

Special Commission of Inquiry into Healthcare Funding

Statement of Nathan Rudd

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1. This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give to the Special Commission of Inquiry into Healthcare Funding as a witness. The statement is true to the best of my knowledge and belief.

My role

2. I am the Deputy Director & Legal Counsel, Workforce, for the SLHD. From 2009 to 2017, I was the Senior Industrial/Legal Officer – Workforce Services, SLHD (previously Sydney South West Area Health Service). From 2017 to the present, my substantive position has been the Deputy Director & Legal Counsel, Workforce, SLHD but I have also acted as Director Workforce & Corporate Operations, SLHD and Director Industrial Relations and HR Policy, NSW Ministry of Health (MOH) (2020 - 2021).
3. In my role, I provide strategic and workforce management advice and operational management of workforce functions across SLHD. I report to the Director of Workforce & Corporate Operations, who reports to the Chief Executive. I lead a team of 12 Health Managers including Facility based and SLHD wide Workforce Managers. The size of the staff in the Workforce teams at the facility will vary depending for instance, on the size of the facility. Taken together, all of the Workforce Managers teams would comprise around 30 staff, specifically dedicated to employee relations management matters. Supporting the Workforce teams, there is also an industrial relations and investigation team that report through to me. This team comprises an additional four staff members.
4. The facility based and SLHD services Workforce Managers manage matters at their respective facilities/services, including complaints and concerns concerning staff of a clinical and non-clinical nature. This is different to where there is a clinical incident which is managed by clinical governance teams in SLHD under the NSW Health Incident Management Policy Directive PD2020_047 (MOH.9999.0803.0001). This Policy

Directive provides direction for consistency in managing and effectively responding to clinical and corporate incidents.

5. The Workforce teams report to me and seek my advice regarding the application of relevant employment related legislative provisions and MOH's policies and guidelines as required. I ordinarily discuss a range of employment related matters with Workforce Managers daily. I also meet individually with each Workforce Manager fortnightly to discuss matters in a dedicated timeslot. In addition, there is another scheduled weekly meeting with the Workforce Managers in larger facilities being Royal Prince Alfred Hospital, Concord Hospital, Mental Health Services and SLHD Services. At this meeting, we discuss the current initial assessments and investigations that are occurring at their facilities/services. There is also a monthly meeting called the Professional Practice Group Committee (**PPGC**). This meeting provides updates on investigations being undertaken across the SLHD. This meeting is chaired by the Director of Workforce & Corporate Operations and is attended by the Executive Director of Operations, the Director of Medical Services, the Employee Relations Manager and me. These meetings seek to ensure there is consistency in the understanding and application of MOH policies relating to workplace related assessments and investigations across the SLHD.
6. This outline addresses:
 - a. The processes for addressing complaints and concerns; and
 - b. Complaints and concerns that have arisen at Concord Hospital.

Management of complaints and concerns

7. Complaints and concerns are managed in accordance with NSW Health Policy Directives. The Policy Directives most relevant to the management of complaints and concerns involving staff at SLHD are:
 - a. Resolving Workplace Grievances (PD2016_046) (MOH.0002.0047.0001);
 - b. Managing Misconduct (PD2018_031) (MOH.0001.0391.0001);
 - c. Managing Complaints and Concerns about Clinicians (PD2018_032) (MOH.9999.0933.0001);
 - d. Prevention and Management of Unacceptable Behaviours in NSW Health (PD 2021_031) (MOH.0002.0088.0001);

- e. Prevention and Management of Bullying in NSW Health (PD2021_030) (MOH.0002.0087.0001);
 - f. Leading Performance, Development and Talent Management (PD2023_043) (MOH.0002.0078.0001);
 - g. Industrial Consultative Arrangements Policy Directive (PD2024_001) (MOH.0002.0049.0001); and
 - h. Public Interest Disclosures (PD2023_026) (MOH.0001.0151.0001).
8. These Policy Directives are accessible to all staff on the SLHD intranet. Staff receive access to policy information during their induction when they commence at a SLHD facility and Workforce Managers bring visibility to these policies in regular presentations to staff at their facility on workplace matters including bullying and harassment and resolving workplace grievances. Depending on the capacity of each workforce team, presentations are generally conducted on a bi-monthly basis. Staff and Managers also have access to the MOH portal for information on addressing grievances and concerns. This is placed on the SLHD intranet under Workforce Services.
9. The Prevention and Management of Bullying in NSW Health Policy Directive (PD2021_030) (MOH.0002.0087.0001) recommends that complaints be made to the staff member's manager or if the complaint is about the manager or they believe their manager may have a perceived conflict of interest, it should be made to their manager once removed. Sometimes a staff member will make a complaint to an individual that does not fall within either of these positions. In these circumstances, the complaint will be referred to the appropriate manager or to the relevant Workforce Manager. This step is taken to ensure that the complaint is managed independently, and that no perceived or actual conflicts of interest arise when resolving the complaint.
10. Complaints and concerns that are not able to be managed and resolved within a department are escalated to my team. My team will then conduct an initial assessment of the complaint to determine what, if any further action is required such as whether the complaint should be formally investigated. The MOH Policy Directives each have similar but not identical initial assessment provisions. This requires my team to be educated in the relevant initial assessment provisions in the MOH Policy Directives, so they are complied with. In or around 2018, the SLHD received advice from the MOH concerning the expectations of what is required in undertaking an initial assessment. This involved a front-loaded approach where relevant and readily available information is obtained to

