

NATIONAL HEALTH FUNDING POOL BILL 2012

EXPLANATORY MEMORANDUM

Overview of the Bill

This Bill provides for the appointment and conferral of functions on the Administrator of the WA State Pool account forming part of the National Health Funding Pool, and sets out the Administrator's financial management and reporting obligations.

The Bill implements the *National Health Reform Agreement*, an intergovernmental agreement reached between the States, Territories and the Commonwealth in relation to health reform.

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

Long Title

The long title sets out the purpose of the Bill which is to: provide for the appointment of the Administrator of the National Health Funding Pool; provide for the establishment and management of a State Pool Account; amend the *Hospitals and Health Services Act*; and repeal the *Hospital Fund Act 1930* and make consequential amendments.

Part 1 Preliminary

This Part contains the title of the Bill, the relevant commencement provisions and definitions of the terms used within the Bill

Clause 1 Short title

Clause 1 provides that the title of the Bill is the *National Health Funding Pool Act 2012*.

Clause 2 Commencement

This clause provides that sections 1 and 2 of the Bill will come into operation on the day the Act receives Royal Assent. The rest of the Bill will come into operation on a day fixed by proclamation. Different days may be fixed for different provisions.

Clause 3 Terms used

This clause contains the definitions required for the purposes of the Bill. In particular:

“Administrator” is the person appointed under section 5 of the Bill to administer the National Health Funding Pool.

“CEO” means the chief executive officer of the department of the Public Service principally assisting in the administration of the Act, in effect the Director General of the Department of Health.

“State Managed Fund” is a separate fund to the State Pool Account. The National Health Reform Agreement requires certain health funding to be undertaken through a State managed fund.

“State Pool Account” is the bank account established by the State under Part 3 of the Bill.

The “Standing Council on Health” (the Council) is defined under subsection 3 of section 3 as being constituted only by a single Minister for the Commonwealth and a single Minister for each of the States. This acknowledges that there may be more than one Ministerial member of the Council at any time from a jurisdiction. The Standing Council on Health is relevant to the appointment, suspension and removal of Administrator.

Subsections 5 and 6 provide that the Bill is to be interpreted in accordance with the interpretation provisions set out in Schedule 7 to the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law (WA) Act 2010*. All jurisdictions will apply Schedule 7 to ensure a common approach to interpretation of the Bill.

Part 6 of the *Interpretation Act 1984 (WA)* is to continue to apply in relation to the making of regulations under the Bill.

Part 2 Administrator of the National Health Funding Pool

This Part provides for the appointment, suspension and termination of the Administrator, appointment of an Acting Administrator, provision of staff and facilities to assist the Administrator and functions of the Administrator.

Clause 4 The office of the Administrator

The Bill establishes the office of Administrator of the National Health Funding Pool. The same individual is to hold the office for each State, Territory and the Commonwealth.

The office of the Administrator is jointly established by the legislation of the Commonwealth and all States and Territories.

Clause 5 Appointment of Administrator

The Administrator is to be appointed by the Minister who is a member of the Council, effectively the Minister for Health. The appointment is not to be

made unless all members of the Council have agreed on the individual who will be appointed as Administrator, the date that the appointment will take effect and the period and conditions of appointment. The Chair of the Council is to give each member of the Council an opportunity to nominate an individual for appointment.

The Administrator is to be appointed for a term of up to 5 years (eligible for reappointment) and is entitled to be remunerated. A determination about remuneration and the actual remuneration of the Administrator will be determined and paid by the Commonwealth.

Clause 6 Suspension of Administrator

The Chair of the Council is required to suspend the Administrator from office if requested to do so by: at least three members of the Council who are Ministers of State; or the member of the Council who is a Minister of the Commonwealth.

Suspension may only be requested where a member is satisfied that the Administrator:

- is, because of any physical or mental incapacity or otherwise, unable to perform his or her functions satisfactorily; or
- 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.

The suspension is lifted after 60 days unless within that period the Administrator:

- is removed or resigns under section 7; or
- a majority of the Council agree to terminate the suspension; or
- a majority of the Council agree to extend the suspension for a specified period (section 6(4)(b)).

The Chair of the Council is not to suspend the Administrator from office within the 90 days of an earlier period of suspension was terminated unless at the request of a majority of the members of the Council.

