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Legislation Committee

Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010 [Provisions]

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Senate Economics Legislation Committee

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Inquiry into the Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010

The inquiry

Previous Inquiry

1.1 The Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010 was introduced into the House of Representatives on 23 June 2010, and its provisions were referred to the Economics Legislation Committee on 24 June 2010 for inquiry and report by 24 August 2010.

1.2 The committee received two submissions. No public hearings were held.

1.3 The Bill lapsed when the 42nd parliament was prorogued on 19 July 2010, and on 16 August the committee tabled a brief report stating that the intervening federal election prevented the committee from further considering the bill.[1]

Current inquiry

1.4 On 27 October 2010 the Bill was reintroduced into the House of Representatives. The bill progressed through the house on 24 November 2010.

1.5 The bill was re-referred to the Economics Legislation Committee on 28 October 2010 for inquiry and report by 9 February 2011.

1.6 The inquiry was advertised in *The Australian* and on the committee's website, and letters were sent to relevant parties informing them of the inquiry. The committee invited written submissions by 30 November 2011. The committee received two written submissions which are listed in Appendix 1.

1.7 A public hearing was held on 15 December 2010 in Canberra. The committee received evidence from officials from Treasury and the Department of Health and Ageing. A list of those who gave evidence is presented in Appendix 2.

1.8 The committee thanks those who participated in the inquiry.

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1 Senate Economics Legislation Committee, *Inquiry into the provisions of the Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010 report*, 16 August 2010, p. 1.

Related Inquiries

1.9 The committee notes that the Senate Finance and Public Administration References Committee conducted a broad inquiry into the health and hospitals reforms agreed to by the Council of Australian Governments in April 2010, and tabled their report in the Senate on 23 June 2010.

1.10 Further, the committee notes that the Senate Community Affairs Legislation Committee conducted an inquiry into the National Health and Hospitals Network Bill 2010, and reported to the Senate on 22 November 2010, recommending that the bill be passed with several minor amendments. The bill, which provides for the establishment of the Australian Commission on Safety and Quality in Health Care as a permanent independent national body, progressed through the House of Representatives on 27 October 2010, and is currently at the second reading stage in the Senate.

Structure of the report

1.11 This report contains three chapters. The first has outlined the conduct of the inquiry. Chapter 2 discusses the background of the COAG health reforms and outlines the main provisions of the Bill, the recommendations of the Scrutiny of Bills Committee, and the two submissions received by the inquiry. Chapter 3 discusses the issues of note raised through the inquiry and offers two recommendations.

Chapter 2

Background and commentary on the Bill

Council of Australian Government health and hospital reform

2.1 On 20 April 2010 the Council of Australian Governments (COAG), with the exception of Western Australia, endorsed the National Health and Hospitals Network Agreement (NHHN Agreement). Under the Agreement, the Commonwealth Government committed to increase its health and hospital funding to provide:

(a) 60 per cent of the national efficient price of every public hospital service provided to public patients;

(b) 60 per cent of recurrent expenditure on research and training functions funded by States undertaken in public hospitals;

(c) 60 per cent of block funding paid against a COAG-agreed funding model, including for agreed functions and services and community service obligations required to support small regional and rural public hospitals;

(d) 60 per cent of capital expenditure, on a 'user cost of capital' basis where possible; and

(e) over time, up to 100 per cent of the national efficient price of 'primary health care equivalent' outpatient services provided to public patients. [1]

2.2 Under the NHHN Agreement, the Commonwealth will also take full funding and policy responsibility for general practice, primary health care and for the delivery of aged care services (except home and community care services in Victoria).

2.3 The Commonwealth will finance the health and hospital reforms through:

(a) retention and dedication of an agreed amount of Goods and Services Tax (GST) revenue to health and hospital services;

(b) funding as currently provided by the National Healthcare Specific Purpose Payment; and

(c) provision of additional top-up payments from 2014-15.[2]

2.4 The NHHN agreement provided for the establishment of several bodies to perform oversight and governance functions relating to the NHHN. These are:

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1 Council of Australian Governments, *National Health and Hospitals Network Agreement*, pp. 4-5.

2 *Explanatory Memorandum*, p. 4

- the 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;
- a National Performance Authority to monitor the performance of Local Hospital Networks under the NHHN; and
- the establishment of the Australian Commission on Safety and Quality in Health Care as a permanent independent body to develop new national clinical and safety standards.

Provisions of the Bill

2.5 The Bill amends the *Federal Financial Relations Act 2009* in order to:

- vary the way the Commonwealth makes GST payments to states participating in the National Health and Hospitals Network Agreement by providing for a new category of Dedicated GST payments;
- replace the current National Healthcare Specific Purpose Payment with a Special payment for states participating in the NHHN agreement;
- provide for additional top-up payments from the 2014-15 financial year to be paid to states participating in the NHHN agreement from 2014-15;
- create an NHHN Fund to facilitate the payment of dedicated GST revenue, Special payments and Top-up payments under the Act; and
- specify conditions for making payments through the NHHN fund and place conditions on the Minister when making determinations relating to the NHHN agreement.

Dedicated GST payments (from 1 July 2011)

2.6 The Commonwealth currently makes GST revenue assistance payments to the states and territories. These payments are untied – i.e. they may be used for any purpose determined by a state or territory.

2.7 The Bill establishes two categories of GST payments for those states and territories participating in the NHHN Agreement:

(a) dedicated GST revenue payments for health and hospital services; and

(b) untied GST revenue payments to be used for any purpose.

2.8 The proportion of dedicated GST for each financial year will be determined by the Minister on a State by State basis, depending upon each State's share of the total GST pool and health care costs. In aggregate, however, it will be around one third of the total GST pool.[3]

3 Australian Government, *Budget Paper No. 3, 2010-11*, pp 112-113.

2.9 The amount of dedicated GST from 2011-12 to 2013-14 is described in 2010-11 Budget Paper No. 3 as:

> … the amount required in addition to the funding sourced from the existing National Healthcare SPP in each State to fund 60 per cent of the efficient price of public hospitals, take full funding responsibility for GP and primary health care services undertaken by States, and the net additional cost to the Commonwealth from changes in roles and responsibilities for the Home and Community Care program and related programs.[4]

2.10 From 2014-15 the amount of dedicated GST will be fixed, based on the 2013-14 costs, and indexed at the rate of overall GST growth.[5] During the transition to the new arrangements, the NHHN Agreement provides for a periodic three-year review and adjustment on the level of dedicated GST. The agreement also provides for a review of the level of GST to be dedicated once the system has transitioned.

