Special Commission of Inquiry into Healthcare Funding

Statement of Philip Gregory Minns

Name:	Philip Gregory Minns
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Occupation:	Deputy Secretary, People Culture and Governance

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 (**Inquiry**). The statement is true to the best of my knowledge and belief.

A. INTRODUCTION

2. My name is Philip (Phil) Gregory Minns. I am currently Acting Secretary of NSW Health (until 21 April 2024 inclusive) and my substantive role is the Deputy Secretary, People Culture and Governance of NSW Health. In this role, I am responsible for:

   a. Executive and Ministerial Services, which provides support to the Minister for Health and Minister for Medical Research and the Minister for Mental Health; and the Executive by coordinating responses to matters arising from the community and providing timely advice to the Minister's offices, local health districts, pillars and other stakeholders on strategic issues within the NSW public health system.

   b. Legal and Regulatory Services, which provides regulatory, legal and compliance support through four separate units: the Corporate Governance and Risk Management Unit (**CGRM**), Legal Unit, Pharmaceutical Services Unit, and Regulation and Compliance Unit.

   c. Nursing and Midwifery, led by the Chief Nursing and Midwifery Officer. It provides advice on professional nursing and midwifery issues and on policy issues, monitors policy implementation, manages state-wide nursing and midwifery initiatives, represents the NSW Ministry of Health (**Ministry**) on various committees and allocates funding for nursing and midwifery initiatives.

   d. Strategic Communications and Engagement which is a specialist communications service delivery team providing communication services and strategic communications advice for the Ministry and operates as a point of coordination for communications issues across NSW Health.

e. Workforce Planning and Talent Development (**WPTD**) which develops, facilitates and evaluates health workforce strategies across the NSW health system, to improve health outcomes for the people of NSW. In collaboration with national and state agencies and other stakeholders, WPTD aims to establish a clear picture of the health workforce now and into the future to improve workforce supply and distribution.

f. Workplace Relations which leads system-wide industrial relations for the health system, including negotiating and determining wages and employment conditions for the NSW Health Service and the conduct of industrial cases in the NSW Industrial Commission.

3. I am a member of and attend meetings of:

a. the Senior Executive Forum (**SEF**)

b. the Ministry Executive Meeting (**MEM**)

c. the Regional Health Ministerial Advisory Panel (**RHMAP**)

d. the NSW Aboriginal Health Transformation Committee

e. the Peak Unions Consultative Committee

f. the NSW Health Systems Advisory Council, and

g. the Rural Health Network Executive Committee

4. Before commencing as the Deputy Secretary, People Culture and Governance in November 2017, I held Deputy Secretary roles in the Commonwealth and NSW jurisdictions since February 2008. A copy of my curriculum vitae is exhibited to this statement (Exhibit 2, NSW Health Tranche 4 Consolidated Exhibit List).

5. The design of the current governance arrangements in the NSW Health system predates my commencement in the Ministry. The arrangements were developed following the 2011 Director-General's report *Future Arrangements for the Governance of NSW Health* (Exhibit B.23.06, MOH.0001.0309.0001) which built on the 2008 *Final Report of the Special Commission of Inquiry into Acute Care Services in NSW Public Hospitals* (the ***Garling Report***). These arrangements comprise:

a. The Ministry of Health to act as a system manager

b. Responsibility for service delivery devolved to board-governed local health districts (**LHDs**)

c. Four 'pillars' be established – the Clinical Excellence Commission, the Agency for Clinical Innovation, the Health Education and Training Institute and the Bureau of Health Information

d. The role of support services be clarified, and

e. The purchasing and performance framework be strengthened and a more transparent service agreement process be implemented.

6. In my role, I am also responsible for the Policy Distribution System (**PDS**). All policy documents applicable to the NSW Health system are issued by the Ministry through the PDS and are managed by CGRM.

B. SCOPE OF STATEMENT

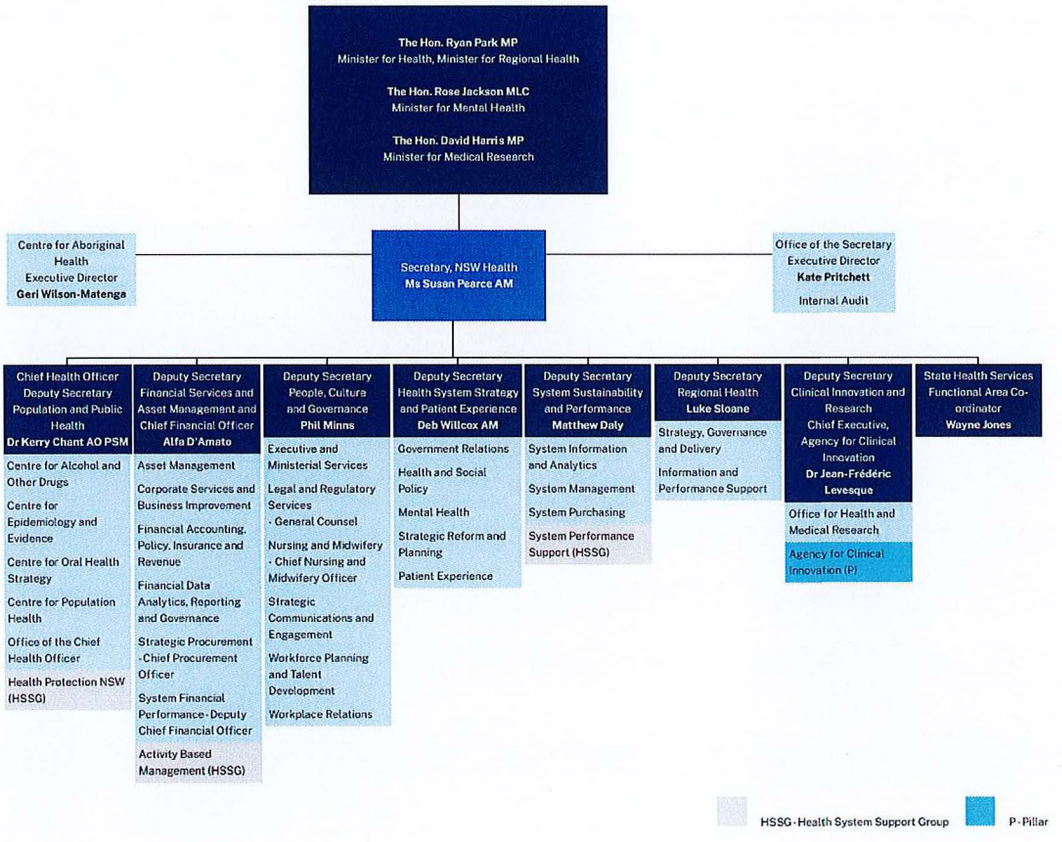
7. The governance and accountability structure of NSW Health derives from disparate sources: legislative, policy and historical custom and practice. Where I refer to source documents, the source document speaks for itself, but I describe my understanding of the effect of the source document. Where I refer to the manner in which things are done according to a historical custom or practice, I will endeavour to make that distinction clear.

8. This statement addresses Term of Reference B concerning the governance and accountability structure of NSW Health. It addresses corporate governance, including the relevant legal components, but on direction from the Inquiry does not address workforce governance, which I understand the Inquiry intends to be dealt with later. Given my responsibility for Legal and Regulatory Services, this statement provides a high-level overview of the governance structures within NSW Health. I understand statements from other Deputy Secretaries will address other governance frameworks including clinical and financial governance, including audit arrangements, which do not sit within my portfolio.

9. The *NSW Health Corporate Governance and Accountability Compendium* (the ***Governance Compendium***) (Exhibit A.12, SCI.0001.0008.0001) outlines the governance requirements that apply to NSW Health entities and sets out the roles, relationships and responsibilities of those entities.

