

**HEALTH SERVICES AMENDMENT (NATIONAL HEALTH REFORM  
AGREEMENT) BILL 2012**

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**Second Reading**

**The Hon. MELINDA PAVEY** (Parliamentary Secretary) [3.00 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Health Services Amendment (National Health Reform Agreement) Bill 2012 implements a major component of the National Health Reform Agreement agreed by the Council of Australian Governments in August 2011 and will establish the legislative framework for new national funding arrangements which are scheduled to commence on 1 July 2012. The agreement requires significant health reform action including the establishment of improved local accountability and responsiveness of public hospital health services through devolved local governance and management, improved and transparent performance reporting and accountability measures, major changes to improve the transparency of public hospital funding through a national health funding pool, and a nationally consistent approach to activity-based funding as a means of improving patient access to services and public hospital efficiency. These key elements of the agreement complement and reinforce directions and strategies already being pursued by the New South Wales Government for a more devolved and accountable health system.

The Government has already implemented important local government changes through the Health Services Amendment (Local Health Districts and Boards) Act 2011, which created local health districts and district health boards with devolved responsibility for managing public hospitals and health services. The Government has also been working closely with the Commonwealth and other jurisdictions to establish the framework and governance arrangements for the new Independent Hospital Pricing Authority and the National Health Performance Authority. The bill before the House today supports the next major plank of the national health reform agenda. It will provide for the implementation of the new health funding arrangements agreed by all Australian governments to promote greater transparency, accountability and efficiency in relation to the funding of hospital and health services in Australia.

The key elements of these new national health funding arrangements include: the establishment of a single national health funding pool comprising separate State pool accounts; the payment of all Commonwealth and State activity-based funding for public hospitals into the pool; the establishment of a national system of activity based funding to commence from 1 July 2012; transparent accounting, reporting and auditing of pool accounts; the appointment of a single administrator of the pool as an independent statutory office holder by all health Ministers under the procedures set out in the agreement; provision that payments from the pool shall only be made by the administrator at the direction of the responsible State Minister and in accordance with the service agreement with the local health district; and the establishment of State managed funds to receive funding for block grants, teaching, training and research.

In New South Wales, in addition to local health districts, these new funding arrangements will also apply to health service networks that will receive activity based funding through the

national health funding pool. This will include the Sydney Children's Hospitals network and the St Vincent's health network. Under the agreement all jurisdictions must pass legislation to implement these new funding arrangements. To maximise national consistency, jurisdictions have agreed on a set of common legislative provisions prepared on behalf of all jurisdictions by the Australasian Parliamentary Counsel's Committee recognising that additional jurisdiction specific provisions may also be required.

I now turn to the specific provisions of the bill. The bill incorporates the agreed national common provisions to be included in a new schedule 6A of the Health Services Act 1997 as well as additional New South Wales specific provisions which are also consistent with the National Health Reform Agreement. Under part 2 of schedule 6A the office of the administrator will be separately created under each jurisdiction's legislation, though a single individual will be appointed to the office. The administrator is independent but accountable to all jurisdictions. Under clause 3 of part 2 the administrator is to be separately appointed by the Minister in each jurisdiction, who is a member of the Council of Australian Governments Standing Council on Health. Before the appointment is made the Chair of the Standing Council on Health is to seek nominations from each member of the council. The proposed administrator is to be unanimously agreed upon by all members of the council prior to his or her appointment as administrator.

The administrator may be appointed for a period not exceeding five years, but will be eligible for reappointment. The functions of the administrator, which are set out in clause 8 of part 2, are: to calculate and advise the Commonwealth Treasurer of the contributions the Commonwealth is required to pay into the State pool account for each State and Territory; to monitor payments into each State pool account; to make payments from the State pool account in accordance only with the directions of the State and to report publicly on the payments made into and from each State pool account, and other matters the administrator is required to report on under the proposed amendments.

Under clause 7 the administrator is to be assisted in carrying out his or her functions by the national health funding body. The funding body will be established under Commonwealth legislation. The administrator cannot delegate his or her functions but is to be assisted by the staff of the funding body. In practice this will mean that, whilst funding body staff can undertake calculations and prepare documentation for approval by the administrator, ultimately all calculations, payments out of State pool accounts and reports must be approved personally by the administrator. In clause 8 the bill explicitly provides that all money in State pool accounts is State money and that neither the administrator nor the staff of the national health funding body is subject to the control or direction of the Commonwealth in relation to the exercise of the administrator's functions. Under clause 8 (3) the Council of Australian Governments is able to issue directions in relation to the manner in which the administrator exercises his or her functions. The purpose of this provision is to ensure consistency in relation to the way the administrator carries out his or her functions for all jurisdictions. It is anticipated that any directions may address such matters as the development of uniform requirements in relation to the preparation of reports and financial statements by the administrator, and common procedures relating to payments by the administrator out of State pool accounts.

