SPECIAL COMMISSION OF INQUIRY INTO HEALTHCARE FUNDING

NSW HEALTH SUPPLEMENTARY SUBMISSIONS

INTRODUCTION

1.1 NSW Health provides these supplementary submissions in accordance with the Commissioner's direction on 27 February 2025. They are intended only to respond briefly to any additional recommendations proposed in the written submissions of other interested parties, and to address any criticism of NSW Health therein. They also address the Commissioner's queries regarding the Single Digital Patient Record (**SDPR**).

SECTION 2 – AUSTRALIAN MEDICAL ASSOCIATION NSW (Limited) (AMA)

2.1 NSW Health responds to certain matters raised in the AMA submissions and the letter dated 25 February 2025 from HWL Ebsworth Lawyers, on behalf of the AMA, to the Special Commission of Inquiry (**AMA letter**).

2.2 Paragraphs [18]-[20] of the AMA's submissions, and [8] - [11] of the AMA letter, provide a version of the events leading to the amendment to clause 34 of the *Health Services Regulation* 2018 in December 2024 in a way that is critical of both NSW Health and the NSW Government. Paragraph [10] of the AMA letter also suggests that advice has been given to the AMA that is contrary to [10.44] of the NSW Health submission. That paragraph goes no further than bring the Inquiry's attention to the amendment to the *Health Services Regulation* 2018. Given the AMA's support of proposed recommendation 17(c), and given also the general nature of the evidence before the Commission as to that history, it appears unnecessary for the Commissioner to make any findings on these matters. If findings are proposed, NSW Health would respectfully seek an opportunity to provide additional evidence as to the events in question.

2.3 NSW Health submits that paragraph [24] of the AMA's submissions should not be accepted. No evidence is cited. The evidence before the Commission does not demonstrate any "culture" within the public health system that medical staff should

not speak up for fear of reprisal. Nor, properly, was such a suggestion put to any executive at a Facility, Local Health District or Ministry level.

2.4 Paragraphs [32] - [35] of the AMA's submissions seek a broader remit for the review mechanism in Counsel Assisting's proposed recommendation 19(d). NSW Health relies on [10.63] - [10.77] of its submissions, which acknowledges the need for review of existing policies and procedures in place for dealing with workplace actions or decisions. The matters raised in these paragraphs of the AMA's submissions would by necessity be considered in NSW Health's upcoming review. NSW Health submits that it is unnecessary for Counsel Assisting's proposed recommendation 19(d) to be made more prescriptive.

2.5 To the extent that paragraphs [14] and [16] of the AMA letter are intended to suggest that NSW Health's review of the model by-laws would not be comprehensive, NSW Health rejects such suggestion.

2.6 In response to [29] of the AMA letter, suggesting any misuse of data can be addressed by NSW Health responding to and clarifying misinformation, NSW Health notes the evidence given by Mr Philip Minns[1], and accepted by the Commissioner[2], regarding the diversion of resources required to respond.

2.7 NSW Health also rejects the assertion at [20] that it has conflated final decisions and those made during the course of an investigation and observes that it is not necessary, prior to NSW Health's review of complaint management processes, for the Special Commission to be more prescriptive in its recommendation 19.

SECTION 3 – ROYAL AUSTRALASIAN COLLEGE OF PHYSICIANS (RACP)

3.1 The issues raised at the second dot point on page 3 in relation to the SDPR are addressed below in Section 8 of these supplementary submissions. In response to the balance of that dot point, NSW Health acknowledges challenges with access to specialist services and is currently considering how telehealth access to specialist care can be incorporated into existing virtual care reform.

3.2 In response to the first dot point on page 4, NSW Health supports the promotion of a system wide culture of employee wellbeing, together with a commitment to create a

[1] Transcript of the Commission, 26 February 2025 T7055.19-45 (Minns).
[2] Transcript of the Commission, 27 February 2025, T7178.37-7179.3 (Commissioner).

workplace that is psychologically safe and allows people to speak up. NSW Health has worked to ensure there is a framework of 'support, prevent and respond' to make a difference to a person's work experience.

