

Chapter 1

Background

Introduction

1.1 On 25 August 2011, on the recommendation of the Selection of Bills committee, the Senate referred the provisions of the National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011 (the Bill) for inquiry and report by 15 September 2011. The reasons for referral and principal issues for consideration were:

This Bill will establish the Independent Hospital Pricing Authority – the lynchpin of the Government's health reforms and will operate alongside the Quality and Safety Commission and the National Performance Authority.

- Relationship of the IHPA with the Safety and Quality Commission
- Relationship of the IHPA with the National Performance Authority
- Impact of the IHPA on the nation's hospitals.¹

Conduct of the inquiry

1.2 The inquiry was advertised in the newspaper *The Australian* and through the Internet. The committee invited submissions from interested organisations and individuals.

1.3 The committee received 16 submissions relating to the Bill and these are listed at appendix 1. The committee considered the Bill at a public hearing in Canberra on 7 September 2011. Details of the public hearing are referred to in appendix 2. The submissions and transcript of evidence may be accessed through the committee's website at http://www.aph.gov.au/senate/committee/fapa_ctte/index.htm.

Background to the Bill

1.4 In April 2010 the Council of Australian Governments (COAG) reached an agreement on health and hospitals reform that included the establishment of a National Health and Hospitals Network (NHHN). The NHHN agreement did not, however, include Western Australia. At the time COAG described the agreement as:

...the most significant reform to Australia's health and hospitals system since the introduction of Medicare, and one of the largest reforms to service delivery in the history of Federation.²

1 Selection of Bills Committee, *Report No. 11 of 2011*, 25 August 2011, Appendix 1.

2 Council of Australian Governments Meeting, Canberra 19 and 20 April 2010, *Communiqué*, p. 1, <http://www.coag.gov.au> (accessed 30 August 2011).

1.5 Major reforms to Commonwealth and state and territory responsibilities were agreed to, including the Commonwealth becoming the majority funder of Australian public hospitals. It was also anticipated that newly formed Local Hospital Networks (LHN) would become responsible for hospital management, and that those networks would 'be paid on the basis of a national efficient price for each public hospital service they provide to public patients', but that some small regional and rural public hospitals, and other agreed services, would continue to be block funded. The reform measures included the establishment of an Independent Hospital Pricing Authority. COAG also agreed to new clinical and safety standards to be developed by the Australian Commission on Safety and Quality in Health Care.

1.6 On 13 February 2011, governments signed a Heads of Agreement on National Health Reform and a revised National Partnership Agreement on Improving Public Hospital Services. Commitment was also given to signing a full National Health Reform Agreement by 1 July 2011. On 2 August 2011, the National Health Reform Agreement (NHRA) was agreed to by COAG.³

1.7 The NHRA builds on principles and objectives for the health system contained in the National Healthcare Agreement (NHA), agreed by COAG in 2008 and amended in July 2011.⁴

1.8 The NHRA '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'. It also establishes 'new financial and governance arrangements for Australian public hospital services and new governance arrangements for primary health care and aged care'.⁵ The COAG Communiqué of 19 August 2011 stated that the NHRA 'will deliver the funding public hospitals need, with unprecedented levels of transparency and accountability, and less waiting time for patients'.⁶

1.9 Three key statutory bodies will oversee and implement these health reforms:

- the National Health Performance Authority (NHPA) – 'will ensure that Australians can access accurate and up-to-date information about how their health system performs so they can choose the best care';⁷

3 Explanatory Memorandum, National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011, p. 2.

4 Council of Australian Governments, National Health Reform Agreement, August 2011, p. 4.

5 Council of Australian Governments, National Health Reform Agreement, August 2011, p. 4.

6 Council of Australian Governments Meeting, Canberra 19 August 2011, *Communiqué*, <http://www.coag.gov.au> (accessed 30 August 2011).

7 Council of Australian Governments Meeting, Canberra 19 August 2011, *Communiqué*, <http://www.coag.gov.au> (accessed 30 August 2011).

- the Independent Hospitals Pricing Authority (IHPA) – 'will set the national price for public hospital services and will develop a national activity based funding system';⁸ and
- the Australian Commission on Safety and Quality in Healthcare (ACSQHC) – 'will lead and coordinate improvements in safety and quality in healthcare in Australia'.⁹ ACSQHC was established on 1 January 2006, becoming an independent, statutory authority on 1 July 2011, under the *National Health and Hospitals Network Act 2011*.¹⁰

1.10 The Commonwealth has introduced legislation to implement the reforms. The *National Health and Hospital Networks Act 2011* was passed in March 2011 and established the ACSQHC as a statutory authority.

