

## Sydney Children's Hospitals Network Board Charter – May 2023

### 1. Overview and Purpose

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The role of the Board is to govern the Sydney Children's Hospitals Network (SCHN) deriving authority from the *Health Services Act 1997*<sup>1</sup> (Act). The Board Charter provides the framework for governance within the SCHN and defines the roles, responsibilities and authorities of the Board and its members. The roles and responsibilities of the Board and Chief Executive are defined in the Act and in the Corporate Governance and Accountability Compendium for NSW Health<sup>2</sup>.

### 2. Governance

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SCHN is established as a specialty governed health corporation (s.41 of the Act) having the same responsibilities as a Local Health District. The Board is established under section 52F of the Act with those functions conferred under the Act and as summarised at section 3. Role of the Board. SCHN's purpose is to help children and young people live their healthiest lives, and we do this by providing exceptional clinical care, research, education and training.

The Board is subject to the control and direction of the Minister for Health and Medical Research, except in relation to the content of a recommendation or report to the Minister. This function has been delegated to the Secretary. Please note references in the Act to a Local Health District and District in this document are replaced with 'Network'.

#### 2.1 Board Composition

As provided in the Act (s26) Boards will consist of 6 to 13 members appointed by the Minister. Board appointments aim to ensure an appropriate mix of skills and expertise to oversee and provide guidance to large, complex organisations, including:

- expertise and experience in health management, business management and financial management
- expertise and experience in the provision of clinical and other health services
- representatives of universities, clinical schools or research centres
- knowledge and understanding of the community
- other background, skill, expertise, knowledge or expertise appropriate to the organisation
- at least one member must have expertise, knowledge or experience in relation to Aboriginal health

A member of a Board can hold office for such period (not exceeding five years) as may be specified in the member's instrument of appointment.

A member whose term of office expires is eligible (if otherwise qualified) for re-appointment but may not be appointed so as to hold office for more than ten years in total (whether or not the appointments are consecutive).

One of the members of a Board is, by the relevant instrument of appointment or by a further instrument signed by the Minister, to be appointed as the Chair of the Board.

A member of a Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

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<sup>1</sup> <https://www.legislation.nsw.gov.au/#/view/act/1997/154>

<sup>2</sup> <https://www.health.nsw.gov.au/policies/manuals/Pages/corporate-governance-compendium.aspx>

## 2.2 Board Committee Structure

The SCHN Board has established the following committees<sup>3</sup> to support the Network to perform its functions under the Act:

- Aboriginal Health Strategic Committee\*
- Audit and Risk Committee
- Finance, Capital Works and Performance Committee
- Medical and Dental Appointments Advisory Committee
- People, Strategy and Engagement Committee\*
- Quality, Safety and Patient Engagement Committee

\* these Committees were established to provide additional assurance for the Board noting not required under the Model By-laws

Each of the committees has a Terms of Reference and reports through to the Board following each meeting. In addition, the SCHN has established the following forums to provide an opportunity for clinical consultation and input for medical, nursing and allied health staff to ensure the delivery of effective patient care and the efficient operations of the Network:

- Medical Staff Councils
- Network Clinical Council

The Board may call upon the Network Clinical Council to provide advice on clinical matters as required. The Chief Executive and other Senior Executives will routinely attend the Clinical Council meetings to provide an update on matters of mutual interest and receive feedback that can be referenced in decision making.

## 3. Role of the Board

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The role of the Board is focused on leading, directing and monitoring the activities of the Network and driving overall performance. The functions of the Board are defined in the Act (s28) and in the Corporate Governance and Accountability Compendium for NSW Health as follows:

- 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 Network and to approve those frameworks
- to approve systems
  - to support the efficient, effective and economic operation of the Network, and
  - to ensure the Network manages its budget to ensure performance targets are met, and
  - to ensure that Network resources are applied equitably to meet the needs of the community served by the Network, and
  - to ensure an enterprise-wide risk management framework is in place, including the levels of risk appetite and tolerance, and for seeking appropriate assurance on the effectiveness of the framework
- to ensure strategic plans to guide the delivery of services are developed for the Network and to approve plans endorsed by the Executive
- to provide strategic oversight of and to monitor the Network's financial and operational performance in accordance with the state-wide performance framework against the performance measures in the service agreement for the Network

