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Health Workforce Australia Bill 2009

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Health Workforce Australia Bill 2009

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House: House of Representatives

Portfolio: Health and Ageing

Commencement: Sections 1 and 2 on Royal Assent and sections 3 to 43 the later of the day the Act receives Royal Assent or 1 July 2009.

Links: The relevant links to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at http://www.aph.gov.au/bills/. When Bills have been passed they can be found at ComLaw, which is at http://www.comlaw.gov.au/.

Purpose

The purpose of the Health Workforce Australia Bill 2009 (the Bill) is to establish Health Workforce Australia (the HWA) as a statutory authority and to specify its functions, governance and structure.

Background

Basis of policy commitment

The Productivity Commission (the Commission) was asked by the Council of Australian Governments (COAG) in June 2004 to investigate institutional, regulatory and other factors across both the health and education sectors. In its report entitled *Australia's Health Workforce*, released on 19 January 2006 the Commission concluded that a more sustainable and responsive health workforce for Australia was needed.[1] It noted also the complexity of Australia's health workforce arrangements and the involvement of numerous bodies at all levels in health workforce education and training. It added:

> Such specialisation in functions contributes to quality health outcomes, but given the interdependencies within health workforce arrangements, it can also hinder effective policy formulation and adjustment to changing care demands.[2]

1. Productivity Commission, *Australia's health workforce*, research report, Canberra, December 2005, viewed 14 May 2009, http://www.pc.gov.au/__data/assets/pdf_file/0003/9480/healthworkforce.pdf
2. Productivity Commission, *Australia's health workforce*.

One of the Commission's recommendations was therefore that more effective governance arrangements for institutional and regulatory structures for the health workforce were established nationally. The Commission considered that such arrangements would ensure decision making processes were 'objective, informed by appropriate expert advice, transparent and reflect the public interest'.[3]

On 29 November 2008, COAG agreed to a National Partnership on Health and Hospital Reform of over $3 billion to improve efficiency and capacity in public hospitals through four reform components. One of these components reflected the earlier recommendations of the Commission and involved the creation of:

> … a National Health Workforce Agency to establish more effective, streamlined and integrated clinical training arrangements and to support workforce reform initiatives. Its responsibilities will include funding, planning and coordinating clinical training across all health disciplines; supporting health workforce research and planning; funding simulation training; and progressing new workforce models and reforms. [4]

The new agency was to be established to commence the management of undergraduate clinical training from January 2010.

Committee consideration

The Bill has been referred to the Senate Standing Committee on Community Affairs for inquiry and report by 15 June 2009. Details of the inquiry are at http://www.aph.gov.au/Senate/committee/clac_ctte/health_workforce_09/index.htm

Position of significant interest groups/press commentary

The Australian Medical Association (AMA) and the Royal Australian College of General Practitioners (RACGP) have made no specific comment on the Bill. However, both bodies have previously expressed concern about what they consider is the Government's attempt to interfere in the processes of medical education and training in relation to the introduction of a national registration process.[5] The idea of a national registration scheme

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3. Productivity Commission, *Australia's health workforce*.
4. Council of Australian Governments (COAG), *National Partnership Agreement on Health and Hospital Reform*, December 2009, viewed 14 May 2009, http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/national_partnership/national_partnership_on_hospital_and_health_workforce_reform.rtf
5. Refer to S Obsorn, 'Registration risks standards: RACGP', *Australian doctor,* 19 August 08, viewed 14 May 2009, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FS8MR6%22 and J Flannery, 'National registration flashpoint', *Australian medicine,* 7 April 08, viewed 14 May 2009,

for the health professions is based on another recommendation from the Commission's report. The Commission recommended that a single national registration board for health professionals, as well as a single national accreditation board for health professional education and training was established. In response to the Commission's recommendations, COAG decided in 2008 to establish nine national boards for nine medical professions. The national scheme was to have the effect of abolishing the current state and territory based registration boards for those health professions.[6]

It may be that organisations like the AMA and the RACGP will be wary of the HWA for similar reasons to those they have given in opposing the national registration scheme. These bodies consider that under the national registration scheme matters relating to medical education and training will not be independent of government interference. The AMA in particular has been concerned that under national accreditation requirements there would be no ongoing role for medical colleges 'in training, conferring specialist qualifications, continuing competence and professional development and in the assessment of overseas medical graduates with specialist qualifications'.[7] The organisations could apply a comparable argument to the proposed HWA's arrangements—that the body will undermine the control medical organisations have over the selection of students for clinical training in medicine and the medical education and training curricula delivered by medical training facilities.

