STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

NATIONAL HEALTH FUNDING POOL BILL 2012

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 22 AUGUST 2012

Members

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

Hearing commenced at 10.30 am

SALVAGE, MR WAYNE
Acting Executive Director, Resource Strategy, Department of Health, sworn and examined:

BRIGGS, MS LISA
Senior Legal Adviser, Department of Health, sworn and examined:

WATTS, MR ADAM
Assistant Director, Performance and Evaluation Group 1, Department of Treasury, sworn and examined:

The CHAIRMAN: Apologies for delay on the start. Welcome to the hearing this morning and thank you for making yourselves available at very short notice. My name is Adele Farina and I am the Chair of the committee. I have some formalities that I need to go through to begin with.

On behalf of the committee I welcome you to the hearing. Before we begin, I must ask you to take the oath or the affirmation, and Pamela will assist with that process. Do we have the set of words that are needed?

Mr Salvage: I can probably remember them.

The CHAIRMAN: We have just had a change of staff and I think the staff are still getting up to speed on the process, so apologies for that.

Mr Salvage: While we are waiting for that, could I just distribute a presentation I would like to talk to?

The CHAIRMAN: Sure, that would be great; thank you.

Mr Salvage: When we get into proceedings, if I could I would like to just talk to the presentation which gives some background to the bill and some of the key features, and then I am very happy to take questions subsequent to that. Could I ask: do you have any other witnesses on the bill?

The CHAIRMAN: No, not at this stage, but that does not mean that that might not change.

Mr Salvage: Sure. You have given people until the end of the month I believe, to make submissions on the bill?

The CHAIRMAN: Yes, what is the closing date?

The Advisory Officer: It is 31 August for public submissions.

The CHAIRMAN: We aim to have it finished by then, that is why I jumped straight into this presentation.

[Witnesses took the oath or affirmation.]

The CHAIRMAN: Would you please state the capacity in which you appear before the committee?

Mr Salvage: I appear before the committee as the lead adviser on this bill for the government in the Department of Health.

Ms Briggs: I am the instructing officer on the bill.

Mr Watts: I am the Treasury instructing officer on the bill.

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

The Witnesses: Yes.

The CHAIRMAN: The 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 and also be aware of the microphones; try to speak into them and not to cover them with paper. I 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—not that there are any at the moment. 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 publication or disclosure of uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that material published or disclosed is not subject to parliamentary privilege.

Do you have any questions in relation to those statements?

Mr Salvage: No.

The CHAIRMAN: Wayne, you distributed a presentation for the committee and you indicated that you would like to speak to that initially before we start questions, so I invite you to do that. But I also point out to you that we do have some time constraints and we do need to be concluded by 12 o'clock today, so just be mindful of that as well please; thank you.

Mr Salvage: Okay, thank you. Thanks for the opportunity to help the committee with its examination of this legislation. As the overhead indicates, this legislation relates to commitments the state has entered into under the National Health Reform Agreement. That agreement, which was signed in August 2011, was a culmination of many years of policy development work between the state and the commonwealth governments. The background to it, in essence, is as follows. The commonwealth is a funder to the state for public hospital services—has been for many, many years—and the mechanism by which the commonwealth has funded the state in the past is through the Australian Health Care Agreement. Essentially what that has involved is the commonwealth distributing a fixed amount of money across the states, which in our case is receipted into state Treasury and appropriated to the Department of Health and the Mental Health Commission in the form of state appropriation. What that means is that there is no direct connection, if you like, between commonwealth dollars allocated through the commonwealth mechanism to the patient's bedside, essentially. When we receive the money—or up until the start of this year when we received the money—from Treasury it is not tagged "commonwealth dollars in support of public hospital services". And when that money gets distributed to our public hospitals, they do not recognise it as commonwealth money either. The commonwealth has a bit of an issue with that in terms of what they describe as "a line of sight". They want to be able to see their money arriving at the patient's bedside, essentially.

In essence, the arguments between the states and the commonwealth over a long period of time have been related to two matters: first of all, that commonwealth grant is essentially a block grant, so it does not take account of movements, for example, in activity. So if your public hospital system is delivering more inpatient activity or emergency department activity than you anticipated, there is no adjustment to commonwealth dollars coming to the state to recognise that. The second issue is over the years the quantum of funding has not matched the increase that we have seen in the expense of hospitals, and that has meant that the state over time has had to pick up a greater share of the responsibility for financing public hospitals. So the point we are at now is the commonwealth grant, through what was the National Health Care Agreement, contributes about 31 per cent of expenditure on public hospital services in Western Australia. The sustainability argument that relates to that is—particularly I think in those jurisdictions where revenue is growing perhaps not as

strongly as it has been in Western Australia—they are going to hit an affordability issue. With public hospital costs growing at seven, eight or nine per cent and state revenue growing at a far lower rate, then the sustainability of expenditures in public hospitals is going to be called into question; and that led directly to the Rudd government's intervention from about 2007 to try to have a reform process for public hospital services. That reform process recognised that the commonwealth would have to become a greater contributor to public hospital services going forward, and also recognised the desirability of basing commonwealth contributions going forward on an activity basis. So there is an alignment between what the commonwealth funds and what is actually being delivered by public hospital services.

[10.40 am]

After a very long process of debate, the result was the National Health Reform Agreement. The reform agreement deals with issues that are broader than the financing of public hospitals but its main focus, you would have to say, is on the financing of public hospitals and exchange of money from the commonwealth to the state to operate the public hospital system. The key features of that agreement are that it upholds and recognises the state's role as the system manager, so that talk in the past of the commonwealth perhaps becoming more directly involved in the provision of public hospital services is put on the back burner as far as this agreement is concerned. It upholds and recognises that the states are the managers and deliverers of public hospital services in their jurisdictions.

Importantly, it introduces the concept of future commonwealth contributions to the state being related to the activity that is delivered through public hospital system. You may be aware that the state introduced a state-based, activity-based funding regime in 2010–11. We are in the third year of that funding mechanism now. The commonwealth agenda or the national reform agenda essentially picks up on that sort of funding methodology and says that in order to be more transparent about where the dollars are going, it is best for as much of public hospital activity as is reasonable to be funded through an activity-based mechanism. Essentially, that is the core reform that is embedded in the National Health Reform Agreement.

There are some financing changes that the bill goes to the heart of. Essentially, whereas in the past the commonwealth would have funded the block grant direct to state Treasury and it would have been appropriated through state budgets to ourselves and the Mental Health Commission, the key change now is the creation of a state pool account into which the commonwealth contribution to public hospital service delivery will be put, along with state contributions and flow from there directly to public hospital services. The rationale for that is that you improve the transparency that goes with those transactions. There will be monthly reporting of flows to local hospital networks—health services in our case—in the state. It was essentially an understanding with the commonwealth that we would create this more transparent arrangement and embed that in legislation as the exchange for there being greater funding certainty from the commonwealth going forward. That is essentially the background to the arrangement. I can step you through the specifics of the bill. I am happy to take questions on that broad introduction.