3.3 The broader rollout of the Chief Wellness Officer role would need to be evaluated and considered in the context of best practice and research. Appropriate governance structures would also need to be established to ensure an integrated system for all NSW Health employees. Improvements to wellbeing may also be done in a number of ways, and not just through appointment of chief wellbeing officers, for example integration with workforce, safety, change management and culture functions.

3.4 In relation to the comments about protected time for teaching and learning at the third dot point on page 4, this is not contained in the Public Hospitals Medical Officer Award. It would be an enhanced condition with a material impact, in that clinical time will be diverted to protected learning, likely resulting in the need for increased full time equivalent (**FTE**) staff. This would need to form part of an award claim or negotiation.

3.5 The balance of RACP's suggestions involve amending Counsel Assisting's proposed recommendations to refer specifically to RACP's activities. NSW Health queries the necessity for such amendments.

SECTION 4 – AUSTRALIAN AND NEW ZEALAND COLLEGE OF ANAESTHETISTS (ANZCA)

4.1 ANZCA's submissions do not propose any additional recommendations or criticise NSW Health.

SECTION 5 – ROYAL COLLEGE OF PATHOLOGISTS OF AUSTRALASIA (RCPA)

Proposed additional recommendations on NSW Workforce Shortages and Training Constraints

5.1 NSW Health submits that RCPA's first proposed recommendation is unnecessary. The issue has been broadly addressed in [10.1] - [10.23] of NSW Health's submissions. Ministry has an established Future Workforce Unit[3] within its Workforce Planning and Talent Development (**WPTD**) Branch, led by Mr Richard Griffiths. The Future Workforce Unit provides a central workforce planning function for NSW Health,

[3] Transcript of the Commission, 14 October 2024, T5648:18-26 (Dominish).

including strategic workforce planning in the near-term and future workforce strategies through analysis of potential megatrends.

5.2 NSW Health Pathology continues to collaborate with the WPTD Branch in workforce planning initiatives, to align workforce strategies with projected demands on health services.

5.3 With respect to the remaining proposed recommendations concerning workforce and training, NSW Health supports more Commonwealth funded placements and incentives for rural and regional placement. Their effectiveness depends on having an adequate supply of trainees looking to fill the positions, noting that there has been a shortage of doctors entering intern training for the 2024 Clinical Year (February 2024 – February 2025). NSW Health had 28.5 FTE intern positions unfilled in metropolitan areas and 66 FTE unfilled in rural areas. NSW Health Pathology would also need to ensure that an increase in training positions could be supported by appropriate supervision arrangements (e.g. supervisor / trainee ratios).

5.4 As to specialist pathologists, NSW Health Pathology is currently trying to fill 17.8 FTE consultant vacancies. However, the evidence before the Commission explained how increasing the funding for specialist positions would not necessarily solve the workforce shortages in rural and regional areas, due to maldistribution of the specialist workforce.

5.5 In respect of the proposed recommendation 3 on page 3, for development of a state-level strategy for Artificial Intelligence (**AI**) integration in pathology, NSW Health submits that development of this strategy is already in progress. The *eHealth Strategy for NSW Health 2016-2026*[4] outlines the foundation digital capabilities including infrastructure that is required across NSW Health to enable AI and advanced technologies. The *Future Health Report*[5] and the *NSW Regional Health Strategic Plan*[6] also provide guidance on the advancement of technology including AI to help with clinical objectives.

5.6 Currently, the AI Taskforce is providing guidance and supporting adoption of the *NSW Government AI Assurance Framework*[7]. There are various proposed use cases and

[4] Exhibit B.23.66, *eHealth Strategy for NSW Health 2016-2026* [MOH.0001.0254.0001].
[5] Exhibit A.14, *Future Health: Guiding the next decade of care in NSW 2022-2032* (May 2022) [SCI.0001.0010.0001].
[6] Exhibit A.49, *NSW Regional Health Strategic Plan 2022-2032* (February 2023) [SCI.0001.0044.0001].
[7] Exhibit N3.12.6, *NSW Government AI Assurance Framework* [MOH.0006.0044.0001].

technologies for AI under review and consideration, of which a sub-section pertains to the use of AI in the pathology and histopathology area (including digitising anatomical pathology).

