Submission to the Senate Standing Committee on Finance and Public Administration

Inquiry into the National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011

Department of Health and Ageing

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TABLE OF CONTENTS

INTRODUCTION

The National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011 (the Bill), introduced into the Australian Parliament on Wednesday 24 August 2011, was referred to the Senate Standing Committee on Finance and Public Administration (the Committee). In undertaking the inquiry, the Committee has listed for consideration the:

- Relationship of the Pricing Authority with the Australian Commission on Safety and Quality in Health Care (ACSQHC);
- Relationship of the Pricing Authority with the National Health Performance Authority (Performance Authority); and
- Impact of the Pricing Authority on Australia's hospitals.

The Department of Health and Ageing submission provides an overview of national health reform, supplementary information on the Bill to that in the Explanatory Memorandum and addresses the relationships between the national bodies.

COAG National Health Reform Agreement

Health Reform Principles

On 2 August 2011, the Council of Australian Governments (COAG) published the National Health Reform Agreement (NHRA) between the Commonwealth and all state and territory governments. The Agreement has the objectives of improving health outcomes for all Australians and the sustainability of the Australian health system. The NHRA sets out the architecture of national health reforms, which will deliver major structural reforms and establish the foundations of Australia's future health system. A key element is to provide funding to ensure the sustainability of Australia's health system into the future.

The NHRA:

a) sets out the shared intention of the Commonwealth, state and territory governments to work in partnership to improve health outcomes for all Australians and ensure the sustainability of the Australian health system;
b) introduces new financial and governance arrangements for Australian public hospital services and new governance arrangements for primary health care and aged care;
c) implements National Health Reform as agreed by the COAG Heads of Agreement on National Health Reform in February 2011;
d) builds on and reaffirms the Medicare principles and high-level service delivery principles and objectives for the health system in the National Healthcare Agreement (agreed by COAG in 2008 and amended in July 2011);
e) supersedes the National Health and Hospitals Network Agreement and the Heads of Agreement on National Health Reform;
f) recognises that:
    (i) the states and territories are the system managers of the public hospital system; and

(ii) the Commonwealth has full funding and program responsibility for aged care (except where otherwise agreed) and has lead responsibility for GP and primary health care;

g) builds on and complements the policy and reform directions and outcomes, progress measures and outputs outlined in the National Healthcare Agreement (NHA). The NHRA should be read in conjunction with the NHA; and
h) is subject to the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) and should be read in conjunction with that Agreement and subsidiary schedules[1].

The NHRA commits to a nationally unified and locally controlled health system where the Commonwealth, states and territories will work in partnership to ensure the sustainability of funding for public hospitals by increasing the Commonwealth's share of public hospital funding through an increased contribution to the efficient costs of growth, while improving:[2]:

a) patient access to services and public hospital efficiency through the use of activity based funding (ABF) based on a national efficient price;
b) the transparency of public hospital funding through a National Health Funding Pool (NHFP) and a nationally consistent approach to ABF;
c) standards of clinical care through the ACSQHC;
d) performance reporting through the establishment of the Performance Authority;
e) accountability through the Performance and Accountability Framework (PAF);
f) local accountability and responsiveness to the needs of communities through the establishment of Local Hospital Networks (LHN) and Medicare Locals;
g) provision of GP and primary health care services through the development of an integrated primary health care system and the establishment of Medicare Locals; and
h) aged care and disability services by clarifying responsibility for client groups.

Policy Context

Through the NHRA and the accompanying National Partnership Agreement on Improving Public Hospital Services (NPA IPHS) the Australian Government will invest an extra $19.8 billion in public hospitals, an investment matched by tough national standards – to reduce waste and ensure future hospital funding is sustainable.

The Australian Government has committed to meeting 45 per cent of efficient growth in public hospital costs from 2014-15, and 50 per cent of efficient growth from 2017-18 onwards.

From 2017-18 onwards, each state and territory and the Commonwealth will share future efficient growth funding in a 50/50 partnership.

[1] NHRA 2011 Clause 1
[2] NHRA Clause 3

Under the NHRA, the states and territories are guaranteed to receive at least $16.4 billion in extra funding between 2014-15 and 2019-20.

This funding equates to millions of extra services funded by the Commonwealth - around 2 million more admitted patient episodes of care, 2.9 million more services in emergency departments, and 19 million more outpatient consultations based on current patterns of hospital expenditure and activity.

Under the Agreement, activity based funding (ABF) will be implemented for npatient, outpatient and emergency department services from 1 July 2012.

Under ABF public hospitals will receive Commonwealth funding based on a nationally efficient price for the hospital services they deliver and. from mid-2014, for as many services as they deliver. This approach will reward productivity and help reduce waste.