It could be argued, however, that objections to the national accreditation scheme by the medical bodies are, as Professor Peter Brooks, Executive Dean of Health Sciences at the University of Queensland argues, nothing more than 'turf wars' and maintaining the power base of the medical profession.[8] It would be possible to dismiss objections to the establishment of the HWA on similar grounds.

There appears to be no like arguments from other health workforce stakeholders about national accreditation arrangements. Indeed, patient groups and the nursing profession welcomed that scheme.[9] It is probable therefore that there will be no objections raised by

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http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2FS82Q6%22

6. COAG, Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions, COAG Meeting 26 March 2008**,** viewed 18 May 2009, http://www.coag.gov.au/coag_meeting_outcomes/2008-03-26/docs/iga_health_workforce.pdf

7. Australian Medical Association (AMA), *National registration and accreditation*, AMA, 6 January 2009, viewed 15 May 2009, http://www.ama.com.au/nras

8. Radio National, 'Doctors divided over national registration scheme' *PM*, 25 March 2008 http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22emms%2Femms%2F99926%22

9. Australian Nursing Federation, *National registration supported by nurses*, media release, 26 March 2008, viewed 18 May 2009, http://www.anf.org.au/ and Consumers Health Forum of

other health workforce bodies or health consumers on these grounds to the measures proposed in the Bill.

Submissions to the Commission indicated support for the establishment of such an authority with the New South Wales Government for example, noting that serious role conflicts in the health sector influences workforce supply and these conflicts coupled with 'government disconnects' can lead to workforce shortages.[10] Similarly, the Australian Private Hospitals Association considered that until the resolution of the problem of fragmentation of roles and responsibilities can be found, it would be unlikely that sustainable, long-term solutions to shortcomings in the health workforce would be developed or agreed upon.[11]

The Committee of Deans of Australian Medical Schools also appears to support the establishment of a 'national coordination mechanism for the continuum of medical education … so that flexible, viable and innovative new models can be explored and, if feasible and successful, funded'.[12]

It appears the only recent comment on the establishment of HWA has been made by the National Rural Health Alliance (NRHA). The NRHA has expressed concern about transparency aspects of the new body, arguing that it has not been made clear to what extent the HWA reports and findings, and the methodology used to produce them, will be accessible to the public.[13] This may be an issue which raises questions for other stakeholders, who may seek further clarification.

Financial implications

The Commonwealth will provide $125 million over four years for the establishment and operation of HWA. A further $1.2 billion in combined Commonwealth and states and territory funding will be administered through HWA over four years for initiatives under the COAG health workforce package.

Australia, *Health consumers want national registration of health professionals*, media release, 25 March 2008, viewed 18 May 2009, http://www.chf.org.au/Docs/Downloads/National_registration_health_professionals.pdf

10. New South Wales Government, submission 178 (p. 4.) to the Productivity Commission.
11. Australian Private Hospitals Association, submission 109 (p. 4) to the Productivity Commission.
12. Committee of Deans of Australian Medical Schools, submission 49 (p. 3) to the Productivity Commission.
13. A Cresswell, 'GPs shortage a long-term worry', *The Weekend Australian*, 19 April, 2009, p. 24.

The annual funding for HWA was summarised in the Explanatory Memorandum to this Bill and is replicated below.

	2009/10 ($ million)	**2010/11 ($ million)**	**2011/12 ($ million)**	**2012/13 ($ million)**	**Total ($ million)**
Direct HWA funding	25.0	30.0	35.0	35.0	125.0
Funding administered through HWA	171.1	345.7	364.4	338.3	1219.5

Key issues

Under the Bill, HWA will be the body which will specify the eligibility for funding of students and the kinds of clinical training eligible for financial support. The Explanatory Memorandum to the Bill argues that HWA will provide more effective governance across health workforce areas by establishing more effective, streamlined and integrated clinical training arrangements.[14] There is scope in the legislation for the appointment of appropriately qualified staff, consultants and the establishment of committees to make these decisions.

