

## **Special Commission of Inquiry into Healthcare Funding**

### **AMA (NSW) Submissions in reply to Counsel Assisting's Submissions**

#### **A. INTRODUCTION**

1. These submissions in reply are made in response to the written submissions of Counsel Assisting the Special Commission of Inquiry into Healthcare Funding (**the Inquiry**), dated 20 December 2024. They are made further to AMA (NSW)'s initial submission of 31 October 2023 and its subsequent submission regarding the complaints processes at NSW Public Hospitals dated 14 June 2024.
2. AMA (NSW) welcomes the opportunity to consider and respond to the submissions and recommendations of Counsel Assisting the Inquiry.
3. AMA(NSW) members include Visiting Medical Officers (**VMOs**), Staff Specialists, Career Medical Officers, General Practitioners, Locums, Doctors-in-Training (**DiTs**), and medical students, all of whom have an important role to play in the provision of medical services in the New South Wales Public Hospital System, community health and private medical practice and hospitals. This breadth of membership places AMA(NSW) in a unique position in terms of its understanding of the variety and complexity of issues confronting the New South Wales health system and its capacity to constructively contribute to proposed reforms to one or more aspects of the system.
4. The submissions focus on the matters raised by AMA (NSW) in its submissions to the Inquiry and the evidence provided on behalf of AMA (NSW) and its members at the Inquiry. The submissions do, where considered appropriate, also provide AMA (NSW)'s position on matters that may not have been addressed in AMA (NSW)'s submissions and evidence to date.

#### **B. THE HEALTH NEEDS OF THE POPULATION AND THE SHIFTING BURDEN OF DISEASE**

##### **Recommendations**

*Preventative health should be identified as a standing, whole of government, priority against which New Policy Proposals brought forward by all branches of government are to be assessed in the sense discussed elsewhere in this outline.*

*All decisions regarding the implementation and advancement of that priority [preventative health] should be informed and coordinated by a multiagency, multidisciplinary body led by NSW Health – ideally by the Chief Health Officer/Population and Public Health Division – with*

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*a view to maximising the long term health benefits achieved through such decisions and insulating them, to the best extent possible, from the vagaries of the political cycle.*

5. AMA (NSW) agrees with Counsel Assisting's conclusion that preventative health should be identified as a standing, whole of government priority. As to how the implementation and advancement of that priority ought to be managed, this is a matter for NSW Health to determine within the resources at its disposal. Should the recommendation be adopted by the Government, AMA (NSW) would welcome the opportunity to be involved in future discussions regarding preventative health measures and the involvement of all stakeholders across the health system in New South Wales, from primary care providers to those providing care in the public health system.

## **C. FUNDING HEALTH SERVICES**

### ***Recommendations***

*As will be apparent from other sections of this outline, the public health system which is – and is required to be – delivered by NSW Health extends well beyond the provision of acute care in New South Wales public hospitals. Existing funding arrangements are an inadequate means of distributing the funds available with a view to funding the delivery of that system.*

*Having identified through, the collaborative planning process described below, the health system that NSW Health aspires to deliver to the people of New South Wales, the Ministry should – with expert guidance – reformulate its approach to funding so as to devise a funding structure which will ensure that the Local Health Districts and Specialty Networks are sufficiently resourced to deliver that system. That might include blended, bundled or other funding mechanisms to support that system.*

*Doing so will enable a considered assessment to be made of whether the present funding envelope available is “adequate” to sustain that system, or whether it needs to be expanded and if so, by how much.*

6. AMA (NSW) agrees that there is a need to reconsider and reformulate the approach to funding of health services, to ensure acute services are appropriately funded across metropolitan, regional and rural New South Wales, as well as to fund any additional services.
7. It is apparent that the existing funding models do not adequately meet the needs of many acute services across the State. As many of the medical practitioners informed the Special Commission either in evidence or in briefings, the annual budget cycle creates challenges including unsustainable upticks in activity followed by downturns in activity which make the recruitment and retention of long-term medical staff, particularly in regional and rural areas, very challenging. AMA (NSW) supports longer budget cycles as a means of supporting service

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design and planning, and supporting the development, implementation and assessment of new and innovative models of care and support for workforce planning.

