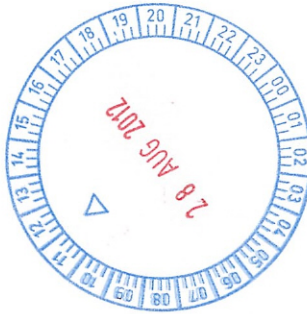


Our Ref: 67286 (C1204287)
Your Ref: HFP A367056



24 August 2012

Hon Adele Farina MLC
Chairman
Standing Committee on Uniform Legislation and Statutes Review
Legislative Council Committee Office
Parliament House
PERTH WA 6000

Dear Chairman

INQUIRY INTO NATIONAL HEALTH FUNDING POOL BILL 2012

Thank you for your facsimile letter dated 21 August 2012 inviting me to provide a written submission on the impact of the above Bill on Western Australia's parliamentary sovereignty and law-making powers.

My statutory role does not extend to cover the departments of the Parliament or the role of the legislature. Therefore, the extent to which the Commission and my officers have relevant expertise or knowledge of the areas of particular interest to your Committee is limited. I have nonetheless set out below some comments on aspects of the above Bill concerning staffing and machinery of government, as these are relevant to my statutory role, in the hope that this might be of at least some assistance to your Committee's deliberations.

- Part 2 of the Bill establishes the office of Administrator of the National Health Funding Pool. Clause 4 contemplates that the individual occupying that office will contemporaneously hold similar offices established under equivalent legislation by laws of other Australian jurisdictions. By clause 9, staff of the Administrator and facilities to support that office are to be provided under Commonwealth laws (the *National Health Reform Act 2011* (Commonwealth)). Clause 25 of the Bill excludes certain state legislation, including the *Public Sector Management Act 1994* (PSM Act), from application in respect of the office of the Administrator or any function exercised or performed by the Administrator. This would appear to be necessary because, in the absence of such a provision, it is likely that the office of the Administrator would be considered to be a "non-SES organisation" as defined in s3(1) PSM Act. Without clause 25, the occupant of the office of Administrator, and his or her staff, could be required to comply with provisions of the PSM Act applicable to non-SES organisations that deal with the governance of a public sector body and the conduct and behaviour of staff of such a body, including compliance with

the principles in sections 7, 8 and 9 of that Act, and with the Public Sector Code of Ethics and applicable public sector standards and Commissioners Instructions. As the Administrator's office and staff are expected to be subject to similar requirements applicable to them as Commonwealth officers under the *Public Service Act 1999* (Commonwealth), Clause 25 appears to operate to prevent there being a potential conflict between the laws of Western Australia and those of the Commonwealth that may apply to the Administrator and his or her staff in relation to staffing and performance matters.

- As mentioned above, the person occupying the office of Administrator will contemporaneously occupy other statutory offices. A similar position can apply within the Western Australian public sector to executive officers and other public service officers under sections 63(1)(h) and 67(f) of the PSM Act, under which I am empowered to authorise the holding of concurrent positions. For example, the CEO of the Department of Transport currently occupies the offices of Commissioner for Main Roads and the Public Transport Authority; and the CEO of the Department of Housing is concurrently also appointed to the Housing Authority.
- While clause 25 of the Bill excludes application of the PSM Act and three other State Acts listed in that clause, the Bill notably does not exclude application of the *Public Interest Disclosure Act 2003* (for which the Public Sector Commission is principally responsible for administration) nor the *Corruption and Crime Commission Act 2003* (for which it is proposed that the Public Sector Commission have a role in relation to minor misconduct in the public sector).
- Other similar legislative schemes that confer certain statutory functions on Commonwealth officials include:
 - *Health Practitioner Regulation National Law (WA) Act 2010*;
 - *Occupational Licensing National Law (WA) Act 2010*;
 - *National Gas Access (WA) Act 2009*;
 - *National Environmental Protection Council (WA) Act 1996*.

I trust that the above comments will be of some assistance to your Committee.

Yours sincerely



M C Wauchope
PUBLIC SECTOR COMMISSIONER