



Office of the **Information Commissioner**

Our Ref: 16/064/00
Your Ref: HFP A367056

30 August 2012

Hon. Adele Farina MLC
Chair
Standing Committee on Uniform Legislation
and Statutes Review
GPO Box A11
PERTH WA 6837



Dear Ms Farina

INQUIRY INTO NATIONAL HEALTH FUNDING POOL BILL 2012

I refer to your letter dated 21 August 2012 inviting my written submissions on the impact of the *National Health Funding Pool Bill 2012* ('the Bill') on Western Australia's parliamentary sovereignty and law-making powers.

Clause 25 of the Bill provides that the *Freedom of Information Act 1992 WA* ('the WA FOI Act') does not apply to or in respect of the Administrator of the National Health Funds Pool ('the Administrator') or any function exercised or performed by the Administrator. Under clause 26(1), the *Freedom of Information Act 1982* ('the Cth FOI Act') and the *Australian Information Commissioner Act 2010* ('the AIC Act') apply in its place.

As I have previously informed the Committee, I have some concerns about the impact of the Council of Australian Governments regulatory reform agenda on State oversight laws and mechanisms. However, in light of the narrow role of the Administrator, I do not object to the application of the Cth FOI Act and to the disapplication of the WA FOI Act to the activities of the Administrator. I have previously informed the Department of Health of my position in this regard.

Clause 26(2) of the Bill provides that the application of the relevant Commonwealth laws is subject to modifications made by the regulations. In the Second Reading of the Bill in the Legislative Assembly, Hon. Dr Kim Hames MLA, Minister for Health, said that the relevant commonwealth laws will require modifications to enable them to be administratively workable as Western Australian laws and that these modifications will be made by regulations made under the Bill and be subject to parliamentary review and disallowance in the usual way.

However, clause 26(2) could result in the potential dilution of the current provisions in the Commonwealth laws and the fragmentation of oversight arrangements. It could also be argued that this approach allows regulations to make legislative determinations of a kind that should properly be the preserve of Parliament. I have previously raised this issue with the Department of Health.

I have no objection to my letter being made public.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S. Bluemmel', with a stylized, cursive script.

Sven Bluemmel
INFORMATION COMMISSIONER