commonwealth ... A state or territory that has a greater per capita spend on healthcare than average will have a lower proportion of that expenditure funded by the Commonwealth through the [existing] Healthcare Specific Purpose Payment ... This will result in a greater amount of GST dedicated when the Commonwealth increases its funding commitment as set out in the NHHN Agreement.
>
> ...
>
> The proportion of the GST revenue that will be dedicated to healthcare will also vary due to the effect of the existing horizontal fiscal equalisation (HFE) arrangements. For example, states that have sizable own source revenues are net contributors under HFE processes and, therefore, have a smaller GST pool from which to dedicate funds for healthcare. As a result, these states are likely to have a larger proportion of GST revenue dedicated to healthcare than other states and territories.[4]

3.5 Treasury noted that once these HFE effects were accounted for, the proportion of total state revenue (undedicated GST and own-source revenue) dedicated to healthcare was far more similar across the states, as Table 2 shows:

Table 2: dedicated GST as a percentage of undedicated GST and own-source revenue in each state and territory for 2013-14

NSW	VIC	QLD	WA	SA	TAS	ACT	NT	**Average**
15%	13%	20%	17%	16%	16%	29%	15%	**16%**

Source: Department of Treasury estimates, Answer to Question on Notice (Question No. 4), 15 December 2010.

2 Department of the Treasury, Answer to Question on Notice (Question No 2), 15 December 2010 (received 13 January 2011).

3 see for example Andrew Tillet and Daniel Emerson, 'Revealed: raw deal for WA from health plan', *West Australian*, 17 January 2011, p. 1.

4 Department of the Treasury, Answer to Question on Notice (Question No. 4), 15 December 2010 (received 13 January 2011).

3.6 At the public hearing on 15 December 2010 Treasury also outlined the basis behind the projections of state health costs over the forward estimates underlying the dedicated GST estimates in MYEFO:

> **Senator SIEWERT**—I would like to go to the issue of how the estimates were made about the amount of GST that will be withheld. You say that it is based on data from the AIHW [Australian Institute of Health and Welfare]. Could you outline a little bit more clearly how that was estimated?
>
> **Mr Robinson**—In terms of the projections, you are correct that they were based on data from the AIHW. Modelling was done around both hospitals and primary care ... Basically, a real per capita age adjusted model was developed for both hospitals and primary care. The historical data was examined and historical growth weights were determined. They were then applied to the real per capita age adjusted model, which then included CPI and population estimates to produce the estimates. On the primary care side, we again used AIHW data based on the community health services data cube from the broader AIHW health expenditure model and projected the estimates from there... [5]

Need for changes to the Intergovernmental Agreement on Federal Financial Relations

3.7 In order for the changes agreed to under the NHHN Agreement to be implemented, it is also necessary for the states to sign a revised Intergovernmental Agreement on Federal Financial Relations (IGA). The current Intergovernmental Agreement, which was agreed to by COAG in December 2008, provides for the sum of GST revenue to be paid to States and Territories to be used for any purpose.[6] The NHHN Agreement would change these arrangements by introducing dedicated GST payments to participating states.

3.8 At the public hearing on 15 December 2010 Senator Cormann highlighted the fact that a revised IGA had not yet been signed, and questioned why the current Bill enabling changes to Commonwealth-state GST distribution was proceeding in the absence of a new IGA. [7]

3.9 In response Treasury officials emphasised the fact that the states (excluding Western Australia) had already agreed to the changes in GST arrangements through the NHHN Agreement itself, and told the committee that they were expecting the states to sign on to a revised IGA by early 2011.[8]

---

5 *Proof Committee Hansard* , 15 December 2010, p. 8.

6 Council of Australian Governments, *Intergovernmental Agreement on Federal Financial Relations*, December 2008, p. 6.

7 Senator Cormann, *Proof Committee Hansard* , 15 December 2010, p. 2.

8 Ms Sue Vroombout, General Manager, Commonwealth-State Relations Division of the Department of the Treasury, *Proof Committee Hansard*, 15 December 2010, p. 2.

Unanimous agreement of the States

3.10 The current IGA can be changed only by unanimous agreement by the states, which means that any such revision would need to be agreed to by Western Australia even if it continues to refuse to sign up to the NHHN Agreement.

