

**STANDING COMMITTEE ON  
UNIFORM LEGISLATION AND STATUTES REVIEW**

**NATIONAL HEALTH FUNDING POOL BILL 2012**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 27 AUGUST 2012**

**Members**

**Hon Adele Farina (Chairman)  
Hon Donna Faragher (Deputy Chairman)  
Hon Nick Goiran  
Hon Linda Savage**

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**Hearing commenced at 1.35 pm****SALVAGE, MR WAYNE****Acting Executive Director, Resource Strategy, Department of Health, sworn and examined:****MAGRO, MS LYNETTE****Director, Legal and Legislative Services, Department of Health, sworn and examined:****WATTS, MR ADAM****Assistant Director, Performance and Evaluation Group 1, Department of Treasury, sworn and examined:**

**The CHAIRMAN:** Thank you for making yourself available and getting responses so promptly to those questions that were put on notice last week; it was much appreciated.

I am informed that I have to go through the formalities again, so I apologise for that. I welcome you on behalf of the committee. I will ask you to take either the oath or affirmation.

[Witnesses took the oath.]

**The CHAIRMAN:** You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

**The Witnesses:** Yes.

**The CHAIRMAN:** Thank you. These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of the hearing for the record. Also, please be aware of the microphones. Try to talk into them and do not cover them with any papers. I also need to remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. I should advise you that we do have media at the hearing today. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

I think that last week we had got to clause 30 of the bill, so perhaps we can we could turn to clause 30, which is the regulation-making power. I note that clause 30 of the bill grants a general power to make regulations that are necessary and convenient. Have any regulations been drafted at this stage?

**Mr Salvage:** No, and I suspect that there probably will not be any drafted under this head of power. The only regulations under consultation are the ones that modify the applied commonwealth laws, as we discussed last week.

**The CHAIRMAN:** So you are not looking at making any regulation outside the ones that modify the state laws?

**Mr Salvage:** No, none are planned.

**The CHAIRMAN:** Why has this regulation-making power been couched in such broad terms?

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**Mr Salvage:** I think if you are looking at clause 31, my understanding is that that is the general form of words that is applied by parliamentary counsel when constructing a regulation-making power for legislation.

**The CHAIRMAN:** Would it matter if the regulations were made by positive affirmation, as opposed to the disallowance process, as detailed in the Interpretation Act?

**Mr Salvage:** We did canvass the committee's request on that matter with parliamentary counsel last week. The advice was that a regulation-making power by disallowance is the usual way to go. There is no particular reason why we would see an alternative approach being taken in this bill.

**The CHAIRMAN:** There have been instances where Parliament has approved a regulation-making power by affirmative action. Did you have an opportunity to canvass that with the minister?

**Mr Salvage:** I have not discussed that with the minister, no.

**The CHAIRMAN:** Do the regulations made under the WA bill need to be the same or similar to the regulations made under the commonwealth bill, or the New South Wales bill, which will apply to all the other state jurisdictions?

**Mr Salvage:** I think that in the common provisions legislation, which all jurisdictions signed up to, there is a mechanism that allows for the regulations to be made with the agreement of the Standing Council on Health. We would intend to abide by that intent, so it will be a process whereby the regulations—I am speaking about the regulations that apply to the disappplied state laws and the applied commonwealth laws—will be signed off on by the Standing Council on Health, the ministerial council, and we would intend to follow the agreement of that council in relation to the regulations made under the WA bill. As I mentioned last week, we elected for a different adoption approach for the reasons we outlined; namely, that we did not want applied Western Australian law being varied by regulations made under a commonwealth enactment. Hence we have embedded the regulation-making power in our own bill.

[1.40 pm]

**The CHAIRMAN:** So it will be the council that clears the regulations, not COAG.

**Mr Salvage:** It will be the Standing Council on Health that approves all of those regulations; that is correct.

**The CHAIRMAN:** I note that the National Health Reform Agreement and the National Healthcare Agreement 2011, which were provided to the committee, are unsigned. I wonder whether you would be in a position to provide the committee with signed copies of the agreements.

