



Human Services Legislation Amendment Bill 2005

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Human Services Legislation Amendment Bill 2005

Date Introduced: 23 June 2005

House: House of Representatives

Portfolio: Finance

Commencement: The formal provisions of the Act commence on Royal Assent; the substantive provisions commence on a day to be fixed by Proclamation or six months after Royal Assent (which ever occurs first).

Purpose

The major purposes of the Bill are:

- the abolition of the governance boards of Centrelink and the Health Insurance Commission (HIC);
- the replacement of HIC (an authority with separate legal personality to the Commonwealth) with Medicare Australia (a body which will form part of the Commonwealth);
- the creation of the offices of Chief Executive Officer (CEO) of Centrelink and Medicare Australia, with statutory functions; and
- the establishment of new governance arrangements under which the CEOs will be directly accountable to the Minister.

Background

In its 2001 election platform, the Coalition flagged its intent to examine statutory authorities and office holders.¹ On 14 November 2002, the Government appointed Mr John Uhrig AC to conduct a review of the governance practices of statutory authorities and office holders, with a particular emphasis on those which impact on the business community. The objective of the review was to identify issues surrounding existing governance arrangements and to provide policy options for Government to get the best from statutory authorities and office holders and their accountability frameworks.²

The review focussed on seven statutory authorities: the Australian Taxation Office (ATO), the Australian Consumer and Competition Commission (ACCC), the Australian Prudential Regulation Authority (APRA), the Reserve Bank of Australia (RBA), the Australian Securities and Investment Commission (ASIC), the Health Insurance Commission (HIC) and Centrelink.³

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The Uhrig Report was released by the Minister for Finance and Administration on 12 August 2004. The Report recommended two templates designed to ensure good governance exists: one where governance can best be provided by 'executive management' and the other where it can best be provided by a 'board'. Both templates detail measures for ensuring the boundaries of responsibilities are better understood and that the relationship between Australian Government authorities, Ministers and portfolio departments is clear.⁴

The Report influenced the creation in October 2004 of a new Department of Human Services⁵ (DHS), under the Finance portfolio, which brings together six agencies that administer \$80 billion of human services each year: Centrelink, HIC, Child Support Agency, Health Services Australia, Commonwealth Rehabilitation Services and Australian Hearing. A key element in establishing the DHS was the need to separate the bureaucracy: between those parts which develop policy and those parts which implement the policy, such as the delivery service of welfare payments.⁶ As a new initiative, a single Human Services Advisory Board will be established this year, replacing the five agency boards.⁷ However, to date there has been no announcement about the establishment of this Board.

The Bill to be introduced amends the *Health Insurance Commission Act 1973* and the *Commonwealth Services Delivery Agency Act 1997* by making changes to the governance structures of Centrelink and the HIC.⁸

As part of the changes to be made by the Bill, Medicare Australia and Centrelink will each consist of their respective Chief Executive Officers (CEOs) and their staff, but legally will be part of the Commonwealth.⁹ Employees in the two agencies will be covered by the structure, principles and statutory powers under the *Public Service Act 1999*, providing them with a generic range of employment rights and obligations. The CEOs management reporting requirements will be clearly structured and they will have additional support structures to the Executive and to the Australian Public Service as detailed in specific legislation contained in the Bill. Both bodies will be prescribed agencies for the purposes of the *Financial Management and Accountability Act 1997*¹⁰ (FMA Act) which applies to budget-funded authorities managed by a CEO. The FMA Act establishes various management and reporting responsibilities for the CEO (sections 44–46, 49 and 51), as well as allowing the Minister to give the guidelines to the CEO (s. 64).¹¹ Furthermore, it provides an accountability framework for CEOs to manage agency resources.

Position of significant interest groups/press commentary

Academics within the public administration discipline have commented on the Uhrig Report which had influenced the establishment of the DHS, of which Centrelink and the HIC are a part. Roger Wettenhall commented that at the outset the Uhrig inquiry denied itself the possibility of meeting up with people who could have established links for the inquiry and widened its horizons.¹² Ian Holland considered that the Uhrig Report had four

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major flaws. The inquiry had not considered what direction to take for governance of statutory authorities; secondly, it avoided "...examining the governance of highly autonomous statutory authorities";¹³ thirdly, it incorrectly assumed that a legislative framework protects the operational independence of a statutory authority; and fourthly, it paid no attention to overseas experience or models of governance.¹⁴ Stephen Bartos considered the Uhrig Report barely addressed questions of ethics nor did it address the role of statutory authorities in managing risk and, in particular, political risk.¹⁵

However, significant interest groups have not announced positions against the introduction of this Bill.