C. NSW CORPORATE GOVERNANCE AND ACCOUNTABILITY LEGISLATION

Organisational Structure



10. The organisational structure of the Ministry is set out in the above organisational chart.

The Health Services Act 1997

11. The *Health Services Act 1997* is the principal act regulating the governance and management of the public health system in NSW. It establishes the structure of the public health system and the functions, management and control of LHDs, statutory health corporations, and affiliated health organisations.

The Health Minister

12. The functions conferred on the Health Minister under the *Health Services Act* includes:

    a. appointing the chairs and members of the boards of a LHD, specialty network governed health corporation (referred to in this statement as a "specialty health network" (**SHN**)) and board governed statutory health corporation

b. determining the amounts of monies to be paid out of money appropriated from Consolidated Fund to public health organisations, and

c. fixing a scale of fees for hospital services and other health services that are received from public health organisations.

The Secretary, NSW Health (Secretary)

13. Section 122 of the *Health Services Act* provides that the Secretary's functions and powers include:

a. facilitating the achievement and maintenance of adequate standards of patient care within public hospitals and in relation to other services provided by the public health system

b. facilitating the efficient and economic operation of the public health system consistent with the standards referred to in (a) above

c. inquiring into the administration, management and services of any public health organisation

d. providing governance, oversight and control of the public health system and the statutory health organisations within it

e. making recommendations to the Minister as to monies (if any) to be paid to public health organisations out of the Consolidated Fund in any financial year to any public health organisation

f. entering into performance agreements with public health organisations, reviewing the results of organisations under such agreements and to report those results (and make recommendations about the results) to the Minister, and

g. giving directions to statutory health corporations including directions relating to the employment of NSW Health Service senior executives.

LHDs

14. Section 17 of the *Health Services Act* establishes 15 LHDs as bodies corporate. LHDs are responsible for managing public hospitals and health institutions and for providing health services to defined geographical areas. Their primary purposes, as specified by section 9 of the *Health Services Act* are to, within their area:

a. provide relief to sick and injured people through the provision of care and treatment, and

b. promote, protect and maintain the health of the community.

15. The *Health Services Act* also sets out the key functions of LHDs, and each LHD is subject to the governance, oversight and control of the Secretary. The Secretary may determine the role, functions and activities of any public hospital, health institution, health service or health support service under the control of a LHD and, for that purpose, give any necessary directions to the LHD. In addition, the Minister may direct a LHD to establish any hospital, health institution, health service or health support service, close any public hospital or health institution, or cease to provide any health service or health support service, under its control, or restrict the range of health care or treatment provided by any public hospital, health institution or health service under its control, if the Minister is satisfied that it is in the public interest to do so.

16. Each LHD has a Chief Executive and a Board. The Chief Executive is appointed by the LHD Board with the concurrence of the Secretary and is responsible for the management and control of the LHD. The Chief Executive's performance is managed under the *PD2022_021 NSW Health Executive Performance Management Policy Directive* Exhibit 42 NSW Health Tranche 4 Consolidated Exhibit List, through the Performance and Talent online system. For Chief Executives of LHDs and SHNs, targets and measures should directly contribute to achievement of the key performance indicator targets in the Service Agreement executed by the Secretary, the Board Chair and the Chief Executive of the LHD or SHN. The Secretary clarifies performance requirements, gives feedback, undertakes progress reviews as required and contributes to or undertakes an annual performance review of Chief Executives with the Board Chair. For these discussions the Secretary, NSW Health reviews the performance report of the LHD or SHN over the year, for consideration of individual Chief Executive performance assessment.

17. To note, at the time of this Inquiry LHD Boards are currently undergoing review from two perspectives:

a. The Cabinet Office (**TCO**) is currently finalising a statewide review of all NSW Government Boards and Committees. As part of this review NSW Government agencies, including NSW Health, were asked to review the purpose and structure of existing boards and committees and to confirm whether they should be retained by assessing their contribution to government decision-making and alignment with

government priorities. In response to this request, NSW Health advised TCO that LHD Boards should be retained, partly due to the National Health Reform Agreement and their basis in legislation, and also due to their core accountabilities of monitoring LHD performance and leading staff and community engagement. Preliminary advice from TCO has confirmed that this position has been accepted.

b. The Minister for Health has requested that all LHD Board Chairs review their current board membership and develop appointment plans to reduce the size of their boards to eight members in total and to also ensure that each board has the appropriate balance of capability and diversity amongst its members.

18. The Board, comprised of six to 13 people, is appointed by the Minister and has the following functions prescribed by section 28 of the *Health Services Act*:

a. to ensure effective clinical and corporate governance frameworks are established to support the maintenance and improvement of standards of patient care and services by the LHD and to approve those frameworks

b. to approve systems to support the efficient and economic operation of the LHD, ensure the LHD manages its budget to ensure performance targets are met, and to ensure the LHD resources are applied equitably to meet the needs of the community served by the LHD

c. to ensure strategic plans to guide the delivery of services are developed for the LHD and to approve those plans

d. to provide strategic oversight of and monitor the LHD's financial and operational performance in accordance with the State-wide performance framework against the performance measures in the performance agreement for the LHD

e. to appoint, and exercise employer functions in relation to, the chief executive of the LHD

f. to ensure that the number of NSW Health Service senior executives employed to enable the LHD to exercise its functions, and the remuneration paid to those executives, is consistent with any direction by the Secretary or condition referred to in section 122(2) of the *Health Services Act*

g. to confer with the chief executive of the LHD in connection with the operational performance targets and performance measures to be negotiated in the service agreement for the district under the National Health Reform Agreement

h. to approve the service agreement for the LHD under the National Health Reform Agreement

i. to seek the views of providers and consumers of health services, and of other members of the community served by the LHD, as to the LHD's policies, plans and initiatives for the provision of health services, and to confer with the chief executive of the LHD on how to support, encourage and facilitate community and clinician involvement in the planning of LHD services

j. to advise providers and consumers of health services, and other members of the community served by the LHD, as to the LHD's policies, plans and initiatives for the provision of health services

k. to endorse the LHD's annual reporting information for the purposes of the *Government Sector Finance Act 2018*

l. to liaise with the boards of other LHDs and specialty network governed health corporations in relation to both local and State-wide initiatives for the provision of health services, and

m. such other functions as are conferred or imposed on it by the regulations. At the present time, the only additional board function prescribed by regulation is to liaise with the governing bodies of affiliated health organisations and Primary Health Networks established by the Commonwealth in relation to both local and State-wide initiatives for the provision of health services.

19. The board member selection criteria is set out at section 26(3) of the *Health Services Act* and requires an appropriate mix of skills and expertise to oversee and provide guidance to the LHD, and one member is required to have expertise, knowledge or experience in relation to Aboriginal health. Board member terms are for a period specified in the board member's instrument of appointment (not exceeding five years). A board member whose term of office expires is eligible for re-appointment but may not be appointed so as to be a board member for more than 10 years in total.

20. The Minister may, for any reason or no reason and without notice remove any board member or all board members, or remove all board members and appoint the chief executive of the LHD or any other specified person as an administrator.

21. Schedule 4A of the *Health Services Act* sets out the constitution and procedure of boards.

22. A chief executive is not a board member but is typically invited to board meetings as is the chair of the LHD's Medical Staff Executive Council and one executive staff member.

Statutory Health Corporations (SHCs)

23. Section 41 of the *Health Services Act* prescribes that SHCs are constituted as set out in Schedule 2. SHCs can be chief executive governed, board governed or specialty network governed health corporations. There are three forms of SHCs in NSW which are listed in Schedule 2 as follows:

    a. Bureau of Health Information (board governed)

    b. Clinical Excellence Commission (board governed)

    c. Agency for Clinical Innovation (chief executive governed)

    d. Health Education and Training Institute (chief executive governed)

    e. Justice Health and Forensic Mental Health Network (**JHFMHN**) (specialty network governed), and

    f. The Sydney Children's Hospitals Network (Randwick and Westmead) (incorporating The Royal Alexandra Hospital for Children) (**SCHN**) (specialty network governed).

