



New South Wales

Health Services Amendment (National Health Reform Agreement) Act 2012 No 36

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Health Services Amendment (National Health Reform Agreement) Act 2012 No 36

Act No 36, 2012

An Act to amend the *Health Services Act 1997* to make provision for health funding arrangements under the National Health Reform Agreement. [Assented to 20 June 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Services Amendment (National Health Reform Agreement) Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Health Services Act 1997 No 154

**[1] Sections 4 (a) and (c1), 28 (f) and (g), 62B (1) and 126 (2) (a) and (d) and
 clause 92 of Schedule 7**

Omit “NHHN Agreement” wherever occurring.

Insert instead “National Health Reform Agreement”.

[2] Section 126I

Insert before section 127:

**126I Health funding arrangements under the National Health Reform
 Agreement**

Schedule 6A contains provisions relating to health funding
arrangements under the National Health Reform Agreement.

[3] Section 127 Determination of subsidies

Insert after section 127 (2):

(2A) In making a determination under this section, the Minister is also
 to have regard to the National Health Reform Agreement.

[4] Section 127 (6)

Insert after section 127 (5):

(6) This section does not affect the operation of the provisions
 relating to health funding arrangements under the National
 Health Reform Agreement set out in Schedule 6A.

[5] Schedule 6A

Insert after Schedule 6:

Schedule 6A National Health Funding Pool and Administration

Part 1 Preliminary

1 Interpretation

(1) In this Schedule:

Administrator means the Administrator of the National Health
Funding Pool appointed under clause 3 and under the

corresponding provision of the laws of the Commonwealth and the other States.

COAG means the Council of Australian Governments.

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

Note. In New South Wales, local health districts, specialty network governed health corporations and affiliated health organisations declared to be networks under section 62B of the Act are local hospital networks for the purposes of the National Health Reform Agreement.

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

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.

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

Note. See also clause 27.

Standing Council on Health means (subject to subclause (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.

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.

Note. Function and **exercise** of a function are defined in the Dictionary to the Act.

- (2) The Standing Council on Health, when acting under this Schedule, 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 Schedule to a member of that Council is to be construed as a reference to those Ministerial members only.

- (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 Schedule is the Minister having primary portfolio responsibility for health in his or her jurisdiction.
- (4) A reference in this Schedule 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) This Schedule is to be interpreted in accordance with Schedule 7 to the *Health Practitioner Regulation National Law (NSW)* and, for that purpose, Schedule 7 applies as if references to this Law or a Queensland Act were references to this Schedule or an Act of this jurisdiction, and with all other necessary modifications.
- (6) The *Interpretation Act 1987* does not apply to or in respect of this Schedule.

Part 2 Administrator of the National Health Funding Pool

2 The office of Administrator

- (1) The office of Administrator of the National Health Funding Pool is established by this Schedule.
- (2) It is the intention of Parliament that the same individual holds the office established under subclause (1) and under the corresponding provision of the laws of the Commonwealth and the other States.
- (3) The Administrator appointed under this Schedule may exercise and perform the functions of the Administrator in relation to:
 - (a) one jurisdiction, or
 - (b) 2 or more or all jurisdictions collectively.
- (4) A reference in a provision of this Schedule (other than in clause 8 (1) and Part 3) to a function of the Administrator under this Schedule includes a reference to a function of the Administrator under the corresponding provision of the laws of the Commonwealth and the other States.

3 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 Schedule.
- (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 subclause (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.

4 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.

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- (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 subclause (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.

5 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.

6 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 (NSW)* (clause 27) contain additional provisions relating to acting appointments that have effect subject to this clause.

7 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 Schedule 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 Schedule to that body, to any such member of staff or to any other person or body.

8 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 4, 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 Schedule, and
 - (e) to exercise or perform any other functions conferred on the Administrator under this Schedule.

Note. The corresponding provisions of the laws of the Commonwealth provide that the functions of the Administrator include monitoring Commonwealth payments into each State Pool Account for the purposes of Part 4.