Essentially, the bill gives effect to the state's commitments under the National Health Reform Agreement, providing for the appointment of an administrator for the national health funding pool and the flow of commonwealth and state funds through the funding pool and subsequently to hospitals. There are some consequential amendments in this state that relate to our hospitals act that I can touch on later.

I turn to slide 2. Again, just to put this funding regime in context, the approved expenditure budget for the Department of Health in 2012–13 is $6.762 billion. That is clear from the budget papers. The breakdown of how that is financed is provided in the graph that I have provided to you. I point out that the majority of funding for that expenditure comes through the state directly to the Department of Health. There has been a funding flow of state money through the Mental Health Commission to

the department since 2010–11 with the establishment of the Mental Health Commission. The component of that funding that we are talking about in terms of the National Health Funding Pool Bill is that 21 per cent component that is indicated there. I mentioned a figure of 31 per cent contribution to public hospital expenditures. This percentage is different because what we are looking at in the presentation here is a total budget view so the health department's budget funds things other than public hospital services. What we are talking about in terms of the funding flow through the state pool account accounts for roughly 21 per cent of the financing of our total activities in 2012–13. It is significant.

Turning to slide 3, I mentioned that the previous funding arrangement was that the commonwealth, through the National Health Care Agreement, would provide funding direct to state Treasury and state Treasury would flow those funds through to the Department of Health and the commission and we would on-flow those funds to health services and external providers. Again, from a commonwealth perspective, that lacked a certain transparency in terms of where their dollars ended up. The agreement reached under the National Health Reform Agreement is that we will change that funding flow to make it more transparent for all concerned.

As I indicated, the National Health Reform Agreement very importantly underscores the state's role as the manager of public hospital services. The way that this will operate going forward is that the state will continue, as it does now through the state budget process, to identify the quantum of activity it wants to see delivered through its public hospital systems. Once that quantum of activity is determined, there will be a conversation back to the commonwealth about what that means in terms of adjustments to commonwealth funding going forward. Importantly, the slide indicates that there will be no change to the quantum of commonwealth money coming into the state over this year and next year. The true activity-based funding component of this kicks in from 2014–15. From 2014–15, the commonwealth has said that it will pay 45 per cent of the efficient price of growth in activity over 2013–14 levels. When we come to plan for 2014–15, we will say that next year we will deliver 20 000 weighted units of hospital activity—I am making up numbers here—and we will then say to the commonwealth, "Your funding contribution based on the national efficient price equates to such and such." That funding then flows through the state pool account and our services. A critical part of that is the national efficient price. As part of the National Health Reform Agreement, an independent body—the Independent Hospital Pricing Authority—has been established to set an efficient price for public hospital services.

The CHAIRMAN: And that has been established?

Mr Salvage: That body has been established. It exists and is doing its work. We have an ongoing dialogue with them about the cost of delivering services in Western Australia and want to make sure that they take account of the fact that it is a large state with dispersed populations and high Indigenous communities, for example, in the north west. We believe that all those factors need to be taken into account in setting the price for public hospital services. The important thing, though, is that the commonwealth's funding contribution kicking in from 2014–15 will not necessarily be based on what it costs us to deliver the service. It will be based on an established national efficient price. It will be 45 per cent from 2014–15. It will be a bit higher from 2017–18, up to 50 per cent. Our view is that when they are delivering funding increases at 50 per cent of the efficient hospital growth, they will not necessarily be funding 50 per cent of the system. That is because this new funding regime really deals with growth from 2013–14 onwards. It does not deal with that underlying inequity in funding shares currently of 31 per cent versus the state's contribution, for example.

The CHAIRMAN: Just to be clear on the record here, the efficient cost is calculated across the nation; it is not calculated on a state-by-state basis?

Mr Salvage: Correct. The other thing I would point out on that slide is that it is important to understand that we distinguish in funding public hospital services between services that can be

legitimately or reasonably financed on an activity basis versus services that need to be block funded. Classically, small rural hospitals have a cost structure that does not lend itself to funding on an activity basis. There is a sense in which those should continue to be funded through block mechanisms whereas larger hospitals have an activity profile that allows for the funding of services on an activity basis.

[10.50 am]

In terms of our own state funding model, since 2010–11 we have funded our hospitals—inpatient, emergency department and outpatient activity—on an activity basis, and it will be consistent with the national approach from this year. Services like mental health services will not be funded through the national ABF mechanism for a couple of years because there is further work to be done on classifying the activity, making sure that the costing structure aligns to the activity. It is the same with subacute care, for example.

The CHAIRMAN: How far has the authority got in determining what that efficiency cost will be?

Mr Salvage: They have announced a national efficient price for 2012–13. That is an indicative price. As I say, it does not affect the flow of dollars into the state in 2012–13 or 2013–14, but it will become real and evident from 2014–15. So we need to understand the construction of that price and how it compares to our cost.

The CHAIRMAN: Are you able to comment on that today, as to whether you are satisfied with that process and satisfied with the price that has been fixed?

Mr Salvage: I would say that there is still ongoing dialogue between the state and the Independent Hospital Pricing Authority to ensure that they are fully informed of our cost structures and the cost of delivering services in places like the Pilbara, and we are not at this point wholly satisfied that that is accommodated in the setting of the national efficient price.

Keeping going, again part of the rationale for this reform is to ensure that the commonwealth's funding becomes more aligned to what is actually happening in the hospital system. So what the commonwealth has indicated is that there is additional money that will be provided from the commonwealth over the next seven-year period, a funding guarantee of $16.4 billion, of which Western Australia should be receiving about $1.7 billion. So there is real additional money coming into the system as a consequence of this agreement. Additionally you will be aware that when Western Australia signed up to become party to the national reform process, we became eligible for funding under the national partnership agreement on improving public hospital services, and there will be $351 million of commonwealth money again coming to the state over the next little period to deal with those issues for elective surgery and emergency departments et cetera. That, again, is real money coming to the state that is contingent upon this agreement.

I will now turn to the next slide which just basically shows the change in the funding agreement. The commonwealth really from the start of this new financial year will pay its money into a state pool account, and where the money is going to be flowing to public hospitals for services that are funded on an activity basis, essentially the money is released from the state pool account under the authority of the administrator and goes directly to our health services and external providers. So obviously the change in flow in that context is that the commonwealth dollars will no longer flow through state Treasury to the Department of Health. Having said that, the state pool account is a state account. It has been established in the name of Western Australia. The Director General of Health is the accountable officer in relation to that account and all moneys receipted into that account are essentially recognised as part of state revenue. So it is an important part of the state's overall revenue picture.

The CHAIRMAN: I just note that "State Managed Fund DOH" and "State Managed Fund MHC" are listed there but there is no sort of flow diagram associated with them.

Mr Salvage: There is when we come to the next one.

The CHAIRMAN: There is on the next one? All right, no problems.