3.11 The Treasurer, the Hon. Wayne Swan MP indicated in a second reading speech on the Bill that he was confident Western Australia would agree to changes to the IGA even if they did not endorse the NHHN agreement:

> The detailed implementation of the COAG agreement will require revisions to the Intergovernmental Agreement on Federal Financial Relations, and these revisions will need to be agreed by all states and territories. The revisions to the IGA can be designed to allow Western Australia to join the health reforms or to remain separate from the health reforms. The Bill preserves the existing federal financial relations arrangements for Western Australia until it becomes a signatory to the National Health and Hospitals Network Agreement, and Premier Barnett has indicated that Western Australia will not stand in the way of other states participating in health reform.[9]

3.12 In evidence at the public hearing on 15 December 2010, a Treasury official indicated that discussions with Western Australia around the revised IGA are ongoing:

> **Ms Vroombout**—...discussions are ongoing with Western Australia both at officials' level and at the governmental level around its participation in the National Health and Hospital Network reforms and around the sorts of things it is looking for in a revised IGA that it would be comfortable signing on to.
>
> **Senator CORMANN**—I think that the government of Western Australia could not have been more adamant that it will never agree to hand over any of its GST and, given that, like the advice you provided to the governments back in September, that is still current, isn't it? You do not have unanimous agreement and you told the Treasurer and the government at the time that he might need to find alternative approaches.
>
> **Ms Vroombout**—We are continuing to work with Western Australia around a form of words in the revised intergovernmental agreement that they would be comfortable signing on to.[10]

3.13 Concerns were also raised that the newly elected Victorian government has said it may revise that state's decision to participate in the NHHN Agreement, and that the coalition state opposition in NSW has also confirmed it may reconsider being a part of the NHHN reforms if it wins the NSW state election on 26 March 2011.[11]

---

9 Wayne Swan, *House of Representatives Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010 Second Reading Speech*, 24 November 2010, p. 3679.

10 Ms Vroombout, *Proof Committee Hansard*, 15 December 2010, p. 4.

11 *Proof Committee Hansard*, 15 December 2010, p. 3.

Hence, any revised IGA may need to account for one or more states not participating in the NHHN agreement in order to obtain unanimous approval from the states.

Benefits of the proposed arrangements for Western Australia and Victoria

3.14 At the public hearing Treasury was quick to highlight the fact that Western Australia will lose out on significant Commonwealth funding if they do not sign on to the NHHN Agreement:

> **Senator PRATT**—...What is Western Australia currently at risk of missing out on if it does not sign up to the agreement?
>
> **Ms Vroombout**—It is around $350 million under a national partnership agreement on improving public hospitals and, going forward from 2014-15 onwards, its share of the 15.6 top-up funding.
>
> **Mr Broadhead**—An estimated $1.7 billion, I think. That is an approximate figure. That is over the five years from 2014 to 2020.[12]

3.15 With regards to Victoria, Treasury explained that if it were to withdraw from the NHHN Agreement, it could lose both its share of the additional funding provided under the IPHS National Partnership (valued at up to $635 million between 2011-12 and 2013-14) and its share of the $15.6 billion 'top-up' funding made available between 2014-15 and 2019-20 under the NHHN Agreement (the value of which could be up to $3.8 billion if the top-up funding is distributed on a population share basis).[13]

Committee Comment

3.16 The committee notes the current uncertainty about the detail of a revised Intergovernmental Agreement on Federal Financial Relations, but is confident the Commonwealth will be able to agree upon a revised IGA with the states in 2011.

Parliamentary scrutiny of payments from the NHHN Fund

3.17 Concerns were raised both in the Scrutiny of Bills Committee Digest and at the public hearing about the level of Federal parliamentary scrutiny that payments would be subject to under the proposed amendments.

3.18 These included concerns that the Minister's determinations for each financial year detailing the dedicated GST revenue for a state, the specified amount of Special Payments and the specified amount of top up payments were non-disallowable legislative instruments. There were also concerns expressed at the fact that the NHHN Fund is to be set up as a Special Account, rather than allowing the Commonwealth's funding of the NHHN Agreement to be subject to the approval through the standard annual appropriations process.

---

12 *Proof Committee Hansard*, 15 December 2010, p. 6.

