

House of Assembly—No 59

As laid on the table and read a first time, 17 May 2012

South Australia

National Health Funding Pool Administration (South Australia) Bill 2012

A BILL FOR

An Act to give effect to requirements under the National Health Reform Agreement in relation to the establishment and management of accounts, the receipt and payment of funds, and the provision of information; to provide for financial management and reporting in relation to Commonwealth/State health funding; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *National Health Funding Pool Administration (South Australia) Act 2012*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

10 *Administrator* means the Administrator of the National Health Funding Pool appointed under section 7 and under the corresponding provision of the laws of the Commonwealth and the other States;

COAG means the Council of Australian Governments;

Department means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

15 *function* includes a power, authority or duty;

local hospital network means an organisation that is a local hospital network (however described) for the purposes of the National Health Reform Agreement;

National Health Funding Pool means the combined State Pool Accounts for each State;

20 *National Health Reform Agreement* means the National Health Reform Agreement between the Commonwealth and the States that was agreed to by COAG on 2 August 2011, as amended from time to time;

25 *responsible Minister* for a jurisdiction means the relevant Minister with portfolio responsibility for the administration of the provision of this Act in which the expression occurs (or of the corresponding provision of the laws of the Commonwealth and the other States);

Service Agreement means a Service Agreement under section 31;

30 *Standing Council on Health* means (subject to subsection (2)) the Ministerial Council by that name or, if there is no such Ministerial Council, the standing Ministerial Council established or recognised by COAG whose members include all Ministers in Australia having portfolio responsibility for health;

State includes the Australian Capital Territory and the Northern Territory;

35 *State Managed Fund* of a State means a bank account or fund established or designated by the State for the purposes of health funding under the National Health Reform Agreement that is required to be undertaken in the State through a State Managed Fund;

State Pool Account of a State means the bank account established by the State under Part 3 or under the corresponding provisions of the law of another State.

(2) The Standing Council on Health, when acting under this Act, is to be constituted only by a single Minister for the Commonwealth and a single Minister for each of the States, and any reference in this Act to a member of that Council is to be construed as a reference to those Ministerial members only.

5 (3) If there are 2 or more Ministers for the Commonwealth or for a State who are members of the Standing Council on Health, the relevant Minister for the purposes of this Act is the Minister having primary portfolio responsibility for health in his or her jurisdiction.

10 (4) A reference in this Act to the agreement of, or a request by, a member of the Standing Council on Health is a reference to an agreement or request in writing.

(5) Parts 2 to 5 (inclusive) are to be interpreted in accordance with Schedule 7 of the *Health Practitioner Regulation National Law (South Australia)* and, for that purpose, Schedule 7 applies as if references to this Law were references to this Act, or an Act of this jurisdiction, and with all other necessary modifications.

15 (6) The *Acts Interpretation Act 1915* does not apply to or in respect of Parts 2 to 5 (inclusive).

(7) Any incorporated hospital under the *Health Care Act 2008* is a local hospital network for the purposes of this Act.

4—Extraterritorial operation of Act

20 It is the intention of Parliament that the operation of this Act is to include, as far as possible, operation in relation to the following:

- (a) things situated in or outside the territorial limits of this jurisdiction;
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- 25 (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction.

5—Act binds the Crown

30 This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, the Crown in all its other capacities.

Part 2—Administrator of the National Health Funding Pool

6—The office of Administrator

(1) The office of Administrator of the National Health Funding Pool is established by this Act.

35 (2) It is the intention of Parliament that the same individual holds the office established under subsection (1) and under the corresponding provision of the law of the Commonwealth and the other States.

(3) The Administrator appointed under this Act may exercise and perform the functions of the Administrator in relation to—

40 (a) one jurisdiction; or

(b) 2 or more or all jurisdictions collectively.

- (4) A reference in a provision of this Act (other than in section 12(1) or Part 3) to a function of the Administrator under this Act includes a reference to a function of the Administrator under the corresponding provision of the law of the Commonwealth and the other States.