Mr Salvage: I will bring you back to the point I made that we fund hospitals on an activity basis, or on a block funding basis. Under the National Health Reform Agreement, for hospitals services that are funded on an activity basis the commonwealth's money comes into the state pool account and goes direct to the service providers; so that would be funding for things like inpatient activity, emergency department activity and outpatient activity. For other forms of services that are not funded on an activity basis or are funded through a block arrangement currently—I will switch to the block funded services diagram—in this context the commonwealth money still comes through the state pool account. It becomes a clearing house, if you like, for all commonwealth money to be received in the state but in this case, where there is an attribution of commonwealth money to those non-ABF funded services, they will go into separate accounts—one for ourselves and one for the commission. You might have picked up in the 2012–13 budget papers—budget paper volume 2, page 151—there is a statement of the flow of dollars through the state pool account to both the Department of Health and the Mental Health Commission's state managed funds. If I can just talk you through the composition of the bill —

The CHAIRMAN: Yes, but I am just a bit mindful of the time. I am wondering whether we might do that as we go through the questions that the committee has. I think the presentation that you have presented clearly outlines what those provisions do and what the key features of the bill are. I am just a bit concerned about the time constraints that we have today. I note that Hon Nick Goiran has indicated that he has some questions in relation to clauses 6 and 7 of the bill, so I might hand over to Nick at this point.

Hon NICK GOIRAN: Perhaps for the sake of simplicity, Mr Salvage, I will direct my questions through to you and at your discretion you will deflect to your colleagues. My questions are around clauses 6 and 7 of the bill, but as a precursor to that if I could just get you to turn your mind to clause 4(2) of the bill, is it correct that this clause will mean that the administrator is a WA statutory office holder?

Mr Salvage: Yes.

Hon NICK GOIRAN: On that basis then in terms of clause 6, which deals with the suspension of the administrator, is my understanding correct that the administrator, who would be a WA statutory office holder, could be suspended at the request of the commonwealth minister?

Mr Salvage: I will just give some context to that. Part of the new funding arrangement involves the appointment of someone called the administrator to be the administrator of each state pool account within the National Health Funding Pool. The states held the line against that person being appointed under national legislation or being a national appointed officer. So the principle that we held onto quite tenaciously through the negotiations was that if that person is handling state money, that person needs to be a state statutory office holder. So this bill provides for the appointment of the Western Australian administrator of the Western Australian state pool account; that is correct. What has been agreed is that the same person will hold essentially nine appointments as the administrator of all of the pool accounts and of the National Health Funding Pool collectively. And so this mechanism deals with the situation where the integrity or the behaviour of the administrator is called into question, then there needs to be a mechanism to provide for redress. And collectively it was agreed that this provision would be put into the bill to allow for that to happen in those situations. We, from a state perspective, were clear that for that to happen there had to be specified grounds for suspension and so the grounds set out in clause 6(2) dictate the circumstances where an action might be taken to suspend the administrator from the exercise of his or her duties. I think this gets to the question of the practical realities of having one person appointed nine times over; it is actually doing the same job and needing to have a mechanism to deal with those exceptional circumstances where you might need to deal with an administrator who might have gone off the track a bit.

Hon NICK GOIRAN: Yes, so in terms of that agreed mechanism, it is the case that the commonwealth minister would have the capacity to interfere with the standing of a WA statutory office holder pursuant to this clause?

Mr Salvage: That is correct. It confers a power on the commonwealth minister to suspend the administrator in all of his or her capacities but only in those exceptional circumstances that are detailed in clause 6(2).

[11.00 am]

Hon DONNA FARAGHER: Paragraph (a) states —

(a) at least 3 members of the Council —

That is fine —

who are Ministers of a State; or

(b) the member of the Council who is a Minister of the Commonwealth.

Was it not considered that it would be appropriate that it would be a minister of the commonwealth and the relevant state minister, so there is obviously consultation, for argument's sake, in Western Australia? That is, a requirement that the commonwealth minister would have to consult with the Western Australian state ministry if they were to go down this path, except this is obviously an exceptional circumstance in which this would be done? Was that considered?

Mr Salvage: It was not considered, from memory. These provisions reflect what was put into the National Health Reform Agreement. I cannot remember that issue being considered. I think, in practice, if you ever got to a situation in which, say, there was a financial irregularity in relation to the administrator's exercising of functions, there would certainly be a coordinated response by ministers in relation to what had happened. But you are right; on the face of the law, the commonwealth minister is able to act unilaterally in this particular case. We also put into the legislation some restrictions on the time limit within which the administrator may be suspended in this circumstance, and we are also insistent on stating grounds for suspension that would have to apply before action could be taken. I also note that in terms of dismissal, there is no exclusive power granted to a commonwealth minister to dismiss. It has to be through a majority agreement through the Standing Council on Health.

Hon NICK GOIRAN: That leads me to my next question. You touched on clause 7; my understanding is that the outworking of clause 7 is that the WA Minister for Health would have to remove the administrator if a majority of the members of the council agree to the administrator's removal.

Mr Salvage: Correct.

Hon NICK GOIRAN: The conclusion that gets drawn from that is that the WA minister will be subject to the decisions of ministers from other places. Is that just a "necessary evil" in order to make this thing work?

Mr Salvage: If you start from the proposition that you will have one person essentially doing the same job across the nation, you have to deal with mechanisms for the termination and suspension of them from their role. We felt that the majority decision through SCoH set the bar pretty high in relation to when such a circumstance might be contemplated.

Hon NICK GOIRAN: It is just interesting to note that the bar is higher for removal or resignation, yet the bar seems lower for suspension.

Mr Salvage: The circumstances in which you would want to contemplate a suspension are pretty extreme. If, for example, it came to light that the administrator had acted inappropriately in relation to the exercise of his or her functions or had been found to be involved in activity that called into question their integrity, I think you would want a fairly robust mechanism to deal with that situation

at the time. You would not necessarily want the person continuing to hold office with such a cloud over their heads while nine ministers collectively tried to decide what to do in that circumstance.

Hon LINDA SAVAGE: As you say, there could be exceptional circumstances but it is very tricky to find a mechanism. I note that it includes having been accused, not necessarily the example you gave of having been convicted. It will be interesting to see how that would work in practice because that is quite broad—being accused or may become bankrupt.

The CHAIRMAN: How is the administrator of the national health funding pool, its staff and facilities funded?

Mr Salvage: The administrator is funded through commonwealth appropriations, so provision is made in the commonwealth budget this year to fund the administrator. That was agreed to through the National Health Reform Agreement, similarly with the national health funding body, which will be the body that assists the administrator in the exercise of his or her functions.

The CHAIRMAN: So there is no Western Australian funding contribution towards that?

Mr Salvage: There is no state funding contribution at all.

The CHAIRMAN: I would like to turn now to clause 10(4) of the bill, which refers to directions that may be given by COAG. I am just wondering whether COAG has determined the procedures for COAG directions to be issued to the administrator and whether you are in a position to provide those to the committee.

Mr Salvage: No directions have been drafted to this point.

The CHAIRMAN: I am talking about the procedures for issuing a direction.