provide a recommendation on a matter. This process demonstrates the purpose of an initial assessment as well as ensuring a risk-based approach is undertaken.

11. The subject matter of the complaint is important to considering how the issues can be advanced. This is because often multiple policy directives may apply to the one complaint. The workforce teams also have regard to the Public Interest Disclosures Policy Directive (PD2023_026) (MOH.0001.0151.0001) and whether any matter that they are involved in ought be advanced under those Policy provisions. Workforce Managers at a facility level have received online mandatory training on the obligations set out in PD2023_026 (MOH.0001.0151.0001), and so are able to manage complaints considered to constitute a Public Interest Disclosure (PID) and liaise with Internal Audit as required.
12. In managing complaints, one of my team's primary objectives is to manage the complaints in a timely manner. We have implemented a SLHD Workforce wide database of record keeping for each of the Workforce teams of initial assessments and investigations to assist in managing compliance with timeframes set out in policy directives. For example, the Appendices of the Prevention and Management of Bullying in NSW Health Policy Directive (PD2021_030) (MOH.0002.0087.0001) recommends that an initial assessment of a complaint of bullying be completed within three days of receiving the complaint. Initial assessments are ordinarily approved or otherwise by senior management such as the General Manager of a facility/service. This assessment may include an accompanying risk assessment as required by a MOH policy. The initial assessment including recommendation for actions and, if applicable, any risk assessment, are then considered by the Director of Workforce and Corporate Operations and the Chief Executive of SLHD. My team devotes a lot of time and resources to conduct this initial assessment and any accompanying risk assessment and to meet with staff, respondents, and complainants, to keep them informed of the progress of an assessment and any investigation as required.
13. In relation to assessments that recommend a matter be treated as a grievance, a recommendation may be made for a facilitated discussion/mediation. On occasion, the SLHD may engage external providers to undertake that facilitated discussion/mediation. I am aware of the SLHD utilising Community Justice Centres mediators or external facilitators including mediators listed on the NSW Health Panel of mediators.
14. In circumstances when a Risk Assessment recommends an investigation of any concerns/allegations meeting thresholds as provided for in MOH policies and this is

approved by the SLHD Chief Executive, administrative action is then undertaken to commence the investigation process. This involves Workforce drafting Terms of Reference which are ordinarily signed by a senior SLHD executive such as a General Manager who will be the decision maker on the investigation outcome.

15. Where a matter straddles both clinical and non-clinical concerns, multiple MOH Policy Directives are required to be considered in conjunction, throughout the investigation process. For example, section 1.1 of the Managing Complaints and Concerns about Clinicians Policy Directive (PD2018_032) (MOH.9999.0933.0001), provides that this Policy Directive should be used in conjunction with other applicable NSW Health policies such as the Managing Misconduct (PD2018_031) Policy Directive (MOH.0001.0391.0001). MOH Policy Directives also have links to information fact sheets to guide and support their implementation.
16. MOH Policies Directives contain provisions regarding potential outcomes of investigations and the role of the decision maker when making a final decision regarding investigation findings. The provisions are similar in each of the Policy Directives and guidance is often provided in MOH Facts Sheets. See for example the Managing Misconduct Policy Directive (PD2018_031) (MOH.0001.0391.0001) at section 7.3 and the Managing Complaints and Concerns about Clinicians Policy Directive (PD2018_032) (MOH.9999.0933.0001) at section 6.3.
17. The SLHD Workforce teams are aware of the seriousness of the need to maintain confidentiality on all employee related matters. Confidentiality obligations are embedded within MOH Policy Directives and are expressly outlined in the Managing Misconduct Policy Directive (PD2018_031) (MOH.0001.0391.0001) and accompanying Information Sheet 3. The SLHD Workforce staff involved in initial assessments and investigations always inform staff involved in such matters of their confidentiality obligations.