In accordance with the National Health Reform Agreement, the costs of the administrator and funding body are to be borne by the Commonwealth. I note that the Commonwealth has allocated funding for this purpose in its recent 2012-13 budget. The bill contains provisions

for the suspension and removal of the administrator. Given that the administrator will be appointed by all nine jurisdictions, it has been necessary to take some care in the drafting of these provisions. Under clause 4 of the proposed new schedule 6A the administrator is to be suspended by the chair of the Standing Council on Health if the chair is requested to do so by either three State health Ministers or the Commonwealth health Minister. The bill specifies the grounds on which the administrator may be suspended. These grounds include failure by the administrator to comply with his or her obligations or duties, physical or mental incapacity, being accused or convicted of a criminal offence and bankruptcy.

In addition, safeguards have been included to ensure that the Commonwealth Minister acting alone may not repeatedly request the suspension of the administrator. To address this concern paragraph (5) of clause 4 requires that where there is a repeated request to suspend the administrator within 90 days of an earlier period of suspension the suspension must be agreed to by a majority of members of the Standing Council on Health. Under clause 5 the Standing Council on Health has the power, by majority decision, to remove the administrator from office. In that event all health Ministers must take steps to terminate the administrator's appointment in their jurisdictions by the date determined by the standing council. The provisions also allow the administrator to resign from the office.

Clause 6 permits the chair of the standing council to appoint an acting administrator during any period when the office is vacant or the holder of the office is suspended or absent from duty. The appointment of an acting administrator may only be made from a panel of persons previously agreed to by the Standing Council on Health. Part 3 of the proposed new schedule 6A contains provisions for the establishment of a State pool account and State managed fund in New South Wales.

In accordance with the National Health Reform Agreement, under clause 9 the New South Wales State pool account will be established as a separate bank account held with the Reserve Bank of Australia. All Commonwealth funding to the State for hospitals under the National Health Reform Agreement will be paid by the Commonwealth directly into the State pool account. The State contribution for activity-based funding for New South Wales hospitals also will be paid into the account. Other State payments will be made to the State managed fund or direct to local health districts. Under these new arrangements the administrator will make payments directly to local health districts from the State pool account in accordance with the directions of the State in its role as system manager.

Under the agreement these payments are to be made in accordance with service agreements that are agreed between the State and each local health district. These agreements will set out the volume of services to be provided by each local health district, as well as the price to be paid for those services. The Ministry of Health is currently managing an overall implementation program to commence these new funding arrangements on a statewide basis and in local health districts from 1 July 2012. A key principle of the proposed arrangements is that the administrator will be subject only to directions of the State Minister, or his or her delegate, and is not subject to the control or direction of the Commonwealth in relation to the exercise of the administrator's functions under the provisions of this bill.

The bill also acknowledges that, given the critical role of the administrator in making payments to the health system in New South Wales, it is necessary for there to be a mechanism to facilitate the making of payments in the event the administrator is unavailable to make payments at a particular time—for example, due to illness or misadventure. The

power to appoint an acting administrator by the chair of the standing council partially addresses this risk; however, it does not sufficiently address the risks when time-critical payment is required to maintain public hospital services. Accordingly, under clause 11 (8) of part 3 the Minister may direct a New South Wales State official to make payments from the State pool account in circumstances when the administrator is not available to make a payment at the time it is required to be made. It is intended this power would be used in exceptional circumstances only.

The National Health Reform Agreement also requires States to establish State managed funds for the purpose of receiving both Commonwealth and State block funding for small public hospitals and other block-funded services, as well as funding for teaching training and research. Clause 12 requires the Director General of the Ministry of Health to establish a State managed fund, which may be established either as a separate fund or a separate bank account. In either case, the funding that is paid through the State managed fund will be reported on by the administrator in the same way as the administrator reports on funding through State pool accounts. Under part 4 of the proposed schedule 6A the administrator is required to establish appropriate financial management and record-keeping systems in relation to the administration of the State pool accounts. A key component of the National Health Reform Agreement is that the administrator will provide regular reporting on all funding flows through the State pool accounts and State managed funds of all jurisdictions.

