

Special Commission of Inquiry into Healthcare Funding

Statement of Graeme Loy

Name: Graeme Loy

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Occupation: Chief Executive, Sydney Local Health District (Interim)
Chief Executive, Western Sydney Local Health District
(substantive position)

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.

A. INTRODUCTION

2. My name is Graeme Loy. I am the Chief Executive of Western Sydney Local Health District (**WSLHD**), a role I have held since **October 2018**. This remains my substantive appointment with NSW Health. Since May 2024, I have been acting in the position of Chief Executive of Sydney Local Health District. A copy of my curriculum vitae is at (**MOH.0010.0375.0001**). I am making this statement in my capacity as Chief Executive of WSLHD.
3. As Chief Executive, I have ultimate responsibility and oversight for the operations and governance of WSLHD. This includes industrial matters and employment matters as well as those relating to education and training of all staff, including doctors in training.

B. MATTERS RELATED TO RADIOLOGY IN WESTMEAD HOSPITAL

4. During my tenure as Chief Executive of WSLHD, two complex matters regarding the Westmead Hospital Radiology Department have occurred. These events stand out to me as concerning given they both relate to a single department out of close to 50 departments across Westmead Hospital.
5. One matter was the rescinding of a long standing, non-award arrangement that provided significant personal financial benefit to involved Staff Specialist Radiologists employed at Westmead Hospital. Resolution of this required extensive industrial and legal actions and negotiations. This occurred over the period **July 2020 to January 2023**.

6. The second matter was the withdrawal of accreditation of Westmead Hospital as a training provider for Clinical Radiology by the Royal Australian and New Zealand College of Radiologists (**RANZCR**) ('**the College**'). The lead up to this included considerable back and forth between the College and Westmead Hospital and with the WSLHD Executive in the later stages. This also required extensive negotiations to protect the wellbeing of the Radiology Trainees and continue to provide effective service delivery to the people of Western Sydney. This occurred over the period **March 2021 to October 2022**.
7. These matters should have been separate and managed on their own merits. However, in my view, they were closely interrelated at their core as they were being driven by and dependent on the engagement and actions of the Staff Specialist Radiologists, all of whom by definition are members of RANZCR. Obtaining and maintaining accreditation is dependent on the engagement and goodwill of the consultant group and the information and advice they provide to the College. I was privy to discussions with the Staff Specialist Radiologists at Westmead Hospital, particularly three of the four senior consultants who held themselves out to be representatives of the group and who linked the accreditation issue to the industrial dispute in a meeting on 16 March 2021. A timeline of all the meetings that I had over this period in relation to this issue is exhibited to this statement (**MOH.0010.0364.0001**).

C. RESCINDING THE RADIOLOGY AGREEMENT AND RESULTANT INDUSTRIAL DISPUTE

8. A request was made to me to approve the extension of an agreement for Staff Specialist Radiologists at Westmead Hospital which provided for a non-standard and above award financial and employment arrangement between WSLHD and the Staff Specialist Radiologists employed by WSLHD. This document is known as the "*Radiology Agreement*" and is exhibited to this statement (**MOH.0010.0282.0001**).
9. The Radiology Agreement had been in place in WSLHD for an extended period of time. I understand that it was first implemented in 1999. The earliest version I have seen was for the period 1 July 2004 to 30 June 2009. It included a clause that provided an assumption of renewal on a five year cycle. The terms of the Radiology Agreement were in effect at the time of my commencement as Chief Executive of WSLHD.
10. These terms provided significant personal financial benefits to the 19 Staff Specialist Radiologists that far exceeded the provisions of the Staff Specialists (State) Award 2022.

These benefits included working less hours while being paid as full-time employees, guarantees of maximum payments under the Rights of Private Practice arrangements, Training Education and Study Leave (TESL) like arrangements over and above the Award, and direct payment for work undertaken outside of standard hours.