Mr Salvage: There have been no procedures determined in relation to the issuing of directions to the administrator. This, again, is an exceptional circumstance provision. If it were felt necessary to provide the administrator with some additional guidance in what he or she does, again wanting to have a mechanism that allowed for collective agreement in relation to the issuing of those directions and hence COAG was chosen for that purpose.

The CHAIRMAN: Is that procedure set out in the intergovernmental agreement? Clause 10(4)(a) of the bill is very clear. It says that the directions will be given in accordance with the procedures determined by COAG, and Parliament is being asked to pass this bill without any knowledge of those procedural arrangements.

Mr Watts: We can follow that up. My understanding is that it is a consensus view of COAG, but I can follow that up for you and find out what the procedures are.

The CHAIRMAN: We will take that as question on notice 1.

Clause 10(4)(c) says that COAG directions are to be made publicly available. How will this be done?

Mr Salvage: Again, we would have to come back to you with that. I imagine it would be through the COAG secretariat.

The CHAIRMAN: Will the Western Australian Parliament be notified of any such directions?

Mr Salvage: It is not provided for in this legislation. There is no obligation to do that. But they will be made public.

The CHAIRMAN: In terms of how they will be made public, we will make that question on notice 2.

My next question relates to clause 12. Clause 12(2)(b) states —

> if another bank is specified under the National Health Reform Agreement,

I was wondering whether such an act or acts are specified under the National Health Reform Agreement.

Mr Salvage: No. The National Health Reform Agreement specifies the Reserve Bank of Australia. That is the bank with which the state has established its state pool account facility. Clause 12(2)(b) allows for the possibility that there might be a change in the understanding about which bank will be selected for that purpose. The Reserve Bank is the bank that is stated in the NHRA.

The CHAIRMAN: At clause 12(3), what is meant by "Public Bank Account"?

Mr Watts: The public bank account is a term defined under the Financial Management Act. It refers to the bank account that the state has with regards to public funding. Generally speaking, it is a single bank account. This does not form part of the bank account. That was a requirement of the National Health Reform Agreement. Typically, agencies operate within the public bank account but there are subdivisions of the bank account that enable quarantining of funding for certain purposes or for certain agencies. That is the basis upon which all public funding in the state is held, with a few exceptions.

Hon LINDA SAVAGE: Does that go back to clause 12(1), "to maintain a separate State bank account"? Is that what that is talking about?

Mr Watts: That was the requirement of the National Health Reform Agreement.

The CHAIRMAN: Clause 13(2)(c) makes provision for money paid to the state by another state. I am curious to know whether Western Australia is required to pay money to another state under the agreement.

Mr Salvage: It relates to where we have a cross-border arrangement. I will give a specific example. There are a number of beds at Royal Darwin Hospital, for example, that the state purchases activity through from the NT government because it makes better sense for people in the east Kimberley to be referred to Royal Darwin than to come to Perth or to go to one of our regional hospitals. For this state there are very few examples of that kind. When you get to the New South Wales, Victoria, ACT situation, there are lots of cross-border arrangements where essentially residents from one state are treated in a public hospital in another state. That involves an exchange of money between the states concerned.

[11.10 am]

Hon LINDA SAVAGE: Could I ask a question there just for my own information to understand that a bit better, and I was thinking about it earlier when you talked about working out the efficient cost? Is there some sort of flexibility within the way it works; for example, if suddenly WA needed a lot more burns beds? Let us say we had a disaster and we needed burns beds, is that something that would be envisaged under something like that, to be able to go out and access in another state and have that flexibility?

Mr Salvage: If Western Australia were to refer to another state for treatment patients that we would ordinarily be responsible for treating, then this provision would kick in. We would be required to pay another state, as we do now, for the provision of that treatment of public patients.

Hon LINDA SAVAGE: So when people go interstate for treatment because they say they cannot get it in Western Australia—I mean we hear about that from time to time.

Mr Salvage: Sure.

Hon LINDA SAVAGE: Does that have any ramifications for this?

Mr Salvage: If we refer patients from WA to Brisbane or Sydney or Melbourne because we do not provide the service in this state, then yes, we do pay for the treatment through existing arrangements.

Hon LINDA SAVAGE: Okay, and that is only if it is referred by the hospital?

Mr Salvage: Correct.

Hon LINDA SAVAGE: As opposed to someone deciding that they want treatment that is available somewhere else?

Mr Salvage: Correct.

Hon LINDA SAVAGE: Even if that treatment is available in another hospital but the clinical decision here is that it is not appropriate?

Mr Salvage: Correct.

Hon LINDA SAVAGE: They would not be able to draw on that?

Mr Salvage: It is all driven by clinical decision. It might be to do with the availability of the facility or the management of waiting lists, but if the state refers one of its patients to another state, then we are liable to meet the cost of that. For Western Australia it is quite a limited component of our total hospital funding. For those states like Victoria and New South Wales—you know the Albury–Wodonga situation where essentially they run that as a single health region, and there might be Victorians going to Albury Hospital for some issues—it is a much bigger consideration, and also with the ACT and Queensland.

The CHAIRMAN: I might just move now to clause 14(2), which refers to the interest earned in the state pool account being credited to the consolidated account. I assume that is the state consolidated account.

Mr Salvage: Correct.

Hon LINDA SAVAGE: Just to follow up on that, that does not mean a separate state bank account, so the interest earned goes just to consolidated revenue or does it stay within the separate state bank account?

Mr Salvage: It comes essentially to Treasury if there is any interest earned on money in the account. This will not be a significant issue because the timing of flows of funds through the state pool account means that they are unlikely to accumulate a lot of interest. We will be endeavouring to ensure that state money going to the state pool account kind of goes out of there pretty quickly.

Hon LINDA SAVAGE: But if it did accumulate interest, it does not stay within the separate health bank account, is that what you are saying; it actually could be used for other things?

Mr Salvage: It reverts to consolidated revenue but I would note that the sums of money involved in the generation of interest on money that will be deposited in the state pool account will be very small, just because we are not going to be leaving large amounts of money in that account.

Hon LINDA SAVAGE: That would be the ideal but it is not impossible.

Mr Watts: When it returns to consolidated revenue it has not been allocated for a purpose, so it becomes funding which could be appropriated.

Hon LINDA SAVAGE: Yes, that is what I am saying, so the money could be used for something else completely from health.

Mr Watts: Only through appropriation by Parliament.

The CHAIRMAN: My next question is at clause 17, which sets out the financial management obligations of the administrator and the requirement to prepare financial statements. Can I just clarify whether these will be made public and whether there is a mechanism for having those tabled in the Western Australian Parliament?

Mr Watts: My understanding is that these will be made public and yes, we can pursue that—having that tabled in Parliament.

The CHAIRMAN: Through an amendment to the legislation to require that to be done?

Mr Salvage: You are correct: it is not a requirement of the legislation that that occur now. There will be a website established for the administrator that, I suspect, over time you will become very interested in because it will show funding flow to health services, and the quantum of service delivered through health services and any material of this kind will be available through that website, I am sure.