#### **D. PLANNING AND DELIVERY OF HEALTH SERVICES IN NEW SOUTH WALES**

##### ***Recommendations***

*At a practical level, NSW Health must implement a transparent, committed, and collaborative approach to system wide planning, of the type outlined below. Whilst the local identification of health needs and general perspective of Local Health Districts should remain an important part of this process, there is a need for greater system-wide planning, coordinated through the Ministry, and a far greater level of engagement of community and other providers of health services at every stage in the planning process.*

*That planning process must – in a tangible way – involve at least the following:*

- a. Identification of the health needs of the relevant community. This must be done in genuine collaboration with the community, including other providers of health care within the relevant place;*
- b. Identification of other entities, including other Local Health Districts, which are already (or are capable of) delivering services to meet the identified needs;*
- c. Identification of gaps or areas of need which are not being met;*
- d. Identification of which of those gaps the public health system ‘should’ fill and how, both generally and within the relevant community. Once again, this is something that must be done in an open collaboration with the community, clinicians and all other providers of health care within the relevant place;*
- e. A system wide approach, coordinated within the Ministry, to determining what services are to be provided through the public health system to ensure that the identified health needs of the relevant population are met in an accessible but sustainable way, recognising that not all services can or should be provided everywhere;*
- f. Ongoing and genuine collaboration with the community and other providers of health services to:
  - i. Determine how emerging gaps are to be filled and what funding is available to enable that to occur;*
  - ii. Generate an evolving strategy which is forward looking and covers short, medium and long term planning horizons; and*
  - iii. Incorporate genuinely collaborative and transparent processes of monitoring, to ensure the plan is delivering on its intended objectives and enables adjustment to be made where required.**

*System-wide, coordinated planning, of that kind needs to be accompanied by a transparent articulation of the planning process, the health needs of the community identified through that process, the way in which those health needs are to be met and, to the extent that they are not, this also needs to be clearly articulated and an explanation of the rationale for this decision provided. It is essential that the extent to which those objectives are being achieved is reported upon in a frank and transparent way, potentially supported by expanded reporting by the Bureau of Health Information.*

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8. AMA (NSW) supports the recommendations made by the Counsel Assisting. As noted in Counsel Assisting's recommendations, the views of those at the Local Health District level are an important part of the process. So too, the views of the medical practitioners providing services are an important part of the process, yet the experience of many medical practitioners is that they are not a part of the process, or to the extent that they be, they are on the periphery. It is critical that this is addressed not only for planning of health service delivery but for improving and optimising clinician involvement in the delivery of health services both inside and outside the public hospital system.

#### **E. STATEWIDE SERVICES**

##### ***Recommendations***

*As part of the system-wide approach to planning discussed above, the governance and accountability structures, planning function, and funding responsibility for all supra-LHD and their functional equivalents should sit within the Ministry, rather than Local Health Districts.*

*The system wide planning process described above should also include the development of a statewide plan for paediatric services that articulates the roles of the Sydney Childrens Hospital Network, John Hunter Childrens Hospital and paediatric services within Local Health Districts. That plan should clearly identify the role of those highly specialised centres, both in providing care and supporting paediatric care that can and should be delivered in Local Health Districts or within the primary care setting.*

9. AMA(NSW) supports the recommendations of Counsel Assisting with regard to system-wide planning and the role of the Ministry, and supports the development of a statewide plan for paediatric services that identifies the role of highly specialised centres as well the provision of support for those services that can and should be delivered in LHDs and / or primary care settings.