11. In July 2020, notice was given to the Staff Specialist Radiologists that the terms of the Radiology Agreement would cease effective **1 January 2021 (MOH.0010.0365.0001)**. This action was based on *NSW Health Policy Directive Non-Standard Remuneration or Conditions of Employment (PD2018_040) (MOH.0010.0144.0001)* and my commitment as Chief Executive to ensure the appropriate use of public funding.
12. It was WSLHD's position that the Radiology Agreement was a contractual matter, rather than an Award based matter. Notwithstanding, notification was also made to the Australian Salaried Medical Officers' Federation (ASMOF) in **July 2020** regarding the ceasing of the Radiology Agreement as a matter of courtesy (**MOH.0010.0283.0001**).
13. A period of consultation followed, culminating in a notification of Dispute being made to the Industrial Relations Commission (IRC) in **November 2020 (MOH.0010.0353.0001 – Notice of Dispute; MOH.0010.0357.0001)**. This resulted in a Status Quo order requiring the continuation of the current arrangements which continued the advantageous financial arrangements for the Staff Specialist Radiologists (**MOH.0010.0354.0001**).
14. A protracted period of IRC hearings and attempted negotiations followed, both with ASMOF and the Staff Specialist Radiologists. This extended throughout **2021 and 2022**. Despite the good faith efforts of the WSLHD Executive, the communications with the Staff Specialist Radiologists during the period that formal negotiations were taking place were difficult, hostile and ultimately unsuccessful and the matter returned to the IRC. The IRC handed down a decision on **16 September 2022** which dismissed the Dispute Notification lodged by ASMOF (**MOH.0010.0284.0001**), enabling WSLHD to progress with the ceasing of the non-standard above award arrangement. I escalated the issue of the non-standard arrangement to the NSW Ministry of Health (MOH). I am aware that the MOH also notified the matter to the Independent Commission Against Corruption.
15. The non standard arrangement formally ceased in February 2023 but was replaced with a Determination approved by the MOH which set out a five year transition plan. A copy of the Determination agreed with the Staff Specialist Radiologists is exhibited to this statement (**MOH.0010.0356.0001**). This five year transition plan was agreed in order to build up the structure of the Radiology Department and create a revenue stream for the

radiologists that would sustain a model that was compliant with the award given that under the former Radiology Agreement, any revenue from billings were previously deposited to General Funds (rather than the Staff Specialists No 1 Account as required under the Staff Specialists Determination).

16. The ceasing of the Radiology Agreement created a lot of uncertainty in the Radiology Department. The Determination as a transitional arrangement is intended to support the Radiology Department through the change processes as they returned to Award arrangements.
17. There was a significant impact on service delivery and further threatened legal action in response to the Radiology Agreement being ceased. Nearly all consultants reduced their fractions and WSLHD became reliant on significant outsourcing to cover the shortfall, which remains in place. A number of doctors also resigned and a recruitment campaign took place to replace the vacated full-time equivalent (FTE) components.

D. WITHDRAWAL OF RADIOLOGY ACCREDITATION FROM WESTMEAD HOSPITAL

18. Parallel to the industrial situation outlined above, Westmead Hospital and WSLHD were in correspondence with RANZCR regarding matters raised by RANZCR in their inspection report of October 2019 (**MOH.0010.0285.0001**).
19. During the period following this report, the management of accreditation matters was primarily managed at a local level by the Radiology Department and Westmead Hospital, with some support from the Research and Education Network. Processes in WSLHD have since changed providing for increased governance and oversight of this area of the organisation.
20. In **September 2020**, correspondence from RANZCR was received by WSLHD detailing that the Clinical Radiology Education and Training Committee (**CRETC**) had downgraded the accreditation of Westmead Hospital to Level D Full Site for a 12-month period from 31 July 2020, listing the recommendations that were required to be addressed by 31 July 2021 (**MOH.0010.0286.0001**). One of the recommendations of particular importance to the College was:

“Westmead Hospital to address the inadequate FTE resources and provide evidence of recruitment of an additional four FTE Consultants to ease the high clinical workload to enable adequate access to education, supervision and improve wellbeing of trainees”.

21. A comprehensive response to this was provided by WSLHD on 12 November 2020, documenting progress against a significant proportion of the matters raised (**MOH.0010.0287.0001**). This included the following statement:

“WSLHD has approved the recruitment of an 4FTE staff specialists in Radiology but has been to date unsuccessful in recruiting to these positions. Additional complexity is added by payment arrangements outside of award conditions no longer being supported by NSW Health. Alternate approaches (eg VMO recruitment) are being investigated” (**MOH.0010.0287.0001**, page 10).

