Australian National Preventive Health Agency (Abolition) Bill 2014

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Date introduced: 15 May 2014
House: House of Representatives
Portfolio: Health
Commencement: Sections 1 to 3, commence on Royal Assent; Schedule 1 commences on 1 July 2014, or if Royal Assent is granted on or after this date, then the end of a three month period from the date Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
Purpose of the Bill
The Australian National Preventive Health Agency (Abolition) Bill 2014 (the Bill) proposes to repeal the Australian National Preventive Health Agency Act 2010 which established the Australian National Preventive Health Agency (ANPHA) in 2010. It also makes transitional arrangements for the transfer of the agency’s records and documents to the Department of Health and for the continuation of any Ombudsman investigations.

Background
The continuing growth in lifestyle related chronic diseases such as Type 2 diabetes and the contribution of modifiable risk factors such as smoking, diet and alcohol consumption has prompted calls for stronger national action on disease prevention and health promotion. Three major reports into the health system conducted in 2009 all supported a focus on greater preventive health efforts. These reports also highlight the evidence that shows that strengthened prevention efforts can reduce health system costs.

Establishment and functions of ANPHA
A key component of the National Partnership Agreement on Preventive Health, agreed by the Council of Australian Governments (COAG) in 2008 was the establishment of enabling infrastructure to drive national preventive health policy and programs. The establishment of ANPHA fulfilled the Commonwealth’s commitment to establish such preventive health infrastructure. Following the passage of the Australian National Preventive Health Agency Act 2010, ANPHA commenced operations on 1 January 2011.

The main functions of the ANPHA as described on the Department of Health’s website are:

• providing evidence-based advice to federal, state and territory health Ministers
• supporting the development of evidence and data on the state of preventive health in Australia and the effectiveness of preventative health interventions and
• putting in place national guidelines and standards to guide preventative health activities.

The main focus of the ANPHA is on alcohol and tobacco consumption, and obesity. Together, these risk factors contribute to around 40 per cent of potentially preventable hospitalisations for chronic conditions.

The ANPHA is also responsible for a number of national programs addressing these risk factors, including:

• two national social marketing programs relating to tobacco use and obesity (the National Tobacco Campaign and the Shape Up campaign)
• managing and administering the Preventive Health Research Fund and
• managing the development of a National Preventive Health Workforce Strategy in partnership with Health Workforce Australia.

As part of its role in building the evidence base, ANPHA is required to produce regular reports on preventive health matters. This includes the publication of the State of Preventive Health 2013, the development of a research strategy for preventive health and various evidence briefs. In addition, ANPHA undertakes commissioned research; these are reports commissioned by governments wanting advice on a specific issue. In

3. For example, a US study found for every $1 invested in community based disease prevention programs to reduce obesity, increase physical activity and reduce smoking, the return on investment over and above the cost of the programs, would be $5.60 within five years. National Preventative Health Taskforce, op. cit., p. 13.
5. For example, a US study found for every $1 invested in community based disease prevention programs to reduce obesity, increase physical activity and reduce smoking, the return on investment over and above the cost of the programs, would be $5.60 within five years. National Preventative Health Taskforce, op. cit., p. 13.
7. The Australian National Preventive Health Agency administers the Preventive Health Research Fund which is focussed on translational research.
2012, ANPHA was tasked by the Australian Government with investigating the evidence around setting a minimum floor price for alcohol. The report was provided in-confidence to the government in May 2013, and under legislative requirements it was later publicly released by ANPHA in May 2014. 10

The ANPHA is a statutory authority under the Health portfolio, and reports through its Chief Executive Officer (CEO) to the Commonwealth Minister for Health. It also operates under the Financial Management and Accountability Act 1997 (FMA Act) and the Public Service Act 1999. It is funded by the Commonwealth but can charge fees for services it provides to the states and territories, such as commissioned research. 11

As part of the 2014–15 Budget, the Government announced changes to the Commonwealth health portfolio ‘to streamline the management of policy and programmes, reduce duplication between government agencies and drive efficiencies.’ 12 This included a commitment ‘to transfer essential functions of the Australian National Preventive Health Agency ... to the Department of Health as soon as possible’, with a view to its closure. 13

In his second reading speech to the Bill, the Minister for Health argues that the current arrangement whereby preventive health responsibilities are spread across both the Department of Health and the ANPHA has led to fragmentation, duplication and inefficiencies. The ‘essential functions’ of ANPHA ‘will be integrated with the Department of Health’s existing work addressing alcohol, tobacco and obesity and in line with current policy and priorities’. 14

