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Committee Secretary
Senate Standing Committee on Community Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Inquiry into the National Health Reform Amendment (National Health Performance Authority) Bill 2011

Please accept the following submission to the Inquiry into the National Health Reform Amendment (National Health Performance Authority) Bill 2011 ("the Bill").[1]

This submission will discuss the apparent lack of integration between the two bodies established by the Bill, namely the National Health Performance Authority ("the Performance Authority") and the Australian Commission on Safety and Quality in Health Care ("the Commission"). This submission will also consider the objectives and scope of the Performance Authority, its powers where poor performance is identified, and the composition of its membership.

1. Relationship between the Commission and the Performance Authority

1.1. The Bill's delineation between the Commission and the Performance Authority is comprehensive, yet cosmetic. While great (and necessary) effort has been expended on differentiating the Boards, CEOs and other constituent parts of both the Commission and the Performance Authority, the Inquiry must urgently consider the functional overlap the Bill will create.

1.2. It is abundantly clear from the Minister's second reading speech that quality and safety are aspects of health system performance that the Performance Authority will monitor. In connection with its monitoring function, the Performance Authority will "collect, analyse and interpret information"[2] and "publish (whether on the internet or otherwise) reports."[3]

1.3. At the same time, the Commission will "collect, analyse, interpret and disseminate information" and "publish (whether on the internet or otherwise) reports" on health care quality and safety matters.[4] This is a tremendous—and rather obvious—functional overlap, one that will place a

[1] For reasons of clarity, this submission will use the clause numbers of the final consolidated version (the National Health Reform Bill 2011), rather than the item numbers for the amendment.
[2] National Health Reform Bill 2011 cl 60(1)(d).
[3] National Health Reform Bill 2011 cl 60(1)(b).
[4] National Health Reform Bill 2011 cl 9(1).

substantial administrative burden on individual health services which will need to meet the quality and safety reporting requirements of both the Commission and the Performance Authority.

1.4. This duplication of reporting requirements raises another issue regarding functional overlap: the Performance Authority's recognition of the work of the Commission. The Commission has the function of formulating "indicators relating to health care safety and quality matters", and to then "promote, support and encourage" the use of these indicators.[5] The Performance Authority will formulate "performance indicators to be used by the Performance Authority" in connection with its monitoring function.[6] The Performance Authority is not prevented from using indicators (or standards) "formulated by a person or body other than the Performance Authority".[7]

1.5. The fact that the Bill sets up the Commission to "promote, support and encourage" the use of their indicators, and then does not prevent the Performance Authority from listening to the Commission, is a mildly amusing legal quirk. However, it is difficult to see how the Bill will create the "backbone of a modern, integrated, high-performing health system"[8] when the Bill itself does not appear to be integrated.

1.6. Given the considerable expertise in health care quality and safety matters that the Commission will possess, and its consultation requirements,[9] a duty should be imposed on the Performance Authority to recognise and use (as much as possible) the Commission's quality and safety performance indicators. Such a move would create a more integrated and coherent approach, and reduce duplication.

1.7. Perhaps more ambitiously, the Inquiry may wish to consider the inclusion of a "cooperation clause" within the Bill. Such a clause could be modelled on the *Health and Social Care Act 2008* (UK), which creates a duty of cooperation in certain matters between the UK Care Quality Commission (CQC) and the Independent Regulator of NHS Foundation Trusts ("Monitor"), two statutory authorities that monitor performance (quality, safety, governance etc.) within the NHS.[10] Such a clause would improve the coherence of the Bill; as it currently stands, the only real formal linkage between the Commission and the Performance Authority is found in the secrecy provisions.[11] While very necessary, the secrecy provisions of the Bill can hardly be relied upon to create an integrated health system.

2. Objective and scope of the Performance Authority

2.1. The objective of the Bill is to establish both the Commission and the Performance Authority.[12] However, there is no objective for the Performance Authority itself, and the Bill provides only a

[5] National Health Reform Bill 2011 cl 9(1)(g)–(i).
[6] National Health Reform Bill 2011 cl 60(1)(c).
[7] National Health Reform Bill 2011 cl 60(3).
[8] National Health Reform Bill 2011 – Second Reading Speech.
[9] National Health Reform Bill 2011 cl 10, 20.
[10] *Health and Social Care Act 2008* (UK) s 70.
[11] National Health Reform Bill 2011 cl 54H, 120.
[12] National Health Reform Bill 2011 cl 3.

list of its functions. Again, the Inquiry may wish to consider the *Health and Social Care Act 2008* (UK) and the objectives of the CQC, a body broadly analogous to the Performance Authority.

2.2. The main objective of the CQC in performing its functions "is to protect and promote the health, safety and welfare of people who use health and social care services"; the CQC must also encourage service improvement and a user focus, as well as the efficient and effective use of resources.[13] The Bill could most certainly be improved with a similar legislative statement for the Performance Authority, rather than this being expressed as a mere organisational mission statement.