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<sup>3</sup> The criteria under which these structures and forums function are set out in the Corporate Governance and Accountability Compendium (2012) and/or in the NSW Health Model By-laws

- to appoint, and exercise employer functions in relation to the Chief Executive of the Network including an annual performance assessment
- to ensure that the number of NSW Health Service senior executives employed to enable the Network to exercise its functions, and the remuneration paid to those executives, are consistent with any direction by the Health Secretary or condition referred to in the Act (s122 (2))
- to confer with the Chief Executive of the Network in connection with the operational performance targets and performance measures to be negotiated in the service agreement for the Network under the National Health Reform Agreement
- to ensure safety and quality systems are in place which are focused on the patient experience, quality outcomes, evidence based practice, education and research
- to ensure the design, implementation and effectiveness of a social, environmental and ethical sustainability framework and strategy
- to ensure research, education and training strategies are effective and focused on supporting staff and the Network in striving for excellence
- to approve the service agreement for the Network under the National Health Reform Agreement
- to seek the views of providers and consumers of health services and of other members of the community served by the Network, as to the Network's policies, plans and initiatives for the provision of health services, and to confer with the Chief Executive of the Network on how to support, encourage and facilitate community and clinician involvement in the planning of Network services
- to advise providers and consumers of health services and other members of the community served by the Network as to the Network's policies, plans and initiatives for the provision of health services
- to endorse the Network Annual Report
- to liaise with the Boards of other Local Health Districts and specialty network-governed health corporations in relation to both local and state-wide initiatives for the provision of health services
- such other functions as are conferred or imposed on it by the regulations.

These functions relate to governance oversight, not a day-to-day management and operational role. The Board Chair also has an oversight role in respect of the Chief Executive. In addition to making recommendations as to appointment of the Chief Executive, the Board Chair also enters into an annual performance agreement with the Chief Executive and undertakes an annual performance review as provided for under the Health Executive Service Framework.

#### **4. Role of the Board Chair**

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The Chair is the leader of the Board, the official representative and spokesperson for the Board and the principal link between the Board and the Chief Executive. The role of the Board Chair is specified in the NSW Government Boards and Committees Guidelines<sup>4</sup> as follows:

The Chair is responsible for leading the activities of the Board. The Chair's responsibilities include:

- ensuring that the Board performs its functions, acting within any relevant statutory powers, legal obligations and complying with approved policies relevant to the entity (including whole of government policies)

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<sup>4</sup> [https://arp.nsw.gov.au/assets/ars/99f08809f0/NSW\\_Government\\_Boards\\_and\\_Committee\\_Guidelines\\_-\\_Updated\\_September\\_2015.pdf](https://arp.nsw.gov.au/assets/ars/99f08809f0/NSW_Government_Boards_and_Committee_Guidelines_-_Updated_September_2015.pdf)

- facilitating the conduct of meetings to allow frank and open discussion
- ensuring individual members make an effective contribution
- developing the capability of the Board or Committee and its members
- facilitating the flow of information to members and stakeholders
- liaising with the relevant Ministers, Secretary, Deans of Universities and Chairs of other Local Health Districts
- reviewing the performance and contribution of members
- ensuring that appropriate secretariat support is provided
- in some circumstances, providing input into the nomination, selection and recruitment process for new members.

#### 4.1 Role of the Deputy Chair

One of the members of the Board is nominated by the Chair and approved by the Minister to act as Deputy to the Chair. If the Chair is unavailable, the Deputy may take on the responsibilities of the Chair on a temporary basis. The Deputy Chair may act in the office of Chair during the illness or absence of the Chair, and while so acting has and may exercise all the functions of the Chair and is taken to be the Chair.

