

## CLAUSE NOTES

### *National Health Funding Administration Bill 2012*

**Clause 1            Short Title**

**Clause 2            Commencement**

Provides for the Act to commence on the day it receives Royal Assent or 1 July 2012, whichever is the latter.

**Clause 3            Interpretation**

Provides the definitions of specific terms used in the Bill.

As all jurisdictions will be adopting common legislative provisions to establish the office of the Administrator, it is important that these provisions be interpreted in the same way in each jurisdiction. Therefore, clause 3(5) provides that the *Tasmanian Acts Interpretation Act 1931* does not apply to the Bill, and Schedule 7 of the Health Practitioner Regulation National Law is applied instead, as this Schedule provides uniform interpretation provisions of a kind which are standard for national scheme legislation.

**Clause 4            The office of Administrator**

Establishes the office of Administrator of the National Health Funding Pool. As per the intention of the National Health Reform Agreement (NHRA), the Administrator will be appointed under a law of the Commonwealth and each state and territory. The intention is that a single person will be appointed as Administrator in all jurisdictions and that the Administrator may exercise the functions of Administrator in relation to one jurisdiction or two or more or all jurisdictions collectively.

**Clause 5            Appointment of Administrator**

Provides for the Minister to appoint by instrument in writing a person as Administrator after the Standing Council on Health (the Council) has agreed on the person to be appointed. Before the Council decides on the appointment, the Chair of the Council must give each member an opportunity to nominate an individual for appointment. The Administrator may be appointed for up to five years, but is eligible for reappointment. He or she is to be paid the remuneration determined in accordance with the law of the Commonwealth, which means remuneration will be determined by the Commonwealth Remuneration Tribunal.

- Clause 6**                    **Suspension of the Administrator**
- Specifies the grounds under which the Chair of the Council is required to suspend the Administrator from office.
- Clause 7**                    **Removal or resignation of the Administrator**
- Sets out the method by which the Administrator may be removed from office or resign. If the majority of the Council agree to remove the Administrator from office, the Minister must remove the Administrator from office by instrument in writing. The Administrator may resign by notice in writing to the Chair of the Council.
- Clause 8**                    **Acting Administrator**
- Enables the Chair of the Council to appoint a person to act as the Administrator if the office is vacant or the Administrator is suspended or absent from duty.
- Clause 9**                    **Provision of staff and facilities for Administrator**
- Notes that a National Health Funding Body will be established under Commonwealth law to assist the Administrator in exercising or performing his or her functions. However, the Administrator is not entitled to delegate his or her functions to the Body. The NHRA requires the Commonwealth to fund all costs associated with the establishment and ongoing operation of the Body.
- Clause 10**                   **Functions of the Administrator**
- Sets out the functions of the Administrator. The functions are consistent with the policy intent of clauses B26 and B27 of the NHRA.
- This clause specifically relates to the duties of the Administrator when he or she is acting under Tasmanian legislation. The corresponding legislation of the Commonwealth will specify the functions of the Administrator when he or she is acting under Commonwealth law, such as monitoring Commonwealth payments into each State Pool Account.
- To avoid doubt, it is stated that this Bill does not give the Commonwealth ownership or control of money in a State Pool Account.

**Clause 11                    Establishment of State Pool Account with Reserve Bank**

Provides for the Secretary of the Department of Health and Human Services to open and maintain a bank account with the Reserve Bank of Australia for the purpose of receiving funding under the NHRA. This account is to be known as the State Pool Account.

**Clause 12                    Payments into State Pool Account**

Specifies which money is to be paid into the State Pool Account. This includes money from the Commonwealth, the State and another state. Interest earned on money in the State Pool Account may be paid into that account or another account.

As the State Pool Account is a bank account in the name of the State, any Commonwealth money paid into the State Pool account will cease to be part of the Commonwealth Consolidated Revenue Fund (and cease to be under Commonwealth control) as soon as the payment is made into the account.

**Clause 13                    Payments from the Pool**

Specifies what can be paid with money from the State Pool Account. This includes payments for services provided by the THOs; teaching, training and research; and any other matter that the NHRA states is to be funded through the Pool. Payments may only be made in accordance with the directions of the State Minister for Health. In practice, it is likely that the directions would be given by a person delegated by the Minister under clause 28 of this Bill.

**Clause 14                    State Managed Funds**

Provides for a State Managed Fund to be established for the purpose of receiving block funding. The account may be either a separate bank account, separate fund or an existing bank account or fund. In Tasmania it is proposed to be a fund within the public account.

**Clause 15                    Distribution of Commonwealth Funding**

Provides that the amount of Commonwealth funding distributed to the State is to be consistent with the advice provided by the Administrator to the Commonwealth Treasurer.