1.11 The National Health Reform Amendment (National Health Performance Authority) Bill 2011 was introduced into the House of Representatives on 3 March 2011 and establishes the NHPA and provides for its functions, powers and liabilities; amends provisions relating to the ACSQHC; and amends the NHHN Act to change its title to the *National Health Reform Act 2011*.¹¹ The Bill was referred to both the House Standing Committee on Health and Ageing¹² and the Senate Community Affairs Legislation Committee. During its inquiry, the Community Affairs Committee received proposed amendments to the Bill from the Department of Health and Ageing. The Community Affairs Committee recommended that the Bill be passed subject to the recommended amendments.¹³ The Bill was agreed to by the House of Representatives on 17 August 2011 with amendments¹⁴ and was introduced in the Senate on 22 August 2011.

8 Council of Australian Governments Meeting, Canberra, 19 August 2011, *Communiqué*, <http://www.coag.gov.au> (accessed 30 August 2011).

9 National Health Reform Agreement, p. 39, <http://www.coag.gov.au> (accessed 30 August 2011).

10 Australian Commission on Safety and Quality in Health Care, <http://www.safetyandquality.gov.au> (accessed 31 August 2011).

11 Explanatory Memorandum, National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011, p. 2.

12 House of Representatives Standing Committee on Health and Ageing, *Advisory Report on the National Health Reform Amendment (National Health Performance Authority) Bill 2011*, March 2011.

13 Senate Community Affairs Legislation Committee, *National Health Reform Amendment (National Health Performance Authority) Bill 2011*, June 2011.

14 The Senate Community Affairs Legislation Committee, *National Health Reform Amendment (National Health Performance Authority) Bill 2011*, June 2011 inquiry made three recommendations for amendments to the Bill. Recommendation 1, regarding specifying greater detail around processes that would lead to inclusion of new bodies or organisations in the NHPA's monitoring functions, and the granting of new functions to the NHPA; and Recommendation 2 regarding involvement of state and territory Ministers in the reporting process, are reflected in amendments to the legislation. However, Recommendation 3, regarding a broader range of mandated representation on the NHPA, is not.

1.12 The National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011 establishes the IHPA as an independent statutory authority under the *Financial Management and Accountability Act 1997*. The Bill introduces a principally activity based funding model, as recommended by the National Health and Hospitals Reform Commission in 2009,¹⁵ and agreed to in the National Health and Hospitals Network Agreement in 2010.¹⁶ It is a model that has already been operational in the private health sector.¹⁷

1.13 The activity based funding model replaces the previous arrangements whereby states received block grants, negotiated through health care agreements.¹⁸ The IHPA will set the price for each service or activity¹⁹ having regard for principles of access, clinical safety and quality, efficiency and effectiveness and financial sustainability.²⁰ There will still be some circumstances in which block funding will apply, where hospitals have low levels of activity, such as rural hospitals and specialised units. The IHPA will also have a role in determining amounts for block funding.²¹

1.14 An interim Independent Hospital Pricing Authority commenced operations as an executive agency on 1 September 2011. Under the NHRA, it was agreed that an interim IHPA would be established prior to passage of the enabling legislation.²²

15 National Health and Hospitals Reform Commission, *A Healthier Future for All Australians: Final Report June 2009*, p. 21.

16 Council of Australian Governments Meeting, Canberra 19 and 20 April 2010, Communiqué, p. 3, <http://www.coag.gov.au> (accessed 30 August 2011).

17 The Hon. Nicola Roxon, Minister for Health and Ageing, Second Reading Speech, National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011, *House of Representatives Hansard*, 24 August 2011, p. 9.

18 The Hon. Nicola Roxon, Minister for Health and Ageing, Second Reading Speech, National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011, *House of Representatives Hansard*, 24 August 2011, p. 8.

19 The Hon. Julia Gillard, Prime Minister and the Hon. Nicola Roxon, Minister for Health and Ageing, *A Better Deal for Patients, Joint Release*, 13 February 2011, [p. 3].

20 The Hon. Nicola Roxon, Minister for Health and Ageing, Second Reading Speech, National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011, *House of Representatives Hansard*, 24 August 2011, p. 10.

21 The Hon. Nicola Roxon, Minister for Health and Ageing, Second Reading Speech, National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011, *House of Representatives Hansard*, 24 August 2011, p. 10.