All activity based funding of public hospitals, from states, territories and the Commonwealth, will be paid through a national funding pool. Activity based payments will be made from the pool to Local Hospital Networks (LHNs). Published reports will detail what funds flowed into the pool and what payments were made from the pool to each LHN and the basis of those payments. This will deliver unprecedented transparency in hospital funding arrangements.

Commonwealth funding for public hospitals will flow to LHNs from mid-2012 according to the numbers and kinds of services they provide. From mid-2014, if hospitals provide more services they will receive more Commonwealth funding, based on an efficient price for each kind of service, determined by an independent Pricing Authority.

The essence of the new arrangements for Commonwealth funding from mid-2014 onwards is payment for each and every public hospital service delivered, based on an independently determined efficient price. For additional services above the base level in each state the Commonwealth's contribution is locked in as 45 then 50 per cent of that independently determined efficient price.

The NHRA also provides for new governance arrangements for public hospitals, through the formation of Local Hospital Networks, and new primary care organisations – Medicare Locals. . These mechanisms will deliver more locally-responsive hospital and primary health care services. The boundaries for the LHNs have been agreed with all states and territories, and LHNs have already been established in NSW, SA and the ACT. Victoria is retaining its existing independent statutory public hospitals as LHNs. The remaining states and the NT are on track to implement LHNs by 1 July 2012.

National Governance

To give effect to the commitments set out in the NHRA, the Commonwealth, states and territories have agreed to establish new national governance arrangements under clause 3 of the Agreement, including:

- improving patient access to services and public hospital efficiency through the use of ABF based on a national efficient price developed by the Pricing Authority;
- improving the standards of clinical care through the ACSQHC;
- improving performance and accountability reporting through the establishment of the Performance Authority; and
- improving the transparency of public hospital funding through a NHFP, managed by an Administrator with support from a National Health Funding Body (NHFB)

Legislation to establish the ACSQHC has already been passed by Parliament. The Performance Authority's enabling legislation was introduced in the House in March 2011; was the subject of a report by the Senate Committee on Community Affairs Legislation in June; has passed the lower house; and is currently before the Senate.

Legislation to establish the national fund pool Administrator and NHFB is anticipated for introduction later this year.

This Bill, currently before Parliament, is the third bill in the Australian Government's health reform initiative, implementing COAG's aims under the NHRA. The Pricing Authority is essential to the sustainable funding of Australia's public hospitals as set out in the NHRA, including the achievement of improved productivity.

The Role of the Pricing Authority

The Bill has been prepared to give effect to commitments under the 2 August 2011 COAG settled NHRA.

Under the NHRA, the Pricing Authority is required to, amongst other activities, determine the national efficient price, determine the supporting data requirements and data standards for data on hospital activity, specify hospital costing data, determine a small number of adjustments or loadings to the national efficient price, propose to COAG criteria for block funding of hospitals and hospital services for which activity based funding is not appropriate, and assess cross-border and cost-shifting disputes. The Bill reflects these functions in section 131.

The Pricing Authority will operate independently of any Commonwealth, state and/or territory government. Its setting of the national efficient price will be informed by submissions from the Commonwealth, states and territories and other interested parties, and it will be supported in its work by a clinical advisory committee and a jurisdictional advisory committee.

Under the NHRA, LHNs will enter into Service Agreements with their respective state governments specifying the levels of services they will deliver in the coming financial year. The national efficient price established by the Pricing Authority will inform these agreements and, as envisaged in the NHRA, will be used by the Administrator and the National Health Funding Body to calculate a Commonwealth funding contribution for each LHN. The Pricing Authority will not be involved in these negotiations and decisions on service planning or volume setting.

Further legislation is to be introduced to implement the new funding arrangements, to commence from 1 July 2012, including the establishment of the funding pool, and the creation of a statutory Administrator who will make payments to LHNs.

The Pricing Authority will ensure that the Commonwealth's increased contribution to growth in public hospital services is based on a fair and efficient price. In determining the national efficient price, the Pricing Authority must, amongst other things:

- have regard to ensuring reasonable access to public hospital services, clinical safety and quality, efficiency and effectiveness and financial sustainability of the public hospital system;
- consider the actual cost of delivery of public hospital services in as wide a range of hospitals as practicable;
- consider the expected changes in costs from year to year when making projections;
- have regard to the need for continuity and predictability in prices.

In carrying out its functions the Pricing Authority will:

- publicly call for submissions from interested parties annually;
- have regard to any submissions from governments regardless of when they are made; and
- draw on relevant expertise and best practice within Australia and internationally.

The Pricing Authority will also have a role in determining which services are eligible as hospital services for Commonwealth funding and in determining criteria and amounts for services that are better funded using block funding. This last will ensure secure funding for smaller hospitals, including in rural areas, which have varying levels of activity over time and would not be able to meet their community service obligations if funded on activity alone. It will also ensure funding for specialised units such as bone banks for which activity based funding is not appropriate.