## 5. Role of Board Members

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### 5.1 Values and Conduct

Board Members are expected to uphold and model NSW Health's CORE values of Collaboration, Openness, Respect, and Empowerment.

Collaboration – every person in the health system plays a valuable role that contributes to achieving the best possible outcomes

Openness – encouraging communication that is transparent and two-way, to build trust, confidence and greater cooperation

Respect – upholds the dignity of each person and regard for the role, abilities, knowledge, skill and achievements of each person

Empowerment – recognises the knowledge sharing to make well informed decisions to enhance health care.

The nature of work in the NSW public sector requires a high standard of accountability, transparency and fairness. Board members are required to comply with:

- Relevant legislation including regulations
- The Department of Premier and Cabinet Conduct Guidelines for Members of NSW Government Boards and Committees <sup>5</sup>
- The NSW Health Code of Conduct <sup>6</sup>.

### 5.2 Roles and Responsibilities

Board members are appointed for the good of the SCHN and are not there to represent the group or interest that may have nominated them. The role of the Board member is not one of direct representation of any particular sectional interest, rather they must carry out their role and functions in the interests of the SCHN and the community that the Network serves as a whole.

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<sup>5</sup> [https://arp.nsw.gov.au/assets/ars/99f08809f0/NSW\\_Government\\_Boards\\_and\\_Committee\\_Guidelines\\_-\\_Updated\\_September\\_2015.pdf](https://arp.nsw.gov.au/assets/ars/99f08809f0/NSW_Government_Boards_and_Committee_Guidelines_-_Updated_September_2015.pdf)

<sup>6</sup> <https://www.health.nsw.gov.au/mentalhealth/professionals/Documents/prac-guide/nsw-code-of-cond.pdf>

Board members are expected to be forthright in meetings, to be prepared and consider all aspects of any issue that influences the strategic direction of the SCHN. Board members must respect the SCHN Executive's operational role in execution of the Board strategy and support decisions made by the Board.

The Corporate Governance and Accountability Compendium for NSW Health define the roles and responsibilities for Board members in Section 3.4.

### **5.2.1 Compliance with Laws and Policy Directives**

- Requirement to comply with relevant legislation including regulations, and to maintain the values and standards of conduct outlined in section 5.1.

### **5.2.2 Fiduciary duties of good faith**

- Duty to act honestly and properly for the benefit of the organisation.
- Duty to disclose interests in matters before the board, including potential conflicts of interest.
- Duty not to divert (without properly delegated authority) the organisation's property, information and opportunities

### **5.2.3 Duty to act honestly and properly for the benefit of the SCHN**

- A Board member must not act in self-interest and must at all times avoid any conflict between their duty to the Board and the Network, and their own or third party interests.
- A Board member has an overriding and predominant duty to serve the interests of the Board and the Network, in preference, wherever conflict arises, to any group of which they are a member.
- A Board member has a duty to demonstrate leadership and stewardship of public resources.

### **5.2.4 Duty to disclose interest**

- A Board member must disclose to the Board any direct or indirect interest the member has in a matter before them.
- The responsibility for managing a conflict of interest is shared between the Board member who has the conflict (the conflicted Board member) and all other Board members.
- The conflicted Board member must firstly identify their conflict of interest and notify the other Board members as soon as practicable. It is then the responsibility of the remaining Board members to decide what appropriate remedial action is to occur.
- It is not solely for a Board member to decide whether they believe they have a conflict of interest. Board members should take into account the values of other members.
- A Board member is required to avoid actual or potential conflicts between obligations to the Network and personal interests or duties to others and being accountable to the Network for business opportunities that come to them as a Board member.

Process for managing conflicts of interest:

- Stage 1: A Board member identifies that they have a conflict of interest or a Board member identifies a fellow Board member has a conflict of interest.
- Stage 2: The Board member who identified the conflict notifies the Board.
- Stage 3: Remaining Board members determine the appropriate remedial action.
- Stage 4: Remaining Board members inform the conflicted Board member of the outcome.