- Clause 16**            **Financial management obligations of Administrator**
- Requires the Administrator to develop and apply appropriate financial management policies and procedures, keep proper records and prepare financial statements.
- Clause 17**            **Monthly reports by Administrator**
- Requires the Administrator to provide to Commonwealth and the Minister for Health or their appointee monthly reports on payments into and out of the State Pool Account and State Managed Fund and on related public hospital activity levels during the relevant month. The reports are to be made publicly available.
- Clause 18**            **Annual report by Administrator**
- Requires that within four months of the end of the financial year the Administrator will provide and publish an annual report, including information on payments into and out of the State Pool Account and State Managed Fund and on related public hospital activity levels during the relevant financial year. The annual report is to be accompanied by an audited financial statement for each State Pool Account and a financial statement that combines the audited financial statements for each State Pool Account. The annual report is then be tabled in Parliament by the Minister for Health.
- Clause 19**            **Administrator to prepare financial statements for State Pool Accounts**
- Provides that after each financial year, the Administrator is to prepare a financial statement for each State Pool Account and a combined financial statement consisting of the financial statements for each State Pool Account.
- Clause 20**            **Audit of financial statements**
- Requires the financial statements for the State Pool Account to be audited by the State's Auditor-General.
- Clause 21**            **Performance audits**
- Allows the State's Auditor-General to carry out a performance audit of the exercise or performance of the Administrator's functions relating to Tasmania. If the Auditor-General plans an audit, he must notify all other Auditors-General of this intention, in order to allow other Auditors-General wishing to conduct an audit at the same time to coordinate the conduct of the audits.

**Clause 22**                    **States to provide Administrator with information about State Managed Funds**

As the Administrator is required to report on State Managed Funds which they will not operate, this clause requires the Minister to provide information to the Administrator about payments into and out of the State Managed Fund and the services and function they funded, that is required to allow the Administrator to meet his or her reporting requirements.

**Clause 23**                    **Provision of information generally**

The Administrator must provide to the Minister any information requested by the Minister in the time set by the Minister, and must also provide to the Minister a copy of advice provided to the Commonwealth Treasurer under clause 10(1)(a) on amounts required to be paid into State Pool Accounts by the Commonwealth. The Administrator may at any time provide information relating to a jurisdiction to the Minister for the jurisdiction. Information relating to a jurisdiction that is made available by the Administrator to another jurisdiction may only be publicly released by the second jurisdiction in accordance with arrangements approved by the Minister for the first jurisdiction.

**Clause 24**                    **Exclusion of legislation of this jurisdiction**

Provides that certain Tasmanian legislation does not apply to or in respect of the Administrator or the Administrator's functions. This reflects the requirement of clause 28(g) of the NHRA. Instead, the Commonwealth legislation specified in clause 25 will apply. This ensures a nationally consistent basis for the Administrator to exercise his or her functions.

This clause also allows the Minister or their delegate to use and disclose information about a person if it relates to a performance or exercise of a function under this Bill by either the Minister or the Administrator. This is to ensure that the Minister can comply with clause A8 of the NHRA relating to the provision of information to the National Bodies set up under the Agreement.

This clause also provides that certain legislation does not apply to or in respect of this Bill.

**Clause 25**                    **Application of Commonwealth Acts**

Provides that the *Commonwealth Archives Act 1983*, *Australian Information Commissioner Act 2010*, *Freedom of Information Act*

*1982, Ombudsman Act 1976 and Privacy Act 1998* will be applied as laws of this jurisdiction to or in respect of the Administrator and any function exercised or performed by the Administrator.

The clause provides these Acts apply subject to any modifications made by regulations under the Commonwealth *National Health Reform Act 2011* by the Commonwealth with the agreement of all the members of the Standing Council on Health.

This is required to enable Commonwealth oversight bodies to operate in respect of the Administrator and any function exercised or performed by the Administrator.

**Clause 26 Extraterritorial operation of Act**

Provides that the operation of this Bill is to include the operation of things, acts, transactions and matters situated or occurring inside or outside the territorial limits of Tasmania; including things, acts, transactions and matters that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction. This reflects that the Administrator will operate in each state and territory and for the Commonwealth.

**Clause 27 Act binds Crown**

Provides that the Tasmanian Government is bound by this legislation.

**Clause 28 Delegation of functions of responsible Minister**

Enables the Minister to delegate his or her powers under this Bill, with the exception of clauses 4 to 10 of this Bill, relating to the office of the Administrator, including appointment, suspension or removal of the Administrator.

**Clause 29 Transitional and validation provisions**

Provides that if, following the commencement of this Bill, another jurisdiction has not enacted corresponding legislation, that jurisdiction's Minister for Health will be that jurisdiction's responsible Minister for the purposes of this Bill. Anything done by a Minister for Health that would have been validly done had the corresponding legislation of other jurisdiction been in place is taken to have been validly done.

**Clause 30 Administration of Act**

Provides that administration of this Bill is assigned to the Minister for Health with the Department of Health and Human Services being the responsible department.