The decision to abolish ANPHA also aligns with the National Commission of Audit recommendation to reduce the number of government agencies in the Health portfolio. 15

The abolition of ANPHA is one element in a number of proposed changes to preventive health funding. The Government has also announced it will cease funding for the National Partnership Agreement on Preventive Health and reduce funding for the National Tobacco campaign. 16

As of June 2013, the ANPHA had 42 staff. 17 A number of staff will be transferred to the Department of Health according to advice provided to a Senate Committee. The future employment prospects of other employees remains uncertain. 18 In addition, the future role of an Advisory Council comprising 11 members, which provides expert advice on preventive health matters, is not clear. 19

Committee consideration

**Senate Standing Committee on Community Affairs**

The Bill has been referred to the Senate Standing Committee on Community Affairs for inquiry and report by 14 July 2014. 20

At this stage no submissions have been publicly released.

**Policy position of non-government parties/independents**

Labor’s Shadow Health Minister Catherine King, has expressed strong criticism of the proposed abolition of ANPHA and other changes to preventive health programs, describing it as a broken promise that will ‘place a greater burden on the health system’. 21

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13. Ibid
To date, no specific statement from the Australian Greens party on the proposed abolition of ANPHA has been identified but given past statements they have made supporting preventive health activities, they are likely to view it negatively.

The policy positions of other cross bench Members and Senators are not yet known.

**Position of major interest groups**

The proposed abolition of the ANPHA has been welcomed by advocates of smaller government and reduced bureaucracy, as well as the commercial food and beverage industry, but has been condemned by many public health advocates and other health specialists.

The Australian Food and Grocery Council, representing retail food interests, sees it as a practical measure which will ‘reduce complexity and overlapping jurisdictions’ and a ‘step away from prescriptive policy intervention with a renewed emphasis on greater collaboration between government, industry and other stakeholders’.  

The Australian Taxpayers Alliance and MyChoice consumer lobby group jointly ‘applauded’ the announcement which will ‘slim bloated bureaucracies’. In their view the ANPHA ‘was an uninspired tax sinkhole’, that took away consumer choices, and ‘wasted millions of taxpayer dollars on feeble, nagging media campaigns’.

Others have expressed disappointment.

The Public Health Association of Australia, representing public health interests, has criticised the cuts to preventive health in the Budget, including the abolition of the ANPHA and related agencies:

> These agencies focused on promoting preventive health approaches and primary health care designed specifically to reduce pressure and costs in hospital and acute settings. It is vital that there are agencies at the national level to protect and progress the national interest in key areas such as primary health care and preventive health.

> "It has long been said that prevention is better than cure – certainly prevention is cheaper than treatment – and its false economy to cut funding in these areas to achieve short term savings. As it stands, only about 2% of the health budget is spent on prevention – if the Government wants to reduce pressure on the health budget over time, they should actually be looking to increase that figure. Instead, expenditure on prevention is reduced dramatically".

Mike Daube, Professor of Public Health Policy at Curtin University, also condemned the cut to preventive health spending and abolition of agencies, describing it as a ‘dark day for Australia’s health and health services, and especially for prevention. Nobody can doubt our health services and future health are the big losers. The crazy part of all this is that it’s preventive programs that ultimately save the system money’.

Journalist Peter Martin is also critical of the abolition of the ANPHA, pointing out that independent advice on preventive health issues, such as the advice ANPHA provided on a minimum floor price for alcohol, may not be so independent or forthcoming from the Department of Health.

Recent cutbacks in state government funding of public health and health promotion services in anticipation that Commonwealth funding would cover these, have others worried that ‘neither level of government is providing funding for prevention’.

**Financial implications**

The budget papers show that the abolition of the ANPHA is forecast to generate savings of $6.4 million over five years, which will be invested in the new Medical Research Future Fund. All but $6.4 million in the funds that

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27. R Tooher, *‘Budget cuts to preventive health will hit already depleted workforce in South Australia hard’*, Croakey weblog, 26 May 2014, accessed 29 May 2014.
would have been allocated to the ANPHA over the forward estimates will be directed to the Department of Health, as shown in the table below.

## Smaller Government — Australian National Preventive Health Agency — abolish

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Whether this funding will be used by the Department solely to integrate and administer the preventive functions previously undertaken by the ANPHA, however, is not clear.

