



MENTAL HEALTH LAW CENTRE (WA) Jnc.

ABN 40 306 626 287

Our Ref: SB/WH

30 August 2012

Private and Confidential

Hon Adele Farina MLC

Chairman

Email: unileg@parliament.wa.gov.au

Dear Ms Farina

Submission to the Standing Committee on Uniform Legislation and Statutes Review

National Health Funding Pool Bill 2012 (the Bill)

We refer to the invitation to make submission on the impact of the Bill on Western Australia's parliamentary sovereignty and law making powers, published on 18 August 2012 in the West Australian.

The Mental Health Law Centre (MHLA) receives its core funding from the State Community Legal Centres Funding Program administered by Legal Aid WA. The MHLA is a Statewide Community Legal Centre specialising in mental health law. Our primary service is to provide legal advice and representation to people who are involuntary patients in the mental health system.

We submit as follows:

- We are concerned with the specific exclusion of State legislation pursuant to cl 25. The exclusion of the named state legislation and the application of Commonwealth Acts, listed in cl 26 of the Bill means that the functions performed by the Administrator are subject only to the Commonwealth Acts.
- The membership and constituents of the Standing Council on Health (SCOH) are critical, because it is this authority that appoints the Administrator. Under the Bill, the SCOH will be constituted only by a single Minister for the Commonwealth and a single Minister for each of the States. However, there is no mention of the actual number of members in the SCOH. There should be 8 members in the SCOH (6 states and 2 territories) according to the Bill. Does the appointment of the Administrator require a majority vote? If so, if it was down to 2 candidates and the votes were split equally, how would the final decision be made? Does the Chairman have a casting vote?

- The duration of the Administrator's appointment is 5 years. What would be the grounds for termination? The Administrator is given very wide powers. Firstly, the Administrator calculates the payments to be made into State Pool Accounts by the Commonwealth and advises the Commonwealth Treasurer (cl 15). There is no mention as to who or what can guide or influence the calculations or the guidelines applied. It appears that the Administrator has the sole discretionary power over the calculations. This lack of transparency is a cause for concern.
- The Responsible Minister for the State would give direction to the Administrator for the payments from the State Pool Account (cl 14 (1)). Again, there is no mention about who or what can guide or influence the calculations. The calculations would be consistent with the advice given by the Administrator to the Commonwealth Treasurer (cl 15). In fact, this seems a round robin or in other words, circular, because the Responsible Minister can only give directions based on what the Administrator has calculated to be the amount in the first place.

The funding of State Managed funds is by way of block funding credited from the State pooled funds. The two State Managed funds are:

1. the State Managed Fund (Health) Account, and
2. the State Managed Fund (Mental Health) Account,

and are essentially the operating accounts for items listed in cl.16 (3)(a). However, there is no mention of the methods of calculation or criteria for this funding.

- The Bill is clear about the expectation of financial reporting both monthly and annually. The financial management obligation, as dictated by clause 17, requires the Administrator to develop and apply appropriate financial management policies and procedures. However, this is for pooling funds and administering Commonwealth funds in each State. What constitutes the decision to increase or decrease the funding from Commonwealth to the States and the basis of the distribution? Are these contained in the *National Health Reform Agreement*?

At this stage, we do not know the full impact that the Bill can have on the Western Australia's parliamentary sovereignty and law making powers. However, we are concerned about the lack of transparency in the distribution of Commonwealth funding into the State pool accounts and eventually distributed to the State Managed funds.

The final distribution to the State Managed Fund (Mental Health) Account, the amount allocated and how it is allocated is unclear. This may significantly affect the size of the funding available for mental health services in Western Australia.

Please do not hesitate to contact our Ms Boulter for further comment.

Yours faithfully
Mental Health Law Centre



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