

THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

EXPLANATORY STATEMENT

HEALTH (NATIONAL HEALTH FUNDING POOL AND ADMINISTRATION)
BILL 2012

Presented by
Katy Gallagher MLA
Minister for Health
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HEALTH (NATIONAL HEALTH FUNDING POOL AND ADMINISTRATION) BILL 2012

OVERVIEW

The Health (National Health Funding Pool and Administration) Bill 2012 gives effect to the funding arrangements as set out in the National Health Reform Agreement (NHRA) as agreed to by the Council of Australian Governments (COAG) in August 2011.

HUMAN RIGHTS IMPLICATIONS

There are no human rights implications associated with this Bill.

DETAIL

Part 1 Preliminary

Clause 1 Name of Act

This clause is a technical clause and sets out the name of the proposed Act as the *Health (National Health Funding Pool and Administration) Act 2012*.

Clause 2 Commencement

This clause is a technical clause setting out when commencement of the Act will occur. It is intended that the Act will commence on 1 July 2012.

Clause 3 Dictionary

This clause indicates that the dictionary is at the end of this Act.

Clause 4 Standing council on health

This clause provides that the standing council on health only includes the Ministers of Health for the Commonwealth and each of the States and Territories and that the relevant Minister for this Act is the Minister for Health.

Clause 5 Interpretation

This clause provides that the *Legislation Act 2001* does not apply to this Act other than Part 1 (Preliminary), section 37 (Regulation-making power) and Part 6 (Transitional). This is because the Act has adopted by incorporation the interpretation provisions contained in schedule 7 of the Health Practitioner Regulation National Law (ACT).

Clause 6 Notes

This clause is a technical clause that explains that a drafter's note is explanatory and is not part of the Act.

Part 2 Administrator of the national health funding pool

Clause 7 The office of administrator

This clause establishes the office of the administrator which will be an individual appointed by the Minister for Health and who will also be appointed by the Commonwealth and every other State and Territory.

Clause 8 Appointment of administrator

This clause provides the detail regarding the appointment of the administrator. All members of the standing council on health can nominate individuals for appointment. All members of the Council must agree on the appointment. The Minister for Health must make the appointment. The appointment must be in writing and not exceed five years. The appointed administrator is eligible for reappointment and is entitled to remuneration in accordance with the law of the Commonwealth. In accordance with the NHRA all costs associated with the recruitment and establishment of the Administrator will be borne by the Commonwealth.

Clause 9 Suspension of the administrator

This clause provides the detail regarding the suspension of the administrator. The administrator is required to be suspended from office if requested by at least three members of the standing council on health or by the Minister of Health for the Commonwealth.

The administrator cannot be requested to be suspended by a member of the standing council on health unless the member is satisfied that the administrator is unable to perform his or her functions because of any physical or mental incapacity or otherwise; has failed to comply with his or her obligations or duties as administrator; or has been accused or convicted of an offence that carries a penalty of imprisonment; or has or may become bankrupt.

Any suspension has to be effected by an instrument in writing and the chair of the standing council on health is responsible to notify all members of the council. Sub clause (4) provides that after 60 days the suspension becomes a termination unless a majority of the Council extends the suspension or conversely terminates the suspension.

Sub clause (5) provides that the chair of the council is not able to suspend the administrator from office within the period of 90 days after an earlier period of suspension was terminated unless a majority of the members of the council request the chair to do so.

Clause 10 Removal or resignation of administrator

This clause provides for the removal or resignation of the administrator. If a majority of members of the standing council on health agree to the administrator's removal from office then the Minister for Health must remove the administrator. The administrator is to be removed from office by an instrument in writing that takes effect on the date agreed to by the majority of the members of the standing council on health. The administrator may resign as administrator by notice in writing to the chair of the standing council on health. The resignation of the administrator takes effect on the date notified by the chair of the standing council on health to all members of the council.

Clause 11 Acting administrator

This clause provides that the chair of the standing council on health may, from time to time, appoint an individual to act as the administrator during any period when the office is vacant or the holder of the office is suspended or absent from duty. Any acting appointment may only be made from a panel of people, and in accordance with the procedure, agreed to by all the members of the standing council on health.