24. In addition, the Cancer Institute (NSW) is established by *Cancer Institute (NSW) Act* 2003. Section 21A of the *Cancer Institute (NSW) Act* provides that Chapter 10 of the *Health Services Act* extends to the Cancer Institute as if it were a statutory health corporation.

25. A board governed SHC is subject to the control and direction of the Minister (except in relation to the contents of a recommendation or report made by the board to the Minister) and its chief executive is appointed by the Secretary. The chief executive of a chief executive governed SHC is appointed by the Secretary.

26. JHFMHN and SCHN are the only SHNs within NSW Health. Each has a board and is governed in the same manner as LHDs (including that a chief executive is appointed by the board with the concurrence of the Secretary).

Affiliated Health Organisations (AHOs)

27. AHOs are not-for-profit religious, charitable or other non-government organisations which operate establishments or provide services that are recognised as part of the public health system in accordance with section 62 of the *Health Services Act*, and a list of those AHOs recognised is contained in Schedule 3 of the *Health Services Act*. The Minister can determine the role, functions and activities of any recognised establishment or recognised service of an AHO following consultation with the organisation. AHOs are managed by the LHD in which they sit. Evidence about the role and governance of AHOs will be given by Deborah Willcox AM, Deputy Secretary (Health System Strategy and Patient Experience).

The *Health Administration Act 1982*

28. The *Health Administration Act 1982* sets out the broad roles of the Minister and Secretary in relation to the health portfolio generally. The *Health Administration Act* also sets out certain powers and functions of the Minister, including that the Minister may:

    a. formulate general policies for the purpose of promoting, protecting, developing, maintaining and improving the health and well-being of the people of New South Wales

    b. provide, conduct, operate and maintain health services, and, where necessary, improve and extend services

    c. arrange for the construction of any buildings or works necessary for, or in connection with, health services, and

    d. appoint such councils, committees and advisory bodies as the Minister considers appropriate.

29. The *Health Administration Act* also sets out certain functions of the Secretary including:

    a. initiating, promoting, commissioning and undertaking surveys and investigations into the health needs of the people of New South Wales, the resources of the State available to meet those needs and the methods by which those needs are met

b. inquiring into the nature, extent and standards of the health services, facilities and personnel required to meet the health needs of the people of New South Wales and to determine the cost of meeting those needs

c. planning the provision of comprehensive, balanced and co-ordinated health services throughout New South Wales

d. formulating the programs and methods by which the health needs of the people of New South Wales may be met

e. undertaking, promoting and encouraging research in relation to any health service, and

f. promoting and facilitating the provision of the professional, technical or other education or training of any persons employed or to be employed in the provision of any health service.

30. Under the *Health Administration Act*, the Secretary is incorporated as a corporation sole with the corporate name "Health Administration Corporation" (**HAC**) for the purpose of exercising certain statutory functions. In practice the HAC is the legal vehicle through which the Secretary provides certain statewide health services and shared services (NSW Ambulance, NSW Health Pathology, Health Protection NSW, HealthShare NSW, eHealth NSW, and Health Infrastructure).

Governance of Boards

31. There are a number of different board models that operate within NSW Health.

LHDs and SHNs

32. The functions of boards of LHDs of SHNs are set out exhaustively in sections 28 and 52F of the *Health Services Act*. Those functions are broadly focused on providing high level oversight, ensuring there are appropriate frameworks in place, acting as a liaison with key stakeholders of the organisation including consumer representatives, and to approve the annual service agreement and endorse the organisation's annual reporting information. The board's role also includes exercising the employer function with respect to the chief executive (discussed further below).

33. Importantly, the role of LHD and SHN boards does not include day to day management or control of the organisation, which is the responsibility of the chief executive (see

sections 24 and 52G of the *Health Services Act*). Chief executives of LHDs and SHNs are, in the exercise of their functions, accountable to their board (sections 25(b) and 52G of the *Health Services Act*).

Board governed SHCs (currently BHI and CEC)

34. Under section 47 of the *Health Services Act*, the affairs of a board governed SHC are controlled by the board, which is in turn subject to the direction and control of the Minister (except in relation to the contents of a recommendation or report made by the board to the Minister). The Minister's power of direction and control over the board of a board governed SHC has been delegated to the Health Secretary (see NSW Health Combined Delegations Manual, delegation A213).

35. The chief executive of a board governed SHC is appointed by the Health Secretary. Under section 51 of the Health Services Act, the chief executive manages the affairs of the board governed SHC, and is, in the exercise of his or her functions, subject to the direction and control of the board.

Chief executive governed SHCs (currently ACI and HETI)

36. A chief executive governed SHC does not have a board. Under section 52B of the Health Services Act, the chief executive manages and controls the affairs of a chief executive governed SHC.

Ambulance Service Advisory Board

37. Section 67C of the *Health Services Act* establishes an Ambulance Service Advisory Board which consists of the chief executive of the Ambulance Service of NSW and between 8 – 12 persons appointed by the Health Secretary who are to have expertise and experience in health management, financial management, clinical paramedic services or other health services and / or business management.

38. The function of the Advisory Board is to provide advice to the Health Secretary or to an appointed body in relation to the exercise of functions under Chapter 5A of the *Health Services Act* in respect of the provision of ambulance services (section 67C(5)), and any other functions as may be conferred or imposed on it by the Health Secretary.

Boards of HAC entities

39. Section 126C of the Health Services Act allows the Health Secretary to appoint a committee, board or other body for the purposes of Part 1A of Chapter 10 of the Health Services Act relating to the provision of services. A number of HAC entities (HealthShare NSW, Health Infrastructure, NSW Health Pathology and eHealth NSW) all provide services pursuant to Chapter 10 of the *Health Services Act*.

40. The number of members and the procedure for the appointed body is to be determined by the Health Secretary, who also has the power to terminate the appointment of a member of an appointed body at any time for any or no reason by notice in writing to the member.

41. The Health Secretary has established boards for HealthShare NSW, Health Infrastructure, NSW Health Pathology and eHealth NSW under section 126C of the Health Services Act and has delegated functions to each of those boards under section 126B of the Health Services Act.

Bodies established under Model By-Laws

42. The *Health Services Act* provides that the Secretary may make Model By-Laws for LHDs and SHNs (the ***LHD/SHN Model By-Laws***). There are separate Model By-Laws for chief executive-governed statutory health corporations (Exhibit 213 NSW Health Tranche 4 Consolidated Exhibit List) and board-governed statutory health corporations (Exhibit 214 NSW Health Tranche 4 Consolidated Exhibit List). The *LHD/SHN Model By-Laws* require LHDs and SHNs to establish a number of clinical governance bodies and provide for a number of functional and advisory committees including:

    a. Committees of the board, being:

        i. Audit and Risk

        ii. Finance and Performance, and

        iii. Quality and Safety

    b. Medical Staff Councils;

    c. Mental Health Medical Staff Councils;

    d. Medical Staff Executive Councils (LHDs only);

e. Hospital Clinical Councils and/or Joint Hospital Clinical Councils;

f. LHD/SHN Clinical Councils; and

g. Medical and Dental Appointments Advisory Committee.

43. The objectives of clinician consultation and input structures and forums are set out in Part 6 of the *LHD/SHN Model By-Laws*. The objectives of these forums and structures are to:

a. facilitate effective patient care and services through a co-operative approach to the management and efficient operation of public hospitals between hospital executive management, clinical staff (including medical practitioners, nurses, midwives and allied health practitioners) and clinical support staff; and

b. provide a forum for information sharing and to support feedback to staff on issues affecting the administration of the hospital(s) through the members of the councils.

Medical Staff Councils / Medical Staff Executive Councils

44. Under the LHD/SHN Model By-Laws, a chief executive is to establish:

a. in the case of a SHN — one Medical Staff Council, and

b. in the case of a LHD — a Medical Staff Executive Council and at least two Medical Staff Councils.