Special and Specific Purpose Payments (from 1 July 2011)

2.11 The Commonwealth currently provides an ongoing financial contribution to the states and territories for the delivery of health services – referred to as the National Healthcare Specific Purpose Payment (National Healthcare SPP).

2.12 For those states and territories participating in the NHHN Agreement, the Bill establishes a new Special payment to replace the National Healthcare SPP. The new Special payment will be equivalent to the financial assistance provided under the current National Healthcare SPP. The Special Payment will be indexed from 2012-13 according to an indexation rate determined by the Minister.

2.13 The amount paid to each state, however, may be adjusted to account for changed funding responsibilities under the NHHN agreement. Under proposed subsection 15G of the Bill, the Minister is given the power to make determinations detailing that an amount is the positive or negative State adjustment amount for a state in a financial year. These provisions are included 'in order to achieve a budget neutral transfer of funding for HACC [Home and Community Care] and related programs from the Commonwealth'.[6]

2.14 This means that the transfer of funding responsibility for HACC and related programs to the Commonwealth, agreed to under the NHHN Agreement, will be funded by a commensurate reduction in the Special Payment amounts paid to states, via the negative State adjustment amount mechanism provided for in the legislation. In response to a question taken on notice at the public hearing, Treasury provided their estimate of the total reduction of the states' total Special Payment amount over the forward estimates:

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4 Australian Government, *Budget Paper No. 3 2010-11*, p. 112.

5 Council of Australian Governments, *National Health and Hospitals Network Agreement*, p. 28.

6 *Explanatory Memorandum*, p. 13.

Table 1: Estimated total reduction in Special Payment to 2013-14 [7]

Year	2010-11	2011-12	2012-13	2013-14
Expense ($m)	$0m	-$38.1m	-$61.7m	-$77.0m

2.15 The bill provides for any states not participating in the NHHN Agreement to continue to receive the National Healthcare SPP under the current arrangements.

Additional top-up funding (from 1 July 2014)

2.16 The Bill provides for the Commonwealth to make additional 'top-up payments' to those states and territories participating in the NHHN Agreement from 1 July 2014, with the specific amount to be determined by the Minister. The payments will reflect the additional expenditure required over and above the funding sourced from the new Healthcare Special Payment and the dedicated GST to fund the Commonwealth's health commitment to fund 60 per cent of hospital funding and 100 per cent of General Practice and primary care services. The need for this additional expenditure is largely due to the fact that hospital costs are expected to grow at approximately 8 per cent per annum over the medium term, while over the same period GST revenue is expected to grow at only 6 per cent per annum.[8]

2.17 Between 2014-15 and 2019-20, the Commonwealth has guaranteed that the top-up payment will be no less than $15.6 billion over and above the funding sourced from the National Healthcare SPP and the dedicated share of GST.[9] The Bill does not indicate how this funding will be distributed between participating NHHN states.

2.18 In the event that the amount required to fund the Commonwealth's health and hospital commitments is less than $15.6 billion, the residual funds will be provided to participating states and territories to fund any health services that will assist in ameliorating the growth in demand for hospital services.

Existing Commonwealth funding streams

2.19 During the inquiry Treasury noted that in addition to the three streams of Commonwealth funding outlined in the NHHN Agreement, the Commonwealth will continue to provide $2.6 billion in further funding for health and hospitals between 2011-12 and 2013-14 through the Improving Public Hospital Services National

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

8 *Explanatory Memorandum*, p. 16.

9 This commitment is based on all states and territories endorsing the NHHN Agreement. In the event that not all states and territories endorse the NHHN Agreement over this period, the total funding may be reduced.

Partnership (IPHS NP), as well as providing Commonwealth Own Source Payments to the states and territories for items such as hospital care for veterans. [10]

NHHN Fund

2.20 The Bill establishes a National Health and Hospitals Network Fund (NHHN Fund) to facilitate the payment of Commonwealth funding for the NHHN Agreement. To oversee the NHHN Fund and the distribution of funding, the NHHN Agreement provided for the establishment of an independent National Funding Authority.[11] Subsequent to the NHHN Agreement, however, the Commonwealth and states and territories agreed that a National Funding Authority would not be required.[12] Under new arrangements, payments from the NHHN Fund will now be paid directly to participating states and territories and/or to joint intergovernmental funding authorities.

2.21 The Federal Minister for Health and Ageing, the Hon Nicola Roxon MP, described the change as an improvement:

> We believe that we can get the transparency that is needed, that we can actually track the way the money will be spent and passed onto local hospital networks without establishing a separate authority …[13]

2.22 The NHHN Fund is established under proposed subsection 15A of the Bill as a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. This means that amounts determined by the Minister are quarantined from the Consolidated Revenue Fund into the NHHN Fund, and can only be paid from the NHHN Fund for the purposes specified in the Bill. [14]

2.23 The Bill contains provisions which allow for grants paid from the NHHN Fund to the joint intergovernmental funding authorities to be forwarded to Local Hospital Networks (LHNs) established under the NHHN, provided that the money is spent on NHHN matters.

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10 Department of the Treasury, Answer to Question on Notice (Question No. 7), 15 December 2010 (received 13 January 2011).

11 Council of Australian Governments, *National Health and Hospitals Network Agreement*, p. 29.

12 Department of the Prime Minister and Cabinet, answer to question on notice from the Senate Finance and Public Administration References Committee public hearing, 7 June 2010 (received 16 June 2010).

13 The Hon Nicola Roxon MP, Minister for Health and Ageing, Transcript of Press Conference, Canberra, 17 June 2010, http://www.health.gov.au/internet/ministers/publishing.nsf/Content/tr-yr10-nr-nrsp170610.htm?OpenDocument&yr=2010&mth=6 (accessed 9 July 2010).

14 *Explanatory memorandum*, p. 23.

Legislative Instruments

2.24 The Bill provides for the Minister to determine for each financial year: the dedicated GST revenue for a state; the specified amount of Special Payments (and State adjusted amounts which may arise from changes in funding responsibilities); and the specified amount of top up payments.

2.25 Although these determinations will be legislative instruments, they will not be disallowable by the Federal Parliament because 'the determination facilitates the operation of an intergovernmental body or scheme involving the Commonwealth and a State'[15], in accordance with subsection 44(1)(a) of the *Legislative Instruments Act 2003*. In making these determinations however, the Minister must take into consideration the NHHN Agreement, the Intergovernmental Agreement and, where appropriate, recommendations from the Commonwealth Grants Commission.