Under clauses 15 and 16 the reporting will be both monthly and annual, and will include reporting on the amounts paid in by the Commonwealth and States and Territories, payments out to each local health district and the basis on which they were made, and the number of public hospital services funded. Both the monthly and annual reports by the administrator must be made publicly available. In addition, a copy of the annual report for each jurisdiction must be tabled in that jurisdiction's Parliament. These arrangements will ensure complete transparency and accountability in relation to funding provided by all levels of government for local health districts and other health services covered by the National Health Reform Agreement. Under clause 17 the administrator must also prepare an annual special purpose financial statement in relation to each State pool account and an annual combined financial statement for all State pool accounts.

Clause 18 provides that the Auditor-General of each State or Territory will audit the special purpose financial statement prepared by the administrator for their State or Territory's pool account. Clause 19 also provides for State and Territory Auditors-General to have the power to conduct a performance audit of the administrator in relation to their jurisdiction under their existing legislation. However, they will be required to provide notice to other Auditors-General of a proposed performance audit, so as to provide Auditors-General with an opportunity to collaborate and minimise the potential impact on the administrator. Part 5 of proposed new schedule 6A contains a number of miscellaneous provisions. These include provisions applying Commonwealth oversight and government information legislation to the administrator, including archives, freedom of information, Ombudsman and privacy legislation.

The equivalent New South Wales legislation will be disapplied from the administrator. The purpose of this approach, which is stipulated by the National Health Reform Agreement, is to avoid imposing an excessive regulatory burden on the administrator, who will be exercising statutory functions in nine jurisdictions. The application of Commonwealth oversight legislation will be modified, as appropriate, by way of regulations made under the

Commonwealth National Health Reform Act 2011 with the agreement of the Standing Council on Health. Commonwealth regulations currently are being developed by an inter-jurisdictional working group. As the regulations may not be completed by 1 July 2012 the bill includes a transitional provision that will delay the application of the Commonwealth oversight and government information legislation and the disapplication of New South Wales legislation to the administrator until the agreed regulations have commenced.

The miscellaneous provisions of the bill also include provisions that will allow the appointment of the initial administrator with the agreement of all jurisdictions' health Ministers and the commencement of the new national funding pool, even if all jurisdictions have not commenced their legislation on time. I am advised that legislation to implement the new funding arrangements has been introduced by the Commonwealth, Queensland, Victoria, South Australia, Tasmania and the Northern Territory. These transitional provisions will ensure that the national funding scheme can commence in the event that any particular jurisdiction has not commenced its legislation. The bill also contains a small number of other amendments to the provisions of the Health Services Act to accommodate the new national health funding pool arrangements: specifically, items [3] and [4] of schedule 1 to the bill amend section 127 of the Act, which deals with the funding of public health organisations in New South Wales.

Item [3] provides that the Minister is to have regard to the National Health Reform Agreement in determining the amount of subsidy paid from the Consolidated Fund to fund public health organisations under the existing financial provisions of the Health Services Act. Item [4] makes it clear that the provisions contained in section 127, relating to the determination of funding to public health organisations, do not affect the operation of the provisions in the new schedule 6A that relate to health funding arrangements under the National Health Reform Agreement. The bill implements common national legislative provisions to establish a more transparent, accountable and efficient system of funding of hospital services in Australia.

Under the national health funding arrangements New South Wales will continue to provide the majority of funding for New South Wales health services; have responsibility, as the system manager, for the integrated public health system, and will be responsible for ensuring local health districts' and networks' performance; set the price, funding rules and overall level of funding received by local health districts for service delivery, and purchase services from local health districts under service agreements; and bear the residual risk and meet the costs of service delivery in the public healthcare system.

The proposals contained in the bill support and complement this Government's policies for a more devolved and responsive health system where key decisions about patient care are made locally in the context of transparent governance and funding arrangements. It would be remiss of me, as the Parliamentary Secretary for Regional Health, not to mention that provision has been made for small rural hospitals. The new funding model under the national health reforms incorporates activity-based funding. As we know, funding for public hospitals was moved to a nationally consistent model from 1 July 2012. In accordance with the National Health Reform Agreement, a phased implementation of activity-based funding in New South Wales has been planned, with acute admitted emergency and non-admitted services to be funded on an activity basis from 1 July 2012.

Mental health and subacute services will be phased in from 1 July 2013, with shadow funding allocation planned from 1 July 2012. However, as we know, not all services are suitable for

activity-based funding. This includes services provided by rural and remote hospitals. The lower volumes and relatively high fixed costs of smaller hospitals make it impractical to implement activity-based funding in those services, and they will continue to be block funded where appropriate. The bill provides the legislative basis for further health reform opportunities throughout New South Wales and Australia. I commend the bill to the House.