2.3. The Performance Authority will be responsible for monitoring local hospital networks, public hospitals, private hospitals, primary health care organisations and "other bodies or organisations that provide health care services."[14] With the exception of the "other" category, all these entities are defined by the Bill by way of reference to subordinate instruments.[15]

2.4. The lack of definition of the "other" category creates both flexibility and uncertainty regarding the scope of the Performance Authority's responsibilities. For instance, will the Performance Authority monitor individual general practices or pharmacies, both being "other bodies or organisations that provide health care services"? While large-scale performance monitoring of general practices is observed in the UK (the Quality and Outcomes Framework), it is not clear if this is what is intended here. Potentially, the scope of the current clause could include other entities within the health system, such as pathology providers. The Inquiry may wish to consider whether the scope of the Performance Authority's responsibilities requires further definition.

3. Poor performance by a health system entity or facility

3.1. The Minister's second reading speech states that the Performance Authority will identify those "areas of the health system that require improvement so that action can be taken". It is clear from the Bill that while the Performance Authority may identify these poorly performing areas of the health system, it will not be empowered to take much action.

3.2. As it currently stands, where a Performance Authority report indicates poor performance by an entity or facility, it is empowered only to provide them with a copy of the draft report, and then to "invite the manager of the entity or facility to give the Performance Authority written comments about the draft report within 30 days after receiving the draft report".[16] The Explanatory Memoranda states that this is intended to ensure that managers "are aware of any potential adverse reports by the Performance Authority" (not making them aware of their entity or facility's poor performance *per se*) and to allow them the "opportunity to provide mitigating information".[17]

[13] *Health and Social Care Act 2008* (UK) s 3.
[14] National Health Reform Bill 2011 cl 60(1)(a).
[15] National Health Reform Bill 2011 cl 5 (definitions).
[16] National Health Reform Bill 2011 cl 62(2).
[17] National Health Reform Bill 2011 – Explanatory Memoranda, p 9.

3.3. Beyond the Performance Authority's power of invitation, it is unclear what it will actually *do* in a situation where poor performance is detected. It may be possible to impose an obligation on the Performance Authority to assist the poorly performing entity or facility to improve. Given the extraordinary wealth of health system performance information that will be at the Performance Authority's disposal, it would not be unreasonable to expect that it could identify comparable (but high performing) entities/facilities from which the poor performing entity/facility could learn. Given that the Minister's second reading speech also states that the Performance Authority will "allow for the identification of high-performing parts of the health system so those successes can be transferred to other areas", revising the Bill to include such a duty would be appropriate.

3.4. The Inquiry should also note that there is precedent for a more interventionist approach to be taken. The CQC has broad powers to conduct special reviews or investigations of individual health services, and has particular reporting obligations with respect to adult social care services provided by English Local Authorities. The *Health and Social Care Act 2008* (UK) imposes a duty on the CQC to inform the Secretary of State of any failure of a Local Authority to "discharge any of its adult social services functions to an acceptable standard."[18] A similar obligation is placed on the CQC with regard to failures in health service provision by Welsh NHS bodies.[19]

3.5. The inclusion of similar powers of investigation in the Bill would represent a substantial change to the Performance Authority's powers. At a minimum, the Inquiry might wish to consider whether clause 62 should be redrafted to place a similar reporting obligation on the Performance Authority with respect to poorly performing entities or facilities. Such an obligation would arguably be more useful than simply reporting this information *en masse* on the Performance Authority's website, and would create a formal mechanism for action.

4. Composition of the Performance Authority

4.1. The Bill pays particular attention to regional differences in health system performance. The Minister must ensure that at least one member of the Performance Authority has substantial experience and standing in rural and regional health.[20]

4.2. This focus on regional differences in health system performance is commendable. However, the Committee should also consider what other expertise should be required of Performance Authority members. The Performance Authority will be tasked with monitoring the performance of local hospital networks, public and private hospitals, primary health care organisations and "other bodies or organisations", yet specific expertise in these very different areas of the health system is apparently not required.

4.3. The Inquiry should consider including an obligation on the Minister to ensure that, at a very least, both primary and acute care expertise is included in the Performance Authority membership. The inclusion of such an obligation, similar to that for regional expertise, would

[18] *Health and Social Care Act 2008* (UK) s 50.
[19] *Health and Social Care Act 2008* (UK) s 51.
[20] National Health Reform Bill 2011 cl 72(4).

ensure that this expertise is present by legislative design, rather than as incidental to the appointment process.

5. Summary

Several shortcomings within the current version of the Bill must be addressed by the Inquiry. The functional overlaps between the Commission and the Performance Authority are of particular concern, and must be remedied in order to ensure that the Bill does indeed create the backbone of a modern, integrated and high-performing health system.

Yours sincerely,

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