**Mr Salvage:** My understanding is that the Department of the Premier and Cabinet had forwarded to Irina a signed document. It may have only had our state Premier's signature on it, but it indicated obviously that WA had signed up to that agreement. We could source a document that has the collective agreements of all the states and territories if that is what the committee wished to have.

**The CHAIRMAN:** That is what the committee would like to have. If you could do that, it would be appreciated. We will take that as question on notice 1 for today's hearing.

In the minister's letter to the committee, which was undated but received on 22 June, the minister raised a number of concerns. One was the growth in the number and scope of the national bodies being established in connection with the National Health Reform Agreement and the potential for additional commonwealth incursion into state service responsibility agreements—for example, reporting obligations in respect of the new National Health Performance Authority. I am interested to know whether the department shares these concerns.

**Mr Salvage:** As I indicated when we met last week, one of the key principles of the National Health Reform Agreement is that it recognises the state's role as the system manager of public hospitals. Part of the new machinery that is being brought in involves the creation of new

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independent bodies. The Independent Hospital Pricing Authority we briefly discussed last week. The performance authority is another national body being created in this space. We are vigilant that in terms of the establishment of those bodies there is not any incursion of the principle that the states are responsible for managing public hospitals. That has been part of our liaison with the commonwealth in the establishment of those bodies under national legislation. I suppose that there is a general concern that when you do have a body established for the purpose of monitoring the activities of state instrumentalities, that might grow. The intent of it might be harmonisation of reporting across the nation to begin with, but you will be essentially creating a power at the national level that could be quite incursive. We believe that as we are the managers of the public hospital system, it is important that that responsibility be recognised and upheld in the national arrangements.

**The CHAIRMAN:** What are the reporting obligations under the National Health Performance Authority that the minister referred to?

**Mr Salvage:** There is something referred to as a performance management framework that has been put out by the National Health Performance Authority. We can provide a copy to the committee if you would so like.

**The CHAIRMAN:** Yes, I will take that. That will be question on notice 2.

**Mr Salvage:** It is, I think, available from the performance authority.

So, it is a National Health Performance Authority; it deals with health in the broad, not just public hospitals. We are quite keen to ensure that there is a balance of focus between those aspects of state responsibility, public hospitals, and those sectors of health care that are a commonwealth responsibility, principally primary care and aged care components. As part of our engagement, if you like, with the new national authority we are keen to ensure that there is a balance of reporting across all health services and not just focused on public hospitals exclusively.

**The CHAIRMAN:** Another concern that was expressed was the basis on which prices for public hospital services are to be determined and that the responsibility for determining the national efficient price for public hospital services has been given to a new Independent Hospital Pricing Authority and, further, concern that if the pricing authority's modelling fails to take into account the significant and legitimate cost disabilities involved in the delivery of services in a state the size of WA, the state again will be left to meet the shortfall in funding. Does the department share these concerns?

**Mr Salvage:** It is very much a concern that in striking a price for the delivery of public hospital services across the nation, that that pricing methodology should take account of those legitimate factors in a state like Western Australia that might not be present to the same extent in other jurisdictions, absolutely.

**The CHAIRMAN:** Has the basis on which the pricing authority sets the price been agreed by WA?

**Mr Salvage:** There has been a price published by the Independent Hospital Pricing Authority. As we discussed last week, it does not become real in terms of the dollars that will come to the state until 2014–15 but, obviously, the work that is being done now to establish the basis on which the price will be set is very relevant and we are continuing to talk to the pricing authority about their methodology.

**The CHAIRMAN:** I am just trying to clarify whether a price has been set and agreed to by all the states or whether a proposed price has been set and there is still consultation and negotiation occurring in relation to that price.