#### **F. PRIMARY CARE AND AGED CARE**

##### ***Recommendations***

*NSW Health should significantly increase its involvement in the delivery of primary care and aged care.*

*Where there is market failure of primary care, NSW Health should, via the relevant Local Health District (and as an integral part of the service planning exercise), conduct an assessment of the unmet primary care needs and collaborate with other stakeholders to ensure that adequate primary care is delivered. In many cases, this will inevitably involve NSW Health stepping in to deliver that care; where necessary it should do so in a manner which capitalises on synergies with its wider operations. Access to Commonwealth funding streams for the delivery of this care should clearly be pursued by the Ministry but the delivery*

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*of primary care in communities where it is lacking should not await the outcome of those intergovernmental discussions.*

*As part of its system-wide planning process, NSW Health should facilitate more regional training opportunities for primary care workers, and provide the training and support required for those contributing to the delivery of primary care to exercise their full scope of practice.*

*Similarly, where market failure in the aged care sector is having a direct and adverse impact on the delivery of acute care through public hospitals, NSW Health should, via the relevant Local Health District, and in consultation with the community and other stakeholders, conduct an assessment of the unmet aged care needs in the relevant community and coordinate with other stakeholders to support or deliver the required aged care services. Once again, there will inevitably be locations in which NSW Health will need to step in and deliver that care; as it is already doing through numerous multi-Purpose Services located in rural and remote areas of the State and capitalising on available synergies with its wider operations. Commonwealth funding streams for the delivery of this care should obviously be pursued by the Ministry but the provision of aged care to the extent required to relieve the existing, and unsustainable, burden on public hospitals should not await the outcome of those intergovernmental discussions.*

10. AMA (NSW) and its members are very conscious of the challenges of meeting the demands of the community for primary care and aged care services. Every day, those providing these services and those working in the hospital system must manage the competing demands and challenges of a lack of access to primary and aged care services in many local communities. AMA (NSW) maintains that this remains the primary responsibility of the Commonwealth Government to fund and resource.
11. AMA (NSW) supports the continuation and ideally, the growth of private general practice in rural and regional communities. Any government initiatives to address market failure by stepping in to provide services, must be a last resort, and all efforts made by state and federal governments to support private general practice. For example, consideration given to financial incentives and support for persons relocating (financial and non-financial) to provide services in the private market.
12. All of that said, there can be little argument that in some circumstances there is a role for the State to support and perhaps provide care particularly in rural and regional areas where 'market failure' has seen a lack of workforce and services. The role of the State Government in the provision of primary and aged care must not be at the expense of hospital services. Funding is a challenge. While the benefits of investment in primary care services and aged care services should result in a lessening of pressure and demands for hospital services, this will not be realised immediately, and AMA (NSW) does not support any diversion of resources and funding from hospital services to fund primary care and aged care services. The challenge for the Government is to fund these initiatives with additional funding, and as Counsel Assisting has observed, including seeking additional funding from the Commonwealth.



13. Further, while supportive, AMA (NSW) does not support a reduction of medical (or other) staffing in the hospital system to staff primary and aged care services. Again, there must be additional resources and investment to meet these important needs for regional and rural communities.

## **G. THE HEALTH WORKFORCE**

### ***Recommendation***

*As of the system wide approach to planning, NSW Health should:*

- a. establish a central workforce planning function, located in the Ministry, which collaborates regularly and systematically with local organisations to direct the clinical workforce establishment across the NSW health system with the objective of guiding the deployment of the human resources available within the system in a way that best meets the needs of the New South Wales population as a whole; and*
- b. once that function is established, prioritise a thorough, evidence-based, review of specific initiatives that should be implemented to help address current workforce shortages and maldistributions.*

14. AMA (NSW) is supportive of NSW Health establishing a central workforce planning function within the Ministry of Health to collaborate with local organisations with the objective of guiding the deployment of the human resources available to best meet the needs of the population of New South Wales.