13 Department of the Treasury, Answer to Question on Notice (Question No. 3), 15 December 2010 (received 13 January 2011).

Dedicated GST payments

3.19 Proposed Section 6A of the Bill provides for the Minister to determine that specified amounts are the dedicated GST revenue amounts for each participating NHHN state for a financial year. These determinations are non-disallowable legislative instruments.

3.20 It is clear that under the proposed bill Federal parliament has no direct oversight over the amount of these payments or how they are to be calculated. The NHHN Agreement, however, does outline how the overall dedicated GST amount will be calculated for each financial year. Of the three funding streams provided for under the bill, the dedicated GST revenue is subject to the least federal parliamentary scrutiny.

Special payments

3.21 The Bill provides for the current National Healthcare SPP to be replaced for states participating in the NHHN Agreement with a Special payment. The Bill contains provisions for any states not participating in the NHHN Agreement to continue receiving the National Healthcare SPP. Under the proposed amendments, the amount for each financial year to be payable to non-participating states under the National Healthcare SPP will be determined by a disallowable legislative instrument made by the Minister.

3.22 For participating NHHN states, the Minister is given power to make determinations relating to the amount paid to each state in a financial year as a Special payment to replace the National Healthcare SPP (proposed section 15E(1) and (2)). Under proposed subsection 15E(9) of the Bill, these determinations are legislative instruments which would not be disallowable by the parliament.

3.23 The legislation does, however, outline the base amount of the Special payments to be paid to participating states. For the 2011-12 financial year this amount is to be equivalent to the amount that would have been paid under the previous arrangements of the National Healthcare SPP, and for future years after 2011-12 the amount would be equal to the amount for the previous financial year, plus an indexation amount determined by the Minister through a legislative instrument. [14]

3.24 This legislative instrument of the Minister would be disallowable, meaning that the final indexed amount to be paid to states as Special Payments would be subject to parliamentary scrutiny. This point was emphasised by Treasury at the public hearing:

> **Ms Vroombout**—... Yes it is true that the determination in relation to the special payment itself is not disallowable, but the base amount of the special payment is outlined in the legislation and then the Treasurer

14 It should be noted that the indexation factor may be positive or negative, and hence may result in an addition or subtraction of funds from the amount of the previous financial year's amount.

> determines the indexation amount for that base amount. The determination in respect of the indexation amount is a disallowable instrument so the result is that the quantum of the special payment is subject to parliamentary scrutiny. [15]

Special payments – State adjusted amounts

3.25 The Minister is also given the power to make determinations detailing the amount to be added or subtracted to each state's Special Payment as positive or negative State adjustment amounts for a financial year. These determinations are not disallowable by the parliament, and stand separate from the determination relating to the indexation of the Special Payment for each financial year.

3.26 Hence, whilst the overall amount paid to participating states and territories for a given financial year is limited by a disallowable legislative instrument, the final amount paid to each individual state as a Special Payment could be adjusted via this mechanism without parliamentary recourse.

3.27 The provisions for State adjustment amounts are included in the legislation simply to account for the transfer of funding responsibilities from states to the Commonwealth. As such, Treasury assured the committee that:

> Any such change that saw the Commonwealth (rather than the states and territories) making direct payment for transferred services would also result in a commensurate change in the special payment to the states and territories. Any such negative adjustment would be a direct consequence of a diminished level of activity delivered directly by the states and territories.[16]

Top-up payments

3.28 Proposed subsection 15H(13) of the Bill states that the top-up payments to be paid to states between the 2014-15 and 2019-20 financial years are to be made by a determination of the Minister which is a non-disallowable legislative instrument.

3.29 The total amount of funds dedicated to these top-up payments in each financial year, however, will be limited by a general drawing rights limit set in the annual Appropriations Act. Hence, the overall figure of Commonwealth funding allocated to top-up payments will be subject to parliamentary oversight.

NHHN Fund

3.30 Under the proposed legislation the NHHN fund is to be established as a Special Account for the purposes of the *Financial Management and Accountability*

---

15 Ms Sue Vroombout, *Proof Committee Hansard*, 15 December 2010, p. 10.

16 Department of the Treasury, answer to question on notice (Question No 5), 15 December 2010 (received 13 January 2011).