7—Appointment of Administrator

- (1) The Minister for this jurisdiction who is a member of the Standing Council on Health is to appoint an individual to the office of the Administrator of the National Health Funding Pool under this Act.
- (2) Before the appointment is made, the Chair of the Standing Council on Health is to give each member of the Council an opportunity to nominate an individual for appointment.
- (3) An appointment is not to be made unless all the members of the Standing Council on Health have agreed on the individual who will be appointed as Administrator, the date that the appointment will take effect, the period of appointment and the conditions of appointment.
- (4) The appointment is to be made by instrument in writing.
- (5) The Administrator is to be appointed (subject to subsection (3)) for the period, not exceeding 5 years, and on the conditions specified in his or her instrument of appointment, but is eligible for re-appointment.
- (6) The Administrator is entitled to the remuneration determined in accordance with the law of the Commonwealth.

8—Suspension of Administrator

- (1) The Chair of the Standing Council on Health is required to suspend the Administrator from office if requested to do so by—
- (a) at least 3 members of the Council who are Ministers of a State; or
 - (b) the member of the Council who is a Minister of the Commonwealth.
- (2) A member of the Standing Council on Health is not to request the suspension of the Administrator unless the member is satisfied that the Administrator—
- (a) is, because of any physical or mental incapacity or otherwise, unable to perform his or her functions satisfactorily; or
 - (b) has failed to comply with his or her obligations or duties as Administrator; or
 - (c) has been accused or convicted of an offence that carries a penalty of imprisonment; or
 - (d) has or may become bankrupt.
- (3) A suspension is to be effected by an instrument in writing and is to be notified by the Chair of the Standing Council on Health to all members of the Council.
- (4) A suspension is terminated after a period of suspension of 60 days unless before the end of that period the Administrator is removed or resigns from office or a majority of the members of the Standing Council on Health—
- (a) terminate the suspension; or

(b) extend the suspension for a specified further period.

- (5) Despite subsection (1), the Chair of the Standing Council on Health is not to suspend the Administrator from office within the period of 90 days after an earlier period of suspension was terminated unless a majority of the members of the Council request the Chair to do so.

9—Removal or resignation of Administrator

- (1) The Minister for this jurisdiction who is a member of the Standing Council on Health is required to remove the Administrator from office if a majority of the members of the Council agree to the Administrator's removal from office.
- (2) The Administrator is to be removed from office by an instrument in writing that takes effect on the date agreed to by the majority of the members of the Standing Council on Health.
- (3) The Administrator may resign as Administrator by notice in writing to the Chair of the Standing Council on Health.
- (4) The resignation of the Administrator takes effect on the date notified by the Chair of the Standing Council on Health to all members of the Council.

10—Acting Administrator

- (1) The Chair of the Standing Council on Health may, from time to time, appoint an individual to act as the Administrator during any period when the office is vacant or the holder of the office is suspended or absent from duty.
- (2) Any such appointment may only be made from a panel of persons, and in accordance with the procedure, agreed to by all the members of the Standing Council on Health.

Note—

The applied provisions of Schedule 7 to the *Health Practitioner Regulation National Law (South Australia)* (clause 27) contain additional provisions relating to acting appointments that have effect subject to this section.

11—Provision of staff and facilities for Administrator

- (1) Staff and facilities to assist the Administrator in exercising or performing his or her functions under this Act are to be provided by the National Health Funding Body constituted under the *National Health Reform Act 2011* of the Commonwealth.
- (2) The Administrator is not entitled to delegate a function conferred on the Administrator under this Act to that body, to any such member of staff or to any other person or body.

12—Functions of Administrator

- (1) The Administrator is—
- (a) to calculate and advise the Treasurer of the Commonwealth of the amounts required to be paid by the Commonwealth into each State Pool Account of the National Health Funding Pool under the National Health Reform Agreement (including advice on any reconciliation of those amounts based on subsequent actual service delivery); and
- (b) to monitor State payments into each State Pool Account for the purposes of Part 5; and

- (c) to make payments from each State Pool Account in accordance with the directions of the State concerned; and
- (d) to report publicly on the payments made into and from each State Pool Account and other matters on which the Administrator is required to report under this Act; and
- (e) to exercise or perform any other functions conferred on the Administrator under this Act.