22 Department of Health and Ageing, *Submission 13*, p. 6.

Overview of the Bill

Purpose of the Bill

1.15 The National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011, amends the *National Health Reform Act 2011* to establish the IHPA, as agreed by COAG, in the NHRA on 2 August 2011. The Bill provides for the functions, powers, accountabilities and liabilities of the Independent Hospital Pricing Authority, as well as the establishment of committees and bodies to assist the IHPA.²³

1.16 As outlined in the Bill, the IHPA's main functions are:

- (a) to determine the national efficient price for health care services provided by public hospitals where the services are funded on an activity basis;
- (b) to determine the efficient cost for health care services provided by public hospitals where the services are block funded;
- (c) to publish this, and other information, for the purpose of informing decision makers in relation to the funding of public hospitals.²⁴

Provisions of the Bill

Objects, functions, powers and operation of the IHPA

1.17 The object of the IHPA, as provided for in proposed section 130, is to promote improved efficiency in, and access to, public hospital services through the provision of independent advice to Commonwealth, state and territory governments regarding the efficient costs of these services, and through developing and implementing systems to support activity based funding for such services.²⁵

1.18 Proposed section 131 provides for the functions of the IHPA and specifies the matters that the IHPA must have regard to when performing these functions. Among other provisions, the IHPA's functions will include:

- determining the national efficient price for healthcare services provided by public hospitals where the services are funded on an activity basis;
- determining the efficient cost for health care services provided by public hospitals where the services are block funded;
- developing and specifying classification systems for health care and other services provided by public hospitals;

23 Explanatory Memorandum, p. 2.

24 National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011, Item 21, proposed section 128.

25 Explanatory Memorandum, p. 5.

- determining adjustments to the national efficient price to reflect variations in the costs of delivering health care services; and
- determining data requirements and data standards in relation to data that is to be provided by states and territories.

1.19 Proposed section 134 outlines the Constitutional limits on the IHPA's functions.²⁶

Cost-shifting disputes and cross-border disputes

1.20 Proposed Part 4.3 sets out how the IHPA will deal with disputes about cost-shifting and cross-border health costs, reflecting clauses A88-A101 of the National Health Reform Agreement.²⁷

1.21 The procedures for assessing cost-shifting disputes by the IHPA are set out in proposed section 139. The procedures to be followed by the IHPA in making recommendations on cross-border disputes, as set out in proposed section 140, are very similar.

Constitution and membership of the IHPA

1.22 The IHPA is established as a body corporate with perpetual succession, with a seal, which is able to sue and be sued and is able to deal with real and personal property, under proposed section 142.²⁸

1.23 Proposed subsection 6(3) and proposed section 143 effectively set the minimum number of members of the IHPA at nine members, including the Chair and Deputy Chair.²⁹

1.24 Members, including the Chair, are appointed by the Minister, and can be appointed on a full-time or part-time basis, for up to a maximum five year period, and can be reappointed, as provided for in proposed sections 144 and 145.³⁰

1.25 Proposed section 144 provides that at least one of the members of the IHPA is to have substantial experience or knowledge and significant standing in regional or rural health care.³¹

26 Explanatory Memorandum, p. 6.

27 Explanatory Memorandum, p. 7.

28 Explanatory Memorandum, p. 8.

29 Explanatory Memorandum, pp 4 and 8.

30 Explanatory Memorandum, p. 8.

31 Explanatory Memorandum, p. 8.

Chief Executive Officer of the IHPA

1.26 The provisions for the Chief Executive Officer (CEO) of the IHPA are contained in proposed Part 4.8 of the Bill. The IHPA CEO is appointed by the IHPA under a written instrument, in consultation with the Minister. The appointment must not exceed five years, however the CEO may be reappointed.³²

Clinical Advisory Committee

1.27 The Clinical Advisory Committee (CAC) is established under proposed Part 4.10 to advise the IHPA on the formulation of casemix classifications for healthcare and other services provided by public hospitals, to provide advice on matters referred to it by the IHPA and to do anything incidental to or conducive to the performance of those functions. The Chair of the CAC is required to prepare and provide to the Minister an annual report for presentation to the Parliament, as soon as practicable after the end of each financial year.³³

Jurisdictional Advisory Committee

1.28 Proposed Part 4.11 establishes the Jurisdictional Advisory Committee (JAC) and provides that the IHPA must have regard to the advice provided by the JAC. Under proposed section 196, the JAC's functions include the provision of advice to the IHPA, including the following:

- (a) developing and specifying classification systems for health care and other services provided by public hospitals;
- (b) determining adjustments to the national efficient price to reflect variations in the costs of delivering health care services; and
- (c) standards and requirements in relation to data relating to health care services provided by public hospitals that are provided by States and Territories.