The Board Executive Officer will maintain a conflict of interests register. This register will be updated whenever a change occurs.

It is important for conflicts to be managed by impartial decision-makers who are not involved in the conflict. The risks associated with the conflicted Board member being involved in a specific decision by the Board need to be considered, so that the Board can determine the most appropriate remedial action. Usually, the conflicted individual will not be involved in a discussion regarding remedial action in relation to their particular conflict of interest. By removing the conflicted individual from the management process, the SCHN will be able to demonstrate it has acted responsibly and with reasonable care to address the issue.

#### **5.2.5 Duty not to misuse the SCHN property, information or opportunities:**

- Board members must comply with the duty of confidentiality of information about the affairs of the SCHN obtained as a Board member.
- Release of information by a Board member must be lawful and either required by law or authorised by the Board.
- The use of SCHN property, information or opportunities must be authorised by the Board and be for the benefit of the SCHN.

#### **5.2.6 Duty of care and diligence**

- Board members are required to exercise care and diligence in the exercise of their powers.
- A Board member is expected to take a diligent and intelligent interest in the information available and request further clarity if required to satisfy their understanding.
- Board members are required to monitor the Network's financial and operational performance in accordance with the state-wide performance framework against the performance measures in the Network's service agreement.
- A Board member is not required to give continuous attention to SCHN affairs – the duties are intermittent to be performed at and in preparation for Board meetings.
- Where duties may properly be left to an officer of the SCHN, a Board member is justified in trusting the officer to perform the duties honestly.

## **6. Role of the Chief Executive**

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The Chief Executive is an ex officio member of the Board and is employed as a Health Service senior executive by the Secretary, NSW Health.

Under the Act (s24) the Chief Executive manages and controls the affairs of the Network. The Chief Executive can commit the Network contractually and legally and is the employer delegate for all staff working in the SCHN. In the exercise of their functions, the Chief Executive is accountable to the Board constituted for the Network. Under the By-Laws the Board may have a closed meeting excluding the Chief Executive for the purpose of evaluation of the Chief Executive's performance.

## **7. Role of the Board Executive Officer**

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The Board Executive Officer is responsible and accountable for:

- Liaising with the Chair and Chief Executive to determine the timing and content of meetings.
- Providing Board members with an annual planner providing details of upcoming meetings.
- Producing and delivering the notice of meetings and agenda, including circulating the minutes of meetings.
- Preparing, managing and retaining all records of the Board, including the agenda, minutes, reports and recommendations.

- Ensuring all Board members have access to the Board portal.
- Coordinating actions arising to ensure that reports and updates are provided to the Board as required.
- Supporting the Chair in undertaking the Board evaluation and performance assessments.

## 8. Meeting Times and Procedures

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The Corporate Governance and Accountability Compendium details that at least six ordinary meetings of the Board must be held at regular intervals and an annual public meeting must be held between 1 July and 31 December each year.

The Board currently schedules 11 ordinary meetings each year (each month except January), with the dates, times and locations contained in an annual planner. Board meetings are usually held in person with the option to attend virtually as required through an appropriate secure technological means as agreed with the Chair. The Board Chair may invite other attendees to the meeting as required.

All Board papers and correspondence are delivered to members via the Board portal. It is the responsibility of members to access papers via the Board portal.

The SCHN has established procedures for the Board and each of the Board approved committees (Terms of Reference), in accordance with the Act, Regulation and By-Laws. The procedures are documented and accessible through the Board Executive Officer and cover the following matters:

- distribution of minutes, reports to be received (and frequency), types of matters that must be approved; types of matters that should be noted
- declarations of conflicts of interest
- matters to be dealt with in confidence
- training and development; attendance at conferences specific to Board roles and responsibilities
- remuneration

### 8.1 Quorum and Voting

The minimum quorum for a Board meeting is at least half of the ministerially appointed Board members plus one. Any matters requiring a decision will be decided by a majority of votes of members present.