45. In LHDs, Medical Staff Councils are in practice established at the hospital level. Generally, for larger hospitals, there is a single Medical Staff Council. Two or more hospitals may share a Medical Staff Council where, for example, the hospitals are smaller, share medical staff appointments between them and/or it is otherwise convenient for the facilities to share a Medical Staff Council.

46. Medical Staff Councils are composed of visiting practitioners, staff specialists, career medical officers and dentists with appointments to the public health organisation or the public hospital/s which the Council represents, and staff specialist pathologists appointed by NSW Health Pathology whose principal area of work is in the organisation or the hospital(s) which the Council represents.

47. The LHD/SHN Model By-Laws were most recently amended in 2021 to include a requirement for chief executives of LHDs and SHNs to establish a Mental Health

Medical Staff Council. The role of Mental Health Medical Staff Council is to enable engagement with all psychiatrists and CMOs working within mental health services in the organisation, including psychiatrists working in community health services. This change to the LHD/SHN Model By-Laws was made following feedback that psychiatrists who work in community health services do not work in a hospital setting and so do not actively participate in hospital-based Medical Staff Councils. The Mental Health Medical Staff Council model was intended to provide an alternative engagement structure for these clinicians.

48. The Medical Staff Executive Council or the Medical Staff Council (if there is only one Council) is to provide advice to the chief executive and board on medical matters. The Medical Staff Executive Council or the Medical Staff Council (if there is only one Council) also nominates a short list of up to 5 medical practitioners to be included on the NSW Health Board Appointments Register to be available to the Minister for Health when considering the appointment of a member or members of the Board of an LHD or SHN.

Hospital Clinical Councils/Joint Hospital Clinical Councils

49. Hospital Clinical Councils operate at hospitals or hospital networks to promote clinician engagement in local management decision making. These forums are multi-disciplinary (i.e. involve medical, nursing and allied health staff).

50. The objectives of a Hospital Clinical Council are to:

    a. provide a local structure for consultation with, and involvement of, clinical staff in management decisions impacting public hospitals and related community services; and

    b. be a key leadership group for its public hospital or hospital network and work with the management team in ensuring that the hospital/s deliver high quality health and related services for patients;

LHD Clinical Council / SHN Clinical Council

51. LHD/SHN Clinical Councils facilitate the input of clinicians into the strategic decision-making process and bring together the LHD / SHN executive, clinical stream directors and general managers of hospitals/hospital networks on a regular basis.

52. Under the LHD/SHN Model By-Laws the Clinical Council is established by the chief executive and provides the board and the chief executive with advice on clinical matters affecting the organisation, including on:

    a. improving quality and safety in the hospitals within the organisation;

    b. planning for the most efficient allocation of clinical services within the organisation;

    c. translating national best practice into local delivery of services;

    d. developing innovative solutions that best address the needs of the local community; and

    e. such other related matters as the board or chief executive may seek advice on from time to time.

Medical and Dental Appointments Advisory Committee

53. The LHD/SHN Model By-Laws also provide for the Board of an LHD or SHN to establish a Medical and Dental Appointments Advisory Committee (MADAAC). The role of the MADACC is to:

    a. to provide advice, and where appropriate make recommendations with reasons, to the chief executive concerning matters relating to the appointment or proposed appointment of visiting practitioners, staff specialists or dentists,

    b. consider any application that has been referred to the Committee by the Chief Executive for:

        i. appointment of a visiting practitioner, staff specialist or dentist; or

        ii. a proposal to appoint a person as a visiting practitioner, staff specialist or dentist.

    c. provide advice and, where appropriate, make recommendations with reasons to the Chief Executive concerning the clinical privileges which should be allowed to visiting practitioners, staff specialists and dentists.

54. Advice on all matters concerning the clinical privileges of visiting practitioners, staff specialists or dentists must be referred to a subcommittee of the MADACC (the

Credentials (Clinical Privileges) Sub-Committee) that is also required to be established by the LHD/SHN Model By-Laws.

D. NSW GOVERNMENT CORPORATE GOVERNANCE

55. As a NSW Government agency, NSW Health is required to comply with various whole-of-government requirements. These requirements may take various forms, including Premier's Memoranda and circulars.

56. These whole-of-government frameworks may be topic specific, with examples including:

    a. The Public Service Commission's *Classification and Remuneration Framework for NSW Government Boards and Committees* and *Appointment Standards for Boards and Committees in the NSW Public Sector*

    b. NSW Treasury's TPP20-08 *Internal Audit and Risk Management for the General Government Sector*

    c. The Public Service Commission's *Code of Ethics and Conduct for NSW Government Sector Employees*

E. NSW HEALTH CORPORATE GOVERNANCE

The Governance Compendium

57. Section 2 of the *Governance Compendium* describes the NSW Health System governance framework. Primarily, this framework requires public health organisations to publish an Annual Corporate Governance Attestation Statement, whereby each organisation attests that its governance arrangements are consistent with the following seven governance standards:

    a. Standard 1: Establish robust governance and oversight frameworks – health organisations should ensure that the roles and responsibilities of its board, chief executive and senior management are clearly understood and that responsibilities for compliance with legal and policy obligations are allocated.

    b. Standard 2: Ensure clinical responsibilities are clearly allocated and understood.

c. Standard 3: Set the strategic direction for the organisation and its services – all health organisations have clear, articulated and relevant plans for meeting their statutory or other purposes and objectives.

d. Standard 4: Monitor financial and service delivery performance – boards and chief executives responsible for ensuring appropriate arrangements are in place to secure the efficiency and effectiveness of resource utilisation by their organisation; and for regularly reviewing the financial and service delivery performance of the organisation.

e. Standard 5: Maintain high standards of professional and ethical conduct – Health organisations must have systems and processes in place to ensure that staff and contractors are aware of and abide by the NSW Health Code of Conduct and relevant professional registration and licensing requirements. Public health organisations must also have policies, procedures and systems in place to ensure that any alleged breaches of recognised standards of conduct or alleged breaches of legislation are managed efficiently and appropriately.

f. Standard 6: Involve stakeholders in decisions that affect them – Health organisations must have systems and processes in place to ensure the rights and interests of key stakeholders are incorporated into the plans of the organisation and that they are provided access to balanced and understandable information about the organisation and its proposals.

g. Standard 7: Establish sound audit and risk management practices – Each public health organisation must establish and maintain an effective internal audit function that is responsible for overseeing the adequacy and effectiveness of the organisation's system of internal control, risk management and governance.

58. Where an organisation has not met one of the governance standards, the statement should include a qualification as to whether the organisation is intending to meet the standard but is still working towards implementation of the minimum actions required, or the reasons the standard is not applicable. The statement should be certified by the chief executive and board chair, submitted to the Ministry, and published on its website. The statement is also published in the NSW Health annual report.

59. A Governance Standards Checklist has been developed by the Ministry as a guide for boards and chief executives in undertaking corporate governance assessments. The checklist highlights a number of actions that public health organisations can and should

take in order to meet each governance standard. The checklist provides key structural elements which are considered to provide a basis within a good governance framework, that will when effectively implemented, support the organisation in meeting its objectives and obligations as a public sector entity. The checklist is set out in pages 31 and 32 of the *Governance Compendium*.

60. These arrangements utilising checklist and attestation processes are a direct consequence of the intentional design of the NSW Health governance framework to enable devolved governance and decision making closer to the point of service provision. The processes established by the Ministry attempt to provide guidance and guardrails to public health organisations without providing absolute oversight by NSW Health.

61. These governance processes are supplemented by the *NSW Health Performance Framework* (***Performance Framework***) which is Exhibit A.11 SCI.0001.0007.0001 to this statement. I understand, evidence about the *Performance Framework* will be given by Matthew Daly, Deputy Secretary (System Sustainability and Performance).

Performance Framework

62. The *Performance Framework* incorporates the strategic priorities for the NSW Health system which flow from Commonwealth/State agreements, including implementation of NSW Health Funding Reform.