**Mr Salvage:** A price for 2012–13 has been established by the pricing authority. As I indicated though, it will not affect the total quantum of dollars to flow from the commonwealth to the state

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until 2014–15, but we are obviously very interested in the basis on which that price has been generated, notwithstanding it will not affect actual dollars in this year or next.

**The CHAIRMAN:** Does the department have any concern about the price that has been set?

**Mr Salvage:** I think it is on the record that the minister has indicated he wishes to have further conversations—dialogue—with the pricing authority to ensure they are fully understanding of Western Australian circumstances that need to be reflected in that price. There will be a further dialogue with that authority as we go forward.

**The CHAIRMAN:** Will the price be set on an annual basis?

**Mr Watts:** Yes, I understand it will be set on an annual basis.

**Hon DONNA FARAGHER:** Is that set out in the bill or is this something beyond the scope of the bill?

**Mr Salvage:** That is set out in the legislation establishing the Independent Hospital Pricing Authority, which is a national piece of legislation.

**Hon LINDA SAVAGE:** That Independent Hospital Pricing Authority, I understand, has to have at least one member with rural and regional expertise; is that correct?

**Mr Salvage:** That is correct.

[1.50 pm]

**Hon LINDA SAVAGE:** Has that person been appointed and what input do we have into that in Western Australia?

**Mr Salvage:** The Independent Hospital Pricing Authority board has been established, and we can provide details of the membership of the board to the committee.

**The CHAIRMAN:** We will take that as question on notice 3; and also if that could identify the person with the regional expertise.

**Mr Salvage:** So, the head of the authority whom they appoint?

**Hon LINDA SAVAGE:** The person with the regional expertise who has been appointed specifically to fill that role.

**The CHAIRMAN:** I want to focus on some of the financial aspects of the bill. Clause 10(a) requires the administrator to calculate and advise the commonwealth Treasurer of the amounts required to be paid by the commonwealth into each state pool account and of the National Health Funding Pool under the NHRA. By reference to what criteria will this amount be determined?

**Mr Salvage:** Essentially, it will be by reference to the amount of activity that we believe will need to be delivered by the public hospital system calculated by reference to the national efficient price. That is the way it will be established going forward. As it relates to this year and next year, there will be no impact on the flow of dollars coming into the state, anticipatory of us moving to a true activity-based funding methodology commencing in 2014–15.

**The CHAIRMAN:** Clause 13(2)(b) requires money to be credited by the state into the state pool account, being money made available for the purposes of funding public hospital services on an activity funding basis under the NHRA. How are these amounts to be determined?

**Mr Salvage:** That is determined through the budget process. There was an innovation in this year's budget statements that you might have picked up. There was a statement of flows of dollars through the state pool account. It is indicated in Health's component of the budget statements. I do not have those numbers with me, but it clearly delineates the quantum of money that will come through the state for activity-based funding services and also from the commonwealth.

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**The CHAIRMAN:** Clause 15(1) provides that directions by the responsible state minister to the administrator for payments from the state pool account are to be consistent with the advice provided by the administrator to the commonwealth Treasurer about the basis on which the administrator has calculated the payments to be made into that account by the commonwealth. How will any inconsistency be dealt with, bearing in mind that clause 15(2) still requires the administrator to make payments strictly in accordance with the directions of the responsible minister?

**Mr Salvage:** The administrator will advise the commonwealth Treasurer as frequently as needs be about the activity profile that is going to be delivered through WA public hospitals. That will be the basis on which calculations are made about the amount of money that will be received from the commonwealth into the state pool account. If there is a variation in the activity profile, then there is no limitation on the number of times the administrator can vary his or her advice in this regard, but once the advice is made the distribution of commonwealth dollars through the state pool account will be consistent with that.

**The CHAIRMAN:** Would you be able to provide the committee with a general explanation of the processes of activity-based funding and block grant funding as provided for in parts 3 and 4 of the bill?