Other committees

1.29 Other committees may be established to provide assistance or advice to the IHPA. These committees may be made up wholly of IHPA members, wholly of persons who are not members, or a combination of members and non members. The IHPA may determine the committee's terms of reference, terms and conditions of its members, and procedures to be followed.³⁴

32 Explanatory Memorandum, pp 10–11.

33 Explanatory Memorandum, pp 12 and 14.

34 Explanatory Memorandum, p. 16.

Reporting obligations of the IHPA

1.30 Under proposed section 208 the Minister or a state/territory Health Minister may require the IHPA to prepare reports and documents, and on written notice to prepare documents about one or more specified matters relating to the performance of the IHPA's functions.³⁵

1.31 Proposed subsection 209(1) requires the IHPA to keep the Minister and the Standing Council on Health informed of its work and operations. However, this is limited by proposed subsection 209(2) stating that the IHPA is not required to inform the Standing Council on Health about the performance of its functions and powers under the *Financial Management and Accountability Act 1997*.³⁶

1.32 Proposed subsection 210 requires the IHPA, as soon as possible after the end of each financial year, to prepare and give to the Minister an annual report on the information and advice given by the IHPA in that particular year for presentation to the Parliament.³⁷

1.33 The IHPA is prohibited, under proposed section 211, from publishing a report unless the report, and a period of 45 days to comment on the report, has been given to the Minister and each state or territory Minister. However, under proposed section 212, this does not apply to a report under section 200 which is an annual report prepared and given to the Minister for presentation to the Parliament about its operations during the financial year.³⁸

Secrecy

1.34 Proposed Part 4.14 of the Bill contains provisions related to secrecy. As the Explanatory Memorandum explains, a person commits an offence if that person is or has been an official of the IHPA, has obtained information in the course of their work relating to another person, referred to as protected information, and discloses or uses the information. Exceptions are made where the disclosure or use is authorised under Part 4.13 or is compliant with Commonwealth or prescribed state law (proposed subsections 213(1) and (2)).³⁹

1.35 In addition, under proposed subsection 213(3) an official of the IHPA is not to be required to produce or disclose protected information to a court or tribunal except where it is necessary for giving effect to the Act.⁴⁰ Proposed subsections 214–223

35 Explanatory Memorandum, p.16.

36 Explanatory Memorandum, p. 17.

37 Explanatory Memorandum, p. 17.

38 Explanatory Memorandum, p. 17.

39 Explanatory Memorandum, p. 17.

40 Explanatory Memorandum, pp 17–18.

provide a list of exceptions from the prohibition for disclosure of protected information set out in this part.⁴¹

Other matters

1.36 Proposed section 225 requires the IHPA to publish on its website at least once each financial year a statement setting out its work program and seek submissions from interested parties about the work program.

Chapter 5 Miscellaneous

1.37 As the Explanatory Memorandum explains, the proposed Chapter 5 includes several provisions relating to privacy and confidentiality, a statement of the relationship between the Act and state laws, the non-application of the *Commonwealth Authorities and Companies Act 1997* and regulation making power.⁴²

Part 2 Transitional Provisions

1.38 Item 22 provides for the Minister, in consultation with the Standing Committee on Health to appoint a person to act as IHPA CEO before the end of the six months period from the commencement of Item 22 during the vacancy in the office of the IHPA CEO, so long as no appointment has previously been made.⁴³

Financial impact

1.39 The Commonwealth Government allocated \$91.8 million in funding for the IHPA over four years in the 2010-11 Budget.⁴⁴

Related inquiries

1.40 The following Senate committee reports have been tabled in relation to the COAG health and hospital reforms:

- Senate Finance and Public Administration References Committee: *Council of Australian Governments reforms relating to health and hospitals*, June 2010;
- Senate Economics Legislation Committee: *Federal Financial Relations Amendment (National Health and Hospitals Network) Bill 2010*, January 2011;
- Senate Community Affairs Legislation Committee, *National Health and Hospitals Network Bill 2010*, November 2010; and

41 Explanatory Memorandum, p. 18.

42 Explanatory Memorandum, p. 20.

43 Explanatory Memorandum, p. 21.

44 Explanatory Memorandum, p. 2.

- Senate Community Affairs Legislation Committee, *National Health Reform Amendment (National Health Reform Amendment (National Health Performance Authority) Bill 2011*, June 2011.