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Hon Adele Farina MLC

Chair

Standing Committee on Uniform Legislation and Statutes Review

GPO: Box A11

Perth WA 6837

Submission One

Dear Ms Farina

Adele

National Health Funding Pool Bill 2012

The above Bill is a uniform legislation Bill and so is likely to be before your Committee shortly.

I have identified two points that I would like to draw to your Committee's attention, in case it wishes to consider them when it considers the Bill. Both relate to freedom of information.

Clauses 25 and 26

Under clauses 25 and 26 of the Bill, in respect of the Administrator and his/her functions, WA's freedom of information (FOI) laws are excluded and are replaced by those of the Commonwealth, subject to modifications made by regulations.

WA's 1992 freedom of information laws are, notwithstanding their age, quite progressive. It wasn't until 2010 that the Commonwealth amended its legislation in a way which brought its FOI laws more into line with WA's. As I understand it, the Commonwealth FOI laws are now worded in a slightly more pro-disclosure way than WA's, but taking into account WA's caselaw interpreting the meaning of WA's FOI laws, in effect they are quite similar.

My concern therefore lies not with the fact that the Commonwealth FOI laws will apply, but with the proviso that they will apply subject to any modifications made by the Bill's regulations, notwithstanding the content of the relevant jurisdiction's own FOI laws. In particular, I query the limits imposed by clause 30 on such modification, and note:

- The similarity between WA and Commonwealth FOI laws;
- Clause 26(2)'s elevation of regulations on this point to the status of an Act, through a process that is less transparent and rigorous than for Acts, and
- The Administrator's need for uniformity across jurisdictions on this point.

Perhaps an amendment, confirming to remove doubt that the power to modify is limited to what is necessary or convenient to give effect to the purpose of the Bill, would be appropriate.

Clause 24(5)

I also note that clause 24(5) provides that any information relating to a jurisdiction that is provided under that section by the Administrator to another jurisdiction can only be publicly released by the second jurisdiction with the approval of the Minister of the jurisdiction to which the information relates.

This provision appears to give the Minister power to refuse to allow the publication of information about his/her jurisdiction despite anything to the contrary in that jurisdiction's own FOI laws, or the Commonwealth's FOI laws. For the sake of uniformity and indeed as general principle, it seems appropriate that there should be a clear procedure guiding the Minister's discretion. One possibility is to amend the Bill to require that in exercising this discretion, the Minister must have primary regard to the laws of his/her own jurisdiction, including its freedom of information laws.

Yours sincerely



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