63. The *Performance Framework* includes the performance expected of affected organisations to achieve the required levels of health improvement, service delivery and financial performance. Implementation of the framework is within the portfolio of Matthew Daly, Deputy Secretary (System Sustainability and Performance).

64. The *Performance Framework* applies to:

    a. the 15 LHDs

    b. SHNs and AHOs including SCHN, JHFMHN, St Vincent's Health Network

    c. Statewide Health Services: NSW Ambulance, NSW Health Pathology, Health Protection NSW

    d. Shared Services: Healthshare NSW, eHealth NSW, Health Infrastructure, and

e. Pillars: Agency for Clinical Innovation, Bureau of Health Information, Cancer Institute NSW, Clinical Excellence Commission, Health Education and Training Institute.

65. In accordance with the *Performance Framework*, each health service is to have in place an effective internal performance framework that extends to facility and clinical network/stream levels for monitoring performance and identifying and managing emerging performance issues.

66. As of April 2024, NSW Health is conducting performance level assessment in respect of Pillars and Shared Services in the same way it assesses LHDs and SHNs.

Future Health

67. In 2022, NSW Health developed a 10-year strategy to plan for future needs of the NSW population titled *Future Health: Guiding the next decade of health care in NSW 2022 – 2032* (Exhibit A.14, SCI.0001.0010.0001) and Strategic Framework (Exhibit A.15, SCI.0001.0011.0001) (together ***Future Health***). The vision of *Future Health* is for a sustainable health system that delivers outcomes that matter most to patients and the community, is personalised, invests in wellness and is digitally enabled.

68. The Strategic Framework for *Future Health* stipulates the following outcomes:

a. patients and carers have positive experiences and outcomes that matter

b. safe care is delivered across all settings

c. people are healthy and well

d. our staff are engaged and well supported

e. research and innovation, and digital advances inform service delivery, and

f. the health system is managed sustainably.

69. In accordance with *Future Health*, governance, performance measurement and funding models will be adapted to support these outcomes.

Independent Commission Against Corruption

70. The *Independent Commission Against Corruption Act 1988* imposes obligations on principal officers of public authorities to notify the Independent Commission Against

Corruption (**ICAC**) of any matter where the officer suspects, on reasonable grounds, that corrupt conduct has occurred.

71. An effective internal reporting system must be established in each NSW Health organisation to facilitate the flow of corruption reports to the chief executive. Further information is set out in *PD2011_070 Corrupt Conduct – Reporting to the Independent Commission Against Corruption (ICAC)* and *PD2023_026 Public Interest Disclosures*. Further information is also provided in section 9 of the *Governance Compendium.*

State Records Act

72. The *State Records Act 1998* applies to NSW Health agencies. It provides for:

    a. protecting records in the custody of a public office

    b. making and keeping full and accurate records of its activities

    c. establishing and maintaining a records management program in conformity with standards and codes of best practice

    d. making arrangements for monitoring and reporting on the records management program, and

    e. keeping technology-dependent records accessible.

73. All papers maintained by the public health organisation are considered to be state records and subject to the *State Records Act*. Records management requirements to enable compliance with the *State Records Act* by the Ministry are set out in the *PD2009_057 Records Management Policy – Department of Health*. The Governance Compendium otherwise requires NSW Health agencies to be aware of the provisions as to retention, disposal and maintenance. Records can include work papers, electronic records, diaries, minutes of meetings etc.

74. Information on records management, including record retention, maintenance and disposal requirements is available on the internet via the State Records website. Health organisations are subject to specific records management requirements and should refer to the public health sector section of the State Records website.

Privacy obligations

75. NSW Health agencies have a legal obligation to comply with applicable privacy legislation.

76. NSW Health agencies are bound by the *Health Records and Information Privacy Act 2002* which regulates the collection and use of personal health information and the *Privacy and Personal Information Protection Act 1988* which regulates the collection and use of other personal information.

77. The NSW Health Privacy Management Plan is NSW Health's privacy management plan as required by section 33 of *Privacy and Personal Information Protection Act*. Amongst other things, it sets out NSW Health's policies and procedures in managing personal information under the *Privacy and Personal Information Protection Act* and health information under the *Health Records and Information Privacy Act* including how to access and amend personal information, and who to contact in the event of any privacy complaints or concerns.

78. The NSW Health Privacy Manual for Health Information provides NSW Health agencies with practical and operational guidance to the legislative obligations imposed by the *Health Records and Information Privacy Act* with respect to personal health information. The Manual outlines procedures to support compliance with the legislation, including through the presentation of commonly occurring scenarios and examples within NSW Health, across all of the Health Privacy Principles.

79. Information about the privacy governance framework and the online privacy tool for NSW public sector agencies is available on the NSW Privacy website.

80. Chief executives must ensure that the public health organisation has in place processes to comply with these legislative requirements including:

    a. the notification to patients on the collection of their personal information and outlining their rights under privacy law

    b. the establishment of internal review processes where patients wish to lodge a complaint where they believe their privacy has been breached

    c. the establishment of internal processes for patients / others who wish to access records under privacy legislation

d. training for staff on their privacy obligations and support for staff through local health information management processes, and

e. the provision of a dedicated Privacy Contact Officer in all health districts to coordinate privacy implementation and oversee internal reviews.

Government Information (Public Access) Act

81. On 1 July 2010, the *Government Information (Public Access) Act 2009* (***GIPA Act***) came into effect, replacing the former *Freedom of Information Act 1989* (**FOI**).

82. The *GIPA Act* provides a framework for accessing information from New South Wales Government agencies, and seeks to promote a more proactive and transparent approach towards accessing and releasing government information.

83. The *GIPA Act* is predicated on government agencies practising proactive disclosure by creating a presumption in favour of disclosure of information unless there is an overriding public interest against disclosure. As a result, New South Wales Government agencies are expected to release a wider range of information either free of charge or at a reasonable cost. Each organisation should have a nominated Right to Information Officer to co-ordinate and process applications for information submitted under GIPA Act.

84. Under the *GIPA Act* any person may complain about an agency's conduct in relation to its functions under the *GIPA Act* to the Office of the Information Commissioner. A complaint cannot be made in relation to an agency decision that is reviewable under the *GIPA Act*. If the Information Commissioner decides to deal with the complaint, the aim will be to help the parties resolve the complaint using any measures considered appropriate including bringing the parties together for conciliation. The Commissioner may also conduct investigations into a complaint and, in certain circumstances, report the matter to the Minister responsible for the agency.

85. CGRM manages public-facing services under the *GIPA Act* for the Ministry and ensures compliance with the requirements of the legislation and other NSW Government policy and practice.

86. In addition, CGRM also supports system-wide compliance with *the GIPA Act* through offering a central advisory service for all NSW Health organisations and through regular communication with a network of GIPA practitioners.

87. CGRM also holds responsibility for annual reporting requirements on statewide metrics, as prescribed by the *GIPA Act* and facilitated by the Information and Privacy Commissioner.

Public interest disclosures

88. The *Public Interest Disclosures Act 2022* (***PID Act***) offers protection for public officials who, in the public interest, disclose information on serious wrongdoing, including:

    a. Corrupt conduct

    b. Government information contravention

    c. A local government pecuniary interest contravention

    d. Serious maladministration

    e. A privacy contravention, and

    f. A Serious and substantial waste.

89. The PID Act offers various pathways for public officials to disclose serious wrongdoing, such as reporting to a designated disclosure officer, their supervisor, or other relevant agencies, such as an integrity organisation. It also enhances safeguards for whistleblowers, ensuring increased protection for those who speak out.

90. There are three types of Public Interest Disclosures (PIDs):

    a. Voluntary PID – a disclosure voluntarily made by a public official

    b. Witness PID – a disclosure from a witness during an investigation

    c. Mandatory PID – a disclosure by a public official who has a legal obligation to report as an ordinary function or aspect of their role in an agency.