**Mr Salvage:** Are you talking about the basis on which the amount is determined?

**The CHAIRMAN:** What is meant by those terms and how do they apply?

**Mr Salvage:** Activity-based funding is a method of funding health activity based on the amount of activity delivered by a public hospital or health service. The state introduced activity-based funding in 2010–11 as an important reform. It provides greater stability and certainty in predicting funding for hospital services, essentially. We fund various hospital service types on an activity basis; so inpatients, emergency department services and outpatient services are funded on an activity basis. I think the principle that underpins the NHRA is to fund most hospital services on an activity basis wherever possible; however, it is not always possible to fund services based on activity. The example I think I gave last week is small rural hospitals where there is a cost structure associated with the delivery of those services that would be difficult to justify in terms of activity. The reform agreement says that as far as those types of service are concerned they will continue to be funded by block and basically identified the amount money that is required to run those services as a block allocation. Over time, the expectation is that a greater percentage of total hospital funding will be determined under activity-based funding arrangement. I think I mentioned last week that under the NHRA the funding of mental health services and subacute services are in scope to becoming activity-based funded further down the track. That is not a funding methodology that has been applied to those service types under the national process in 2012–13.

**The CHAIRMAN:** What about block grant funding?

**Mr Salvage:** Block grants are essentially those service types that do not readily lend themselves to being funded on an activity basis, and that might be to do with economies of scale or that we do not have the information systems to capture the activity that would allow services to be funded on an activity basis.

**The CHAIRMAN:** How will the establishment of the National Health Funding Pool and various accounts impact on the level of detail provided in the state budget papers and the WA Parliament's ability to scrutinise spending in the health budget through the budget estimates process?

**Mr Salvage:** There are two levels to that, if I can answer in these terms. In this year's budget papers there is more detail about the component of the total hospital spending that that is going to go to public health services funded on an activity basis; so details of the amount of money to flow through the state pool account and through state managed funds, which is an additional level of transparency, if you like, over and above what has been reported previously. The other thing that I mention is that one of the functions of the administrator is to report monthly, both in terms of the

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quantum of dollars being provided to hospital networks and the activity that is generating. There will be reporting—monthly by the administrator and annually through an annual report which will be tabled in the Parliament.

**The CHAIRMAN:** Focusing still on the budget estimates processes, one of the frustrations I have found with the process, particularly with large departments such as the Department of Health, is that at the time we are debating the budget estimates the Department of Health has not allocated any of its appropriations. For example, I am a regional member so I am keen to know how much money regional hospitals in my electorate will get, but when I ask questions I am told those matters have yet to be determined and will not be determined until the end of the year or much later in the year, which is a fair way through the financial year, so I am not able to access that information. I am concerned that with this new financial setup it will be even more difficult to access information and will hinder the Parliament's legitimate role in scrutinising the executive.

**Mr Salvage:** I think I have given you a very concrete example of where your ability to scrutinise will in fact be enhanced through —

**The CHAIRMAN:** But we will not be seeing the monthly reports.

**Mr Salvage:** They will be publicly available —

**The CHAIRMAN:** They will not be tabled.

**Mr Salvage:** — through the administrator's website for anyone who wants to see them.

**The CHAIRMAN:** The problem with that is that there are limited opportunities for the Parliament. There are processes and procedures in the Parliament and unless a document is tabled it becomes a bit more difficult to get time in the order of business of the day to actually dedicate time in Parliament to scrutinise those documents. So failing to table those documents in the Parliament does create some procedural issues in being able to properly scrutinise those documents. What you are saying is that, effectively, they will be provided publicly and it will be left to members of Parliaments to do what they need to do to bring those things to account.

[2.00 pm]

**Hon DONNA FARAGHER:** With the exception of an annual report.

**Mr Salvage:** Correct.

**Hon DONNA FARAGHER:** That will be tabled by the Minister for Health.

**Mr Salvage:** The annual report will be tabled by the Minister for Health as prepared by the administrator. The general point I wanted to make is that one of the key objectives of the national reform is actually to improve transparency of public hospital operations, and the distribution of money through the state pool account is really quite a key part of that. So there will be increased scrutiny, if you like, of where the money is actually going through that pool account.