Press commentary has been limited and concerned mainly with the Prime Minister's announcements, on 22 October 2004, of the appointment of Joe Hockey as the Minister for Human Services,¹⁶ and Patricia Scott as the Secretary of the DHS.¹⁷ After that date there were three controversial issues covered by the press.

In May 2005, the *Australian Financial Review* commented on the impact of policy matters on the Department of Human Services and Minister Hockey's focus on improved IT structures.¹⁸ The article also suggested there were some transitional clashes between portfolios relating to six agencies under the DHS and that relevant Ministers had sought "...legal advice as to the extent of their powers under the new portfolio structures."

In July 2005, the *Australian Financial Review* commented on Centrelink's call for bids for a \$100 million high-speed network upgrade. The article alleged that two years after the initial bids were called the process was still unresolved with resulting impact on 400 Centrelink offices and service delivery problems for recipients of child support, disability support pensions and Medicare rebates.¹⁹

The third issue covered was a demarcation dispute between two Government Ministers regarding responsibility for policy and service delivery matters. An article in *The Australian* in March 2005 suggested there were mounting problems with the Government's attempts to reform the federal bureaucracy, particularly in the delivery of human services. The article alleged that Minister Hockey was "...being cut off from key welfare delivery agencies he was meant to control" and that Senator Patterson was reluctant "...to share control with Mr Hockey, who is meant to oversee delivery of services."²⁰

Pros and cons of Executive devolution of decision-making

This Bill attempts to implement a new service delivery model in response to perceived public frustrations: "Citizens are demanding seamless services and are frustrated with duplications, gaps and lack of integration."²¹ Therefore, there is a need to strike an optimal balance between devolution and coordination to achieve 'whole of government' activities and service-wide capability objectives.²²

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On the debit side, to some observers this management approach to service delivery masks a different issue. Some have argued that the public service in Australia is well reformed and has ‘become something of a beacon for other nations’²³, however John Wanna considers the terms ‘whole of government’ and ‘joined-up’ approaches are euphemisms: the Executive does not want too much decision-making devolved too far down the line.²⁴

Prime Minister Howard has made it clear that some advisory boards to statutory authorities will go.²⁵ “Existing boards will continue to provide advice to the Minister with the aim of establishing a single Advisory Board on Human Service...”²⁶ The Advisory Board of Human Services will advise the Secretary of DHS, who will in turn advise the Minister,²⁷ as well as coordinate the operations of the six agencies.²⁸ In the long term however, this public sector management approach might have negative cumulative effects on public and business interests. The Uhrig Report recommends that statutory agencies and office holders be required to provide to departmental heads the same accountability information they currently provide to ministers.²⁹ In response, the changes made by this Bill would place the power to appoint, direct and control the CEO of Centrelink and Medicare Australia directly in the hands of the Minister for Human Services.

Reduction in opportunities for consultation

It might be time to look at whether there is to be a correlation between tighter government control of regulators and public servants, and decreased public confidence in the Government.³⁰ There will always be some tensions with some of the conventions of our system of government, but it has been argued that this does not mean that public opinion or specialist advice should be ignored.³¹ In abolishing the advisory boards of the HIC (Medicare Australia) and Centrelink, it is possible that the sounding board of advice on delivery issues and service improvement proposals in human services,³² which are currently available to the Minister for Human Services, would be diminished. By significantly reducing the number of advisory board members, the opportunity for public consultation with board members is curtailed. Furthermore, it could be argued that with fewer individuals able to comment on Human Services matters, there will be a limited range of opinion available to the Government.

It could also be argued that with the new powers available to the Minister for Human Services, there will be an increased level of responsibility for matters touching on other portfolios. The changes made by the Bill would empower the Minister for Human Services to direct specific CEOs, but it would also mean that the Minister is responsible if service delivery is not implemented or executed effectively.