The CHAIRMAN: Would the department have any objection to an amendment being moved to the bill to require those financial statements to be tabled in Parliament?

Mr Salvage: The financial statements will certainly be tabled as part of the annual report of the administrator, and there will also be a monthly reporting by the administrator on moneys spent or moneys that have gone from the state pool account to individual health services. That is all going to be made public. This clause, I believe, goes to the issue of the policy settings under which the administrator must operate. We would have no objection to those policies being required to be tabled in Parliament, if that was the view.

The CHAIRMAN: Also in relation to clause 18, which talks about the monthly reports which you have just mentioned, again this says that these will be made public. I am curious to know how they will be made public and also whether these will be tabled in Parliament so that there is capacity for the Parliament to scrutinise what is happening with those accounts.

Mr Salvage: We are talking to the acting administrator designate now about how this works in practice. My understanding is that they will be published on the administrator's website and accessible in that capacity. I think I would wonder about the mechanism for tabling monthly reports to the Parliament when they will be available in that way through the administrator's own facility. But certainly the annual financial statements of the operation of the state pool account will form part of the annual report that will be tabled in the ordinary course of events.

The CHAIRMAN: And will those monthly reports form part of the annual financial report?

Mr Salvage: There will be a consolidation across the year both of financial statements and of activity delivered with the money that has been provided through the state pool account; that is correct.

The CHAIRMAN: My next question is at clause 24.

Hon NICK GOIRAN: I will follow up on where you have left off there.

The CHAIRMAN: Sure.

Hon NICK GOIRAN: Mr Salvage, can I just get clarity? I see at clause 19—and you have referred to it a couple of times—that there is provision for an annual report by the administrator and that that annual report, as I understand it, includes the audited financial statements for the year in question. Clause 19(4) requires that the responsible minister table that in the WA Parliament.

Mr Salvage: Correct.

Hon NICK GOIRAN: Given that that is the case, that seems to address the query about clause 17 on the preparation of financial statements. They would be one and the same, I would have thought.

Mr Salvage: Clause 17(c) deals with financial statements. I think the question, as I had understood it, related to the setting of policy guidelines under which the administrator will be operating. So if you go to clause 17(a), "develop and apply appropriate financial management policies and procedures", my understanding is that that was the question about whether those would be tabled in the WA Parliament.

Hon NICK GOIRAN: Okay.

Mr Salvage: The financial statement will, as a matter of course through the annual report, be tabled. My understanding of your question, though, related to the earlier subclause of that clause about policies.

The CHAIRMAN: That is correct.

Hon NICK GOIRAN: I just want to have clarity around whether there are other sub-departments within the Department of Health that currently have such financial management policies and procedures.

Mr Salvage: The Department of Health has a suite of financial management policies and procedures; that is correct.

Hon NICK GOIRAN: Yes.

Mr Salvage: And they are available, I believe, through our website.

[11.20 am]

This is quite a separate function from the Department of Health. The administrator is accountable to the Minister for Health in the exercise of his or her functions. The Director General of Health is accountable for the operation of the state pool account in terms of the Financial Management Act. The administrator per se will not be part of the Department of Health and will receive his instructions from the Department of Health but will not be part of the department.

The CHAIRMAN: Clause 24(5) restricts the publication of information by another jurisdiction in accordance with arrangements approved by the responsible minister for the jurisdiction to which the information relates. Has Western Australia determined what these arrangements will be?

Mr Salvage: No, and the provision has yet to be tested. The administrator will be holding information in his various capacities from essentially eight jurisdictions. If we go back to the situation of cross-border arrangements, he will hold information about the quantum of service that is delivered by hospital X in jurisdiction Y. Before releasing information that relates to a state's financial obligations or to the state's service provision, there will be a process of consultation with the minister concerned before that occurs. If we were to say we would be quite interested to know how much money is being spent on hospital X in Sydney, the Minister for Health in New South Wales might want to know why we want to know about that. It is a mechanism that allows for the policing of that release of that sort of information by the administrator.

The CHAIRMAN: Will these arrangements be merely administrative in nature or will they be set by regulation? It just seems to me that there will not be a lot of transparency into what is being proposed as a result of clause 24(5).

Mr Salvage: Administered by administrative arrangement is my understanding of the way that clause will be put into effect by the administrator. Similarly, there will not be any regulations involved in that determination.

The CHAIRMAN: Is it the intention of this clause that the minister would be able to refuse the publication of information sought pursuant to the Freedom of Information Act?

Mr Salvage: No. The Freedom of Information Act is obviously a separate regime to this, so, no, it would not be my understanding that this would be permissible by this clause.

Hon DONNA FARAGHER: Just going back to your example, this simply deals with a potential situation in which a particular state wants information with respect to another state and how much funding they provide to that hospital. Under that sort of arrangement there would be this agreement to provide that information rather than anyone going through an FOI process to get that information. That is a separate process.

Mr Salvage: Correct. The administrator will hold a whole swag of information about the operation of public hospitals across the nation. There is a clear power placed upon the minister to ask the administrator for that information as it relates to his or her jurisdiction. This says that if the request is made that relates to information held by the administrator that relates to another jurisdiction, there has to be a process of negotiation with the minister concerned. The most practical example I can

probably give there would be if the Minister for Health in Victoria wanted to know about the financing of hospitals that Victorians get treated in and goes to the administrator and says, "I want to know about the cost structure of Albury hospital." The Minister for Health in New South Wales would become involved in that decision to disclose. The freedom of information issue is quite separate to that. A regime of freedom of information will be applied to the administrator. If anyone wants information that is held by the administrator, they apply under that legislation to get access to it.

Hon DONNA FARAGHER: If access was denied through the administrative arrangements, that would not stop a relevant jurisdiction going through an FOI process to get that information in any event.

Mr Salvage: Correct.

The CHAIRMAN: Clause 25 excludes the application of four state acts to the bill and the functions performed by the administrator. In respect of each of those acts that are listed in clause 25, what is the reason for the exclusion of the application of these acts?

Mr Salvage: It comes back to the idea that we have one person performing the role of administrator under essentially nine different enactments. When that model was decided upon as part of the negotiation of the National Health Reform Agreement, it was again collectively agreed between the states and the commonwealth that a single regime of administrative law should apply to that individual. There are a number of acts that we have agreed through that agreement to set aside, solely in relation to the appointment of the administrator as a statutory officeholder of the state. In their place, we apply the equivalent commonwealth acts with the intention that that administrative law regime will be consistent in relation to that individual, irrespective of the jurisdiction or the capacity in which he or she is acting.

The CHAIRMAN: In relation to the state account, an application through freedom of information under the commonwealth act will gain you access to information in that state account, even though it is a state-held account.

Mr Salvage: Bear in mind that this bill applies the commonwealth's act as state law. When we are setting aside certain state acts under clause 25, we are putting in their place enactments of the commonwealth but applying them as Western Australian law. If you take the freedom of information example, if you want to gain access to something that you believe the administrator has, you will apply through the Freedom of Information Act of the commonwealth as applied as Western Australian law to gain access to that information.