Clause 12 Provision of staff and facilities for administrator

This clause requires that the staff and facilities to assist the administrator in exercising or performing his or her functions under this Act are to be provided for by the national health funding body constituted under the *National Health Reform Act 2011* (Cwlth). Sub clause (2) provides that the administrator is not entitled to delegate a function conferred on the administrator under this Act to that body, to a member of the staff or to any other person or body.

Clause 13 Functions of administrator

This clause provides for the functions of the administrator. The administrator is required to calculate and advise the Treasurer of the Commonwealth of the amounts required to be paid by the Commonwealth into each state pool account of the national health funding pool under the national health reform agreement (including advice on any reconciliation of those amounts based on subsequent actual service delivery).

The administrator is to monitor State payments into each state pool account for the purposes of part 4 (Financial management and reporting), and to make payments from each state pool account in accordance with the directions of the State concerned. The administrator is to report publicly on the payments made into and from each state pool account and other matters on which the administrator is required to report under this Act.

The administrator is also to exercise or perform any other functions conferred on the administrator under this Act. The administrator and the body and staff assisting the administrator are not subject to the control or direction of any Minister of the Commonwealth in relation to the exercise or performance of

the administrator's functions under this Act. However, the administrator is required to comply with any directions given by COAG in relation to the manner in which the administrator exercises or performs his or her functions under this Act (including in relation to the preparation or provision of annual or monthly reports, financial statements or information under part 4).

Directions given by COAG under subsection (3) are to be given in accordance with a written resolution of COAG passed in accordance with the procedures determined by COAG, are to be notified in writing to the administrator and are to be made publicly available by the administrator.

Sub clause (5) makes it clear that this Act is not intended to give the Commonwealth ownership or control of money in a state pool account, or to have any affect on the obligation of the administrator under the law of a State to make payments from the state pool account of the State in accordance with the directions of the State.

In addition, sub clause (6) makes it clear that the administrator may have regard to information obtained in the exercise or performance of functions under the law of another jurisdiction in the exercise or performance of the administrator's functions under part 4.

Part 3 National health funding pool

Division 3.1 State pool account

Clause 14 Establishment of ACT local hospital network directorate

This clause provides that the Treasurer must, under the *Financial Management Act*, establish and keep a directorate (the ACT local hospital network directorate) for this Act.

Clause 15 Establishment of state pool account with Reserve Bank

This clause requires the director-general to open and keep a bank account (the state pool account) with the Reserve Bank of Australia solely for the ACT's use under this Act. The state pool account is a directorate banking account of the ACT local hospital network directorate.

Clause 16 Payments into state pool account

This clause provides for what must be paid into the state pool account.

This includes all activity-based funding allocated from ACT funds for the provision of public hospital services under the national health reform agreement; all funding received from the Commonwealth for the provision of public hospital services and other health services under the national health reform agreement; money paid to the ACT by another State for payment into the state pool account under the national health reform agreement; and any

other funding received from the Commonwealth for payment into the state pool account.

Sub clause (2) provides that the following may be paid into the state pool account: exceptional payments for the provision of health services decided by the director-general and any interest earned on the account.

Sub clause (3) provides that the amounts paid into the state pool account may include adjustments to reflect the difference between estimated and actual health services provided; and for other funding reconciliations under the national health reform agreement.

Clause 17 Payments from state pool account

This clause provides for the payments of funds from the state pool account. Payments including the timing of the payments, are to be made only by the administrator in accordance with a direction of the responsible Minister for this jurisdiction. The administrator is required to authorise personally each payment made from the state pool account. Payments from the state pool account are to be made only to local hospital networks and for other health services; or to the state managed fund; or to a Territory banking account (other than the state pool account or the state managed fund); or for any other matter that is to be funded through the state pool account.

Any payment to a local hospital network includes a payment to another entity on behalf of the network for corporate or other services provided to the network by that entity. A direction made by the Minister to the administrator for the payment of funds from the state pool account is to be consistent with the purpose for which the funding was paid into the account; the national health reform agreement; advice provided by the administrator about the basis on which the administrator has calculated payments into the account by the Commonwealth, and any relevant service agreement between the director-general and a local hospital network.