**The CHAIRMAN:** I hope that is true. Now, through the budget estimates process, will the WA Parliament be able to scrutinise how the commonwealth moneys paid into the state fund are allocated and spent?

**Mr Salvage:** I indicated that there is a line in the budget papers now which identifies the commonwealth money coming into the state, and I just emphasise that that is quite a radical departure from previous years. We spoke last week about the 2011–12 financial year. There would have been \$1.3 billion of commonwealth money coming to Western Australia for public hospital services. There was no transparency around that in the state budget papers. If you look to the current set of budget papers, you can actually see the \$1.4 billion coming into the state pool account. So that is quite a radically different mechanism.

**The CHAIRMAN:** Except it will only show the total amount that the commonwealth have allocated to the account; it will not actually show how those moneys are being spent, will it?

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**Mr Salvage:** If you want a more detailed answer than that, I might have to take that question on notice.

**The CHAIRMAN:** That will be question on notice 4.

Just going back to that question about the state moneys paid into the state fund, again that will appear just as a line item in the budget papers, so we will not get any detail as to how that will be spent in the budget papers.

**Mr Salvage:** The budget papers indicate the total amount of money flowing through the state pool account to fund services on an activity basis and the contribution being made by the commonwealth and the state to that total amount of money.

**The CHAIRMAN:** But no detail as to how it is actually being allocated.

**Mr Salvage:** None down to health service level if that is the question. So, it is a funding flow through the state pool accounting in total terms. It does not indicate allocation to health services; correct.

**The CHAIRMAN:** Under this new model, will the federal Parliament be able to scrutinise how state moneys paid into the state fund are spent?

**Mr Salvage:** As part of the reporting by the administrator, there will be an indication of where funds go through the state pool account to health services.

**Mr Watts:** I think it is in regard to past—so not in terms of the estimates, but in terms of actuals, yes, they will have the opportunity to scrutinise that through the annual report that will be tabled by the minister for health and ageing.

**The CHAIRMAN:** How much detail will be provided in that annual report? Again, are we going to just get very general allocations which do not mean much to anyone reading the papers, or will the annual report actually detail how every dollar has been spent—so, X dollars were paid to Bunbury regional hospital, for example?

**Mr Salvage:** If I can refer you to clause 19 of the bill, which spells out in some detail the matters that will have to be reported on as part of that annual report, it refers to the amounts paid through the state pool account by the relevant state, the amounts paid by the commonwealth and the basis on which payments are made, and the amounts paid from the state pool account and the basis on which they are made. It does specify there to some level of detail what will be included in that report.

**The CHAIRMAN:** What does it mean by “local hospital networks”? So, it will throw two or three hospitals into a network and it will say that that is the money that is allocated to that network; is that what is meant by this?

**Mr Salvage:** “Local hospital network” is the terminology used in the National Health Reform Agreement to refer to what we refer to in this state as area health services. So, in our case, there will be four health services which equate to the “local hospital networks” terminology. There will be the North Metropolitan Health Service, the South Metropolitan Health Service, the WA Country Health Service and the Child and Adolescent Health Service.

**The CHAIRMAN:** As a country member, that concerns me, because if it is only being identified as to the amount of money that goes to WA country health, I am not able to get any detail about what portion of that funding is actually coming into the hospitals within my region. It seems to me that we are not actually getting much detail and much transparency at all through this process.

**Mr Salvage:** That is the process that has been established.

**The CHAIRMAN:** Will the establishment of the national health funding pool in various accounts impact or hinder the minister’s ability to answer parliamentary questions regarding how moneys in the health portfolio are being spent?