91. Under the *PID Act*, all staff members who have other staff members reporting either directly (or indirectly) to them have a responsibility for encouraging staff to report known or suspected wrongdoing, and to provide support for staff when they make, or are suspected of making, a disclosure. managers are obliged to:

    a. receive and pass on voluntary PIDs that they receive from staff who report to them, or staff they supervise

b. ensure staff are protected from detrimental action when they have either made or are suspected of making a voluntary PID, by:

   i. maintaining confidentiality, and offering support through programs such as the Employee Assistance Program

   ii. implementing local management strategies to minimise the risk of reprisal or workplace conflict in relation to the report

   iii. notifying disclosure officers if they consider a staff member is being subjected to reprisal as a result of reporting serious wrongdoing.

c. Under the *PID Act*, disclosure officers are the chief executive of the NSW Health organisation

d. the most senior ongoing employee who ordinarily works at a permanently maintained worksite where more than one employee works

e. board members of Board-governed organisations. This includes board members appointed by the Minister to a Board of a local health district, specialty health network, or Board-governed statutory health corporation.

92. Under the PID Act, organisations are required to:

a. promote a workplace culture which encourages and supports all staff (including volunteers, contractors and sub-contractors) who report serious wrongdoing

b. receive disclosures from public officials

c. ensure processes are in place for:

d. assess reports of serious wrongdoing

e. manage compliance with the PID Act

f. support public officials who make voluntary public interest disclosures (PIDs), including minimising the risk of detrimental action

g. implement corrective actions should serious wrongdoing be identified and has occurred

h. comply with reporting requirements for allegations or findings of detrimental action

i. provide annual reporting, as set out in the Regulation, to the NSW Ombudsman.

93. *PD2023_026* NSW Health Policy Directive *Public Interest Disclosures* provides the framework for management of public interest disclosures within NSW Health.

Notification of legal matters to the Ministry of Health

94. Public health organisations are required to notify the General Counsel of the Ministry of certain legal matters in accordance with *PD2017_003 Significant Legal Matter and Management of Legal Services* (Exhibit 45 NSW Health Tranche 4 Consolidated Exhibit List).

95. Legal matters which have implications beyond the local affairs of the public health organisation must be reported to the Ministry. These are legal matters which:

a. raise issues which are fundamental to the responsibilities of the Minister, Secretary, Ministry or HAC

b. involve significant medico-legal, ethical, industrial, work health and safety or other operational issues

c. relate to allegations of historical sexual abuse

d. relate to coronial proceedings

e. concern legal proceedings to which a public health organisation or any of its officers are a party which raise a significant question of interpretation of NSW Health policy or legislation administered by the Minister for Health

f. concern legal proceedings involving more than one public health organisation or multiple NSW Government agencies,

g. raise issues concerning intergovernmental relations, arrangements or agreements

h. otherwise concern legal engagement involving the expenditure (or reasonably anticipated expenditure) on legal costs and disbursements in excess of $150,000

i. core legal matters that require referral to the Crown Solicitor's Office, and

j. proceedings where a claim has been made for compensation over and above the relevant award or statutory entitlements and those proceedings may have system wide implications.

96. Public health organisations must also carry out compliance and enforcement of health legislation in accordance with *PD2014_021 Prosecution Policy and Guidelines* (Exhibit 46 NSW Health Tranche 4 Consolidated Exhibit List). The Prosecution Policy and Guidelines is based on a risk-based approach to enforcement and encourages a proportional and measured response to an alleged breach of health legislation, starting with the education of the offender followed by, if required, verbal cautions, written warnings, Penalty Infringement Notices, non-reinstatement of licences in relation to private health facilities where appropriate and finally, as a last resort, prosecution.

97. Examples of enforcement conducted by NSW Health includes in relation to illegal nicotine sales, black market tobacco sales and seizures, sales of tobacco and e-cigarettes to minors, tobacco advertising, smoking regulation (for example, smoking in public places), skin penetration regulation and legionella investigations.

98. The Ministry provides a number of strategies to train and assist Ministry and LHD officers in their enforcement functions. For example, officers who are authorised to issue Penalty Infringement Notices are required to engage in on-line training conducted by State Revenue NSW. The Ministry's legal officers train investigators in interview techniques, and assist with drafting and enforcing investigation protocols.

Complaints Management

99. *PD2020_013 Complaints Management* (Exhibit 78 NSW Health Tranche 4 Consolidated Exhibit List) provides a framework for management of complaints across NSW Health to support timely, efficient and fair management of complaints. NSW Health has a number of other policy directives and guidelines to support the management of particular complaints, for example, *PD2018_032 Managing Complaints and Concerns about Clinicians* (Exhibit 187 NSW Health Tranche 4 Consolidated Exhibit List) relating to clinical complaints.

NSW Government policy requirements

100. Whole of government policies are issued from time to time by central agencies including the Department of Premier and Cabinet, NSW Treasury or the Department of Finance, Services and Innovation. These policies can include mandatory requirements across the

whole government sector in relation to financial accountability and reporting, procurement or other issues.

101. The content of these policies and any mandatory requirements will generally be notified to public health organisations through the NSW Health Policy Directive system.

The NSW Health Policy Framework and the Policy Distribution System

102. NSW Health policy documents are managed according to the framework established by *PD2022-047 NSW Health Policies and Other Policy Documents* (Exhibit 215 NSW Health Tranche 4 Consolidated Exhibit List).

103. CGRM have overall responsibility for the policy framework and for the supporting Policy Distribution System (**PDS**).

104. A NSW Health policy document includes any policy directive, guideline, or information bulletin issued through the PDS platform and published on the PDS webpage of the NSW Health website, as well as NSW Health policy and procedure manuals published on the Policy & Procedure Manuals webpage of the NSW Health website.

105. Policy documents set out the obligations to be followed by all NSW Health organisations.

106. All policy documents issued through the PDS have a system-generated cover page that includes a summary of the purpose for the document, the document type, document number, publication date, author branch, branch contact phone number, review date, records management system file number and status.

107. All NSW Health organisations must have processes in place to monitor policy documents issued through the PDS and to communicate and implement the requirements of those documents.

NSW Health Policy Directives and Policy and Procedure Manuals

108. Policy Directives establish the position of NSW Health on a policy area. They outline the minimum standards, behaviours and/or requirements of the NSW Health workforce, and

of the systems, processes and supporting actions required from NSW Health organisations to facilitate those minimum standards.

109. Policy and Procedure Manuals contain a compilation of resources and advice on a specific subject and are utilised where there is a large body of information on the critical function or set of functions.

110. The NSW Health Accounts and Audit Determination (**Determination**) (Exhibit B.23.35, MOH.0001.0278.0001) requires all public health organisations to comply with policy directives issued by the Secretary and the Ministry. Compliance with the Determination is a condition of the amount of subsidy an organisation receives under section 127(4) of the *Health Services Act*.

111. All policy directives and policy and procedures must be approved by the Secretary or relevant Deputy Secretary prior to being issued, rescinded or marked as obsolete on the PDS.

NSW Health Guidelines

112. Guidelines establish recommended practices in relation to clinical and non-clinical activities and functions and are to be adopted and implemented by NSW Health organisations. Sound reasons must exist for a NSW Health organisation to depart from the recommended practices within a guideline issued through the PDS.

113. All Guidelines must be approved by the Secretary or relevant Deputy Secretary prior to being issued, rescinded or marked as obsolete on the PDS.

NSW Health Information Bulletins

114. Information Bulletins are for moment-in-time communications and contain information on new or amended requirements of NSW Health organisations. For example, an Information Bulletin might describe changes to statutory, award or other legal provisions, or contain broader Government policy requirements from sources such as Premier's Memoranda, Treasurer's Directions or Federal Government initiatives.