Sub clause (6) makes it clear that this section does not prevent the Minister from directing the administrator to pay funds to reflect the difference between estimated and actual health services provided, for other funding reconciliations under the national health reform agreement;) to correct any error in payments out of the state pool account, to pay fees associated with maintaining the state pool account, including financial institution fees and audit fees; or for interest earned on the state pool account, or for any purpose decided by the ACT Treasurer.

Clause 18 Payment from the state pool account if no administrator

This clause provides if there is no administrator or acting administrator appointed under this Act, the director-general may pay funds from the state pool account at the direction of the responsible Minister for this jurisdiction as if the director-general were the administrator.

Clause 19 Distribution of Commonwealth funding

This clause provides for directions by the responsible Minister for this jurisdiction to the administrator for payments from the state pool account are, in relation to the distribution of Commonwealth funding provided to the ACT under the national health reform agreement, to be consistent with the advice provided by the administrator to the Treasurer of the Commonwealth about the basis on which the administrator has calculated the payments to be made into that account by the Commonwealth.

Sub clause (2) makes it clear that this section does not affect the obligation of the administrator to make payments from the state pool account strictly in accordance with the directions of the responsible Minister for this jurisdiction.

Division 3.2 State managed fund

Clause 20 Establishment of state managed fund

This clause provides that the director-general must open and keep an account (the state managed fund) with an authorised deposit-taking institution. The state managed fund is a directorate banking account of the ACT local hospital network directorate.

Clause 21 Payments into state managed fund

This clause provides that the following must be paid into the state managed fund; block funding for the provision of public hospital services and other health services allocated by the ACT under the national health reform agreement; funding for teaching, training and research related to the provision of health services allocated by the ACT under the national health reform agreement; amounts paid from the state pool account equivalent to block funding and funding for teaching, training and research related to the provision of health services provided by the Commonwealth under the national health reform agreement; and any other amounts paid from the state pool account.

Sub clause (2) provides that exceptional payments for the provision of health services decided by the director-general may be paid into the state managed fund.

Sub clause (3) provides that the amounts paid into the state managed fund may include adjustments to reflect the difference between estimated and actual health services provided; and for other funding reconciliations under the national health reform agreement.

Sub clause (4) provides a definition of block funding which means funding for public hospital services for public patients that are not appropriately funded through activity-based funding, but does not include top-up funding provided by the Commonwealth under the national health reform agreement.

Clause 22 Payment from the state managed account

This clause provides for the payment of funds from the state managed fund. Payments from the state managed fund including the timing of the payments, is to be made by the director-general.

Sub clause (2) provides that payments from the state managed fund are to be made only to local hospital networks and for other health services; to universities and other providers of teaching, training and research related to the provision of health services; to a Territory banking account (other than the state pool account or the state managed fund).

Sub clause (3) provides that a payment to a local hospital network includes a payment to another entity on behalf of the network for corporate or other services provided to the network by that entity.

Sub clause (4) provides that a payment of funds from the state managed fund is to be consistent with; the purpose for which the funding was paid into the fund; the national health reform agreement; and any relevant service agreement between the director-general and a local hospital network.

Sub clause (5) provides that this section does not prevent the director-general from paying funds from the state managed fund; to reflect the difference between estimated and actual health services provided; for other funding reconciliations under the national health reform agreement; to correct any error in payments out of the fund; or to pay fees associated with maintaining the fund, including financial institution fees and audit fees.

Part 4 Financial management and reporting

Clause 23 Financial obligations of administrator

This clause provides that the administrator must develop and apply appropriate financial management policies and procedures with respect to the state pool accounts (including policies and procedures to ensure payments from the accounts are made in accordance with the directions of the responsible Minister); keep proper records in relation to the administration of the state pool accounts, including records of all payments made into and from those accounts and the basis on which the payments were made; and prepare the financial statements required by this part in relation to the state pool accounts and arrange for the audit of those financial statements in accordance with this part.