Hon NICK GOIRAN: One of the acts referred to there is the Parliamentary Commissioner Act 1971. In the ordinary course, we would want a person to be able to complain to the Western Australian Ombudsman in this particular case for the reasons you have set out applying clause 26(1)(d), which is the commonwealth Ombudsman. If someone has a complaint about the administrator, are they applying to the commonwealth Ombudsman or the WA Ombudsman?

Ms Briggs: They are applying to the commonwealth Ombudsman. But in saying that, what follows on from the bill is the intention to make regulations under clauses 26 and 30 to modify commonwealth acts apply the state law to make them workable as state laws. Those regulations have not been finalised but work has started on those regulations to make them workable as state laws.

Hon NICK GOIRAN: In theory, could those regulations state that the Western Australian Ombudsman is to receive a complaint about the administrator but apply the principles stated in the commonwealth Ombudsman Act 1976?

Ms Briggs: The intention is that it will be received by the commonwealth Ombudsman. The changes will be made. For example, reports would be tabled in the WA Parliament provided to the

chair of the Standing Council on Health in relation to any activity that relates to the WA administrator.

Hon NICK GOIRAN: Could it be done?

Ms Briggs: You change the reference.

Hon NICK GOIRAN: If you have a complaint, you are still utilising the state service of the Western Australian Ombudsman, albeit that he or she will apply the principles in the commonwealth act. So they will stand in place of the commonwealth Ombudsman because the complaint is within the jurisdiction of WA.

Ms Briggs: The purpose of applying the administrative set of commonwealth laws is so that the administrator, who is the same person, is only subject to the one set of administrative laws. The decision has been made that it will apply so therefore the commonwealth Ombudsman will receive the complaints but mechanisms will be tabled in WA Parliament that relate to the WA administrator.

[11.30 am]

Hon NICK GOIRAN: I understand that. I just wondered whether Western Australians would prefer to deal with a Western Australian when they are lodging their complaint.

Mr Salvage: When this issue came up, we consulted with the heads of each of the agencies involved in these Western Australian enactments. Given that the administrator has a very narrow set of functions and the extent to which he or she can exercise discretion is extremely limited, the view was taken that this approach would be appropriate for us in Western Australia. It was the function that was taken in construction of the bill. We are not dealing with an individual who will be making a whole lot of discretionary decisions on behalf of the state. Quite a limited range of functions will be performed by the administrator.

Hon LINDA SAVAGE: I do not know whether Hon Nick Goiran was thinking about this in part when he asked the question. I expect that members of the public would think in terms of making a complaint to the Western Australian Ombudsman not the commonwealth Ombudsman. As a practical matter, is it possible that if a complaint was made to the state Ombudsman, that would be passed on to the commonwealth Ombudsman as opposed to another process which would be, "No, we can't deal with it; you have to go to the commonwealth Ombudsman"? The reality is that for people making that complaint, that will be quite convoluted. For many people it may prevent them going forward. Is it possible in a practical way that if it came to the state Ombudsman as a matter of course it would be passed on to the commonwealth Ombudsman? I do not know if Hon Nick Goiran had something like that in mind but that is what occurred to me hearing him speak.

Ms Briggs: Maybe that is an administrative arrangement. It is certainly something that we could raise with the WA state Ombudsman. We are still in discussion with them about how the regulations are going forward. It sounds like it would fit into the nature of an administrative arrangement where they would cooperate and forward that type of complaint if that is what they received.

The CHAIRMAN: I turn to clause 26(2) which provides that each of the commonwealth acts identified in subclause (1) will apply subject to modifications made by the regulations. The explanatory memorandum states that this clause is provided to ensure the commonwealth acts are administratively workable as laws of the state. However, I note that the wording that is used in clause 26(2) is much broader than that. It does not actually limit the scope of those changes that can be made by regulation to ensure that those acts are administratively workable as laws of the state. I am questioning why that wording has been left so broad, particularly given the explanation that is provided in the explanatory memorandum as to the intent of the provision.

Mr Salvage: The intent is to provide a mechanism whereby in applying, say, the commonwealth's freedom of information legislation, if there is an administrative process in the commonwealth that does not quite fit the state's process, you are allowed to vary the application of the law to make it administratively workable in Western Australia. I must admit that that form of words is a general form of words that is applied by parliamentary counsel. In preparing this legislation as a set of common legislation to be applied across the nation, the default position was that those commonwealth enactments would be modified by regulations made under the commonwealth's equivalent of this bill. Western Australia made it very clear that that would not be acceptable in this state; you could not modify and apply a Western Australian law by commonwealth regulation. So the mechanism selected was by regulations made under this bill. What that means in practice is the process that Lisa referred to whereby the regulations are being examined and looked at. I emphasise that it is not to tamper with in any way the substantive intent of those enactments; it is to make them practically workable in this state.

The CHAIRMAN: However, the wording in subclause (2) would allow you to go much broader than what you are saying the intent is because it would allow any modification to be made.

Mr Salvage: I understand the point you are getting to but these will be regulations that are subject to parliamentary disallowance. I would suggest that —

The CHAIRMAN: They will not even be considered by the committee that looks at regulations—the Joint Standing Committee on Delegated Legislation—if the head of power allows that regulation to be made. The head of power in clause 26(2) is so broad that it actually goes beyond the stated intent of that provision.

Mr Salvage: Right. I do understand the point that you are getting to. I think it is just a generic form of words that was suggested to us by parliamentary counsel to deal with that situation. In the national development of these regulations, we said that the powers conferred on the commonwealth to vary the applied state laws would not be acceptable, so we selected this mechanism. If we can examine with parliamentary counsel whether there is an option to tighten the wording used in this particular case, because I know it would be of some interest and sensitivity to Parliament, the intent is not to modify the substantive enactment; it is simply to pick up those parts of those enactments that need to be varied to recognise slightly different administrative arrangements.

The CHAIRMAN: That goes to my next question. I find it really unusual that we are going to provide a head of power that allows regulations to be made to modify a commonwealth act, as it applies in this state. I do not know that I have ever seen such a provision in a bill before. I am just wondering first of all whether it has ever been used before. Is it in any other state bill that I am not aware of? There is also the question of the appropriateness of that arrangement. Surely if we are going to apply commonwealth acts in this state and want to modify them, that should be contained in the act rather than left to a regulation-making provision.

Mr Salvage: I understand that. By virtue of clause 26, the applied commonwealth law becomes applied as Western Australian law. When we are looking at the Freedom of Information Act of the commonwealth, it is not commonwealth enactment becoming part of the state law; it is the state saying that enactment applies as state law for this specific purpose. In that sense—we did talk to constitutional experts about this—having a power embedded in a Western Australian act that says we can modify applied Western Australian laws to make them administratively workable was an appropriate way to go. I cannot think of any other examples, unless the health practitioner law is an example. We retain the power in our own enactment to vary regulations made which in other jurisdictions rely on regulations being made in the state of Victoria, for example, just being applied as a matter of course through the regulation-making powers. That is one example, I guess, of where the state in that context has elected to take this mechanism on board rather than accept amendments made in another jurisdiction.