22. Further correspondence was received from RANZCR dated 10 March 2021 and 3 June 2021 (**MOH.0010.0390.0001**; **MOH.0003.0130.0001**).

23. WSLHD provided a further comprehensive response on 19 July 2021 (**MOH.0010.0288.0001**). This response addressed the vast majority of recommendations and openly communicated the industrial challenges that WSLHD was experiencing and the associated impact on our ability to address the College’s recommendation to increase staffing numbers for Staff Specialists stating the following:

“WSLHD is in a challenging situation in relation to senior medical staff recruitment currently due to significant ongoing industrial relations matters.

The current “status quo” order made by the IRC results in considerable additional complexity.”

This has impacted on recruitment to Staff Specialist Positions as the current situation means that a newly appointed Staff Specialist will be remunerated and employed under different conditions to existing employees to undertake the same work as per the attached example “1.1.1 Appendix 4 - decline of Staff Specialist role due to award terms”.

Uncertainty regarding the outcome of the IRC hearing also impacts future workforce planning as the current staff establishment in terms of FTE allocated to Westmead Hospital may change based on Commission’s decision”.

24. The final correspondence that I received before the withdrawal of accreditation was received on 21 July 2021 (**MOH.0003.0133.0001**) and stated:

“The College is not satisfied that all recommendations have been resolved and requires additional evidence. Documentation in relation to the following accreditation criteria must be provided:

- 1.1.1:** *The exact credentials, employment contracts, FTE and commencement dates of the required 4 FTE FRANZCR consultants.*

- 1.1.1:** *Clarification of the discrepancy between previously provided consultant FTE (e.g. those previously listed as 0.7 FTE now listed as 1.0 FTE)*
- 1.6.3:** *Clarification of the 24 hour rostering of the CAS-B Building, specifically trainee, SRMOs and supervising consultants.*
- 1.6.3:** *Clarification of the supervision arrangements for SRMOs.*
- 2.2.4:** *Evidence of adequate dedicated onsite secretarial and administrative support for the Directors of Training.*
- 2.2.6:** *Demonstrate that there are defined arrangements in place to clear current backlog of unreported studies, and that these arrangements do not compromise consultant supervision capacity.”*

25. WSLHD responded again on 26 July 2021 (**MOH.0010.0293.0001**). The industrial complexities that prevented Westmead Hospital from progressing the recruitment of additional FTE Staff Specialists were directly outlined. The other matters were again addressed.
26. On 3 August 2021, I received notification from RANZCR that accreditation would be withdrawn from Westmead Hospital from 17 September 2021 (**MOH.0003.0131.0001**). The reason cited was *“RANZCR continues to have serious concerns regarding the welfare and safety of trainees at Westmead. Ensuring trainees have a safe and supportive environment in which to work and learn is the highest priority for RANZCR”*.
27. Over the following weeks and months, extensive work went into developing arrangements to enable the impacted trainees to be redeployed to other training sites as well as negotiating an outcome with RANZCR that allowed the remaining trainees to have the remainder of their employment contracts recognised for training purposes. This required extensive negotiation and legal engagement.
28. Reaccreditation was ultimately attained in October 2022, with trainees rejoining the Radiology Department in the 2023 Clinical year (**MOH.0010.0294.0001**).

E. INTERSECTION OF THE INDUSTRIAL AND ACCREDITATION ISSUES

29. Throughout the process of correspondence with RANZCR, the industrial issues involving the Staff Specialist Radiologists had the potential to negatively impact the progression of the accreditation matters. WSLHD tried in good faith to work through the issues related to each matter on their own merits.