2.26 To provide certainty to the states and territories, the Bill establishes a three part process to be followed in the event that a determination is inconsistent with the NHHN Agreement and would result in substantial financial detriment to one or more states/territories. In these circumstances a determination cannot be made 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 to the determination.[16]

Scrutiny of Bills Digest

2.27 The Senate Standing Committee on the Scrutiny of Bills considered the Bill in its Alerts Digest No. 9 of 2010, and noted several issues with the Bill in its current form.

2.28 The committee criticised the Bill's current Explanatory Memorandum for not including a sufficient index and recommended that a new Explanatory Memorandum for the Bill be issued by the Treasurer.[17] When asked at the public hearing on 15 December 2010 whether any advice from the Treasurer would be forthcoming, a Treasury official stated 'We are expecting that it is imminent'.[18]

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15 *Explanatory memorandum*, p. 16.

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

17 Senate Standing Committee on the Scrutiny of Bills, *Alert Digest No. 9 of 2010*, p. 5.

18 Ms Vroombout, *Proof Committee Hansard* , 15 December 2010, p. 18.

2.29 Secondly, the committee noted that several legislative instruments established by the Bill are not disallowable by the Parliament, and that the removal of such parliamentary oversight is a serious matter. It concluded, however, that the provisions were consistent with subparagraph 44(1)(a) of the Legislative Instruments Act, which states that a legislative instrument is not subject to disallowance if it facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States.

2.30 The committee's final note concerned the proposed creation of the NHHN Fund as a Special Account for the purposes of the FMA Act. This section would give the Minister sole discretion to appropriate payment amounts from the Consolidated Revenue Fund to the NHHN fund, thus establishing a standing appropriation of funds. Noting that the appropriation of money from Commonwealth revenue is a legislative function, the committee stated that these provisions in their current form may be inappropriately delegating legislative powers.[19]

2.31 The committee sought the Minister's advice to see whether the Commonwealth's funding of the NHHN agreement could be subject to approval through the standard annual appropriations process, thus ensuring continuing Parliamentary oversight. The Minister has not yet responded to the concerns of the committee.

Views of Submitters

2.32 The inquiry received relatively little interest. Two submissions were received by the committee before the closing date of 30 November 2010.

2.33 Dr Kathryn Antioch, a Health Economics expert and the former Health Economics member of the Principal Committees of the National Health and Medical Research Council, responds in her submission to suggestions from Shadow Treasurer the Hon. Joe Hockey MP that the governance arrangements created under the NHHN agreement are unclear and may not reduce administrative duplication within the Healthcare system. Offering evidence from Victoria, she argues that local hospital network governance and Activity Based Funding, as proposed under the NHHN agreement, is effective:

> The governance network structure in Victoria has enabled greater control at the local level, strengthened governance across two major hospital networks...the result was improvements in quality and efficiency... The government's broad reform agenda draws, in general, on the Victorian State system of corporate governance via hospital networks in the context of Activity Based Funding. In my view the government's reforms will facilitate greater quality and efficiency by assisting Local Hospital Networks and other organisations to achieve even greater outcomes than

19 Senate Standing Committee on the Scrutiny of Bills, *Alert Digest No. 9 of 2010*, p. 7.

> that achieved in the Victorian experience to date... In my view the reforms represent excellent Evidence Based Policy.[20]

2.34 Catholic Health Australia, the peak body for the 21 public hospitals, 54 private hospitals and 550 aged care facilities operated by the Catholic Church in Australia, are supportive of the Bill and the NHHN reforms more broadly. In their submission they urge that proposed section 15D(5) of the Bill, which allows the Minister to impose conditions on the payments of dedicated GST revenue payments to States, be used by the Commonwealth to:

- ensure that State/Territory Health Departments and proposed Local Hospital Networks are transparent in reporting funding and expenditure in accordance with the NHHN agreement, particularly with regard to non-government owned and operated healthcare providers;
- ensure that the States/Territories abide by the sentiment expressed at paragraph A17 of the NHHN Agreement in supporting the "vital role played by non-government providers in providing health and public hospital services, including Catholic hospitals, and [working] together, including with relevant stakeholders, to ensure this important contribution continues under the new arrangements"; and
- ensure that Catholic hospitals are treated equitably under the NHHN and are able to retain autonomy in relation to the services they provide.[21]

2.35 The submission notes that Catholic hospitals have historically been subject to different funding arrangements than government owned and operated hospitals, and have generally been less favourably treated; Catholic Health Australia seeks to ensure that funding arrangements under the NHHN are equitable.[22]

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20 Dr Kathryn Antioch, *Submission 1*, pp 4, 6.

21 Catholic Health Australia, *Submission 2*, pp 3-4.

22 Catholic Health Australia, *Submission 2*, p. 4.

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]

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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]

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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.

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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*

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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

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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

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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

COALITION SENATORS DISSENTING REPORT

A SMOKE & MIRRORS CASH GRAB NOT HEALTH REFORM

SUMMARY

Coalition Senators recommend the Senate oppose this legislation.

As we are writing this report it is becoming increasingly clear that the Prime Minister is preparing the ground for a massive back down on this Bill. The government's proposed clawback of about one third of GST has clearly not withstood scrutiny.

This Bill seeks to implement yet another grab for cash by a Federal Labor Government addicted to spending.

The government's stated intention to take 'about one third' of GST revenue away from the States and Territories would result in more than $200 billion[1] in additional federal revenue between 1 July 2011 and 30 June 2020 at the expense of the States.

In return, the government is promising to provide the States and Territories with $15.6 billion in so called 'top-up payments' between 1 July 2014 and 30 June 2020.[2]

Simply seizing and re-branding $200 billion in State and Territory revenue as federal funding for health and hospitals is not health reform.

Coalition Senators note that the promised $15.6 billion in 'top-up payments' from 1 July 2014 over six years is less than the federal government would have been expected to commit if annual growth in federal funding under the past three five year healthcare agreements continued from 2014/15.[3]

Even Dr Deeble, principal adviser to the Whitlam and Hawke governments on the introduction of Medibank and Medicare, described the claimed gains to the States of $15 billion over ten years as 'fictitious'.[4]

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[1] Estimate based on published budget forecasts of GST revenue for 2011/12 – 2013/14 and an assumption of 6% year-on-year growth in GST revenue for the period 2014/15 – 2019/20, consistent with the government's stated expectations in the Second Reading Speech on the Bill. Accordingly, estimated GST revenue for the 2011/12 – 2019/20 period is over $613 billion.

[2] That is if all the States and Territories – including Western Australia – participate. Otherwise the $15.6 billion would be reduced.

[3] Taking the average 8.9% growth in federal funding over the past three five-year Australian Health Care Agreements (or equivalent) independently verified by the Parliamentary Library as the benchmark;

[4] Dr John Deeble, Health benefit lost in smoke and mirrors, *The Age*, 14 April 2010, page 19;

Despite repeated requests by the Committee (during the inquiry and in questions on notice) to point us to evidence of any other committed and quantifiable increases in federal funding for health and hospitals over that six-year period, no information has been forthcoming.