### ***Recommendation***

*The Health Education and Training Institute's role should be expanded, with appropriate funding, to include:*

- a. coordinating the allocation of students to clinical placements within NSW Health facilities and services in collaboration with universities and relevant NSW Health agencies;*
- b. overseeing a graduate recruitment program that capitalises on the clinical placements offered within the public health system and facilitates the early recruitment of those who have held such placements immediately upon graduation and into areas of need; and*
- c. the establishment and delivery of specialist medical training networks for all medical specialties, prioritising those with projected shortfalls in trainee numbers compared*

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*with service and workforce demands, in collaboration with the relevant medical colleges and local organisations,*

*with the objective of matching the number and locations of placements and training positions with areas of future service and workforce need and focusing upon maximising opportunities for training and recruitment in rural and regional locations.*

15. AMA (NSW) is supportive of the NSW Government/Ministry of Health taking a greater role in the planning and placement of students, graduate recruitment and those undertaking specialist medical training. As identified by Counsel Assisting the Commission, collaboration with the relevant medical colleges, local organisations and other relevant organisations that may be identified is essential.
16. There must be provided to those who relocate to rural and regional areas appropriate financial compensation and / or financial and other supports, including safe and appropriate accommodation for those undertaking the placements and, if required, their life partners and families.

### **Recommendation**

*There should be a legislated award reform process under the auspices of the Industrial Relations Commission of NSW (with external assistance and advice as appropriate), incorporating at least the following features:*

- a. *a legislated set of objectives to be achieved by the process, which includes:
  - i. *simplifying and, where appropriate, consolidating the current range of awards, determinations and other instruments setting terms and conditions of employment or engagement for NSW Health workers, to provide a consistent and coherent framework of terms and conditions that is easy to understand and apply; and*
  - ii. *updating instruments so that they reflect the current and expected future service delivery and workforce needs of the NSW health system and current and expected future working conditions; and*
  - iii. *providing fair and reasonable terms and conditions of employment or engagement for workers across the NSW health system, including having regard to the value of their work to the system, the impact of those terms and conditions on attraction and retention, and their fiscal and economic impacts;**
- b. *a reasonable but expeditious timeframe in which the process is to be completed; and*
- c. *an extension of the process to Visiting Medical Officers and the VMO Determinations*

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17. AMA (NSW) is supportive of Award and Determination reform for all medical practitioners employed or engaged in the New South Wales public hospital system.
18. As previously submitted, as early as February 2024, AMA (NSW) made repeated representations to the Ministry of Health, the New South Wales Minister for Health and the New South Wales Minister for Industrial Relations for legislative amendments to be made to the *Industrial Relations Act 1996* (NSW) and the *Health Services Act 1997* (NSW) and the relevant regulations, to provide for an arbitrator to be appointed from the Industrial Relations Commission, upon the re-establishment of the Industrial Court. The requested change was to reinstate the previous arrangements in place prior to the former State Government dismantling the Industrial Court.
19. While repeated representations were made, and the matter discussed before the Commission on 17 October 2024, it was not until Dr Joe McGirr MP introduced a Private Members Bill in November 2024 that the Ministry moved to amend the *Health Services Regulation 2018* and undertook to make further amendments to the legislation in 2025. On 13 December 2024, AMA (NSW) formally requested the Hon. Sophie Cotsis, the Minister for Industrial Relations, for the appointment of an Arbitrator. AMA (NSW) is yet to receive a response.
20. The unexplained delay on the part of the Government has meant that the that making and hearing of the application for necessary reforms to VMO arrangements in New South Wales has been delayed.
21. Whilst not the representative body for employed medical staff in the public hospital system, their industrial instruments are in need for significant and urgent reform, and AMA (NSW) supports the submissions that the process must be managed by the Industrial Relations Commission. This does not preclude the parties to these Awards, or indeed, those working under the VMO Determinations, to negotiate and seek to reach agreement where possible, but ultimately and appropriately it is the Industrial Relations Commission that must approve/determine the terms including but not limited to remuneration.