Clause 24 Monthly reports by administrator

This clause provides that the administrator must provide monthly reports to the Commonwealth and each State and Territory containing the following information for the relevant month; the amounts paid into each state pool account and state managed fund by the relevant State and the basis on which the payments were made; the amounts paid into each state pool account by

the Commonwealth and the basis on which the payments were made; the amounts paid from each state pool account to local hospital networks, a state managed fund or other organisations or funds and the basis on which the payments were made; the amounts paid from each state managed fund to local hospital networks or other organisations or funds and the basis on which the payments were made; the number of public hospital services funded for each local hospital network (including a running financial year total) in accordance with the system of activity based funding; and the number of other public hospital services and functions funded from a state pool account or state managed fund (including a running financial year total).

Sub clause (2) provides that a monthly report required to be provided to a jurisdiction under this section is to be provided to the responsible Minister for that jurisdiction or to a body or officer notified to the administrator by that Minister. Sub clause (3) provides that the administrator is to make reports provided under this section publicly available.

Clause 25 Annual reports by administrator

This clause provides that the administrator must, within 4 months after the end of each financial year, provide to the responsible Ministers an annual report on the exercise or performance of his or her functions during the financial year.

Sub clause (2) provides that the annual report must include the following information for the relevant financial year; the amounts paid into each state pool account and state managed fund by the relevant State and the basis on which the payments were made; the amounts paid into each state pool account by the Commonwealth and the basis on which the payments were made; the amounts paid from each state pool account to local hospital networks, a state managed fund or other organisations or funds and the basis on which the payments were made; the amounts paid from each state managed fund to local hospital networks or other organisations or funds and the basis on which the payments were made; the number of public hospital services funded for each local hospital network in accordance with the system of activity based funding; the number of other public hospital services and functions funded from a state pool account or state managed fund.

Sub clause (3) provides that the annual report is to be accompanied by; an audited financial statement for each state pool account; and a financial statement that combines the audited financial statements for each state pool account.

Sub clause (4) provides that the responsible Minister must, as soon as practicable after receiving an annual report under this section, present a copy of the report to the Legislative Assembly.

Clause 26 Administrator to prepare financial statements for state pool accounts

This clause provides that the administrator must, after each financial year, prepare; a financial statement for each state pool account that details financial transactions during that financial year; and a combined financial statement that consists of the financial statements for each state pool account for the financial year.

Clause 27 Audit of financial statements

This clause provides that a financial statement provided under this part for the ACT state pool account is to be audited by the ACT auditor-general in accordance with the Auditor-General Act.

Clause 28 Performance audits

This clause provides that before the ACT auditor-general conducts a performance audit, the ACT auditor-general must notify the auditors-general of all other jurisdictions of his or her intention to conduct the proposed audit.

Sub clause (2) provides that auditors-general who are conducting performance audits at the same time are to make arrangements to co-ordinate the conduct of those audits in relation to any requirements imposed on the administrator. Sub clause (3) provides that a performance audit must be conducted by the ACT auditor-general in accordance with the Auditor-General Act.

Sub clause (4) provides that in this section a performance audit means an audit by the auditor-general of a jurisdiction of the exercise or performance of the functions of the administrator in relation to that jurisdiction to determine whether the administrator is acting effectively, economically, efficiently and in compliance with all relevant laws.

Clause 29 States to provide administrator with information about State managed funds

This clause provides that the responsible Minister for a State is to provide information to the administrator about the following matters relating to the state managed fund of the State that the administrator requires for the preparation of reports and financial statements under this part.

The matters to be reported are; the amounts paid by the State into the state managed fund and the basis on which the payments were made; the amounts paid by the State from the state managed fund to local hospital networks or other organisations or funds and the basis on which the payments were made; and public hospital services and functions that are funded from the state managed fund.

Sub clause (2) provides that the information is to be provided by the time requested by the administrator.

Clause 30 Provision of information generally

This clause provides that the administrator is required to provide to the responsible Minister for a jurisdiction any information requested by that Minister that relates to that jurisdiction. Sub clause (2) provides that the information is to be provided by the time requested by the responsible Minister.

Sub clause (3) provides that the administrator is required to provide to the responsible Ministers of all jurisdictions a copy of advice provided by the administrator to the Treasurer of the Commonwealth about the basis on which the administrator has calculated the payments to be made into state pool accounts by the Commonwealth.