Note—

The corresponding provisions of the law of the Commonwealth provide that the functions of the Administrator include monitoring Commonwealth payments into each State Pool Account for the purposes of Part 5.

- (2) The Administrator and the body and staff assisting the Administrator are not subject to the control or direction of any Minister of the Commonwealth in relation to the exercise or performance of the Administrator's functions under this Act.
- (3) However, the Administrator is required to comply with any directions given by COAG in relation to the manner in which the Administrator exercises or performs his or her functions under this Act (including in relation to the preparation or provision of annual or monthly reports, financial statements or information under Part 5).
- (4) Directions given by COAG under subsection (3)—
 - (a) are to be given in accordance with a written resolution of COAG passed in accordance with the procedures determined by COAG; and
 - (b) are to be notified in writing to the Administrator; and
 - (c) are to be made publicly available by the Administrator.
- (5) To avoid doubt, this Act is not intended—
 - (a) to give the Commonwealth ownership or control of money in a State Pool Account; or
 - (b) to affect the obligation of the Administrator under the law of a State to make payments from the State Pool Account of the State in accordance with the directions of the State.
- (6) To avoid doubt, the Administrator may have regard to information obtained in the exercise or performance of functions under the law of another jurisdiction in the exercise or performance of the Administrator's functions under Part 5.

Part 3—State Pool Accounts—the National Health Funding Pool

13—Establishment of State Pool Accounts with Reserve Bank

- (1) The Chief Executive of the Department is to open and maintain with the Reserve Bank of Australia a separate State bank account for the purpose of the National Health Reform Agreement.
- (2) The bank account is the State Pool Account established for the State for the purposes of this Act.

14—Payments into State Pool Account

There is payable into the State Pool Account established for the State—

- (a) money paid to the State by the Commonwealth for payment into the State Pool Account under the National Health Reform Agreement; and
- 5 (b) money made available by the State for the purposes of funding in the State through the State Pool Account under the National Health Reform Agreement; and
- (c) money paid to the State by another State for payment into the State Pool Account under the National Health Reform Agreement; and
- 10 (d) interest paid on money deposited in the State Pool Account, unless directed to be paid into another bank account by the responsible Minister for the State.

15—Payments from State Pool Account

- (1) There is payable from the State Pool Account established for the State amounts to fund the following in the State under the National Health Reform Agreement
15 (including through a State Managed Fund):
 - (a) the services provided by local hospital networks;
 - (b) health teaching, training and research provided by local hospital networks or other organisations;
 - (c) any other matter that under that Agreement is to be funded through the
20 National Health Funding Pool.
- (2) Payments of amounts from the State Pool Account established for the State are to be made by the Administrator strictly in accordance with the directions of the responsible Minister for the State, including on the amount of each payment, the party or account to which it is to be paid and the timing of the payment.
- 25 (3) The Administrator is required to authorise personally each payment made from the State Pool Account.
- (4) The Administrator is, at the direction of the responsible Minister for the State, to repay any money paid by the State into the State Pool Account for the State that the responsible Minister is satisfied constitutes an overpayment into that Account.
- 30 (5) This section does not affect the payment from the State Pool Account of charges imposed by the Reserve Bank of Australia for the operation of that Account.
- (6) This section does not require the payment for services and matters referred to in subsection (1) to be made only from the State Pool Account.
- 35 (7) For the purposes of this section, the funding of a local hospital network includes the funding of another party on behalf of the network for corporate or other services provided to the network by that other party.
- (8) If at any time when a payment from the State Pool Account is required to be made there is no Administrator or the Administrator is not available to make the payment at that time, the payment from that Account may be made by an official of this State who
40 is directed by the responsible Minister for the State to make the payment.