### ***Recommendation***

*The model by-laws for local health districts and specialty health networks made under ss 39 and 60 of the Health Services Act should be reviewed and amended with a view to clearly identifying the role and functions each council and committee established by them and ensuring that they:*

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- a. provide an effective and robust forum for consultation and feedback between clinicians and management; and*
  - b. are complementary of each other;*
  - c. extend the standing invitation to attend board meetings to the chairs of all councils created by the Model By-Laws.*
22. AMA (NSW) supports a comprehensive review of the model by-laws for local health districts and specialty health networks with a view to clearly identifying the role and functions each council and committee established by them and ensuring the matters set out above are addressed.
23. Dealing with Medical Staff Councils in particular, as submitted in AMA (NSW)'s evidence to the Commission, Medical Staff Councils provide a forum for medical staff to come together to discuss a range of matters related to the delivery of medical services, interactions with other staff and administration, a means to engage with the Executive, and forum to discuss the day to day of their arrangements in the hospital. It can be difficult for an individual to be the voice for colleagues, and a representative body such as the Medical Staff Council can provide that voice if it is empowered and acknowledged.
24. This is particularly important at a time when, as the evidence before the Commission demonstrates, there is a culture within the public hospital system that medical staff should not speak up for fear of reprisal from the Hospital Executive.
25. One of the matters to be considered in a review is the role of the Chair of the Medical Staff Council and the process by which that person may be permitted to speak on behalf of the Medical Staff Council, including in the media, without fear of reprisal.
26. Should the Government adopt this recommendation, AMA (NSW) would welcome the opportunity to be involved in discussions and participate in a consultation process for the review of the model by-laws.

### **Recommendation**

*The Ministry should review its processes for dealing with workplace complaints and grievances, including with a view to:*

- a. simplifying and, where appropriate, consolidating its policy directives and guidelines relating to complaints, grievances, incidents and workplace behaviour;*

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- b. establishing a central contact within the Ministry for local organisations to seek advice about conducting those processes;*
  - c. establishing a process for monitoring the time taken by local organisations to conduct those processes; and*
  - d. establishing a mechanism for staff to seek review of workplace actions or decisions, external to the local organisation.*
27. AMA (NSW) supports a review of the processes for dealing with workplace complaints and grievances including but not necessarily confined to the matters set out in Counsel Assisting's submissions.
28. In 2023 and 2024, AMA (NSW) did provide feedback as a part of a Ministry review of its existing policies. AMA (NSW) does support, as may be **appropriate** (emphasis added), consolidation and simplification of processes, but not for the simple sake of doing so where it is not or may not be appropriate. There remains the need to meaningfully delineate between serious misconduct, misconduct or performance concerns, and grievances and the management of each.
29. Providing a central contact within the Ministry for local organisations to seek advice about conducting workplace complaints and grievances is supported by AMA (NSW). AMA (NSW) believes that access to expertise and advice may assist to address issues including compliance with stipulated timeframes, which as Counsel Assisting has noted in submissions is an issue that is frequently raised, and well as an understanding of what the principle of procedural fairness requires of investigators.
30. As AMA (NSW) has submitted to the Commission, while cognisant of the obligations of employers and principals and the need for employees and contractors to feel safe to raise concerns or complaints, current practices do not place sufficient emphasis on ensuring the person who is the subject of a concern or complaint is afforded procedural fairness and offered appropriate support.
31. A practical example is as follows: to ensure fairness but also for NSW Health to meet its duty of care to those who may be the subject of a concern or complaint, the person who is being notified of a concern or complaint should always be afforded the opportunity to have a support person present at all meetings, including the initial meeting where they are informed of the concern or complaint. It should not be a matter left to the discretion of the Hospital administration. How a person may respond will be unique to that person and should not be disregarded or diminished by those charged with administering a process.