5.7 In addition to the AI Taskforce, there are other strategies in development such as the NSW Health Integration and Interoperability Strategy, Identity & Access Management, the Data & Analytics Strategy, and the SDPR and Health Grade Enterprise Network (**HGEN**) programs that will provide the foundations to enable AI integration into pathology.

5.8 With respect to the balance of RCPA's proposed recommendations (page 3) concerning technological advancement and Activity-based Funding (**ABF**), NSW Health notes these recommendations would require funding for capital costs to implement telepathology, digital pathology, AI infrastructure and molecular testing, and funding for operational budgets to maintain the technology and image storage. This would need to be considered through the NSW Health budget process.

5.9 A prescriptive recommendation as to dedicated funding either for technology, or for pathology services (such as by way of proposed adjustments to the ABF model), could potentially be inconsistent with the proposed recommendation for system-wide clinical services planning, which involves assessment of the most cost-effective way of delivering necessary health services to each community before determining how a funding model could be developed to match that system. As with all other investments in the provision of health services, decisions to increase funding for particular initiatives require appropriate specific policy proposals with business plans.

5.10 NSW Health observes that RCPA's proposed recommendations for changes to the funding model would necessarily be considered as part of the process envisaged in Counsel Assisting's proposed recommendation 4, for determining the appropriate funding structure to support resource allocation after system-wide clinical services planning. A prescriptive series of funding recommendations appears unnecessary.

5.11 In response to proposed recommendation 2 on page 4, for implementation of targeted strategies to reduce turnaround times, NSW Health submits that targeted strategies already exist.

5.12 NSW Health Pathology monitors and ensures appropriate turnaround times are achieved for rural locations. The investment in Point of Care Testing (**POCT**) enables rural communities to access routine testing. NSW Health Pathology has a network of 66 laboratories and leverages this capability across metropolitan, regional and rural areas to support all patients with appropriate access to results.

5.13 As set out in the statement of Ms Vanessa Janissen, Chief Executive of NSW Health Pathology [8], NSW Health Pathology manages and operates POCT statewide, with more than 110 devices in 190 health services to provide on the spot results for conditions such as heart disease, sepsis, kidney damage, COVID-19 and diabetes.

5.14 The pathology service delivery model is discipline and technology specific. In some cases, economies of scale can be achieved in a networked model, with tests batched and processed faster with a lower margin of error.

5.15 The *NSW Regional Health Strategic Plan 2022-2032*[9] recognises opportunities to deliver appropriate services in the community to enable more sustainable solutions for access to healthcare close to home including opportunities for home pathology testing.

5.16 NSW Health is also conducting a review of the Transport for Health policy to identify strategies that will help people select transport options that best suit local needs and resources. The review is statewide, with an emphasis on rural, regional, and remote communities.

SECTION 6 – HEALTH SERVICES ASSOCIATION NSW (HSA)

6.1 HSA's submissions express some concerns as to the potential impact of Counsel Assisting's proposed recommendation 21. On this issue, NSW Health reiterates Section 11 of its written submissions, the evidence given by the Health Secretary and Adjunct Professor D'Amato on 26 February 2025, and NSW Health's oral submissions on 26-27 February 2025.

[8] Exhibit B.10, *Statement of Vanessa Janissen* (8 February 2024) [74] [MOH.9999.0008.0001].
[9] Exhibit A.49, *NSW Regional Health Strategic Plan 2022-2032* (February 2023) [SCI.0001.0044.0001].

6.2 NSW Health notes that the observations made by the HSA in relation to Affiliated Health Organisations that have close integration with individual Local Health Districts are similar to those raised in [11.12]-[11.21] of NSW Health's written submissions.

6.3 HSA's Submissions at page 4, set out alternative recommendations on Affiliated Health Organisations. Affiliated Health Organisations are an important part of the public health system in New South Wales.

6.4 The Health Services Association of NSW (**HSA**) Working Group has been formed bringing together key representatives from Ministry and the HSA to address shared challenges and system-based solutions to support integrated, high quality patient centred care as relevant to Affiliated Health Organisations. Issues for discussion include the development of Service Agreements between Local Health Districts and Affiliated Health Organisations for 2025/26, workforce and the management of capital and assets.