As long as these questions remain unanswered, this issue alone casts serious doubt in the minds of Coalition Senators whether this legislation is in the national interest, the interest of the States and Territories and most importantly the interest of patients.

Furthermore, this legislation proposes to breach the GST Agreement entered into in good faith by the Australian and all State and Territory governments back in 1999.

Both the original GST agreement[5] and its successor agreement signed by former Prime Minister Kevin Rudd and State and Territory Leaders in 2008[6] are unequivocal – changes to the GST arrangements such as those proposed by this legislation require unanimous agreement by all parties.

This is also the advice Treasury gave the incoming Gillard government after the last election[7].

Most of the media focus has been on opposition to the GST clawback from Coalition governments in Western Australia and Victoria and the alternative government in NSW.

While we don't know the reasons why, it is important to note that not one single State or Territory Labor government has as yet signed the agreement to hand over any of their GST revenue to the Commonwealth either. Could it be that on reflection and after further scrutiny they too realised that what they precipitously agreed to in principle back in April 2010 was in fact a bad deal?

Recommendation 1

That the Senate not pass this legislation.

[5] The Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations – agreed on 9 April 1999;

[6] The Intergovernmental Agreement on Federal Financial Relations agreed on 29 November 2008;

[7] Treasury's Incoming Government Brief for the Gillard government (or Red Book), page 15;

FEDERAL-STATE FINANCIAL RELATIONS

This legislation has a fundamental impact on Federal-State financial relations.

Since Federation the 'own-source' revenue base of States and Territories to fund expenditure for important services has narrowed significantly.

In 1942 all income taxing powers were transferred to the Federal government. This resulted in the payment of Federal Financial Assistance Grants to States in various forms between 1946 and 2000 as reimbursement for the loss of those income taxing powers.

In 1997 the High Court also struck down various State and Territory excise arrangements.

The problem of vertical fiscal imbalance between the Commonwealth and the States and Territories was getting worse and worse.

In 2000, the GST was introduced with a comprehensive overhaul of Commonwealth-State financial relations.

All GST revenue was committed to the States and Territories. This was to finally give them access to an efficient source of growth revenue, to help fund state responsibility services like health, law and order and education.

This involved agreement between all Commonwealth, State and Territory governments before relevant legislation was passed through the Federal Parliament.

As the then Victorian Premier Steve Bracks said back in 2005:[8]

> "They (the Federal Government) signed up to it on the basis that that legislation put in place security - all the GST revenue for the states would be enduring. That a future Federal Government would not use its power to simply overturn that legislation…"

Yet, that's exactly what the Gillard government is proposing to do with this legislation (even though it is unclear at this time what the government's proposals actually are).

Ironically, the Gillard government is using the argument that the States 'own-source' revenue is inadequate to fund all of their services as the reason to take a significant chunk of the GST, the one efficient growth revenue they have access to, away from them.

Coalition Senators consider that the fundamental reforms in Federal-State financial relations implemented as part of the introduction of the GST should not be changed this lightly and certainly not without a clear national consensus.

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[8] ABC TV, 7.30 Report, 9 March 2005, http://www.abc.net.au/7.30/content/2005/s1319767.htm

THERE IS NO UNANIMOUS AGREEMENT

In fact not one single State or Territory government has signed the agreement to vary GST arrangements.

One of the key features of the 1999 GST Agreement was that any changes required unanimous agreement. That requirement for unanimous agreement was replicated in the Intergovernmental Agreement on Federal Financial Relations agreed to in 2008.

At the time of writing this report not a single State or Territory government has signed the agreement to hand over any of their GST revenue to the Commonwealth for the National Health and Hospitals Network.

The Gillard government has clear Treasury advice that changes to the 1999 Intergovernmental Agreement on Federal Financial Relations can only be made by unanimous agreement.

In its Incoming Government Brief, Treasury advised the government that[9]:

> "Western Australia has indicated that it is not prepared to agree to proposed amendments to the IGA notwithstanding that they preserve the current arrangements for Western Australia"

and that

> "as changes can only be made to the IGA by unanimous agreement of all parties, alternative approaches may need to be considered to give effect to the financing arrangements for other jurisdictions."

Treasury also told the Gillard government that *"ideally these issues should be resolved before the reintroduction of the legislation"*.

The government did not resolve these 'issues' before reintroducing the legislation.

To proceed with this legislation in the absence of unanimous agreement by all parties to vary the Intergovernmental Agreement on Federal Financial Relations would be a fundamental breach of trust.

It would be a breach of trust both with the States and Territories who entered into these Intergovernmental Agreements in good faith and with the Australian people.

The requirement for unanimous agreement to make any changes is an important safeguard which should be preserved. If the Parliament became complicit in breaching a firm commitment like this a very bad precedent would be set. How could State and Territory governments trust unequivocal commitments made by the Commonwealth in

[9] Treasury's Incoming Government Brief for the Gillard government (or Red Book), page 15;

future, if the Federal Parliament was happy to disregard them on the simple recommendation of the Federal government?

As the States' House, the Senate in particular should take a very dim view of a proposal by government to breach an explicit undertaking to the States and Territories not to vary GST arrangements without unanimous agreement by all parties.

On this important point, government Senators in their report merely note *"the current uncertainty about the detail of a revised Intergovernmental Agreement on Federal Financial Relations"*.

They then proceed to say that they're *"confident the Commonwealth will be able to agree upon a revised IGA with the states in 2011"*.

It is unclear what information government Senators are relying on to reach that view. Certainly no evidence to that effect has been received by the Committee during or since our inquiry. If anything, it looks less likely today that the government will be able to achieve unanimous agreement to the changes to the IGA consistent with this Bill.

This appears to be the Prime Minister's assessment of late as well, given she has been preparing the ground for a major back down on this legislation.

In any event – as a matter of proper process – the unanimous agreement should come first and any debate on passage of this legislation to facilitate implementation of such an agreement second.

Recommendation 2

That before this legislation is considered any further, the government be required to table a copy of an agreement to vary the Intergovernmental Agreement on Federal Financial Relations signed by all members of COAG consistent with the changes proposed in this legislation.

LARGE VARIATONS IN SHARE OF GST TRANSFERS

There is a lack of transparency and apparent unfairness around the share of GST each individual State or Territory is expected to transfer to the Federal government.