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**Mr Salvage:** There will be a greater level of transparency at the local hospital network level and, to that extent, there will be more information available on the public record other than through means of asking the minister in Parliament.

**The CHAIRMAN:** Will that be available at the time of budget estimates or at the time of the annual report being provided, or at any time in between?

**Mr Salvage:** The budget estimates will provide an indication of the total amount of money that is going to be flowing through the state pool account and state-managed funds, because that is part of the total annual construct of Health's budget. The application or the flow of those dollars to health networks will be reported monthly by the administrator and through the annual report to Parliament.

**The CHAIRMAN:** How does the WA bill differ from the model bill?

**Mr Salvage:** In broad terms, the model bill was intended to create a set of legislation that we could all apply, given that the model chosen was to appoint the administrator of each state pool account nine times over. In essence, part 2 of our bill is what we call common provisions. Provisions relating to the administrator's appointment, possible suspension and statements of the administrator's function would all be in the same terms as used in other jurisdictions' legislation. Similarly, in part 5, dealing with financial and reporting obligations, those provisions are in like terms. The definitional provisions at the front end of the bill are generally in like terms. The parts of the bill where we vary are the parts relating to the establishment of the state pool account and the state-managed funds—parts 3 and 4. Largely, that was reflecting the fact that each state needed to make sure that this legislation intersects appropriately with its own financial management act. So, the job that we did was to take what were model provisions and vary them, apply them and make sure that they work for us in Western Australia. So, parts 4 and 5 will include provisions that are unique to Western Australia or which are modified to Western Australian circumstances. Then there are also some changes made to some state legislation in parts towards the end of the bill—the Hospitals and Health Services Act. Those sorts of provisions are uniquely state provisions obviously.

**The CHAIRMAN:** How does the WA bill differ from the New South Wales act?

**Mr Salvage:** I have not studied the New South Wales act in a lot of detail. The common provisions legislation for all states and territories and the commonwealth were put together by the New South Wales parliamentary counsel on our collective behalf. I would say that those provisions that equate to parts 2 and 5 of our bill, which we all agreed would have to be common to make the administrator's task workable, would be in like terms. How New South Wales would have modified the financial provisions to reflect their equivalent of the FMA, I would not be clear about.

**The CHAIRMAN:** I just want to refer to the jurisdictional note to clause 10(4) of the model bill. Why was it determined not to declare in the bill that COAG directions referred to in clause 10(4) are not legislative, statutory or other specified instruments?

[2.10 pm]

**Mr Salvage:** I am struggling to recall. I suspect it is to deal with situations where if under the law of a jurisdiction there is an assumption that directions created under a written law would be subject to disallowance or processes of that kind; I do not know.

**The CHAIRMAN:** Would you like to take that as question on notice 5?

**Mr Salvage:** It is probably best that I do.

**The CHAIRMAN:** Also, again looking at that jurisdictional note, what consideration was given to whether part VI of the Interpretation Act would require the tabling or disallowance of COAG directions under clause 10(3)?

**Mr Salvage:** Again, if I could take that as a question on notice.

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**The CHAIRMAN:** That will be question on notice 6.

I would like to just turn to the answers you have provided in respect to the questions on notice provided last week. In relation to question 2 on clause 10(3) where it is stated that directions from COAG would be made publicly available by the administrator, my question is: would there be any opposition from government and from the department to an amendment to the bill requiring the minister to table the direction in the WA Parliament so that that direction can be brought to the attention of the WA Parliament—that is the only way it is brought to the attention of the WA Parliament, because WA Parliament does not have the capacity to look at a website—and can therefore be considered by the WA Parliament?

**Mr Salvage:** I might defer the answering of this question to the minister. It seems to be a policy question in relation to the bill. What you are requesting does not seem exceptional from my perspective, but the minister's response to that would be for the minister to respond to.

**The CHAIRMAN:** We are going to take that as question on notice 7; however, Kimberley will direct that to the minister.