Clause 7 Removal or resignation of Administrator

The Administrator is to be removed by the Minister who is a member of the Council, currently the Minister for Health, if a majority of the members of the Council agree to the Administrator's removal from office.

The Administrator may resign as Administrator by notice in writing to the Chair of the Council.

Clause 8 *Acting Administrator*

If the office is vacant or the holder of the office is suspended or absent from duty then the Chair of the Council may appoint an acting Administrator. Such an appointment may only be made from a panel of persons and in accordance with the procedure agreed to by the Council.

Clause 9 *Provision of staff and facilities for Administrator*

Staff and facilities to assist the Administrator in exercising or performing his or her functions are to be provided by the National Health Funding Body established under the *National Health Reform Act 2011* (Cth). The Administrator's functions cannot be delegated to the National Health Funding Body or its staff.

Clause 10 *Functions of Administrator*

This clause provides for the functions of the Administrator which are:

- to calculate and advise the Commonwealth Treasurer 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;
- To monitor payments into each State Pool Account for the purposes of financial management and reporting requirements under Part 4 of the Bill;
- To make payments from each State Pool Account in accordance with the directions of the State concerned; and
- 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 the Bill; and
- To exercise or perform any other functions conferred on the Administrator under the Bill.

In exercising his or her functions, the Administrator and the National Health Funding Body and staff are not subject to the control or direction of any Minister of the Commonwealth. However, the Administrator is required to comply with any directions given by the Council of Australian Governments (COAG) in relation to the manner in which the Administrator exercises or performs his or her functions under the Bill.

Part 3 *State Pool Accounts – the National Health Funding Pool*

This Part provides for the establishment of the State Pool Account – Special Purpose Account, payments into and from the State Pool Account and distribution of Commonwealth funding.

Clause 11 Establishment of State Pool Account – Special Purpose Account

This clause provides for the establishment of an agency special purpose account called the State Pool Account in accordance with the *Financial Management Act 2006* and the National Health Reform Agreement.

Clause 12 Establishment of State Pool Account - Bank Account

This clause provides that the Chief Executive Officer (defined under section 3) is to open and maintain a separate State bank account with the Reserve Bank of Australia (or if another bank is specified in the National Health Reform Agreement, that other bank) for the purpose of the National Health Reform Agreement.

Clause 13 Administration of State Pool Account

This clause provides that the State Pool Account is to be administered by the Chief Executive Officer. This clause also provides for the moneys to be credited to the State Pool Account.

Clause 14 Payments from State Pool Account

This clause provides for the application of moneys from the State Pool Account and services and functions that are to be funded.

Interest earned on money in the State Pool Account is to be credited to the Consolidated Account. Payments from the State Pool Account are to be authorised personally by the Administrator and are to accord with the directions of the Minister for Health.

This clause also provides that if there is no Administrator or the Administrator is not available and a payment is to be made from the State Pool Account, then the payment may be made by an official of the State who is directed by the responsible Minister for the State to make the payment.

Clause 15 Distribution of Commonwealth funding

This clause provides that directions by the responsible Minister to the Administrator for payments from the State Pool Account are, in relation to the Commonwealth funding received by the State under the National Health Reform Agreement, to be consistent with the advice provided by the Administrator to the Commonwealth Treasurer about the basis on which the Administrator has calculated the payments to be made into the State Pool Account by the Commonwealth.

The Administrator must make payments from the State Pool Account in accordance with the directions of the responsible Minister.

Part 4 State Managed Funds

This Part provides for the establishment of State Managed Funds for the purposes of the National Health Reform Agreement.

Clause 16 State Managed Funds

This clause provides for the establishment of State Managed Funds in accordance with the *Financial Management Act 2006* (WA).

There are to be two State Managed Funds established. One is to be for the purposes of the Department of Health (being the department of the Public Service principally assisting in the administration of the *Hospitals and Health Services Act 1927*). This is referred to as the State Managed Fund (Health) Account. The other is to be for the purposes of the Mental Health Commission (being the department of the Public Service principally assisting in the administration of the *Mental Health Act 1996*). This is to be referred to as the State Managed Fund (Mental Health) Account.

The National Health Reform Agreement requires that certain funding of public hospital and other health services be undertaken through a State Managed Fund.