- (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 Schedule.
- (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 Schedule (including in relation to the preparation or

provision of annual or monthly reports, financial statements or information under Part 4).

- (4) Directions given by COAG under subclause (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 Schedule 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 4.

Part 3 State Pool Accounts—the National Health Funding Pool

9 Establishment of State Pool Accounts with Reserve Bank

- (1) The Director-General of the Ministry of Health 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 Schedule.
- (3) The State Pool Account is established as an account in the Special Deposits Account.
- (4) To avoid doubt, the State Pool Account and the money standing to the credit of the Account are under the control of the Director-General of the Ministry of Health for the purposes of the application of relevant accounting standards.

10 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
- (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
- (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.

11 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 (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 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.
- (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.
- (5) This clause 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.

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- (6) This clause does not require the payment for services and matters referred to in subclause (1) to be made only from the State Pool Account.
 - (7) For the purposes of this clause, 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 is directed by the responsible Minister for the State to make the payment.

12 State Managed Funds

The Director-General of the Ministry of Health is to:

- (a) open and maintain a separate bank account, or
- (b) establish and maintain a separate fund, or
- (c) designate an existing bank account or fund,

as the State Managed Fund for the State for the purposes of health funding under the National Health Reform Agreement.

13 Distribution of Commonwealth funding

- (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.
- (2) This clause 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 Financial management and reporting

14 Financial management obligations of Administrator

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
- (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 accordance with this Part.

15 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 clause 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 clause publicly available.

16 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 Schedule 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.

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

17 Administrator to prepare financial statements for State Pool Accounts

The Administrator must, after each financial year, prepare:

- (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.

18 Audit of financial statements

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.

19 Performance audits

- (1) For the purposes of this clause, 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.
- (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.
- (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.

20 States to provide Administrator with information about State Managed Funds

- (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:
 - (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.
- (2) The information is to be provided by the time requested by the Administrator.

21 Provision of information generally

- (1) The Administrator is required to provide to the responsible Minister for a jurisdiction any information requested by that 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.
- (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 5 Miscellaneous

22 Exclusion of legislation of this jurisdiction

The following Acts of this jurisdiction do not apply to or in respect of the Administrator or any function exercised or performed by the Administrator:

- (a) the *Government Information (Public Access) Act 2009*,
- (b) the *Health Records and Information Privacy Act 2002*,
- (c) the *Ombudsman Act 1974*,
- (d) the *Privacy and Personal Information Protection Act 1998*,
- (e) the *Public Finance and Audit Act 1983*,
- (f) the *State Records Act 1998*.

23 Application of Commonwealth Acts

- (1) The following Acts apply (subject to subclause (2)) as laws of this jurisdiction to or in respect of the Administrator and any function exercised or performed by the Administrator:
 - (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 1988* of the Commonwealth.
- (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 the members of the Standing Council on Health.
- (3) Until regulations referred to in subclause (2) are made, subclause (1) does not have effect and instead the legislation referred to in clause 22 (a)–(d) and (f) applies to or in respect of the Administrator and any function exercised or performed by the Administrator.

24 Extraterritorial operation of Act

It is the intention of Parliament that the operation of this Schedule 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,
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Schedule, be governed or otherwise affected by the law of another jurisdiction.

25 Schedule to bind Crown

This Schedule binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

26 Delegation of functions of responsible Minister

- (1) The responsible Minister for this State may delegate to an authority or officer of the State the responsible Minister's functions under this Schedule.
- (2) This clause does not apply to the functions of a Minister under Part 2.

27 Transitional and validation provisions

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

[6] Dictionary

Omit the definition of *NHHN Agreement* from Part 1.

Insert in alphabetical order:

National Health Reform Agreement has the same meaning as it has in Schedule 6A and includes any agreement that replaces or supersedes that Agreement.

[Second reading speech made in—
Legislative Assembly on 23 May 2012
Legislative Council on 12 June 2012]