As announced at COAG, the Pricing Authority will be chaired by Mr Shane Solomon with Mr Jim Birch AM as deputy chair. Both appointees have extensive experience in health administration and in activity based funding in Victoria and South Australia respectively.

An interim Independent Hospital Pricing Authority commenced operations as an executive agency, separate from any Commonwealth government department on 1 September 2011. The acting CEO of the interim Pricing Authority is Dr Tony Sherbon, who has extensive health administration and reform experience in the Commonwealth Government, state and territory governments and regional health bodies. Under the NHRA, it was agreed that an interim Pricing Authority would be established prior to passage of the Pricing Authority's enabling legislation. [3]

[3] Clauses B15 – B17, NHRA

RELATIONSHIP WITH THE AUSTRALIAN COMMISSION ON SAFETY AND QUALITY IN HEALTH CARE

The *National Health and Hospitals Network Act 2011* (NHHN Act) established the Australian Commission on Safety and Quality in Health Care (the Commission) as a permanent, independent authority from 1 July 2011. The Commission will lead and coordinate improvements in safety and quality in health care in Australia and will take a lead role in ensuring that all Australians have access to a health care system that provides safe, high quality health care services in a timely manner. It will work with clinicians and health professionals to identify best practice clinical care to support the appropriateness of services delivered in a particular setting.

The Pricing Authority must have regard to ensuring safety and quality in healthcare services in undertaking its functions, including the setting of the national efficient price for hospital services.[4] Therefore, while the Pricing Authority will perform a very different role from the Commission, it will have a legislative requirement to have a strong consideration of how its functions will interact with the safety and quality of health services..

Disclosures of information between the Pricing Authority and the Commission in regard to ensuring safety and quality in Australia's health care system will be enabled under section 220. Information exchanges and the complementary nature of these agencies, will underpin a close and mutually beneficial working relationship between the Pricing Authority and Commission.

RELATIONSHIP WITH THE NATIONAL HEALTH PERFORMANCE AUTHORITY

The National Health Reform Amendment (National Health Performance Authority) Bill 2011 (the Performance Authority Bill), which is currently before Parliament, amongst other things, seeks to amend the title of the NHHN Act to the National Health Reform Act 2011 (the Reform Act), and establish the Performance Authority.

Under the Performance Authority Bill, the Performance Authority monitors and reports on the performance of LHNs and the public hospitals that make up each LHN, private hospitals, and Medicare Locals. These organisations will be assessed against clear and transparent performance guidelines, most notably the Performance and Accountability Framework to be endorsed by COAG, with improved performances in the delivery of health services being driven by accurate and consistent reporting.

As described earlier, the Pricing Authority will also be seeking to drive improvements and efficiencies within the health sector, through different mechanisms and functions. The Pricing Authority must consider patient access, safety, quality and financial sustainability in undertaking its functions. Similar to the ACSQHC, the Performance Authority will also be able to disclose relevant information to the Pricing Authority and vice versa (section 220). The Performance Authority's reports and its

[4] 131(3)(c) of the National Health Reform Amendment Bill 2011

performance framework will play a vital role in ensuring these are met and a robust, professional relationship between the two entities will be important for each to undertake their work.

IMPACT ON AUSTRALIA'S HOSPITALS

The Pricing Authority is central to a new national approach to activity based funding of public hospitals. It will determine the efficient price for delivery of hospitals services, but importantly it will do so having regard to the actual costs of delivering services in as wide a range of hospitals as practicable. It will also call publicly for submissions each year to inform its setting of the price, and it must also ensure reasonable access to public hospital services, clinical safety and quality, efficiency and effectiveness and financial sustainability of the public hospital system. It will also determine a small number of loadings or adjustments to take account of legitimate and unavoidable variations in the costs of service delivery, including those driven by hospital size, type and location. Lastly it should also be noted that the IHPA will recommend to COAG, criteria for services which should not be funded on the basis of activity or should be only partly funded on the basis of activity.

The national approach to ABF will provide incentives for most hospitals to treat more patients more efficiently, while still ensuring the viability of smaller hospitals and some particular kinds of services for which ABF is not appropriate.

More generally, the new approach fundamentally changes the nature of Commonwealth state arrangements for public hospital funding. Since 1984, the Australian Government has supported the delivery of public hospital services free of charge to public patients through block grant funding paid to state and territory governments. The quantum of block funding provided was initially based on an estimate of the additional cost to states at the time, of the policy of treating public patients free of charge. Over the intervening period, the quantum has been periodically renegotiated. Despite these periodic agreements, there has been continued dispute by states and territories as to the adequacy of the Commonwealth's contribution and also the extent to which perceived shortfalls in other Commonwealth programs generate additional pressures and costs for public hospitals, with states exposed to 100 per cent of any such additional costs, over and above the contribution from the Commonwealth.