First, the Treasurer stated in his second reading speech that it will be 'about one third' of GST revenue – without any further specifications. We were then told in MYEFO that the ACT is expected to hand over between 50 and 51% and Queensland up to 44%. It took further questions during this inquiry to find out that if Western Australia signed up to the agreement it would have to hand over a staggering 60 to 63% of its remaining GST revenue to the Commonwealth.

Share of GST to be transferred to the Commonwealth[10]:

	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Total
2011-12	30%	25%	40%	60%	26%	20%	50%	14%	31%
2012-13	31%	25%	43%	62%	27%	20%	50%	15%	32%
2013-14	31%	25%	44%	63%	27%	21%	51%	16%	33%

The proposed method of GST reallocation under the proposed arrangement seems imbalanced

Treasury told the Committee that there were two reasons for the variations in the share of GST to be transferred to the Commonwealth[11]:

> "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 Healthcare SPP (particular in the context of the distribution of the Healthcare SPP moving to an equal per capita basis). This will result in a greater amount of GST dedicated when the Commonwealth increases its funding commitment as set out in the NHHN Agreement."

So in essence, the reason some States and Territories have to hand over a larger share of their GST is because they're investing more of their own money into health and hospital services at present. They have to transfer more GST because their current health spending as a proportion of overall health spending in their jurisdictions is above average while current federal spending in those jurisdictions is below average.

Those States and Territories doing more themselves to respond to health needs in their jurisdictions seem to be getting penalised by the Gillard government's formula for determining the level of GST transfers to the Commonwealth under this legislation.

Secondly:

> "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 a 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,

[10] From MYEFO 2010-11 and Senate Economics Committee Inquiry into Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010, Answer to Question on Notice No.2, 15/12/2010;

[11] Senate Economics Legislation Committee Inquiry into Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010, Answer to Question on Notice No.4, 15/12/2010;

> these states are likely to have a larger proportion of GST revenue dedicated to healthcare than other states and territories."

So those States and Territories who already receive less GST as part of the horizontal fiscal equalisation processes through the Commonwealth Grants Commission will have to hand over a higher share of GST revenue to the Commonwealth.

Those States get hit twice. The worse a particular jurisdiction fares through the Commonwealth Grants Commission process the worse the impact of the proposed GST clawback.

It hardly seems fair.

Apparently State and Territory Leaders were told about 'some' variations between jurisdictions in share of GST to be transferred. However, given the government's refusal to provide specific detail on what State and Territory governments were told, Coalition Senators don't believe they were aware of the significance of those variations when they agreed 'in principle' to the proposed arrangements back in April 2010.

Officials were unable to tell the Committee during the inquiry precisely what the States and Territories were told by the federal government during the COAG meeting:[12]

> Senator CORMANN — When the state and territory leaders signed up to the NHHN deal at COAG back in April 2010—that is, all other than Western Australia—did they know the actual percentages that would be clawed back from each of their states and territories when they agreed in principle?
>
> Ms Vroombout—They had seen estimates of.
>
> Senator CORMANN—Did the Premier of Queensland know that her state would have to hand over up to 44 per cent of their GST?
>
> Ms Vroombout—As I say, they saw estimates of.
>
> Senator CORMANN—How do the estimates compare with the percentages that are contained in MYEFO?
>
> Mr Robinson—I think we would have to take on notice the absolute differences.

We asked the government to provide us with this information. At the time of drafting this report the government is refusing to release that information.

If the information provided to COAG was the same or very similar to the information eventually published in MYEFO on 9 November 2010, why wouldn't they provide it to the Committee?

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[12] Transcript of Senate Economics Committee Inquiry into Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010, 15/12/2010, p.6

It clearly does raise the question whether Premiers and Chief Ministers knew what the impact on their budgets would be when they agreed 'in principle' to the proposition to hand over 'about a third' of their GST revenue to the Commonwealth.

Would this be the reason why no State or Territory government has signed on to the deal? Are they now concerned about the actual share of GST to be handed over to the Commonwealth? Do they now have a better understanding of some of the implications outlined in this report?

STATES AND TERRITORIES WORSE OFF?

In seeking to promote its National Health and Hospitals Network package, the Federal Government has said that its proposed changes would be financed through a combination of:[13]

- Funding currently provided by the National Healthcare Specific Purpose Payment
- The clawback of about one third of total GST
- Top-up funding of at least $15.6 billion between 2014/15 and 2019/20

During the inquiry we asked the government several times for the dollar value of any proposed and committed increases in National Healthcare Specific Purpose payments by the federal government beyond 2014/15.

The government has been unable or unwilling to provide that information to the Committee.

The clawback of about one third of GST – about $200 billion between 2011/12 and 2019/20 – will be at the expense of State and Territory governments.

So the only firm commitment for increased health and hospital funding from the Federal government for the period 2014/15 and 2019/20 through this legislation is the $15.6 billion in top-up payments (if all States are part of the 'deal').

According to Parliamentary Library research (based on published final budget outcomes), federal government funding over the past three five-year Australian Health Care Agreements (or equivalent) has increased by about 8.97% since 1998/99.

Federal funding for health and hospitals under those previous agreements has been:

1998/99 – 2003/04 – $29 billion

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[13] A National Health and Hospitals Network for Australia's Future – Delivering better health and better hospitals, 2010, page 52 (http://www.health.gov.au/internet/yourhealth/publishing.nsf/Content/report-redbook/$File/HRT_report3.pdf);

2003/04 – 2007/08 – $42 billion (+45% from previous agreement)

Extended by one year by the Rudd government.

2009/10 – 2013/14 – $64.4 billion (+53% from previous agreement)

If those past federal health and hospital funding growth trends continued over the subsequent five years (between 2014/15 and 2018/19) relevant federal funding would be:

2014/15 – 2018/19 – $103.2 billion (or an increase of $38.8 billion)

In the absence of any other information from the government $15.6 billion in top-up payments (over six years) would be more than $20 billion less federal funding than if past growth trends in federal health funding continued from 2014/15.

As previously mentioned, while he was slightly more generous, Dr John Deeble also pointed to this issue prior to the COAG discussion in April 2010 when he said that[14]:

> "The claimed "gains to the states" of $15 billion over 10 years are equally fictitious. The Commonwealths own costings show it is simply the extra amount it would have to pay to maintain the average 8 per cent a year increase in state and territory health spending over the past 10 years."

To this date the government has not adequately addressed this issue. Presumably State and Territory governments would want to get clarification on this as well.

Recommendation 3

That before this legislation is progressed any further the government be required to explain the apparent real cuts in federal funding for health and hospitals compared to a continuation of past growth trends.