Act 1997. Concerns were raised at the public hearing that there was no effective parliamentary scrutiny of amounts paid from the NHHN Fund, as the Commonwealth's funding of the NHHN Agreement is not to be subject to approval through the standard annual appropriations process.

3.31 Despite its operation as a Special Account, it is clear that parliament has some level of scrutiny over the funds debited into the NHHN Fund for at least two of the three funding streams available, Special payments and top-up payments, with the third (dedicated GST revenue) being subject to the NHHN Agreement. This point was elaborated on at the public hearing by a Treasury official:

> **Mr Caruso**—... the NHHN fund has a number of checks by the parliament at each stage where amounts are actually debited into the fund. There are three types of funding that the government can debit the NHHN fund. The government cannot credit money out of the NHHN fund if nothing has been debited in. The committee's finding relates to the fact that there is no parliamentary oversight on the crediting of the NHHN fund but, with regard to the debiting, there is actually parliamentary oversight on each of the three sources of funding that can be debited. The first source of funding is the dedicated GST revenue and, as we have discussed extensively, that is set out through the NHHN Agreement. The second source of funding is the special payments, which we have also discussed... the total quantum of the special funding amount is set by legislative instrument and that legislative instrument is disallowable so, again, parliament has an oversight on that source of funding. The third source of funding is the top-up payments, and the Bill provides that top-up payments need to be specified in an annual appropriations act before any amount of top-up payment can be credited into the National Health and Hospitals Network fund—obviously, the Appropriations Act is subject to parliamentary scrutiny so that provides parliamentary oversight for that type of payment as well. [17]

Committee Comment

3.32 The discussion of the NHHN Fund in the Scrutiny of Bills Committee's Digest sought the Minister's advice as to whether the funding arrangements outlined in the NHHN Agreement could be approved through the Annual Appropriations process. Pending this advice, the committee considers that the current arrangements ensure adequate parliamentary scrutiny over funds credited into the NHHN Fund.

Ability of the funding arrangements to meet growing state health costs

3.33 Concerns have been raised about the adequacy of the funding measures outlined in the NHHN Agreement and the current Bill to cover expanding health costs of states between now and 2020. In their submission to the committee's first inquiry into the Bill, Associate Professor Adrian Kay and Dr Richard Eccleston suggested that even with the $15.6 billion Commonwealth commitment to top-up payments between

17 Mr Daniel Caruso, *Proof Committee Hansard*, 15 December 2010, p. 18.

2014-15 and 2019-20, the proposed funding model would struggle to maintain the funding status quo.[18]

3.34 In response to this concern, Treasury officials at the public hearing first clarified how the initial figure dedicated to top-up payments was calculated:

> **Senator CORMANN**—Going on to the top-up payments, what does the $15.6 billion represent? How did you come up with that figure?
>
> **Mr Robinson**—It was on the basis of the projections and the approach that I mentioned in answer to the earlier question around the components of changes in roles and responsibilities in the NHHN agreement—in particular, the Commonwealth 100 per cent of funding of primary care and 60 per cent of hospitals. We did the projection work and then, if you take from that aggregate, the Commonwealth commitment, the dedicated GST and the SPP amount, it is the residual amount.[19]

3.35 Treasury also emphasised the fact that the $15.6 billion commitment was a minimum commitment that would be revised upwards if state health costs increased more than expected:

> **Senator SIEWERT**—Regarding the amount of money that you have set aside for the top-up, what is your level of confidence that that will meet state requirements?
>
> **Mr Robinson**—We used the best data that was available. We did not have data consistent across state budgets, so the institute's [AIHW] data was the most reliable.
>
> **Ms Vroombout**—The other point to make is that the 15.6 is a minimum that the government has guaranteed. If growth is higher than we have projected, then the Commonwealth top-up payment will be higher than 15.6.
>
> **Senator SIEWERT**—You pre-empted my next question, which was: what happens if it is not enough? What is the process for increasing the top-up if it is found to be insufficient?
>
> **Mr Robinson**—The numbers will be determined on the basis of actual expenditure as opposed to estimates. Indeed, we are going through a process now with the states of determining the relevant state budget expenditure that applies to the categories that are subject to the funding and the roles and responsibilities changes. They will be based on actual data and, to the extent that they are higher, the top-up funding would be higher.