This clause also sets out the money to be credited and debited to each State Managed Fund Account.

Part 5 Financial management and reporting

This Part provides for the financial management obligations of the Administrator, provision of monthly and annual reports by the Administrator, preparation by the Administrator of financial statements for State Pool Accounts, audit of financial statements, performance audits, States to provide the Administrator with information about State Managed Funds and the provision of other information.

Clause 17 Financial management 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. In addition the Administrator must keep proper records and prepare the financial statements in relation to the State Pool Accounts.

Clause 18 Monthly reports by Administrator

This clause provides that the Administrator must provide monthly reports to the Commonwealth and each State containing:

- the amounts paid into each State Pool Account and State Managed Fund 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 number of public hospital services funded for each local hospital network in accordance with activity based funding; and
- the number of other public hospital functions funded from each State Pool Account or State Managed Fund.

The Administrator is to make reports provided under this section publicly available.

Clause 19 Annual report by Administrator

Within 4 months after the end of each financial year, the Administrator must provide to the Minister an annual report on the exercise or performance of his or her functions.

The annual report must include:

- the amounts paid into each State Pool Account and State Managed Fund by the 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 activity based funding; and
- the number of other public hospital services and functions funded from each State Pool Account or State Managed Fund.

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.

After receiving an annual report the responsible Minister must cause a copy of the report to be tabled in Parliament.

Clause 20 Administrator to prepare financial statements for State Pool Accounts

After each financial year, the Administrator must prepare a financial statement for each State Pool Account and a combined financial statement that consists of the financial statements for each State Pool Account.

Clause 21 *Audit of financial statements*

This clause provides that a financial statement for the State Pool Account of Western Australia is to be audited by the Auditor-General of Western Australia.

Clause 22 *Performance audits*

This clause provides for the undertaking of an audit by the Auditor-General of the performance of the functions of the Administrator to determine whether the Administrator is acting effectively, economically, efficiently, and in compliance with all relevant laws.

If the Auditor-General decides to conduct a performance audit then the Auditor General must notify the Auditor Generals of all other jurisdictions of his or her intention to conduct such an audit. If more than one performance audit is being conducted at the same time, the Auditors-General who are conducting the performance audits are to make arrangements to co-ordinate the conduct of those audits in relation to any requirements imposed on the Administrator.

A performance audit conducted by the Auditor-General of Western Australia is to be conducted in accordance with the laws of Western Australia.

Clause 23 *States to provide Administrator with information about State Managed Funds*

This clause provides that the Minister is to provide information to the Administrator in relation to the State Managed Funds of the State that the Administrator requires for the preparation of reports and financial statements under this Part including payments into and out of the funds and the services and functions they funded.

Clause 24 *Provision of other information*

The Administrator is required to provide to the Minister for Health any information that the Minister requests.

A copy of advice provided by the Administrator to the Commonwealth Treasurer in accordance with section 10(1)(a) of the Bill, is to be provided to the responsible Ministers.

The Administrator may at any time provide any information that relates to a jurisdiction to the responsible Minister for the jurisdiction. The public release of information that relates to one jurisdiction to another jurisdiction may only be made in accordance with arrangements approved by the responsible Minister for the jurisdiction to which the information relates.

Part 6 Miscellaneous

This Part provides for the exclusion of certain State administrative legislation in relation to the Administrator, the application of certain Commonwealth administrative law Acts, the extraterritorial operation of the Bill, that the Bill binds the State, the delegation of functions of the responsible Minister, regulation making power, and for transitional and validation provisions.

Clause 25 Exclusion of legislation of this jurisdiction

This clause provides that certain State Acts will not apply to the Administrator. In place of these State Acts, the relevant Commonwealth Acts will apply as Western Australian law in relation to the Administrator (see section 26 of the Bill). These provisions are considered necessary to enable the Administrator to operate within a consistent set of administrative laws, notwithstanding that the person will be effectively appointed nine times by all States and Territories and the Commonwealth. Given the relatively limited role and range of statutory functions to be exercised by the Administrator, the State agreed to this arrangement through the *National Health Reform Agreement*. The State Acts that will not apply to the Administrator are:

- *Freedom of Information Act 1992;*
- *Parliamentary Commissioner Act 1971;*
- *Public Sector Management Act 1994;*
- *State Records Act 2000.*

Clause 26 Application of Commonwealth Acts

This clause provides for Commonwealth Acts to be applied as Western Australian laws in place of the State Acts listed in clause 25 of the Bill for the purpose of establishing a consistent set of administrative laws in relation to the Administrator. The Commonwealth Acts are:

- *Archives Act 1983;*
- *Australian Information Commissioner Act 2010;*
- *Freedom of Information Act 1982;*
- *Ombudsman Act 1976;*
- *Privacy Act 1988.*

Each of above Acts may be modified by regulations made under this Bill, to ensure that the above Acts are able to be administratively workable as laws of the State.

Clause 27 Extraterritorial operation of Act

This clause provides for the extraterritorial operation of the Bill.

Clause 28 Act binds the State

This clause provides that the Bill binds the State.

Clause 29 Delegation of functions of responsible Minister

This clause provides that, except for the functions set out under Part 2 of the Bill (relating to the appointment, suspension and termination of the Administrator), the Minister for Health may delegate to an authority or officer of the State the Minister's functions under the Bill. In practice, this will enable the Director General to direct the Administrator in relation to the flow of funds from the State Pool account to health services on the Minister's behalf.

Clause 30 Regulations

This clause provides that the Governor may make regulations as are required, permitted or are necessary or convenient to be prescribed. The *Interpretation Act 1984* will apply to the making of any such regulations.

Clause 31 Transitional and validation provisions

This clause provides for the circumstances where not all jurisdictions have passed legislation establishing an Administrator and State Pool Account.

If on the commencement day of the Bill, corresponding provisions have not been enacted by another jurisdiction, the responsible Minister for that jurisdiction for the purposes of the Bill is the Minister responsible for health.

This clause also provides that any thing done by a Minister of the Commonwealth or of a State before the Bill commences that would have been validly done if this Bill had been in force at the time, is taken to have been validly done. This allows for the appointment of an Administrator even where a jurisdiction has not passed relevant legislation.

Part 7 Consequential amendments to *Hospitals and Health Services Act 1927*

This Part provides for the amendment of the *Hospitals and Health Services Act 1927*.

Clause 32 Act amended

This clause provides that the *Hospitals and Health Services Act 1927* is to be amended.

Clause 33 Section 21 amended

This clause amends section 21 of the *Hospitals and Health Services Act 1927* by adding a new subsection (h). This will enable public hospital boards to

apply funds under their control for the purposes of funding services for public patients provided by private hospitals and the provision of other health services by non-government providers.

The State's ability to fund these services is not in doubt. What requires clarification is the ability for public hospital boards to make these payments as distinct from the Department of Health. For example, the State's contract for services with the operators of the Joondalup Health Campus is managed on the State's behalf by the North Metropolitan Area Health Service, however payments under the contract are made by the Department of Health because of the current limitation of section 21. The amendment proposed by Part 7 will allow funds management for these services to be undertaken directly by public hospital boards, instead of the Department of Health.

Part 8 *Hospital Fund Act 1930 repealed*

This Part provides for the repeal of the *Hospital Fund Act 1930*.

Division 1 Repeal

Clause 34 Hospital Fund Act 1930 repealed

This clause provides for the repeal of the *Hospital Fund Act 1930*.

Clause 35 Funds to be transferred

This clause is a transitional provision. It provides that on repeal of the *Hospital Fund Act 1930* and consequential abolition of the Hospital Fund, any funds standing to the credit of the Hospital Fund are to be dispersed to the State Pool account, a State Managed Fund, the Department of Health's general operating account or to Consolidated Revenue in accordance with the determination of the Treasurer made on advice from the Minister for Health.

Division 2 *Lotteries Commission Act 1990*

Clause 36 Act amended

This clause provides for the amendment of the *Lotteries Commission Act 1990*.

Clause 37 Section 22 amended

This clause provides for amendments to the *Lotteries Commission Act 1990*. Moneys currently credited to the Hospital Fund will after the commencement of the Bill be credited to the State Pool Account and applied in accordance with the provisions of the Bill. This arrangement will replace the Hospital Fund established by the *Hospital Fund Act 1930*, which will be repealed by section 34.