For completeness – after being asked to comment on this issue during the inquiry, the government claimed on notice that:

> "…the analysis incorrectly assumes the first Australian Healthcare Agreement commenced in 1997-98 when it was in fact 1998-99…"[15]

The Parliamentary Library advised that in its research for Coalition Senators it based its findings on publicly available final budget outcomes. Furthermore deferring the reference year for the commencement of the Australian Healthcare Agreement from 1997/98 to 1998/99 made the comparison between past growth and what is proposed in this legislation worse for the Gillard government.

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[14] Dr John Deeble, Health benefit lost in smoke and mirrors, The Age, 14 April 2010, page 19;

[15] Senate Economics Legislation Committee Inquiry into Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010, Answer to Question on Notice No.9, 15/12/2010

Indeed, it meant that the average annual growth in federal health and hospital funding over the past three five year agreements from 1998/99 was 8.97 per cent instead of 8.6%. Based on the answers provided by the government so far, the implication is that the gap between what is proposed in this legislation and a continuation of past growth trends becomes even larger.

SPECIAL PAYMENTS

'Special payments' are proposed to replace current National Health Care special purpose payments for 'participating States'.

There is a lack of clarity as to what will happen with 'special payment' amounts beyond 2014/15. There is no information in this legislation and no information about specific and quantifiable increases in special payments has been provided by the government.

In fact, officials told our inquiry that other than the $15.6 billion in so called top-up payments no other commitment to federal funding increases for health and hospitals have been made for the period 2014/15 to 2019/20:

> Senator CORMANN— If the Treasurer cannot commit to those specific increases as they were experienced in the past, really the only certainty we have got, the only firm commitment to additional federal funding for the states and territories for health and hospitals under the NHHN deal is for the period 2014-15 to 2019-20, which is for that $15.6 billion in top-up payments, isn't it? That is the only firm figure we have got.
>
> Mr Broadhead—Apart from the other agreements that have also been done—for example, the National Partnership Agreement on Improving Hospital Services, which also provides additional resources to the states and territories for elective surgery, emergency departments, subacute care and so on.
>
> Senator CORMANN—Over the period 2014-15 to 2019-20?
>
> Mr Broadhead—Not under that period, no.[16]

This seemed unbelievable. This is why we asked the Government on notice for a detailed breakdown of committed and quantifiable increases in 'special payments' or other proposed federal funding increases for health and hospitals for the period 2014/15 to 2019/20. However, the government yet again has been unable or unwilling to provide answers to any of those questions.

If the Gillard government truly had a good story to tell here why wouldn't they tell us? Why wouldn't they want everyone to know?

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[16] Transcript of Senate Economics Committee Inquiry into Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010, 15/12/2010, p.13

How can any State and Territory government think that handing over $200 billion in GST revenue to the Commonwealth between now and 2019/20 in exchange for $15.6 billion in top-up payments is a good deal for them or for patients?

Furthermore, according to this legislation there could be positive or negative 'adjustments' to special payments to be determined by the Treasurer through a legislative instrument which the government does not want to be disallowable. Yet no specific information has been made available by the government in relation to those possible 'negative adjustments':

> Senator CORMANN—So they have specific dollar figures that their special payments, which currently are their specific purpose payments, will be reduced by between 2012-13 and 2019-20?
>
> Mr Caruso—They are estimates, though.
>
> Senator CORMANN—Are they published anywhere?
>
> Mr Robinson—Not that I am aware of.[17]

'TRUST US WE'RE FROM THE GOVERNMENT'

If this legislation is passed as drafted it would result in reduced accountability to the Parliament.

This Bill provides that the Minister may make certain determinations, which though legislative instruments would not be disallowable under the *Legislative Instruments Act 2003*.

In particular these are: new section 6A (item 18), and in new Part 3A, new subsections 15B(1), 15D(1) and (2), 15E(1) and (2), 15G(1) and (2), 15H(1)(2) and (5). The justification given for the determinations not being disallowable is that the instruments will facilitate the operation of an intergovernmental agreement or scheme.[18]

Yet, as outlined in the government senators' report – current determinations made by the Treasurer under the National Healthcare SPP are disallowable legislative instruments. It is proposed for those determinations to continue to be disallowable for those States not participating in the NHHN agreement.

Yet for determinations in relation to 'Special Payments' to 'participating States' the government wants those determinations by the Treasurer to be non-disallowable. Why?

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[17] Transcript of Senate Economics Committee Inquiry into Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010, 15/12/2010, p.12

[18] Explanatory Memorandum to the Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010, p.17);

Similarly, in this legislation the government proposes that all determinations (again by the Treasurer) about final shares of GST to be handed to the Commonwealth by individual jurisdictions be non-disallowable. Why?

Current shares per State and Territory to be transferred to the Commonwealth are only estimates. We're told that more work is being done to determine final shares to be transferred.

Finally, in this legislation the government proposes that determinations by the Treasurer about so called positive or negative adjustment amounts be non-disallowable. Why?

Coalition Senators can't see any reasonable justification why any of those determinations should not be subject to Parliamentary scrutiny and as such be disallowable.

Recommendation 4

If this legislation is to be passed it should at the very least be amended to ensure determinations by the Treasurer in relation to:

- **the share of GST to be transferred by individual States and Territories to the Commonwealth;**
- **special payments;**
- **positive or negative State adjustment amounts;**

are disallowable.

SOME GOVERNMENT ARGUMENTS GO BEYOND MERE SPIN

In the debate about the federal financial relations implications of this it has become a truism that if this proposed GST drawback does not occur, health costs would consume state budgets in their entirety.

This is what the Prime Minister Julia Gillard said in a speech on 8 December 2010 to the St Vincent's Institute Luncheon at The Langham Hotel in Melbourne:

> "First, by taking on 60 per cent of hospital costs and 100 per cent of community and aged care, the Commonwealth assumes the lion's share of rising health costs into the future.
>
> That growing burden, which would have bankrupted the state treasuries by mid century, now shifts to the Commonwealth." (emphasis added)

Health Minister Nicola Roxon said on Sky News PM Agenda on 22 November 2010:

> "We know that if you don't do anything you'll actually have health expenditure overtake state budgets in just several decades time. And then

> how do you fund every other service? It's just not sustainable." (emphasis added)

These statements are completely without foundation. They're just not true. There is no evidence anywhere that health costs would consume all State budgets or overtake them. It is a ridiculous suggestion which is based on a dishonest and incomplete presentation of state revenue.

Treasurer Wayne Swan, while more careful in his language, has been equally misleading. In his Economic Note on 7 March 2010 he said that:

> "…It's not well known, for example, that if we allowed current trends to continue, by 2045-46 spending on health and hospitals would consume the entire revenue raised by state governments." (emphasis added)

When the Treasurer is talking about revenue 'raised by' State governments he excludes more than half their revenue base from his assessment. The GST for example is not technically raised 'by' the States though it is clearly raised 'for' the States.