The Explanatory Memorandum adds:

> It is anticipated eligibility will, in the first instance, be limited to students in a Commonwealth supported Australian tertiary institution undertaking clinical training that leads to professional entry or registration in a relevant health discipline. Eligible courses are expected to be those that are accredited by a recognised accrediting body for the purposes of registration, or where this is not applicable, otherwise specified in the legislative instrument.[15]

It remains, however, that it is most likely within the scope of the proposed legislation to deviate from this initial direction. One issue which therefore could be perused by some health workforce organisations is whether it should be the prerogative of government to be given such authority to make decisions that may influence the composition of future health workforces.

14. Explanatory Memorandum, Health Workforce Australia Bill 2009, p. 1.

15. Explanatory Memorandum, p. 4. Such legislative instruments would be disallowable by either House of Parliament, unless it was deemed exempt under section 44 of the *Legislative Instruments Act 2003.*

A further issue that could also be raised is whether one body alone should be making decisions in relation to the appropriateness of training for a diverse group of health professionals. As noted above, it may be that the organisations representing the medical workforce will object to this aspect of the legislation, citing this type of justification. Another argument that could be advanced is that it would be preferable to adopt a parallel approach to that of the national accreditation and registration scheme, by establishing separate bodies to coordinate the needs of the various workforces, rather than leaving this task to one body.

On the other hand, a key motivation for this legislation is that the development and articulation of a national strategy for workforce reform is most likely to be best achieved by a body that is able to work with and across jurisdictions. Establishing a number of dispirit bodies each representing the interests of its particular health profession, possibly to the exclusion of the interests of the other professions, is less likely to achieve coordinated, national outcomes.

Main provisions

Clause 4 establishes Health Workforce Australia (HWA) as a statutory Commonwealth authority. Its functions are set out by **clause 5**. In general, these relate to facilitating the training of the health workforce.[16] The Explanatory Memorandum states that its 'major functions… [are to]… plan, coordinate and provide funding in relation to eligible pre-professional entry clinical training and supervision and to provide advice to health ministers on health workforce issues'.[17] Additional functions can be conferred on HWA by regulations, but only if this has been requested by the Australian Health Ministers' Conference (the Ministerial Conference): **subclause 5(2)**.[18] **Clause 6** gives HWA the power to do all things 'necessary or convenient' in order to carry out its functions under clause 5.

Clause 7 empowers the Ministerial Conference to give general directions to HWA regarding the performance of its functions and exercise of its powers. Such directions cannot be inconsistent with the Act nor the *Commonwealth Authorities and Companies Act 1997*, nor regulations or other instruments under either of those Acts. In addition, the Ministerial Conference must consult with the HWA Chair before giving any general directions. A direction is not a legislative instrument, and thus does not have to be tabled

16. 'Health workforce' is defined in clause 3 as 'the body of individuals providing, or employed to provide, to the Australian public: (a) professional health care services; or (b) professional services ancillary to health care'.

17. Explanatory Memorandum, p. 3.

18. Under clause 40, where the Act provides for the giving of an agreement or a direction or a making of a request by the Ministerial Conference, this agreement etc is done by the passing of a Conference resolution in accordance with its own procedures.

in parliament. Presumably information on such directions could be contained in HWA's annual report it would have to submit under the *Commonwealth Authorities and Companies Act 1997*.

Clauses 8-24 deal with the establishment, role, membership and operation of HWA's Board (the Board). **Clause 8** establishes the Board, which under **clause 9**, is 'responsible for ensuring the proper and efficient performance' of HWA's functions.

Under **clause 10**, the Board will consist of a Chair, and up to 12 other members. The Commonwealth, and each state and territory, may each nominate one member. Members are appointed by the Commonwealth Minister, with the approval of the Ministerial Conference. Appointments are on a part-time basis, for a fixed term of between three and five years.[19] There are no requirements that members hold any particular qualifications or experience.