32. AMA (NSW) supports the establishment of a mechanism for all staff (including VMOs) to seek a review of workplace actions or decisions external to the local organisation. AMA (NSW) submits that consideration should also be given to conferring a right of review during an investigation where requirements of policies and processes are not being met, for example, timeframes for the provision of information and / or the conduct of investigations to ensure compliance.
33. The current time taken to complete a review or investigation not only adds to the stress on the person who is the subject of the concern or complaint (and in some cases, the complainant), but compromises the process and compliance with the requirements of procedural fairness as well as depriving the public hospital system of the services that might otherwise be provided while lengthy suspension periods are imposed on many.
34. The review mechanism should be the same for all medical practitioners regardless of their role or manner of engagement. Under the *Health Services Act 1997* (NSW) VMOs have rights of review of certain decisions made by Local Health Districts regarding their VMO appointments. Rights of review are important and should remain, that said, AMA (NSW) has reservations about any rights of review of workplace actions or decisions being managed through the Committee of Review process. In more recent years this process has become increasingly complex, hearings are lengthy and may not be timely, and the costs for all parties are considerable. What was should be an expedient and cost-effective means for VMOs to seek a review of decisions is no longer so.
35. Should the Government adopt this recommendation, AMA (NSW) would welcome the opportunity to be involved in discussions and participate in a consultation process about the appropriate mechanism and body responsible for undertaking the review of workplace actions or decisions.

### ***Recommendation***

*Consideration should be given to the routine collection and collation of a granular data set directed to the wellbeing of the workforce (similar to that which the evidence reveals has been collected by the Chief Wellness Officer in the Sydney Local Health District) with a view to supporting and improving the wellbeing of the workforce within local organisations and across the system more generally.*

36. AMA (NSW) agrees that consideration ought to be given to the regular collection and collation data regarding wellbeing of the workforce and most importantly that steps be taken to address the evidence collected and collated. As noted in the evidence provided by AMA (NSW) there are many pressures on the medical workforce. This can result in feeling of disillusionment and dissatisfaction and ultimately a loss of workforce which a stretched system can ill-afford.

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## H. PROCUREMENT

### ***Recommendations***

*NSW Health should develop and implement a systematic approach to embedding value-based healthcare in its procurement processes, including developing and implementing clear and specific processes for:*

- a. determining the components of “value” that are to be pursued in a particular procurement process;*
- b. evaluating different options for procurement, including tenders, against each of those components of value; and*
- c. consulting as appropriate with clinicians, consumers, community members, suppliers and subject matter experts (including the Agency for Clinical Innovation and the Clinical Excellence Commission), in procurement processes.*

*NSW Health should develop and implement a systematic approach to monitoring the performance of suppliers of goods and services at a systemwide level, including developing and implementing clear and specific processes for:*

- a. formulating clear and measurable key performance indicators, including with reference to value-based criteria applied in the procurement process;*
- b. monitoring those key performance indicators, including designating clear lines of responsibility for performing that monitoring; and*
- c. obtaining feedback from and providing feedback to local organisations, including users of the relevant goods or services, in a regular and systematic way.*

37. AMA (NSW) supports increased involvement of doctors in procurement processes. As those providing many health services the involvement of doctors is critical. They are well placed to provide input and often able to draw on their experiences not only in the NSW health system but also in the private health sector in Australia and can draw on international experiences and expertise.

38. As was provided for in AMA (NSW)'s evidence, consultation with Chairs of Medical Staff Council in June 2024 there was consensus amongst the Chairs present at that meeting that

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there work needed to be done to engage medical practitioners in hospital and service delivery planning, and the delivery of services. All Chairs acknowledged that there were finite resources and that being so, there was a real need to make sure medical staff are a part of the conversation regarding resource allocation, particularly in circumstances where most felt increasingly marginalised from decision-making.

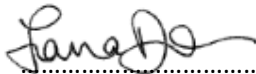
#### **I. FIRST NATIONS HEALTHCARE**

*A co-ordinated, whole of government approach is required to improve the health outcomes of First Nations people.*

*Meaningful collaboration and consultation must be embedded at an organisational level and should include joint clinical service planning, undertaken with the involvement of all relevant stakeholders and with a focus on reducing duplication, addressing service gaps and improving patient journeys.*

39. AMA (NSW) supports the recommendation that there needs to be a co-ordinated whole of government approach to improve health outcomes of First Nations people, and meaningful collaboration consultation with all stakeholders is essential.

Dated: 7 February 2025

A handwritten signature in black ink, appearing to read 'Fiona Davies', written over a dotted line.

**Fiona Davies**  
**Chief Executive Officer**  
**Australian Medical Association (NSW) Limited**