From the Commonwealth perspective, it has been difficult to determine whether states are maintaining levels of service provision commensurate with the needs of their populations, and that states have systematically sought to shift services previously provided by public hospitals to private practice arrangements that draw subsidies from Commonwealth programs.

It is apparent that the public and those working in public hospitals would prefer it if these tensions were resolved and the focus of governments was more clearly on ensuring access to public hospital services within clinically appropriate timeframes, with those services being provided efficiently, safely and to high standards of quality.

The new hospital funding arrangements being introduced through national health reforms squarely address these issues. The Commonwealth's funding contribution will be based on the numbers and kinds of services provided by public hospitals and an independent authority's determination of an efficient price for providing those services. In addition, the Commonwealth contribution will not be fixed or capped in absolute terms; rather it will pay its contribution for every service delivered for as many services as are delivered. This is a fundamentally different basis for the Commonwealth contribution. Furthermore the Commonwealth's commitment to growth, with the Commonwealth funding 45 per cent of the growth of the efficient costs of the provision of additional services from July 2014 and rising to 50 per cent of the efficient costs of provision for additional services from 2017-18 onwards, means that the Commonwealth will meet an increased share of the total costs of public hospitals services. Because this approach uses data on the numbers and kinds of service provided, it makes clear the relationship between the funding provided and the level of services delivered.

Additionally, under the NHRA, states will also participate in nationally consistent activity based funding for most hospital services. This means that the relationship between the services public hospitals provide and the funding they receive from governments will be clear not only for the Commonwealth contribution, but also for state and territory contributions. And because the agreement provides for a national funding pool and an administrator who will be responsible under both Commonwealth and state laws for making payments from the funding pool to LHNs, and for publishing reports on the contributions to the pool and the payments from it, it will be clear which government is paying how much to each LHN for the services it provides, and it will also be possible, to a hitherto unprecedented degree, to compare the funding that one LHN receives and the numbers and kinds of services it provides with those funds, to the funding that other LHNs receive and the numbers and kinds of services they provide.

This overall approach provides a quite different funding environment for Australia's public hospitals, with a much clearer basis for the funds each LHN receives, and with the capacity to compare the funding they receive with that received by other LHNs, nationally.

It is important to note that the new approach to hospital funding also creates incentives for governments, including for the Commonwealth to invest in services outside of hospitals to keep people healthier for longer. The NHRA will also reduce the incentives for governments to shift costs between jurisdictions. To the extent that such cost shifting still occurs, under the Bill the IHPA has the power to investigate, and if it finds that cost shifting is occurring, to publish its findings.

BILL PROVISIONS

The Bill amends the currently titled NHHN Act to provide for the establishment of the Pricing Authority, provide its functions, powers, accountabilities and liabilities, provide for the establishment of committees and bodies assisting the Pricing Authority, and other machinery provisions.

The Bill's provisions align with the NHRA and give effect to the policy intentions of the Agreement where practicable, e.g. section 131 aligns with the NHRA, clause B3. Other Bill provisions seek to provide appropriate mechanisms to enable the Pricing Authority to undertake its functions as required in the NHRA. An example of such mechanism and its underlying requirement includes clause B9(c) of the NHRA that requires the Pricing Authority to draw on relevant expertise and best practice within Australia and international. The Bill establishes the Clinical Advisory Committee and the Jurisdictional Advisory Committee, under Parts 4.10 and 4.11 respectively. These committees provide advice to the Pricing Authority and do anything incidental to or conducive to required functions (sections 177 and 196).

Part 4.3 deals with the Pricing Authority's assessment function for cross-border and cost-shifting disputes. This Part gives effect to the NHRA, Clause 3(k), where parties who are unable to reach bilateral agreement and either party seeks assistance from the Pricing Authority.

Other provisions within the Bill are largely mechanical, outlining requirements to govern the ongoing operations of the Pricing Authority, such as constitution and membership of the Authority (Part 4.4), terms and conditions for members of the Authority (Part 4.5), decision-making by the Authority (Part 4.6), delegations (Part 4.7), the Authority's chief executive officer (CEO) (Part 4.8), staff and consultants (Part 4.9), other committees (Part 4.12), reporting obligations (part 4.13), secrecy and disclosures (Part 4.14) and other matters (part 4.15).

Chapter 5 of the Bill provides miscellaneous provisions to amend the currently titled NHHN Act. Amongst these amendments includes the insertion of section 228 dealing with the protection of patient confidentiality and the concurrent operation of state and territory laws under section 229.

The Bill's Explanatory Memorandum provides more detailed information regarding the Bill's provisions and their operability. A copy is included at Attachment A for your assistance.

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