Clause 17 deals with the termination of Board members' appointment. A government-nominated member *may* be terminated by the Minister without cause at any time, with the agreement of the Ministerial Conference. Members that are not government nominees *may* only be terminated for misbehaviour or physical or mental incapacity, again provided the Ministerial Conference agrees. The Minister *must* terminate a member's appointment (that is, there is no requirement for Ministerial Conference agreement), on a fairly standard set of grounds – for example if they fail, without reasonable excuse, to meet their relevant disclosure and conflict of interests obligations under the *Commonwealth Authorities and Companies Act 1997*. Provisions on remuneration, leave, resignation, additional conditions of employment, board procedures etc are standard for members and boards of Commonwealth statutory authorities.

The day-to-day administration of HWA is the responsibility of its Chief Executive Office (CEO): **clause 26**. The inaugural CEO is to be appointed by the Minister after consultation with the Ministerial Conference: **subclause 27(7)**. Subsequent CEOs are to be appointed by the Board, after consultation with the Minister, who must themselves consult the Ministerial Conference: **subclauses 27(1)-(2)**. Appointments are on a full-time basis, for a fixed term of between three and five years.[20]

Clause 34 deals with termination of a CEO's appointment. The CEO *may* be terminated by the Board for misbehaviour or physical or mental incapacity, but only after consultation with the Minister, who must consult the Ministerial Conference. The Board *must* terminate a CEO's appointment on a fairly standard set of grounds – for example if he or she fails, without reasonable excuse, to meet his or her relevant disclosure obligations under **clause**

19. Persons can be appointed as a member on an acting basis to fill vacancies or where a member is on leave or unable to perform their duties. Such appointments require the agreement of the Ministerial Conference: **clause 13**.

20. Again, acting appointments may be made: **clause 28**.

32. If the Board terminates the CEO's appointment, they must notify the Minister. Provisions on remuneration, leave, resignation, additional conditions of employment, etc are standard for CEO's of Commonwealth statutory authorities.

HWA may employ staff, and engage consultants, as required: **clauses 36 and 38**. The services of officers and employees from Commonwealth, state or territory public services agencies or bodies may 'be made available' to HWA: **clause 37**.

Clause 39 enables HWA to establish committees to provide advice or assistance to it in the performance of its functions under clause 5. Committee membership can be drawn both from Board members and others. Matters such as the committee terms of reference, procedures and the like are determined by HWA.

Clause 41 states that HWA is not subject to taxation under any Commonwealth, state or territory law.

Clause 42 out the various constitutional heads of power on which the Act seeks to rely. These are exceptionally varied, and include:

- the corporations power (section 51(xx))
- the statistics power (section 51(xi))
- the power with respect to medical or dental services, hospital and student benefits etc (section 51(xxiiiA))
- the territories power (section 122)
- the power with respect to the expenditure of money appropriated for the purposes of the Commonwealth (section 81)
- the financial assistance to states and territories power (section 96)
- the implied nationhood power
- the Executive power (section 61)
- the incidental power (section 51(xxxvix)

Clause 43 is a standard regulation-making power.

Concluding comments

The issue of reform which will make Australia's health workforce more responsive to changing health needs has been the subject of discussion for some time. In its 2005 report on the health workforce, the Productivity Commission recommended a number of structural changes, which it argued would work towards this end by streamlining and improving governance and administrative practices. COAG has accepted the efficacy of

adopting such practices and has agreed to establish a body that will coordinate clinical training across jurisdictions. In addition, the body will assist Health Ministers in research and analysis of health workforce matters, and importantly develop and evaluate health workforce strategies from both a national and overall workforce perspective.

As the Productivity Commission notes, coordination and collaboration has been deficient in a number of key areas and has been a major contributor to existing problems in the health workforce.[21] HWA is intended to address some of the specific shortcomings. These include: ineffective coordination between governments at the workforce planning phase, which has led to a lack of information and failures to link projections on the numbers of future health workers required with employers needs. It has also meant that there have not been sufficient mechanisms in place to ensure the potential number of clinical trainee places matches student numbers and that lessons learned from strategic evaluations of workforce programs are not adequately shared.[22]

There may be some objections to the establishment of HWA on the grounds that it will be authorised to undertake tasks that some consider should be solely the prerogative of appropriately trained experts. In spite of such possible objections, it appears that a national body which can work with, and across jurisdictions is a necessary step in the development of the national workforce policy reform agenda as agreed to by COAG.

21. Productivity Commission, *Australia's health workforce*.

22. Productivity Commission, *Australia's health workforce*.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2429.