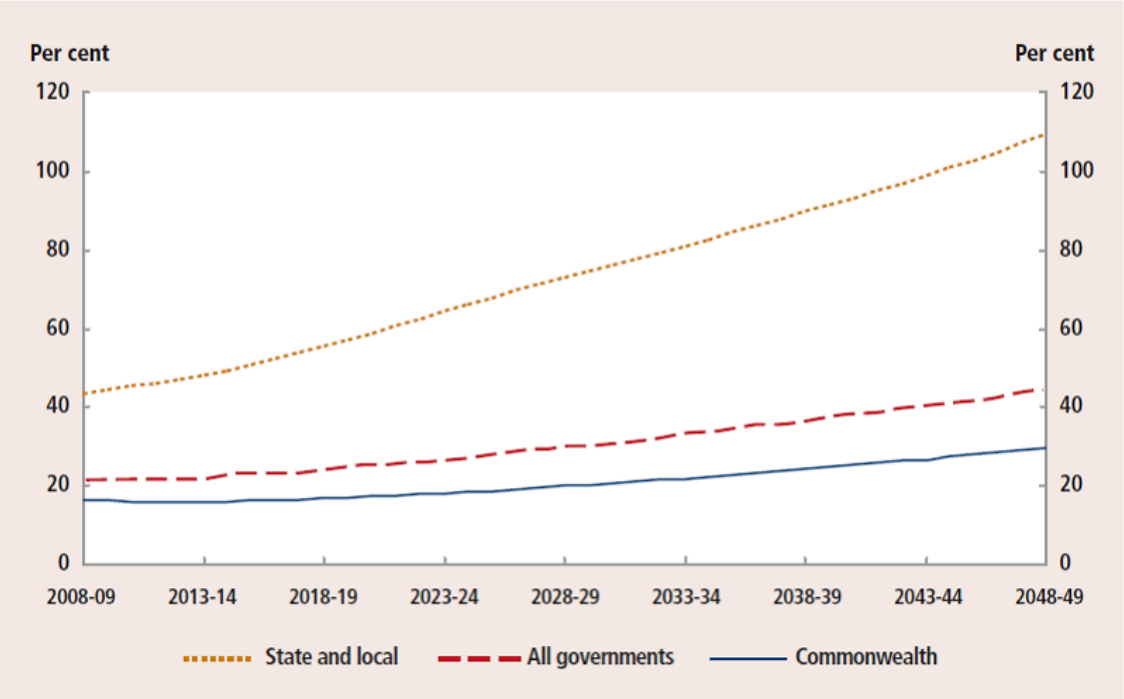
The government in making the above assertions has excluded all of the GST revenue from the State and Territory revenue base as well as all other grants and subsidies received by the States and Territories.

Why would this be a relevant argument? Its like arguing that the Commonwealth can't afford health and hospital funding because a specific revenue category (say the Medicare Levy) can't fully fund it.

To demonstrate their point about health funding 'overtaking state budgets' the Federal government published this grossly misleading graph below in several publications[19]:

[19] A National Health and Hospitals Network for Australia's Future – Delivering better health and better hospitals, 2010, page 53 (http://www.health.gov.au/internet/yourhealth/publishing.nsf/Content/report-redbook/$File/HRT_report3.pdf);

Figure 5: Health funding responsibility as a proportion of own source tax revenue (illustrative)



Source: Treasury projections based on data from the Australian Institute of Health and Welfare. Tax held constant as a share of GDP. Based on current arrangements at the time of the 2010 Intergenerational Report.

To justify their assertion that health and hospital spending would overtake state budgets (or 'consume all State revenue') the government has excluded more than half of the States and Territories revenue base from its calculations – including all of the GST.

This is not a serious way to pursue a public policy debate about how to ensure sustainable health financing into the future.

For the record, in 2009/10 State and Territory 'own-source' revenue amounted to $90.5 billion, whereas total current grants and subsidies (including all of the GST) amounted to $97.2 billion.[20]

[20] Figures provided by the Parliamentary Library, based on information sourced from State Annual Financial Reports and Final Budget Outcomes;

TREASURER AGAIN REFUSES TO ANSWER QUESTIONS

On this occasion the Treasurer has refused to answer the following questions taken on notice by his officials:

1) What are the currently scheduled and committed increases in federal funding for health and hospitals in dollar amounts for each financial year between 1 July 2011 and 30 June 2020 (financial years 2011/12 – 2019/20), broken down for each financial year by their funding source – that is clearly identifying how much of the increased federal health and hospital funding each year comes from:
   - **a.** The GST revenue taken from the States and Territories
   - **b.** Indexation to 'Special Payments'
   - **c.** 'Negative State Adjustment Amounts' from 'Special Payments'
   - **d.** The $15.6 billion in top-up payments
   - **e.** Any other separately identifiable federal government funding source