18 Associate Professor Adrian Kay and Dr Richard Eccleston, *Submission 2*, Initial inquiry into the Bill, July 2010, p. 3.

19 *Proof Committee Hansard*, 15 December 2010, p. 15.

> **Ms Vroombout**—From a technical perspective the bill provides for any increase in the top-up payment to be provided for in an annual appropriation act.[20]

Committee comment

3.36 Given that the NHHN Agreement provides for increases to the top-up payment amounts if necessary, the committee considers that the current provisions in the Bill are sufficient to ensure that the Commonwealth meets its increased health funding commitments.

Process for dealing with disagreements with the States

3.37 The Bill contains two sections designed to safeguard the states against the Minister making determinations regarding NHHN payments which are unfair or detrimental to a state.

3.38 Proposed Section 21A details that when making determinations about dedicated GST payments, special payments or top-up payments, the Minister must have regard to the NHHN Agreement and the Intergovernmental Agreement.

3.39 Proposed Section 21B outlines the process for dealing with any determination made by the Minister which would be inconsistent with the NHHN Agreement and cause a substantial financial detriment to one or more NHHN participating states. It states that the Minister must not make any such determination unless:

(a) COAG has agreed to the determination;

(b) a copy of the proposed determination is provided to the Premiers of all participating states and territories at least three months prior to COAG (unless COAG otherwise agreed to waive this requirement); and

(c) each House of the Federal Parliament has agreed the determination. [21]

3.40 The explanatory memorandum to the Bill states that these provisions are designed to 'provide the States with certainty and security about future funding arrangements'. [22] It also notes, however, that the process outlined should be used only in extraordinary cases:

> The procedure in section 21B is a sign of good faith on behalf of the Commonwealth to the States in regard to the NHHN Agreement. As a result, it is intended there be a high threshold in relation to what is

---

20 *Proof Committee Hansard,* 15 December 2010, p. 8.

21 *Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010*, proposed Subsection 21B.

22 *Explanatory Memorandum*, p. 28.

> substantial financial detriment to one or more States. It is intended that this threshold would only be met in exceptional circumstances. [23]

3.41 This raises the question of how the Commonwealth or states would decide whether a particular determination of the Minister should be subject to the process outlined in Section 21B. This issue was broached by Senator Siewert at the public hearing:

> **Senator SIEWERT**—That then takes me to the question around the determination by the minister. What happens if the states disagree with the determination by the minister both for the GST to be withheld and also for the top-up?
>
> ...
>
> **Ms Vroombout**—... There is a provision in the bill that says that if in making the determination the minister has departed from either the NHHN Agreement or the Intergovernmental Agreement on Federal Financial Relations in a way that results in a significant financial detriment to a state then the minister has to go through a process of approval of the state and approval of the parliament to make that determination which is inconsistent with either of those agreements in a way that results in a significant financial detriment to a state.
>
> **Senator SIEWERT**—With all due respect, there may be disagreement over whether the minister has actually stuck to the processes in the relevant documents. What happens then? I am guessing it is going to be a fine line between whether the states think the minister stuck to the agreement or not. As I understand it, there is no recourse through parliament. If I understand it correctly, it has to go through parliament if they have not used the proper processes. I can foresee there will be disagreement around whether or not they have stuck to the process. [24]

Committee comment

3.42 The committee notes that the legislation does not specify the circumstances under which section 21B could be invoked by a state. There is no clarity around what constitutes 'substantial financial detriment' and hence it is unclear how a disagreement would be resolved in which a state perceived a determination made by the Minister to be detrimental but the Commonwealth did not consider it to meet the 'exceptional circumstances' criteria outlined in the Explanatory Memorandum.

Recommendation 1

3.43 The committee recommends that proposed Section 21B be amended to include a definition of 'substantial financial detriment', so as to provide clarity

---

23 *Explanatory Memorandum*, p. 28.

24 *Proof Committee Hansard*, 15 December 2010, p. 9.

about the circumstances under which the process outlined in Section 21B may be applied to a particular determination of the Minister under the Bill.

Committee Comment

3.44 The committee recognises that this Bill is a vital piece of legislation which will enable the implementation of significant elements of the health and hospital reforms agreed to by COAG in April 2010.

Recommendation 2

3.45 The committee recommends that the Senate pass the Bill.

Senator Annette Hurley
Chair