Sub clause (4) provides that the administrator may at any time provide any information that relates to a jurisdiction to the responsible Minister for that jurisdiction.

Sub clause (5) provides that any information relating to a jurisdiction that is provided by the administrator to another jurisdiction may only be publicly released by that other jurisdiction in accordance with arrangements approved by the responsible Minister for the jurisdiction to which the information relates

Part 5 Miscellaneous

Clause 31 Exclusion of ACT Acts

In order to maintain consistency across Australia in regards to the laws applying to the functions of the administrator this clause provides for the exclusion of the following ACT Acts in relation to the administrator or a function exercised by the administrator:

- (a) the *Freedom of Information Act 1989*;
- (b) the *Health Records (Privacy and Access) Act 1997*;
- (c) the *Ombudsman Act 1989*;
- (d) the *Territory Records Act 2002*.

Clause 32 Application of Commonwealth Acts

Consequent on clause 31 this clause provides that the following Acts apply (subject to subsection (2)) as laws of this jurisdiction to or in relation to the administrator or a function exercised by the administrator:

- (a) the *Archives Act 1983* (Cwlth);
- (b) the *Australian Information Commissioner Act 2010* (Cwlth);
- (c) the *Freedom of Information Act 1982* (Cwlth);
- (d) the *Ombudsman Act 1976* (Cwlth);

(e) the *Privacy Act 1988* (Cwlth).

Sub clause (2) provides that each of the Acts mentioned in subsection (1) applies for the purposes of this Act subject to the modifications made by regulations made under the *National Health Reform Act 2011* (Cwlth) with the agreement of all the members of the standing council on health.

Clause 33 Extraterritorial operation of Act

This clause provides that the Legislative Assembly intends that this Act is to operate to include, in so far as the legislative power of the Legislative Assembly permits, the following; things situated in or outside the territorial limits of this jurisdiction; acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction; and things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction.

Clause 34 Act binds the ACT

This clause provides that this Act binds the ACT and, in so far as the legislative power of the Legislative Assembly permits, the ACT in all its other capacities

Clause 35 Delegation of functions of responsible minister

This clause provides that the responsible Minister for this jurisdiction may delegate to an authority or officer of the State the Minister's functions under this Act. Sub clause (2) provides that this section does not apply to the functions of a Minister under part 2 (Administrator of the national health funding pool).

Clause 36 Offences – use or divulge protected information

This clause provides that a person to whom this section applies commits an offence if; the person uses information; the information is protected information about someone else; and the person is reckless about whether the information is protected information about someone else. Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Sub clause (2) provides that a person to whom this section applies commits an offence if:

- (a) the person does something that divulges information; and
- (b) the information is protected information about someone else; and
- (c) the person is reckless about whether—
 - (i) the information is protected information about someone else; and
 - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Sub clause (3) provides that subsections (1) and (2) do not apply if the information is used or divulged:

- (a) under this Act or another territory law; or
- (b) in relation to the exercise of a function, by a person to whom this section applies, under this Act or another territory law; or
- (c) in a court proceeding.

Sub clause (4) provides that subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent.

Sub clause (5) provides that a person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the territory.

Sub clause (6) provides definitions for this section for the words court, divulge, person to whom this section applies, produce, protected information, territory law, and use.

Clause 37 Regulation making power

This clause provides that the Executive may make regulations for this Act.

Part 6 Transitional

Clause 38 Transitional and validation provisions

This clause provides that if on the commencement of this Act, corresponding provisions to this Act have not been enacted by another jurisdiction, the responsible Minister for that jurisdiction for the purposes of this Act is the Minister of that jurisdiction with portfolio responsibility for health.

Sub clause (2) provides that anything done by a Minister of the Commonwealth or of a State before the commencement of this Act that would have been validly done if this Act, and the corresponding provisions of other jurisdictions, had been in force at the time is taken to have been validly done.

Clause 39 Transitional regulations

This clause provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

Sub clause (2) provides that a regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.

Sub clause (3) provides that a regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

Clause 40 Expiry - pt 6

This clause provides that this part and the dictionary, and the definition of responsible Minister, expire 2 years after the day this section commences.