30. The key period of activity and engagement of these matters had a significant overlap, with the industrial matter largely from **July 2020 to January 2023**. The peak accreditation correspondence at a WSLHD level occurred over the period **March 2021 to October 2022**.
31. Some of the Staff Specialist Radiologists have an active and direct role in College matters and many have ongoing communication and engagement with the College representatives. Successful accreditation processes require the support and engagement of the members of the involved department as the major factor of success or failure.
32. It appeared to me, having regard to the issues set out in paragraph 23 above, that the issues were intertwined and the withdrawal of accreditation related directly to the industrial matters WSLHD was trying to resolve.
33. I fully supported many of the matters raised by RANZCR in relation to trainee's access to education, ensuring reasonable workload, protecting time for the Director of Training and ensuring the wellbeing of trainees. These are all important issues. Any concerns of this nature should be raised by the College and addressed by the facility. Our responses as provided previously show that Westmead Hospital and WSLHD have addressed the concerns of this nature in our responses to the College.
34. The matters that WSLHD was unable to address to the College's satisfaction are set out in paragraph 24 above and in **MOH.0003.0133.0001**.
35. The items referenced at 1.1.1 are both directly related to the industrial dispute, which RANZCR would have been aware of, and had they not been, this information was clearly set out in out in WSLHD response (**MOH.0010.0293.0001**).
36. Item 1.6.3 related to Senior Resident Medical Officers, a role completely outside the remit of the College. These are not trainees of the RANZCR. This is my first experience where the role of Senior Resident Medical Officers has been raised as part of an accreditation process.
37. Item 2.2.4 related to secretarial support for the Director of Training which was addressed in WSLHD's response. Secretarial support is not routinely provided to Directors of Training across the organisation but was provided to assist in this matter.

38. Item 2.2.6 was an operational matter which Westmead Hospital was managing at the time and again not the remit of a medical education college.
39. It appeared to me that WSLHD was not able to address matters to the "satisfaction" of RANZCR as the individuals concerned with the accreditation issues and the industrial dispute were at the centre of both matters.
40. WSLHD's position to cease the Radiology Agreement, which was being used for non award payment advantaging one set of doctors, was a decision based on fairness, good governance and protection of public funding. However, that decision was vigorously opposed by the Staff Specialist Radiologists, the group within WSLHD with the most influence and engagement with the College which was making decisions about our accreditation status.
41. It was clear that the "dealbreaker" for the accreditation, having regard to the matters set out at paragraph 24 above, only two of which related directly to the Staff Specialist Radiologists, became increasing the number of Staff Specialists by 4 FTE. Even increasing the number of Visiting Medical Officers was not accepted as providing the required ratio of consultant to trainees, nor was adjusting the ratio by reducing the number of trainees accepted.
42. WSLHD directly told the College, through written correspondence, about the industrial issues and that we were in a status quo, hamstrung and unable to make any operational changes until we knew the outcome of the industrial matter.
43. It is reasonable that a training college set a supervision standard. It is not reasonable that it determine the size and makeup of the surrounding workforce. Increasing the number of Staff Specialists was the only acceptable outcome to RANZCR, whereas increase in VMO numbers or decrease in trainee numbers, as proposed by WSLHD in the letter to the College on 19 July 2021 which clarifies that Westmead Hospital will adjust the intake of Radiology Trainees for the 2022 clinical year to align with the supervision ratio established by the College, should have adequately addressed the supervision standard. This and the request to see employment contracts, appeared to me to be abnormal and I viewed the request as overstepping.
44. At that point in time, the only way that WSLHD could have had the industrial certainty to realistically recruit an additional 4 FTE Staff Specialists, would have been for us to

reverse the decision to cease the Radiology Agreement and continue with a non award arrangement, outside of all NSW Health policy.

45. From my perspective, it appeared that RANZCR was acting in the interests and on the views of the Staff Specialist Radiologists at Westmead Hospital in their approach to accreditation in this instance. The approach appeared to me to be an attempt to force WSLHD to step away from the industrial dispute to save our accreditation status.
46. The worst of this situation was that the group that most suffered was the Radiology Trainees, who were not part of or advantaged by the Radiology Agreement. Ceasing accreditation with six weeks' notice left those doctors in training completely exposed with no plan for what this would mean for their training recognition.
47. Clearly, I am not a party to the inner workings and discussion of the RANZCR and how they form their views and decisions. However, my view is that the concerns of the College had been reasonably addressed by Westmead Hospital and WSLHD by the deadline set by the College, notwithstanding the critical component of recruiting and employing 4 additional staff specialists in the midst of a widely known, complex and unfortunately hostile industrial dispute where the only immediate way out was for WSLHD to continue the existing Radiology Agreement.

Graeme Loy

Date

Witness:

Merida Bransby

25-7-24

Date