In this situation, it would be the Minister for Human Services who would be directly responsible and accountable to Parliament and not the Ministers responsible for policy development.

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As part of this scenario, associated policy turf wars might also increase as a result of six statutory authorities being managed by the one Advisory Board.

Furthermore, weakly developed cross-cutting measures³³ across portfolios could lead to inadequate performance management.³⁴ For example, the recent demarcation dispute between Ministers Patterson and Hockey³⁵ has highlighted the difficulties which some Government members have experienced in relinquishing control over specific policy and service delivery matters. Therefore, it could be argued that the medium-term effect of seeking to address one management issue by means of legislation and reporting requirements might create a new set of difficulties which would later need to be addressed by the Government.

Costs

There will be no financial impact to the Government from the introduction of the Bill.³⁶ However, public funds would be used for public information campaigns and branding issues associated with the Department of Human Services and, in particular, with Medicare Australia.³⁷

Main Provisions

Schedule 1 to the Bill provides for amendments relating to Centrelink. Part 1 of Schedule 1 deals with amendments to the *Commonwealth Services Delivery Act 1997*, and Part 2 contains consequential amendments to other legislation arising from the amendments to the *Commonwealth Services Delivery Act 1997*. Part 3 contains transitional provisions to ensure that governance changes do not disrupt Centrelink's service delivery to customers and to cover other transitional issues such as reporting.

Schedule 2 to the Bill provides for amendments relating to the Health Insurance Commission. Part 1 of Schedule 2 deals with amendments to the *Health Insurance Commission Act 1973*, and Part 2 contains consequential amendments to other legislation arising from the amendments to the *Health Insurance Commission Act 1973*. Part 3 contains transitional provisions to ensure that governance changes do not disrupt HIC's service delivery to customers and to cover other transitional issues such as reporting.

The Government considers it is appropriate to rename the HIC because, once the changes have been made by the Bill, the successor body to HIC will no longer be a commission. The naming of the new body "Medicare Australia" was selected and is supported by the Government as it reflects one of the key roles of the HIC which is the delivery of the Medicare program. "Medicare" is also a name commonly known by many Australians.³⁸

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Concluding Comments

Overall the intention of the Bill is to resolve perceived service delivery problems for the two statutory authorities. The Bill aims to develop clear lines of accountability from the Minister down to the agency. This is designed to implement better corporate governance in the public sector.³⁹ The changes to be made by the Bill would clarify lines of reporting and accountability for the Secretary, including relevant Ministers, Departmental Secretaries and public servants. In essence, the changes would mean formal accountability upwards to Ministers who in turn are accountable to Parliament.⁴⁰

Whilst this is a worthy goal, the mechanisms adopted by the Bill might be difficult to implement. Turf wars over resourcing issues between Ministers, which have already received press coverage, could continue with resulting public and administrative loss of confidence in Ministerial abilities to effectively manage organisational change. Tighter government control of the service delivery processes means that those areas responsible for policy matters, and those areas responsible for operational elements, will need to be structurally separated. This will mean that the relevant departments and statutory authorities involved will need to devote considerable efforts to implement the structural changes mandated by the Bill which might come at the cost of effectively implementing current human service delivery.

Furthermore, there is a danger that the Advisory Board to be established will not be effective in providing advice and guidance to the Government unless it seeks and receives current, timely and relevant information on service delivery initiatives conducted by Medicare Australia and Centrelink with support from the DHS. This information could be more readily achieved by ensuring that sufficient opportunities are provided for members of the public to be consulted on the implementation of human service delivery initiatives.

Endnotes

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 - 12 R. Wettenhall, 'Statutory Authorities, The Uhrig Report and the Trouble with Internal Inquiries', *Public Administration Today*, Issue 2, December – February 2004, p. 65.
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 - 21 Commonwealth of Australia, *Connecting Government*: op. cit., p. 226.
 - 22 Commonwealth of Australia, *State of the Service Report 2002-03*, State of the Service Series 2002-03, p. 198, www.apsc.gov.au/stateoftheservice/0203/report.pdf

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- 24 J. Wanna, op. cit p. 21.
- 25 P. Malone, 'Boards go in Public Service changes', *The Canberra Times*, 23 October 2004, p. 5.
- 26 J. Howard (Prime Minister) 'Fourth Howard Ministry', loc cit.
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