16—Distribution of Commonwealth funding

- 5 (1) Directions by the responsible Minister for the State to the Administrator for payments from the State Pool Account are, in relation to the distribution of Commonwealth funding provided to the State under the National Health Reform Agreement, to be consistent with the advice provided by the Administrator to the Treasurer of the Commonwealth about the basis on which the Administrator has calculated the payments to be made into that Account by the Commonwealth.
- 10 (2) This section does not affect the obligation of the Administrator to make payments from the State Pool Account strictly in accordance with the directions of the responsible Minister for the State.

Part 4—State Managed Fund

17—Establishment of State Managed Fund

15 The Chief Executive of the Department is to open and maintain with a financial institution a separate bank account as the State Managed Fund for the State for the purposes of health funding under the National Health Reform Agreement.

18—Payments into State Managed Fund

- 20 (1) There is payable into the State Managed Fund—
- (a) block funding allocated to the State, or paid from the State Pool Account, for the provision of hospital and other health services under the National Health Reform Agreement; and
 - (b) funding for teaching, training and research related to the provision of health services allocated by the State, or paid from the State Pool Account, under the National Health Reform Agreement; and
 - 25 (c) interest paid on money deposited into the fund, unless directed to be paid into another bank account by the responsible Minister for the State.
- (2) The following may be paid into the State Managed Fund:
- (a) exceptional payments for the provision of health services that the responsible Minister for the State considers appropriate;
 - 30 (b) any adjustments that the responsible Minister for the State considers appropriate for the purposes of the fund—
 - (i) to reflect the difference between estimated and actual services paid; or
 - (ii) for other funding reconciliations under the National Health Reform Agreement;
 - 35 (c) other amounts that the responsible Minister for the State considers appropriate.
- (3) In this section—
- 40 **block funding** means block funding under the National Health Reform Agreement but does not include top-up funding provided by the Commonwealth under the National Health Reform Agreement.

19—Payments from State Managed Fund

- (1) Payments from the State Managed Fund, including the timing of payments, are to be decided by the responsible Minister for the State.
- (2) Payments from the State Managed Fund are to be consistent with—
- 5 (a) the purpose for which the funding was paid into the fund; and
- (b) the National Health Reform Agreement; and
- (c) any relevant Service Agreement with a local hospital network.
- (3) Payments from the State Managed Fund are only to be made to—
- 10 (a) local hospital networks and other providers of hospital and other health services; and
- (b) universities and other providers of teaching, training and research related to the provision of health services.
- (4) This section does not prevent the responsible Minister for the State from paying amounts from the State Managed Fund—
- 15 (a) to reflect the difference between estimated and actual services provided; or
- (b) for other funding reconciliations under the National Health Reform Agreement; or
- (c) to correct any error in payments out of the fund; or
- 20 (d) to pay fees associated with maintaining the fund, including financial institution fees and audit fees; or
- (e) for interest earned on the account to be paid for any purpose decided by the responsible Minister.

Part 5—Financial management and reporting

20—Financial management obligations of Administrator

25 The Administrator must—

- (a) develop and apply appropriate financial management policies and procedures with respect to the State Pool Accounts (including policies and procedures to ensure payments from those Accounts are made in accordance with the directions of the responsible Ministers); and
- 30 (b) keep proper records in relation to the administration of the State Pool Accounts, including records of all payments made into and from those Accounts and the basis on which the payments were made; and
- (c) prepare the financial statements required by this Part in relation to the State Pool Accounts and arrange for the audit of those financial statements in
- 35 accordance with this Part.

21—Monthly reports by Administrator

- (1) The Administrator must provide monthly reports to the Commonwealth and each State containing the following information for the relevant month:
- (a) the amounts paid into each State Pool Account and State Managed Fund by the relevant State and the basis on which the payments were made;
 - (b) the amounts paid into each State Pool Account by the Commonwealth and the basis on which the payments were made;
 - (c) the amounts paid from each State Pool Account to local hospital networks, a State Managed Fund or other organisations or funds and the basis on which the payments were made;
 - (d) the amounts paid from each State Managed Fund to local hospital networks or other organisations or funds and the basis on which the payments were made;
 - (e) the number of public hospital services funded for each local hospital network (including a running financial year total) in accordance with the system of activity based funding;
 - (f) the number of other public hospital services and functions funded from each State Pool Account or State Managed Fund (including a running financial year total).
- (2) A monthly report required to be provided to a jurisdiction under this section is to be provided to the responsible Minister for that jurisdiction or to a body or officer notified to the Administrator by that Minister.
- (3) The Administrator is to make reports provided under this section publicly available.