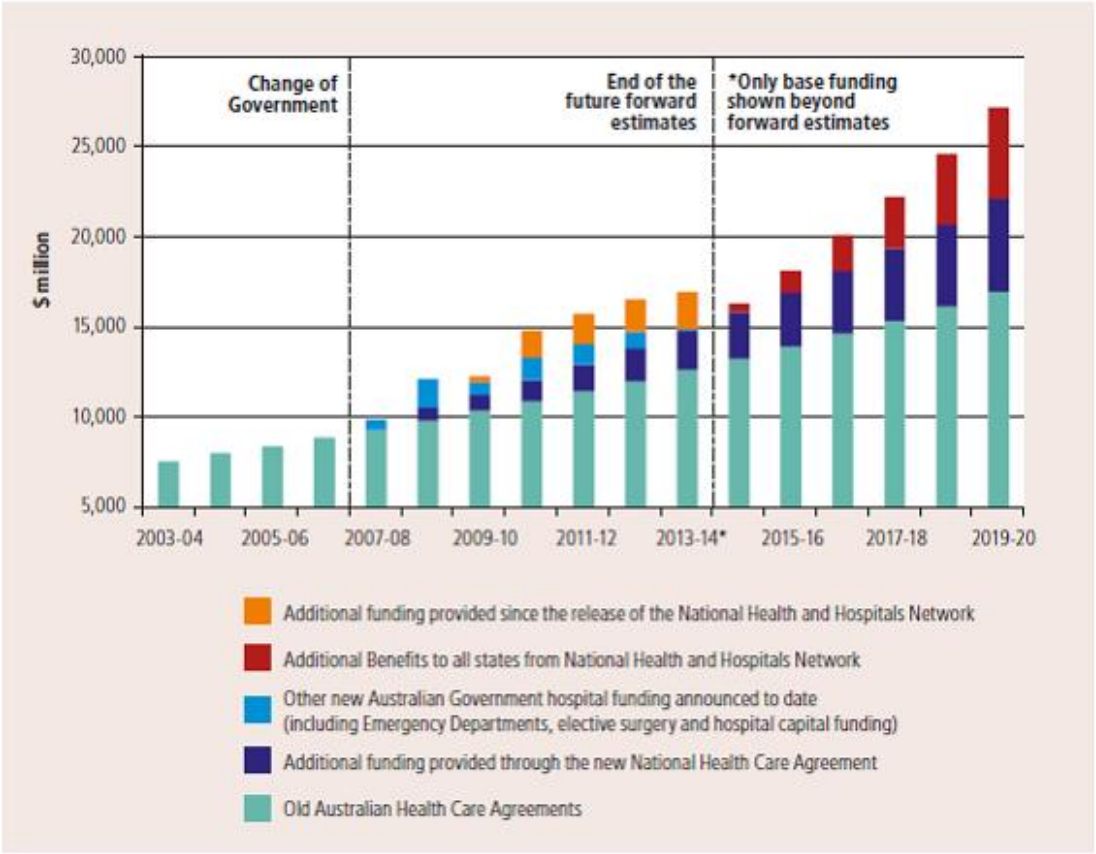
2) In relation to the percentage share of GST to be handed over to the Commonwealth by individual States and Territories between 2011/12 and 2013/14 as part of the National Health and Hospitals Network reform package:
   - **a.** What specific information was made available by the government to State and Territory Leaders at COAG on 19-20 April 2010 about the percentage shares of GST to be handed over by each jurisdiction.
   - **b.** Did each State and Territory Leader obtain specific and detailed advice on the share of GST to be handed over by their respective State or Territory under the NHHN deal.
   - **c.** Or was the information more general and consistent with the government's statements that 'about one third of GST revenue' would have to be handed over under the NHHN reform.
   - **d.** Was the information provided to State and Territory Leaders at COAG on 19-20 April 2010 identical to the information provided in MYEFO 2010/11.
   - **e.** If not, please provide specific details of the percentage shares advised to State and Territory Leaders at the April 2010 COAG meeting.

The graph below purports to present additional Commonwealth Government health and hospital expenditure under the National Health and Hospitals Network until 2019/20.[21]

[21] A National Health and Hospitals Network for Australia's Future – Delivering better health and better hospitals, 2010, page 14 (http://www.health.gov.au/internet/yourhealth/publishing.nsf/Content/report-redbook/$File/HRT_report3.pdf);

Yet, questions about the funding sources, apparent inconsistencies and actual dollar amounts represented in this graph and taken on notice during the inquiry remain unanswered:

Figure 1: Additional Commonwealth Government health and hospital expenditure under the National Health and Hospitals Network



Source: Commonwealth Budget Papers, Commonwealth Department of Health and Ageing and Department of the Prime Minister and Cabinet analysis.

Why is the government not able or unwilling to clarify the detail about the five funding categories depicted in this graph – specifically the funding from 2014/15 listed under the 'Old Australian Health Care Agreements' and under the new 'National Health Care Agreement'. Somebody put this graph together in an effort to sell the merits of the government's proposed reforms. Why then would the government not be prepared to provide such basic information?

CONCLUSION

This legislation is about federal financial relations not about health reform.

It is about $200 billion in additional revenue for a federal government that hasn't been very good at spending taxpayers' money wisely at the expense of States and Territories.

There is insufficient detail about the actual benefits for patients which would flow from this shift in revenue and some costs to the Commonwealth.

True to form, the government has again mismanaged the process which led to the introduction of this legislation. The government is effectively asking the Senate to endorse a breach of the Intergovernmental Agreement on Federal Financial Relations agreed by all Australian governments state and federal in 2008.

Finally, many of the arguments used by the government to promote the merits of its proposed changes did not withstand scrutiny and too many legitimate questions remain unanswered to this day.

Coalition Senators believe that this legislation is not in our national interest, that it is not in the interest of States and Territories and that it is not in the interest of patients across Australia.

It would appear that the Prime Minister has come to the same conclusion.

COALITION SENATORS RECOMMEND THAT:

1) The Senate not pass this Bill;

2) Even if this legislation is considered any further, the government be first required to:

a. table a copy of an agreement signed by all members of the Council of Australian Governments to vary the Intergovernmental Agreement on Federal Financial Relations consistent with the changes proposed by this legislation;

b. explain the apparent real cuts in federal funding for health and hospitals compared to a continuation of past growth trends;

3) If this legislation is to be passed it should at the very least be amended to ensure that determinations by the Treasurer are disallowable instruments when they relate to:

a. the share of GST to be transferred by individual States and Territories to the Commonwealth;

b. special payments;

c. positive or negative State adjustment amounts.

Senator Mathias Cormann

Senator David Bushby

Senator John Williams

APPENDIX 1

Submissions Received

Submission Number	Submitter
1	Dr Kathryn Antioch
2	Catholic Health Australia

Additional Information Received

- Received from the Department of the Treasury on 13 January 2011, answers to Questions on Notice taken at a public hearing in Canberra on 15 December 2010.
- Received from the Department of the Treasury on 13 January 2011, answers to Questions on Notice taken at a public hearing in Canberra on 15 December 2010.
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- Received from the Department of the Treasury on 13 January 2011, answers to Questions on Notice taken at a public hearing in Canberra on 15 December 2010.
- Received from the Department of Health and Ageing on 24 December 2010, answers to Questions on Notice taken at a public hearing in Canberra on 15 December 2010.

APPENDIX 2

Public Hearing and Witnesses

CANBERRA, WEDNESDAY 15 DECEMBER 2010

BROADHEAD, Mr Peter, Acting First Assistant Secretary, Transition Office, Department of Health and Ageing

CARUSO, Mr Daniel, Analyst, Commonwealth-State Relations Division, Department of the Treasury

COLES, Mr Tony, Senior Adviser, Commonwealth-State Relations Division, Department of the Treasury

FLANAGAN, Ms Kerry, Acting Deputy Secretary, Department of Health and Ageing

MASKELL-KNIGHT, Mr Charles, Principal Adviser, Acute Care Division, Department of Health and Ageing

ROBINSON, Mr Peter, Principal Adviser, Social Policy Division, Department of the Treasury

VROOMBOUT, Ms Sue, General Manager, Commonwealth-State Relations Division, Department of the Treasury