In relation to number 3 in this table you have provided, which deals with clause 26(2), you have provided a reply; however, I am not sure you have answered the whole question in terms of what provisions need to be amended. I assume that there has been some work done to date in relation to the regulations that need to be made under that provision and I am just wondering whether it is possible for those where work has been done to be tabled so the committee can ascertain what is currently being looked at.

**Mr Salvage:** There is a process underway. It is being coordinated by the commonwealth Department of Health and Ageing involving all jurisdictions and looking at the legislation to be applied and disapplied. When we spoke to them last week as to the progress on that—we are obviously involved from the Western Australian perspective—the view was that they were targeting a meeting of health ministers in November to approve those regulations and that because of that, they were unwilling to release or share the information that is available now. That was the question and that was the answer we were given. That is all I can say. Can I just note on that the committee did raise a couple of issues that we have endeavoured to respond to there. One is the breadth of the regulation-making power that is associated with disapplication and we have received from Parliamentary Counsel a form of words that addresses the breadth of that question. We have also reflected on that timing issue where we would be disapplying the state law potentially in advance of the regulations being finalised and modelled by the commonwealth legislation. We did pick up a provision in the New South Wales act that we thought covered that space between the two events happening quite well and to confirm that the minister would be prepared to support amendments along the lines indicated there to deal with that situation.

**The CHAIRMAN:** I am curious that given that it was in the New South Wales act, why it was not picked up to begin with in the drafting of the WA bill, because there is a very clear gap.

**Mr Salvage:** What I can say is that there was a collective process for developing the common provisions legislation and then once the common provisions legislation was signed off, it went into its eight-jurisdictional hunker down and tried to work out how the legislation is going to work in each state. At that point the coordination across states ceased, in effect, because we had all signed up to what the common provisions would look like. In our case, there are two options for dealing with the situation that was referred to. Either you could not bring into force those provisions of the act that disapply the state law until we are ready to modify the commonwealth law through state regulations—that would have the effect that those state acts would continue to apply to the administrator until that action took place, so there would be coverage in that context—or you could go the extra step and embed that intent in the legislation as New South Wales have done. I think when we looked at it last week having regard to the concerns raised by the committee, we were minded to go with the legislative option and that is what we recommended.

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**The CHAIRMAN:** Just in relation to that legislative option, it states that until the regulations referred to in subclause (2) are made, subclause (1) does not have effect and instead the legislation referred to in clause 22(a) to (d) and (f) applies to, or in respect of, the administrator in any function exercised or performed by the administrator. When it is using those terms, are you referring to the administrator in his capacity as a state administrator only, not in his capacity as a commonwealth administrator?

**Mr Salvage:** This is state legislation conferring jurisdiction functions and powers on the state's administrator, so that is correct.

**The CHAIRMAN:** So, until such time as the regulations were made, just to put this beyond doubt, anyone seeking a freedom of information request of the administrator in relation to his role as the state administrator will need to go through the state freedom of information commissioner and freedom of information process, and if it is in relation to any of his functions as the commonwealth administrator, we will need to go to the commonwealth FOI process.

**Mr Salvage:** That is my understanding of how it will work.

**The CHAIRMAN:** It looks like we might be done in terms of the questions. I note that there were six questions taken on notice for the department and one taken on notice for the minister. Kimberley will be in contact with you just to detail those questions so that there is a common understanding of what those questions are and also to provide a due date for the answers. On behalf of the committee, I would like to provide an opportunity to you to provide any concluding comments if you feel you would like to.

**Mr Salvage:** Nothing specifically, just to thank the committee for its diligence in looking at this bill as quickly and expeditiously as you have. It is important from our point of view that we make good progress in bringing the legislation before the Council for debate as soon as is able to be done.

**The CHAIRMAN:** Thank you. On behalf of the committee, thank you very much and thank you for your forbearance in appearing before the committee twice—on two dates.

**Hearing concluded at 2.18 pm**

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