Policy availability

115. All NSW Health policy documents are available on the NSW Health website.

116. All NSW Health organisations receive a weekly email advising of new publications on the PDS, or of revisions to the status of existing publications. On receipt of this email, organisations are to:

    a. inform CGRM of any changes to their registered contacts for the distribution of new policy documents

    b. ensure that policy documents are distributed to relevant facilities, units and services controlled by the organisation

    c. ensure that any external person or organisation that is required to comply, under an agreement or other contractual arrangement, is notified of any new or amended requirements, and

    d. ensure that relevant facilities, units or services controlled by the organisation, and relevant contractors, are notified of rescission of obsolete policy documents.

Local procedures

117. Local operating procedures may be developed by public health organisations to document a process or standard required. These procedures must be consistent with statute and common law, and with Government policy as well as NSW Health policy directives and guidelines. They should generally only be developed to clarify local implementation issues where there is no other instruction, or there is a gap in instruction.

118. Local protocols and procedures are not published via the PDS and must not be branded in such a way that could create a perception that the document is a state-wide policy document. NSW Health policy documents must not be locally amended, added to, or otherwise altered or rebadged.

Policy and procedure manuals

119. A range of policy and procedure manuals for NSW Health are published on the Ministry internet and are updated continually to incorporate the latest policies issued by the Ministry. These are:

    a. *NSW Health Accounting Policy Manual* (Exhibit 215 NSW Health Tranche 4 Consolidated Exhibit List), a resource for staff involved with accounting functions within the Ministry and the Ambulance Service.

b. *Accounting Manual for Public Health Organisations* (Exhibit 51 NSW Health Tranche 4 Consolidated Exhibit List), which contains the financial, accounting and audit policy and procedures applicable to public health organisations.

c. *Accounts & Audit Determination for Public Health Organisations Manual* (Exhibit Exhibit B.23.035 MOH.0001.0278.0001), which identifies responsibilities of NSW Health organisations in respect to accounting procedures; the accuracy of accounting, financial and other records; the proper compilation and accuracy of statistical records; and observance of the directions and requirements issued by the Minister, Secretary, and the Ministry.

d. *Fees Procedures Manual for Public Health Organisations Manual*, which contains policy and procedures relating to revenue and charging for services and accommodation provided to inpatients and non-inpatients of hospitals, nursing homes and multi-purpose services.

e. *Patient Matters Manual for Public Health Organisations Manual* (Exhibit 51 NSW Health Tranche 4 Consolidated Exhibit List), a compilation of NSW Health policies and procedures relating to the care and treatment of clients of the health system and includes health record and privacy policies.

f. *Protecting People & Property: NSW Health Policy and Standards for Security Risk Management in NSW Health Agencies* (Exhibit B.53, SCI.0003.0020.0010), which outlines NSW Health policy on key aspects of personal and property security and provide standards for consultation, appropriate documentation and record keeping and regular monitoring and evaluation of risks.

g. *PD2024_009 NSW Health Procurement (Goods and Services)* (Exhibit 53 NSW Health Tranche 4 Consolidated Exhibit List), which ensures high ethical standards for commercial engagements in compliance with the NSW Procurement Board's Agency Accreditation Scheme requirements for the procurement of goods and services.

Delegations of Authority

Delegating statutory powers

120. The Minister, Secretary or the HAC may delegate their statutory functions under section 21 of the *Health Administration Act*. There are also specific provisions for financial

delegations under the *Government Sector Finance Act 2018* and specific provisions for public service staff-related delegations under the *Government Sector Employment Act 2013*.

121. Public health organisations may also delegate powers they have under statute. For example, consistent with section 40 of the *Health Services Act,* a LHD can delegate any of its functions to any member of the NSW Health Service, a visiting practitioner, council or committee appointed by the LHD, a body appointed by the Minister or Secretary or a person / body prescribed in the regulations other than:

    a. the power of delegation itself

    b. the exercise of its function to close any public hospital or health institution, or cease to provide any health service or health support service, under its control the exercise of its function to restrict the range of health care or treatment provided by any public hospital, health institution, health service or health support service under its control, and

    c. the power to make by-laws.

122. Although LHDs can delegate their authority, they remain accountable to the Minister or Secretary for the performance of the organisation and for the implementation of any directions from the Secretary and the Minister for Health.

123. When an officer delegates functions or authority to another person, that person becomes accountable to the officer for the delivery of that function or the exercise of the authority. However, the officer who delegates a function or authority remains responsible for ensuring the delegate effectively exercises the delegated functions or authority.

124. The chief executive must ensure that a written manual of delegations is maintained to record details of delegations of authority. This requirement is set out in *PD2012_059 Delegations of Authority – Local Health Districts and Specialty Networks* (Exhibit 116 NSW Health Tranche 4 Consolidated Exhibit List). A formal written instrument of delegation is to be signed and be available for audit. The written manual of delegations must set out what function of authority has been delegated, to whom, when, and any conditions or limits to the delegation.

125. In deciding what to delegate, chief executives and boards need to consider:

a. consider the structure of the organisation and the appropriate level to hold the delegation

b. an assessment of the risk of delegating the authority

c. an assessment of the knowledge and skill of the person to whom they plan to delegate, and

d. establish processes to regularly monitor and review the exercise of delegation of authority.

Ministry of Health delegations

126. A number of delegation manuals have been developed by the Ministry including:

a. *Combined Delegations Manual*, (Exhibit 54 NSW Health Tranche 4 Consolidated Exhibit List), which contains administrative, financial and staff-type delegations of powers and functions that have been delegated by the Minister for Health, the Secretary and the HAC for the Ministry.

b. *Public Health Delegations Manual*, a copy of which is exhibited to this statement (Exhibit 55 NSW Health Tranche 4 Consolidated Exhibit List), which incorporates delegations derived from powers and functions specified in public health type Acts and Regulations including Poisons, Public Health and Mental Health Acts and Regulations.

c. *HealthShare NSW Delegations Manual* (Exhibit B.23.83, MOH.0001.0361.0001), which contains delegations based on the HAC being the overarching entity under the auspice of which the work of HealthShare NSW will occur, and outlines the administrative, financial and staff-type delegations conferred on HealthShare NSW by the HAC.

d. *eHealth NSW Delegations Manual*(Exhibit 57 NSW Health Tranche 4 Consolidated Exhibit List), which has been compiled to ensure both eHealth NSW's appointed office holders and staff, and eHealth NSW as an entity undertaking goods and services procurement under Agency Accreditation (issued by the Ministry), have clearly set out levels of authority and clarified accountability and responsibility for day-to-day operations.

e. *Health Infrastructure Delegations Manual* (Exhibit 58 NSW Health Tranche 4 Consolidated Exhibit List), which details delegations, similar to those for HealthShare NSW, based on the HAC being the overarching entity under the auspice of which the work of Health Infrastructure occurs.

F. RISK MANAGEMENT

127. *PD2022_023 Enterprise-wide Risk Management* (Exhibit B.23.165 MOH.0001.0272.0001) describes the requirements for NSW Health organisations to establish, maintain and monitor risk management practices in accordance with whole of government policies and international standards. It is complementary to *PD2022_022 Internal Audit* (Exhibit B.23.158 MOH.0001.0265.0001) and consistent with both the International Organisation for Standardisation (**ISO**) *31000:2018 Risk Management – Guidelines* and NSW Treasury's *TPP20_08 Internal Audit and Risk Management Policy for the General Government Sector* (Exhibit 122 NSW Health Tranche 4 Consolidated Exhibit List).

128. Broad requirements under *PD2022_023* include that:

a. All NSW Health organisations must establish and maintain a risk management framework that is appropriate, fit for purpose, and tailored to the needs of the organisation.

b. All NSW Health organisations must have an enterprise-wide risk management procedure in place that outlines how the organisation will identify, assess, manage and monitor risks. It must include processes for escalating risks and for providing risk reports to the senior executive team, the Chief Executive, the Audit and Risk Committee and Board. The organisation's risk appetite is also to be documented, communicated and regularly reviewed.