22—Annual report by Administrator

- (1) The Administrator must, within 4 months after the end of each financial year, provide to the responsible Ministers an annual report on the exercise or performance of his or her functions under this Act during the financial year.
- (2) The annual report must include the following information for the relevant financial year:
- (a) the amounts paid into each State Pool Account and State Managed Fund by the relevant State and the basis on which the payments were made;
 - (b) the amounts paid into each State Pool Account by the Commonwealth and the basis on which the payments were made;
 - (c) the amounts paid from each State Pool Account to local hospital networks, a State Managed Fund or other organisations or funds and the basis on which the payments were made;
 - (d) the amounts paid from each State Managed Fund to local hospital networks or other organisations or funds and the basis on which the payments were made;
 - (e) the number of public hospital services funded for each local hospital network in accordance with the system of activity based funding;
 - (f) the number of other public hospital services and functions funded from each State Pool Account or State Managed Fund.

- (3) The annual report is to be accompanied by—
- (a) an audited financial statement for each State Pool Account; and
 - (b) a financial statement that combines the audited financial statements for each State Pool Account.

- 5 (4) A responsible Minister must, as soon as practicable after receiving an annual report under this section, cause a copy of the report to be tabled in the Parliament of the responsible Minister’s jurisdiction.

23—Administrator to prepare financial statements for State Pool Accounts

The Administrator must, after each financial year, prepare—

- 10 (a) a financial statement for each State Pool Account that details financial transactions during that financial year; and
- (b) a combined financial statement that consists of the financial statements for each State Pool Account for the financial year.

24—Audit of financial statements

- 15 (1) A financial statement under this Part for the State Pool Account of a State is to be audited by the Auditor-General of that State in accordance with the relevant legislation of that State relating to financial audit by the Auditor-General.
- (2) The relevant legislation of South Australia is the *Public Finance and Audit Act 1987*.

25—Performance audits

- 20 (1) For the purposes of this section, a *performance audit* is an audit by the Auditor-General of a jurisdiction of the exercise or performance of the functions of the Administrator in relation to that jurisdiction to determine whether the Administrator is acting effectively, economically, efficiently and in compliance with all relevant laws.
- 25 (2) Before the Auditor-General of this jurisdiction conducts a performance audit, the Auditor-General must notify the Auditors-General of all other jurisdictions of his or her intention to conduct the proposed audit.
- (3) Auditors-General who are conducting performance audits at the same time are to make arrangements to co-ordinate the conduct of those audits in relation to any requirements imposed on the Administrator.
- 30 (4) A performance audit is to be conducted by the Auditor-General of this jurisdiction in accordance with the laws of this jurisdiction relating to the exercise or performance of the functions of the Auditor-General as if it were an examination under the *Public Finance and Audit Act 1987* and, for that purpose, the Auditor-General may exercise any power under section 34 of that Act.

26—States to provide Administrator with information about State Managed Funds

- 5 (1) The responsible Minister for a State is to provide information to the Administrator about any of the following matters relating to the State Managed Fund of the State that the Administrator requires for the preparation of reports and financial statements under this Part:
- 10 (a) the amounts paid by the State into the State Managed Fund and the basis on which the payments were made;
- (b) the amounts paid by the State from the State Managed Fund to local hospital networks or other organisations or funds and the basis on which the payments were made;
- (c) public hospital services and functions that are funded from the State Managed Fund.
- 15 (2) The information is to be provided by the time requested by the Administrator.