6.5 The capital assets of Affiliated Health Organisations are owned by the Affiliated Health Organisation and therefore the responsibility for maintenance and upgrades of capital lies with Affiliated Health Organisations. Affiliated Health Organisations are able to access funding through the Asset Refurbishment and Replacement Program (**ARRP**). Between 2017 and 2020, Affiliated Health Organisations accessed $7.57 million in ARRP funding from NSW Health.

6.6 Regarding the proposal that rollout of the SDPR is funded by NSW Health in Affiliated Health Organisations, whilst the capital funding provided by the NSW Government for the implementation of the SDPR does not include Affiliated Health Organisations, NSW Health is currently working with SVHS and Calvary Mater Newcastle to explore the implementation and funding of SDPR in those services. Accordingly, a recommendation in the terms proposed by the HSA is unnecessary.

6.7 It is also important to point out that there is significant complexity in any proposal to extend the SDPR to include Affiliated Health Organisations, noting that a key element of the SDPR when fully operational is that it will involve a single instance accessible across NSW Health, whereas Affiliated Health Organisations are separate legal entities and their staff are not NSW Health employees. Considerations that are

required to be worked through include: who controls and owns the asset including the data, who makes decisions in relation to the SDPR; privacy and confidentiality; funding arrangements; the status of their underlying infrastructure including their information technology and communications infrastructure and the uplift required to support the SDPR; the ongoing maintenance of the SDPR and the infrastructure that support it; migration and archiving of existing patient data; and cyber security.

SECTION 7 – ST VINCENT'S HOSPITAL SYDNEY (SVHS)

SDPR ([10]-[11] of SVHS submissions)

7.1 SVHS's governance and assets are separate from NSW Health and this raises a number of issues in relation to the implementation of SDPR, including those set out at [6.7] above. At present SDPR funding does not include implementation at SVHS, however NSW Health is currently working with SVHS to determine how SDPR may be rolled out to it including the respective potential funding contributions from NSW Health and SVHS.

Funding ([12]-[14] of SVHS submissions)

7.2 NSW Health submits that SVHS' first additional recommendation on funding at paragraph [14](a) is unnecessary. The evidence did not identify any ambiguity in SVHS' status as an independent entity with its own legal obligations.

7.3 NSW Health submits that SVHS' second additional recommendation on funding at paragraph [14](b) goes significantly, and unnecessarily, beyond Counsel Assisting's proposed recommendation 24. Counsel Assisting's proposed recommendation 24 sets up a process to facilitate resolution of disputes about funding, but as clarified by the Commissioner during closing oral submissions[10], it is intended to do so without detracting from the Minister's power to determine subsidies under s 127 of the *Health Services Act*. In contrast, SVHS's proposed recommendation appears to commit the Minister to provide "sufficient funding" to bring about two outcomes, namely to "avoid risk" to SVHS's sustainability; and "to enable" SVHS and its directors to meet their governance obligations in relation to solvency. The proposed recommendation could operate to fetter the Minister's legislative power to determine subsidies to SVHS, and commit the Minister to fund SVHS in a manner so as to guarantee its solvency. Given

[10] Transcript of the Commission, 26 February 2025, T7157.1-41 (Commissioner).

that SVHS is an independent entity, its solvency depends on numerous factors including those beyond the control of the Minister or NSW Health.

7.4 NSW Health submits that SVHS' third additional recommendation at paragraph [14](c) on funding is unnecessary. NSW Health already recognises the need for greater certainty in funding across the NSW health system and is exploring options for 1 and 4 year agreements. Ministry has also commenced discussions with St Vincent's Health Network (**SVHN**) to refresh the Memorandum of Understanding to provide long term confidence to SVHN and SVHS.

Philanthropic funds ([15]-[16] of SVHS submissions)

7.5 NSW Health submits that SVHS' additional recommendation on philanthropic funds is unnecessary. At present, donations that are made by the public to SVHS are placed in a Restricted Financial Asset account. SVHS is partnered with the St Vincent's Curran Foundation that receives donations via a separate legal entity. The "role" of philanthropy in health care might be varied, and could change depending on the priorities and needs of the private organisation receiving that philanthropy. NSW Health observes that any recommendation to recognise a "primary role" of philanthropy in health care may not be accurate, and in any event appears to be of no utility.