Hon NICK GOIRAN: Can I ask a question on this topic? You mentioned that the spirit—the intent—is to make these things workable. What is the current status of the analysis to determine which, if any, of those five acts specified need any modifications made?

Ms Briggs: For example, the commonwealth Ombudsman Act 1976 has a provision that requires that the Ombudsman provide an annual report to the relevant commonwealth minister. The proposal is that it should be modified so that not only is the annual report provided to the commonwealth minister but it is provided to the chair of the Standing Council on Health. It is the nature of those types of amendments to make it relevant to the examination of the administrator's functions. The characterisation of the modifications are really administrative in nature and not meant to be anything more than that.

Hon NICK GOIRAN: That is a helpful example. Is that analysis complete at this point?

Ms Briggs: No, it is not; it is still ongoing. It is quite a large body of work looking at all those acts. Three subcommittees are being convened. Once again, the inter-jurisdictional requires quite a lot of work and effort, so it is ongoing.

The CHAIRMAN: What is the time frame for completing that work? We are looking at passing this legislation fairly quickly, which will make the commonwealth laws applicable in Western Australia in so far as this bill is concerned when it becomes enacted yet you have not finished the analysis of how they need to be modified.

Ms Briggs: Yes, that is correct. The last update that I received on timing was August. It is now 22 August. I do not have any further information as to the timing of that. The analysis of all of those acts has not been completed yet . It will not be completed before the end of August. Certainly, the regulations will not be drafted before the end of August.

[11.40 am]

The CHAIRMAN: Are you in a position to table the current status of that analysis, the detail of that analysis, to the committee?

Ms Briggs: It is not in a form that—I am thinking out loud—would lend itself to being tabled. There is the possibility, if the act was to be passed by the house before the regulations were made, of proclaiming the provisions of the act without this clause coming into operation if the regulations are not available by then.

The CHAIRMAN: But that would be a bit scary because you will have clause 25, which says the four state acts do not apply and then you will have clause 26 that has not been enacted yet, so the commonwealth Freedom of Information Act and the rest of them will not apply. I am not too sure that we want to go down that path.

Mr Salvage: I think we are working under best endeavours to get the regulations prepared and drafted and I just note that all jurisdictions, apart from Western Australia, South Australia and the ACT, have passed their equivalent of this legislation accepting that there will be a hiatus between the passage of the legislation and these provisions becoming workable. As I say, all the jurisdictions are working under best endeavours to get the regulations completed as quickly as possible.

Hon NICK GOIRAN: Can we put that one on notice to get an update? The latest information is August and it seems that August is going to pass.

The CHAIRMAN: Okay, so that will be question on notice 3, for an indication of the time frame for completion of the drafting of the regulations; and also if you could provide us with any details of what provisions in those acts need to be modified to make them workable in Western Australia.

Ms Briggs: Yes.

The CHAIRMAN: Are you happy with that, Nick?

Hon NICK GOIRAN: Yes.

The CHAIRMAN: My next question is: if a regulation required to make one of the commonwealth acts workable in WA is disallowed by the Western Australian Parliament, how would this impact the enforceability of clause 26?

Mr Salvage: If the regulations are disallowed, then there would be question mark about the workability of the applied commonwealth act in Western Australia. So if we take the Freedom of Information Act, for example, if regulations do not allow for the necessary modifications to make them administratively workable, then that regime might not be able to be applied in relation to the Western Australian administrator.

Hon NICK GOIRAN: But a person would still be able to lodge a complaint to the commonwealth Ombudsman if they were so inclined or put in an application for freedom of information with the relevant commonwealth agency.

Mr Salvage: Correct. But if you are wanting to get information from the Western Australian administrator, if that regime is not workable in Western Australia, that would be an issue about how that is processed, and that will go to the person, recognising that there is certain information that he or she holds that relates to a particular jurisdiction. So, again, the rationale for this provision is to put a common set of arrangements around the administrator, the one person acting essentially in nine capacities. If you are wanting to find out something about the Western Australian state pool account, you will apply through the Freedom of Information Act, or the commonwealth act as applied in Western Australia. And if that component of the total freedom of information regime that sits around the administrator is not made workable, then it would be difficult to progress the application.

The CHAIRMAN: So are you saying that any freedom of information application lodged before the regulations are enacted will not be able to be processed?

Mr Salvage: We would need the regulations brought into place to make the regime administratively workable; that is correct.

Hon NICK GOIRAN: Presumably that is part of the analysis which is on notice and is going to come back to us. My understanding from what I have heard this morning is that there is an analysis being done on the five acts, which are at various stages of progression.

Mr Salvage: Correct

Hon NICK GOIRAN: And there may or may not be issues around that FOI process; perhaps the issues are around the Ombudsman's process. Have I got that correct?

Mr Salvage: I acknowledge that it is not desirable to bring a regime into place without the regulations being completed. I do not know how frequently that occurs, but people are endeavouring to work under a best-endeavours motion to try to get the regulations finalised as quickly as possible.

The CHAIRMAN: What concerns me is that you indicated that if those regulations are not in place to modify the Freedom of Information Act that the state administrator would have difficulty processing a commonwealth freedom of information request.

Mr Salvage: Not if made under the commonwealth's act to the administrator acting in his commonwealth capacity.

The CHAIRMAN: Okay, so if it is made to the administrator acting in his commonwealth capacity requesting information in relation to the Western Australian state fund, would he be able to provide that information?

Mr Salvage: In terms of flow of commonwealth dollars into the state pool account, yes, because that would be a function of the administrator acting in his commonwealth capacity. If it goes to the

operation of the state pool account where he or she draws their jurisdiction from the state law, then that might be an issue if the regime has not been completed in time.

Hon LINDA SAVAGE: So do I take it then it could be an issue in other states that have passed this legislation already?

Mr Salvage: Correct, it will be an issue across the board. I think in practice if the day after the legislation is passed, if there is a freedom of information application made to the administrator, it will be dealt with once the regulations have been agreed and put through.

The CHAIRMAN: I think you might find that there are requirement time lines specified under the commonwealth Freedom of Information Act that might need to be complied with, which might prevent that from occurring particularly if there are some months or years before the regulations are in place.

Mr Salvage: Well, as I said, people are working under a best-endeavours process to try to complete that work as quickly as possible.

The CHAIRMAN: So just for me to get clear, the commonwealth administrator would not be able to provide details of Western Australian state funds put into the Western Australian state fund pool under a freedom of information request?

Mr Salvage: My view would be that that would be the function of the administrator acting under our enactment as a Western Australian administrator. So I would not say that you could apply the administrator's commonwealth capacity to have access to that information.

Hon DONNA FARAGHER: The access to the information how that state pool is actually operating.

Mr Salvage: Correct.

Hon DONNA FARAGHER: If it is applied to him as the commonwealth administrator in relation to the mechanism of how it gets to the state, that could be dealt with.