Complaint process examples

18. In my role, I have been involved in various capacities in the management of a number of complaints involving Concord Hospital which demonstrate the use of the policies and processes discussed above and the different ways complaints may be received and investigated.
19. One example, which occurred in or around November 2020 involved a complaint of alleged misconduct and bullying within the Concord Hospital Emergency Department (ED) involving two clinicians. The complaint was provided to the General Manager at

Concord Hospital. The complaint was referred to Concord Hospital's Workforce team for review. The complaint was assessed in accordance with the Managing Misconduct Policy Directive (PD2018_031) (MOH.0001.0391.0001) and the Prevention and Management of Bullying in NSW Health Policy Directive (PD2021_030) (MOH.0002.0087.0001) by the Senior Workforce Advisor at Concord Hospital. I was not aware of this complaint at the time as I was on secondment to the MOH (February 2020 to May 2021). I became aware of the matter from the Workforce Manager at Concord Hospital in or around November 2021. I was requested to settle a response to ASMOF who raised this complaint. In my discussions with the Workforce Manager, I was advised words to the effect that complaint, was dealt with at a local level, and the complaint did not meet the threshold of misconduct or bullying.

20. Notwithstanding that the bullying complaint was not substantiated, I understand SLHD determined it was appropriate to engage an external consultant to conduct a review of the workplace culture within the ED. I am not aware of who made the decision to engage an external consultant and Workforce was not involved in the process of engaging the external consultant. Workforce did provide some assistance during the course of the review. The external consultants conducted independent meetings with each staff member of the ED. That review was undertaken and resulted in several recommendations, one of which included creating a new role, being a Deputy Head of Department. I understand that SLHD implemented all of the recommendations made. This was communicated by letter to the Australian Salaried Medical Officers' Federation (ASMOF) (MOH.0002.0090.0001) who I understand were involved at various stages as support for staff involved in the complaints management process and the external review.
21. Some complaints may lead to the involvement of SLHD's Internal Audit team or that team may identify issues of concern during regular audit reviews. Where the Internal Audit team conducts an investigation, it will generally be managed within that team and the Workforce team does not take an active role (unless requested by Internal Audit), as we have separate functions. The Workforce team does, however, become involved in responses to that process. For example, I am aware that in January 2023, the Internal Audit Team undertook a review into Concord Hospital's Radiology Department. During that process, ASMOF communicated to SLHD that its members were unhappy with the process, citing an alleged lack of policy compliance and procedural fairness in the review being undertaken by the Internal Audit team.
22. I became involved in the response to ASMOF, as Workforce would ordinarily provide support and assistance on industrial or union matters. I assisted the Internal Audit review

team by settling a draft email to ASMOF. I do not know if this email was sent to ASMOF. Around the same time I also attended two meetings with members of the internal audit team, one of which also included members of the executive of SLHD including the Chief Executive and the Director of Radiology, SLHD. These meetings discussed whether the Internal Audit team should consult with staff during their review. It was decided that the Internal Audit team had sufficient information to continue with their review without the need to interview staff. During these meetings I provided advice about relevant policy application.

23. Less commonly, a complaint or concern may be notified by the taking of or threat of industrial action. For example, on 17 November 2023, MOH issued an Information Bulletin (IB2023_048) (MOH.0002.0076.0001) prescribing the cost to staff to utilise car parks on hospital campuses across NSW which are subject to a car parking development. Correspondence dated 20 December 2023 (MOH.0002.0081.0001) from Director, Workforce and Corporate Operations, SLHD reflecting SLHD's increase in rates was issued to all staff across SLHD.
24. The Health Services Union NSW/ACT/QLD Association responded to this correspondence by threatening industrial action however acted during non-paid hours at Concord Hospital in around January and February 2024. I understand, based on discussions with the Workforce Manager at Concord Hospital that representatives of the NSW Nurses and Midwives' Association likely participated in rallies at Concord Hospital, however I do not have direct knowledge of this. I was involved in dispute meetings with the HSU regarding the concerns raised over parking fees and also access to car parking spots. A series of scheduled meetings were arranged and continue in an attempt to resolve the concerns of the Unions. The SLHD is currently working with the Unions through the Disputes Resolution Procedures under the applicable Awards in relation to this issue.



Nathan Rudd

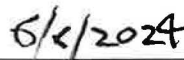


Date



Witness:

ADAM WINKWORTH



Date