## Statement of Compatibility with Human Rights

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

## Failure to pass

If this Bill should fail to pass the Parliament, there may be questions raised about the future of the ANPHA, given that funding for the agency has been largely allocated to the Department of Health. According to the Minister’s second reading speech, ‘existing commitments to grants and social marketing efforts will continue’. However, no funding will be available to the ANPHA.

According to the *Australian National Preventive Health Agency Act 2010* the CEO is appointed by the Minister, with each period of appointment not to exceed five years. Section 22 sets out how the appointment can be terminated, and assuming the abolition Bill does not pass, this provision still operates. The question is then, can termination of employment only occur in accordance with this provision, or can the Minister simply revoke the instrument of appointment?

An analogy can be found with the Climate Change Authority and the Clean Energy Finance Corporation which continue in existence as the Bills seeking their abolition failed to pass the Senate. As the Shadow Minister, Mark Butler stated:

> The Clean Energy (Carbon Tax Repeal) Bills – totalling 11 bills - were introduced to the Senate on 2 December 2013. Labor and the Greens voted to separate the bills relating to the abolition of the Climate Change Authority and the Clean Energy Finance Corporation and be debated in their own right. Each bill was defeated in the Senate, meaning both the CCA and CEFC will continue their operations.

There is no funding for the Climate Change Authority in the Budget. Until lawfully abolished, funding would have to continue for remuneration of appointees until terms of appointment expire.

The agency cannot continue without funding. While the ANPHA has the capacity to generate revenue by charging fees for its services, it is unlikely this would be sufficient to fund the agency for any prolonged period.

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29. The statement of Compatibility with Human Rights can be found at page 2 of the Explanatory Memorandum to the Bill.
30. I am indebted to Diane Spooner (Law and Bills Digest section) for this advice.
Although it may be possible for the Department of Health to provide funds for its continued operation this would be at odds with the Government’s resolve to realise efficiencies by abolishing the ANPHA (and other agencies such as Health Workforce Australia), so this option would appear unlikely. It would remain in limbo until such time as this Bill is passed.

Key issues and provisions

**Schedule 1**

**Item 1** proposes the repeal of the *Australian National Preventive Health Agency Act 2010*.

**Items 2** and **3** propose transitional provisions that allow for the transfer of records and documents in possession of ANPHA to the Department of Health.

**Item 4** proposes that any unresolved complaints raised against ANPHA with the Commonwealth Ombudsman will continue to be dealt with under the *Ombudsman Act 1976* following the transition period, as if the Department of Health had taken the relevant action.

**Item 5** proposes that the Minister may make rules by legislative instrument to address transitional matters.

Concluding comments

The Bill proposes the abolition of the ANPHA to reduce duplication and reduce unnecessary costs. It is intended that the Department of Health, which already manages population health and prevention programs, will take on its essential functions. Funds previously earmarked for ANPHA, minus $6.4 million which will directed to the Medical Research Future Fund, will be allocated to the Department of Health to undertake these functions.

However, some issues remain unclear. These include uncertainty over precisely what ‘essential functions’ of ANPHA will be transferred to the Department, as these are not fully articulated; the quantum of funding that will be available for specific public health campaigns and preventive health programs is not clear, and the uncertain status of the ANPHA if this Bill fails to pass.

The abolition of ANPHA has been criticised by many health groups but mostly welcomed by industry and small government proponents.

Although the Minister for Health has reiterated the Government retains a commitment to prevention, his preferred approach is based on empowering individuals to take responsibility for their own health.\(^{33}\) This approach, however laudable, ignores the growing body of evidence around the social determinants of health. Recent reports show that education, income level and other social and economic factors have a significant impact on healthy behaviours and health outcomes.\(^{34}\)

Meanwhile, new reports continue to highlight the ongoing challenges Australia faces in addressing risk factors for chronic disease. The *2014 Report Card on Physical Activity* assessing activity levels in children found a majority of Australian children were still failing to reach recommended daily physical activity level guidelines. Just 19 per cent of five to 17 year olds met the recommended 60 minutes per day of moderate to vigorous physical activity.\(^{35}\)

Given moves by some state governments to vacate the public health and prevention space, stronger preventive efforts at the national level may be needed to counter the continuing growth in risk factors for preventable chronic diseases.\(^{36}\)

The abolition of the ANPHA, combined with the early cessation of the partnership agreement on preventive health also flagged in this Budget, may ultimately make it harder for the Government to convince public health advocates and other stakeholder groups of the genuineness of future preventive health policy initiatives it may seek to progress.

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