Mr Salvage: Correct.

Hon DONNA FARAGHER: But once it is in the state pool as such, questions in relation to that state pool and how that is dealt with, that is where the difficulty arises.

Mr Salvage: We are dealing with a state pool.

Hon DONNA FARAGHER: Yes.

Mr Salvage: Owned and operated by the state, overseen by the administrator drawing his or her authority from state legislation.

The CHAIRMAN: My next question is: could there be constitutional issues related to section 109 of the Australian Constitution if regulations made under the bill are inconsistent with any provisions in the commonwealth acts listed in clause 26?

Mr Salvage: We have not looked at that issue specifically. What I would say, though, is that this legislation has been developed in a cooperative process involving the commonwealth as well, and the commonwealth accepts the needs for amendments to their legislation to be applied as state law. The mechanism that other jurisdictions have elected to go with is one that sees the commonwealth varying the application of commonwealth laws as state laws. In our case we are taking a different approach because of the reasons that we spoke to you previously.

Hon DONNA FARAGHER: So that this state is unique in that regard?

Mr Salvage: This state is holding the line that amendments made to applied Western Australian law should only be dealt with at the state level.

Hon DONNA FARAGHER: And you say, just to be clear, no other state has taken that approach?

Mr Salvage: My understanding is that every other state has elected to go with the default position, which will be made through regulations made under the commonwealth's bill.

The CHAIRMAN: Can you take that question on notice as question on notice 4?

Mr Salvage: Sure.

The CHAIRMAN: Because I, and I am sure the committee members, would appreciate some comment on that potential constitutional issue; so that will be question on notice 4.

[11.50 am]

I note that the regulations will be made by way of disallowance in Parliament. I am just curious as to whether the department has considered the making of regulations by positive affirmation, as opposed to disallowance where the Parliament needs to agree to the regulations before they come into effect; rather than have a situation where the regulations come into effect and Parliament has 60 days to disallow.

Mr Salvage: No consideration has been given to that as an option. We have simply defaulted to the general regulation-making power, which is via disallowance.

The CHAIRMAN: Okay, and would that be an issue if it were?

Mr Salvage: It would be something we would have to look at very closely.

The CHAIRMAN: Okay, could you take that as question on notice number 5, and to advise the committee if you would see regulation-making powers by positive affirmation as an issue in relation to the making of regulations?

Mr Salvage: Sure.

The CHAIRMAN: My next question is on clause 27, which states —

> 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 —

I am just curious about the words "as far as possible" and what limitations have been foreseen necessitating the use of those words?

Ms Briggs: Once again, it is a drafting style, I think, that has been adopted there. I am not sure that our head minds were turned to what the minute word was or that it was a drafting style that has been adopted to try to capture all possibilities.

The CHAIRMAN: Could we just take that as question on notice number 6, and perhaps you could talk to parliamentary counsel and get some advice back to the committee? This has only recently been a drafting style that has been adopted and I am sure there is some reason behind it and the committee, and I am sure Parliament, would appreciate understanding what that is?

Mr Salvage: Sure

The CHAIRMAN; Then the next question is to clause 28, which again has a qualifier that states —

> … so far as the legislative power of the State permits, …

Again I am curious as to what limitations have been foreseen which have necessitated the use of those limiting words or qualifying words; and I am happy for that to be taken as question on notice 7 so that you can talk to parliamentary counsel in relation to that.

Mr Salvage: Thank you.

The CHAIRMAN: I will just go to clause 29, which purports to sub-delegate the functions of the minister to an authority or officer of the state with no ability for the Parliament to scrutinise the terms of this sub-delegation or who may exercise this power. Could you please explain the reason for this sub-delegation and how it is justified, given its impact on parliamentary sovereignty?

Mr Salvage: This goes to the minister's role and the functions conferred on the minister under this bill. What the clause seeks to do is distinguish the circumstances where the minister might invite, essentially, an officer of the Department of Health to exercise a function on his or her behalf, and it basically provides that there is a power of delegation available to the minister except in relation to his involvement in the administrator's appointment. I will give you a specific example of what this might relate to. Under the funding pool arrangements the state directs the administrator in relation to the release of funds to health services. In practice that is a function that will be exercised by the Department of Health on the minister's behalf. So this provision allows for that administrative function, if you like, to be undertaken on the minister's behalf, whilst making it clear that the minister cannot direct the director general or allow the director general to himself become involved in the appointment of the administrator or the dismissal or the suspension of the administrator.

Hon DONNA FARAGHER: There would be examples of that happening now, though, would there not?

Mr Salvage: The department exists to support the minister in the exercise and the performance of his function, so it is no different in that context.

Hon DONNA FARAGHER: I am sorry, my question is in relation to the delegation to a certain authority; there would be examples of that happening now, whether it relates to these sorts of matters or others.

Mr Salvage: Sure. A classic example would be the minister's role as the board of public hospitals. In effect he has delegated to the director general responsibility for the exercise of those powers on his behalf.

The CHAIRMAN: Just noting the time and the fact that one of the members of the committee has indicated that they have got another commitment that they need to get to, I would like to just, with your indulgence, adjourn the hearing at this point just so that the committee can converse and determine the course of action it wants to take in relation to concluding the hearing either today or at another date and then call you back in to let you know what the committee has determined.

Hon NICK GOIRAN: Can I ask one more question relating to that?

The CHAIRMAN: I am sorry, one last question, if you do not mind.

Hon NICK GOIRAN: One last question: have you got a copy of the National Health Reform Agreement before you?

Mr Salvage: I do.

Hon NICK GOIRAN: If I could just ask you to turn to B36, which is on page 34. There it states —

> State legislation may provide for the Administrator to be subject to state-specific anti-corruption legislation.

In this bill that path has not been taken to specify that the administrator would be subject to the Corruption and Crime Commission Act 2003. Is that because it speaks for itself in the sense that the administrator as the WA statutory office holder would be considered to be a public officer and therefore it is not needed to be specified in this bill?

Ms Briggs: Yes.

The CHAIRMAN: Do you want to take that as a question on notice?

Hon NICK GOIRAN: No, that is the answer; that is good.

The CHAIRMAN: I will adjourn the hearing with your indulgence.

Mr Salvage: Can we leave our papers here?

The CHAIRMAN: You certainly can.

Hearing suspended from 11.56 to 12.01 pm

The CHAIRMAN: Thank you very much. Just for the purpose of Hansard, the hearing has resumed. The committee has a number of questions that it still would like to seek some comment on, so the committee would like to propose that we adjourn the hearing to Monday, 27 August at 1.30 pm, if that is suitable.

Mr Salvage: Sure.

Ms Briggs: I am not available.

The CHAIRMAN: Would that be okay? Are you happy to proceed without Ms Briggs?

Mr Salvage: Yes.

The CHAIRMAN: All right, that being the case, the hearing is adjourned until Monday, 27 August at 1.30 pm and we look forward to seeing you then. Thank you very much for your time.

Hearing concluded at 12.02 pm