129. Further detail, including an outline of mandatory requirements and supporting resources for NSW Health organisations are provided within *PD2022_023.*

130. In terms of responsibility for risk:

a. All NSW Health staff (permanent, temporary or contract) are accountable for managing risk in their day-today roles, including carrying out their roles in accordance with policies and procedures, identifying risks and inefficient or ineffective controls and reporting these to the appropriate level of management.

b. Chief Executives have ultimate responsibility and accountability for risk management in their organisation. All staff are to contribute to a positive risk culture that encourages desirable risk management behaviours, with concerns about business practices raised and acted upon promptly.

c. Managers and decision makers at all levels in NSW Health organisations are accountable for managing risk within their sphere of authority and in relation to the decisions they take. In addition to the responsibilities above, senior executives are responsible for managing specific strategic risks and ensuring necessary controls and treatment plans are in place to effectively manage that risk, including providing adequate resources.

131. NSW Health organisations are required to submit an Internal Audit and Risk Management Attestation Statement to the Ministry by 17 July each year. This is an annual statement to the NSW Health Secretary explaining that organisation's compliance with both *PD2022_023* and *PD2022_022*during that financial year. Advice, opinion or feedback may be sought from the Audit and Risk Committee in relation to the organisation's compliance.

132. Where a NSW Health organisation is not able to comply with any of the requirements of these policy directives, the Chief Executive may apply in writing to the Secretary, NSW Health for an exception from the relevant policy requirements prior to 31 March of the financial year for which the exemption is sought.

133. The request must include an outline of why the organisation has not been able to comply with the policy requirements. A determination with respect to an exception will be for the reporting period only and, even if circumstances for the initial exception are ongoing, further exceptions must be renewed annually.

134. Where an exception is granted, the exception must be indicated on the Attestation Statement. The Audit and Risk Committee and Board must be notified of the request for exception.

G. ADVANTAGES, CHALLENGES AND FURTHER OPPORTUNITIES

Balance of central oversight and local devolved decision-making

135. I have observed that a key ongoing challenge for governance in the NSW Health system is finding the best balance between centralised and devolved decision making. In my

opinion, having regard to the intentional design of the Governance framework and in determining how it evolves, there needs to be a focus on finding the best balance or "sweet spot" between matters that should be the subject of central mandating and those that are amenable to local decision making by a health entity. The exercise of determining the right balance point on that spectrum needs to be sensitive to the wider context of the challenges facing the NSW Health system – as the stressors placed on the system by the Covid pandemic demonstrated.

136. During the Covid pandemic, the NSW Health system was incredibly adaptive and flexible. Temporary governance structures were stood up (for example, the State Health Emergency Operations Centre and the Public Health Emergency Operations Centre) and there was a temporary re-setting of the balance between central and devolved decision-making from which there has now been a re-setting back to a more business as usual model. The adaptive and flexible nature of the NSW Health system during this time demonstrated a level of flexibility, adaptability and resilience in the existing governance structures, albeit during a pandemic.

137. The Secretary commissioned a Debrief of the NSW Health system's response to Covid which was conducted by Robyn Kruk AO and titled *As one system: The NSW Health System's Response to COVID-19* (Exhibit 217 NSW Health Tranche 4 Consolidated Exhibit List) (**Kruk Report**). The Kruk Report noted that NSW Health was relatively well-positioned to respond to the pandemic for a variety of reasons including because of its "devolved operational structures that retained the ability to respond and deploy resources across the health system...". The balanced model of system devolution provided the processes, relationships, networks and systems with which the system could respond to the pandemic as 'one system'.

138. This task of finding the best balance can be characterised as demonstrating where the most value for the total system lies for each area of governance decision making. Instead of viewing all Health governance matters as being areas for either Ministry mandating *or* local health entity freedom to act, more reward lies in finding the point where there is utility in commonality – in effect getting agreement on the type and level of consolidation of practice that avoids the system duplicating work in each health entity where outcomes could be achieved through collaboration to find a common and beneficial solution.

139. The consolidation from multiple pay roll systems to one system is an excellent example of the utility of acting for a common purpose and outcome. That utility is now clear to all system members. The Single Digital Patient Record project now underway is another.

But there have also been areas where it was evidently beneficial to collaborate to remove system variances in practice – two examples being the review of Board Governance arrangements, and the standardisation of chief executive performance review processes completed in 2019.

140. The enduring future work on the governance framework is not so much about "blowing up" the existing arrangements – but rather challenging system members to engage in a dialogue to find the point of useful collaboration between the two end points of the spectrum – finding where the most utility in commonality exists.

Continual adjustments to governance structures

141. The Ministry is continually reviewing the governance structures of the NSW Health system and, as a result, there have been a number of recent changes to divisional structures. For example:

a. The Regional Health Division was established in April 2022, which involved the Coordinator General of the Regional Health Division being appointed and having a direct reporting line to the Secretary. The establishment of the Regional Health Division and, in particular, the appointment of the Coordinator General, was designed to bring a regional voice and representation directly to the Executive of NSW Health so that the importance of regional health and governance could be integrated across all levels of the NSW Health system. In July 2023, the Coordinator General role was reclassified to Deputy Secretary, Regional Health.

b. In January 2023, Wayne Jones was appointed as the State Health Services Functional Area Controller (**HSFAC**) at which time the position was changed to report directly to the Secretary and became a member of the Ministry Executive to strengthen and elevate NSW Health's system-wide emergency planning and response capacity. The position was created to represent all health services on the State Emergency Management Committee and is the key liaison between NSW Health and its partner agencies in delivering whole of government emergency responses. The HSFAC is also responsible for leading the implementation of recommendations of a number of key statewide reviews.

c. In February 2023, the Agency of Clinical Innovation (**ACI**) and the Office for Health and Medical Research were integrated to form a new Division of Clinical Innovation and Research (**CIR Division**) within the Ministry. The ACI continues in existence as a separate pillar organisation. The CIR Division was created to provide a central

point for coordination and strategy setting, and to drive a focus on statewide research and innovation priorities. The dual role of Deputy Secretary for the CIR Division and Chief Executive of ACI, which is held by Jean-Frederic Levesque, is an innovative approach to provide system leadership that spans the continuum of innovation.

d. In March 2023, the Health System Strategy and Planning Division became the Health System Strategy and Patient Experience Division (led by Deb Willcox) to reflect the move of the Experience Team into the Division to support a more integrated focus on human experience in broader health policy. As a result, the existing Patient Experience and System Performance Division was changed to the System Sustainability and Performance Division (led by Matthew Daly) to reflect the focus of the Division on supporting the broader sustainability of the health system, including bringing various programs aimed at hospital avoidance, including Integrated Care, Collaborative Commissioning and Leading Better Value Care, together under a single portfolio, along with the Virtual Care team. These alignments aimed to ensure there is a co-ordinated system wide approach in place for NSW Health's stakeholders.

e. In November 2023, the Centre for Aboriginal Health (**CAH**) was realigned to report directly to the Secretary. This resulted in the Executive Director, CAH being a member of the Ministry's Executive which will enhance the Ministry's ability to address the unique health needs and aspirations of Aboriginal people in NSW, and support the CAH's role in working across the Ministry and the health system to improve outcomes for Aboriginal people. The realignment was also in line with the Transforming Aboriginal Health action plan that the statewide SEF commenced in 2022 where SEF agreed to a range of commitments to improve shared decision making through strengthening Aboriginal governance structures, including through having the most senior Aboriginal health executive in each Local Health District elevated to report directly to the LHD Chief Executive.

f. In January 2024, the Secretary established the eHealth NSW Board (an advisory board) under section 126C of the *Health Services Act* to oversight the operations of eHealth NSW. This resulted in the former eHealth Executive Council being disestablished noting the key elements of the Executive Council's functions would transfer to the newly established NSW Health ICT Strategy Group.

Philip Gregory Minns

Witness: PATRICIA MARINOVIC

9/4/24.

Date

9/4/24

Date