7.6 SVHS' proposed recommendation also implies that there is currently an expectation from Ministry that philanthropic funds are to be utilised to subsidise the delivery of services that SVHS agrees to provide to NSW Health. As NSW Health's submission makes clear at [11.45] this is not the case unless those philanthropic funds have been donated for the purpose of SVHS's provision of public health services. The evidence established that disagreements do arise as to the adequacy of funding provided to SVHS for the delivery of those services; that the parties have then engaged in discussions to try to resolve those disagreements; and that the Minister has provided additional funding on an interim basis pending resolution.

Capital funding ([17]-[18] of SVHS submissions)

7.7 NSW Health submits that SVHS' proposed recommendations on capital funding are unnecessary. NSW Health currently provides transparency and certainty around

capital funding over the medium-long term. Each year, Ministry invites all NSW Health entities, including SVHN, to submit Capital Investment Proposals as part of the annual Capital Investment Planning process. This process informs the annual development and submission of the NSW Health 10-year Capital Investment Strategic Plan (**CISP**). An Assessment and Advisory Group evaluates whether the proposals meet the CISP requirements, need further development or require alternative solutions.

7.8 NSW Health otherwise repeats [7.4] above in relation to the need for greater certainty in funding across the NSW health system, which includes capital funding.

SECTION 8 – THE SDPR

8.1 During NSW Health's oral submissions on 27 February 2025, the Commissioner raised two queries which were taken on notice.

Has any form of costing been done as to what it might cost to roll out the SDPR to General Practitioners (GPs)?

8.2 A costing of the rollout of the SDPR to all General Practices in the State has not yet been undertaken.

8.3 The original business case for the SDPR did not envisage full integration with the various information systems of all healthcare providers and therefore is not funded to do so. NSW Health acknowledges that the sharing of patient information across health care would promote good and safe patient care. The extent of, and mechanism for, sharing this information across health care providers is currently being explored by the Single Digital Patient Record Implementation Authority (**SDPRIA**) with primary care providers.

8.4 Complete integration of health records and access to a patient's full record by all health care providers is an aspiration, the realisation of which faces significant challenges. Primary Care Providers (which include General Practices as well as community-based specialists) are independent organisations with their own governance structures and legal obligations. If they are to be given access to the SDPR, there are a range of issues that need to be worked through including: funding, governance, infrastructure, privacy, data governance and cyber security, as well as

the complexity of integrating numerous existing electronic (and hardcopy) record systems that have varying compatibility.

8.5 The extent to which patient information in the SDPR may be shared with Primary Care Providers is currently being investigated and the SDPRIA is continuing to work with Primary Care Providers in relation to the SDPR and working through these issues.

8.6 Meanwhile, NSW Health has implemented a range of technologies to facilitate electronic information sharing with General Practitioners and is collaborating with the Commonwealth on various initiatives under the National Digital Health Strategy. A key component of this strategy is the My Health Record (**MHR**), which enables the sharing of vital health information—such as allergies, medical conditions, treatments, medications, and test or scan results—across multiple clinical settings. As a patient-controlled system, the MHR allows both patients and their healthcare providers to access health records from various care settings including primary care, public and private hospitals, and community health services. Currently, NSW Health shares discharge summaries, pathology test results, diagnostic imaging reports, and dispense records directly to patients' MHRs.

8.7 NSW Health remains committed to enhancing the utility and adoption of the MHR, working closely with the Commonwealth. This includes supporting the recently passed 'Sharing by Default' Bill 2024, which mandates the automatic sharing of pathology and diagnostic imaging results with the MHR. Moving forward, NSW Health will continue collaborating with the Commonwealth and the NSW Primary Health Networks to improve system interoperability and facilitate seamless data sharing between healthcare providers.

NSW Health's position whether the Commonwealth should make a final contribution to any roll out of the SDPR to GPs (noting role of GPs in primary health care)?

8.8 NSW Health considers that the Commonwealth should contribute funding. Any roll out of the SDPR to General Practices (and other Primary Care Providers) would be an initiative to promote primary care as well as acute care. The appropriate Commonwealth contribution would be a matter for the NSW Government and the Commonwealth.