27—Provision of information generally

- 20 (1) The Administrator is required to provide to the responsible Minister for a jurisdiction any information requested by that responsible Minister that relates to that jurisdiction.
- (2) The information is to be provided by the time requested by that responsible Minister.
- (3) The Administrator is required to provide to the responsible Ministers of all jurisdictions a copy of advice provided by the Administrator to the Treasurer of the Commonwealth about the basis on which the Administrator has calculated the payments to be made into State Pool Accounts by the Commonwealth.
- (4) The Administrator may at any time provide any information that relates to a jurisdiction to the responsible Minister for that jurisdiction.
- 25 (5) Any information relating to a jurisdiction that is provided by the Administrator to another jurisdiction may only be publicly released by that other jurisdiction in accordance with arrangements approved by the responsible Minister for the jurisdiction to which the information relates.

Part 6—Miscellaneous

28—Exclusion of legislation of this jurisdiction

30 The following Acts of this jurisdiction do not apply to or in respect of Parts 2 to 5 (inclusive):

- 35 (a) the *Freedom of Information Act 1991*;
- (b) the *Ombudsman Act 1972*;
- (c) the *State Records Act 1997*.

29—Application of Commonwealth Acts

- (1) The following Acts apply (subject to subsection (2)) as laws of this jurisdiction for the purposes of Parts 2 to 5 (inclusive):
- (a) the *Archives Act 1983* of the Commonwealth;

- (b) the *Australian Information Commissioner Act 2010* of the Commonwealth;
- (c) the *Freedom of Information Act 1982* of the Commonwealth;
- (d) the *Ombudsman Act 1976* of the Commonwealth;
- (e) the *Privacy Act 1998* of the Commonwealth.

- 5 (2) Each of those Acts so applies subject to the modifications made by regulations made under the *National Health Reform Act 2011* of the Commonwealth with the agreement of all members of the Standing Committee on Health.

30—Public finance and audit

- 10 (1) The Administrator is not to be regarded as a public authority under the *Public Finance and Audit Act 1987* and, subject to subsection (2), that Act will not apply to the Administrator in relation to the performance of the Administrator's functions under this Act.
- (2) The Administrator will be taken to be a public authority for the purposes of a performance audit conducted under Part 5.
- 15 (3) The State Pool Account and the State Managed Fund will be taken to be special deposit accounts under the *Public Finance and Audit Act 1987* and must be maintained in accordance with the requirements of the *Public Finance and Audit Act 1987*.

31—Service agreements

- 20 (1) Payments from the State Pool Account and the State Managed Fund to a local hospital network will be in accordance with a *Service Agreement* that is agreed between the Minister and the local hospital network.
- (2) The Minister and a local hospital network may vary a Service Agreement from time to time.
- 25 (3) The Minister must, within 14 days after entering into, or varying, a Service Agreement publish the Service Agreement or variation in a way that allows the agreement to be accessed by members of the public including, for example, on the Internet.

32—Provision of information

- 30 (1) Without limiting any other provision of this Act, any Minister is authorised to provide to the Administrator any information that may be provided to the Administrator under the National Health Reform Agreement.
- (2) The information is to be provided in accordance with any requirements determined by the Administrator after consultation with the Minister.

33—Delegation

- 35 (1) A Minister may delegate to a person or body (including a person for the time being holding or acting in a specified office or position) a function of the Minister under this Act.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
 - 40 (b) may be absolute or conditional; and

- (c) does not derogate from the ability of the Minister to act in any matter; and
 - (d) is revocable at will.
- (3) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- 5 (4) This section does not apply to a function of the Minister under Part 2.

34—Regulations

The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

Schedule 1—Transitional and validation provisions

10 1—Transitional and validation provisions

- (1) If, on the commencement of this Act, corresponding provisions to this Act have not been enacted by another jurisdiction, the responsible Minister for that jurisdiction for the purposes of this Act is the Minister of that jurisdiction with portfolio responsibility for health.
- 15 (2) Any thing done by a Minister of the Commonwealth or of a State before the commencement of this Act that would have been validly done if this Act, and the corresponding provisions of other jurisdictions, had been in force at the time is taken to have been validly done.