### 8.2 Out of Session Decisions (Circular Resolutions)

A resolution is validly made by the Board, even if it is not passed at a meeting of the Board, if a majority of the Board Members agree to a circular resolution. Items would typically only be managed out of session where:

- The item is urgent and must be considered before the next scheduled meeting; or
- Where the meeting has been cancelled and the items are managed out of session to prevent a back-log.

The Chair may decide to circulate items for comment and finalisation out of session. An out of session paper will be sent to Board Members as a circular resolution with a requested response date. If a Board Member has no comment to make or is unable to comment on an out of session item, this needs to be conveyed to the Board Executive Officer. The Board Executive Officer will collate responses and prepare for Chair approval. The final decision in respect to the item will be entered into the minutes of the next Board meeting.

### 8.3 Confidentiality

The principles of confidentiality are provided in the Corporate Governance and Accountability Compendium (3.1.3.3). The maintenance of confidentiality at Board meetings is an essential aspect of



good governance. It ensures trust and supports open and honest discussion of matters so that those in attendance can frankly express their views. Information discussed in Board meetings will often also be information that is not otherwise in the public domain, or which is subject to protections or restrictions such as legal privilege, commercial in confidence obligations, or privacy rules.

### 8.3 Publication of Board Minutes

The minutes of Board meetings are required to be publicly available. NSW Health policy on Board minutes however also makes it clear that where there are substantial and genuine reasons for maintaining confidentiality such as commercial sensitivity, adverse effect on law enforcement, prejudice to current litigation or negotiations, or interference with the right to privacy of third parties, it would be appropriate to excise the confidential information.

At an operational level, it is the responsibility of the Board to ensure minutes of the meeting are publicly available and there is a proper level of transparency with their community and clinicians, while also observing an appropriate level of confidentiality in respect of their internal discussions on Board business and confidential or sensitive information provided to them to assist in the conduct of their business. For these reasons, it is appropriate for a Board to determine the extent of release of information discussed at, and provided to, the Board, either on a case-by-case basis, or through guidelines tailored to the business of a particular Board.

## 9. Induction, Performance and Evaluation

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The Chair, the Chief Executive and Board Executive Officer contribute to the induction of all new members of the Board to assist new members with actively participating in Board decision-making at the earliest opportunity. Development activities for the Board as a whole and on an individual basis will be available from time to time.

The Board considers the ongoing development and improvement of its performance as critical to effective governance. Hence the Board will regularly review the effectiveness of meetings and undertake an annual Board evaluation of its performance, including its performance against the requirements of the Board Charter and the performance of individual Committees. Following each evaluation, the Board will consider what, if any, actions need to be taken to improve its performance. The Board will annually review the composition of both the Board Charter and Board Committees Terms of Reference.

Board members are expected to undertake professional development to maintain current health / governance knowledge to fulfil their duties. Board member attendance at Ministry of Health Board forums is encouraged.

### 9.1 Board Performance

In addition to regular Board meeting evaluations, as part of the Board evaluation process the Board will assess its overall performance including:

- Are the Board agendas addressing the key strategic issues the Board need to consider?
- Are there other strategic matters or issues that need to be considered by the Board? What do we want to devote more time and effort to at Board meetings?
- Are the materials provided by management providing assurance for the Board that allow an understanding of the topics and issues being covered in meetings?
  - What additional or different information should we get?
  - What information should we stop receiving, or receive less frequently?
- Are there any areas of concern for the Board where a deep dive report would be useful?
- What could we do differently in Board meetings to improve discussion?
- What input could we get from internal or external resources to help improve our knowledge and effectiveness?



- What topics could be considered for Board development sessions?

## 9.2 Individual Member Performance

The following factors will be considered by the Chair in the evaluation of individual Board member contributions:

- Meeting attendance, preparation and active participation
- Ability to communicate and express ideas
- Willingness to listen and acknowledge other viewpoints
- Ability to work with other Board members and management

## 10. Board Indemnity

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The Corporations Law does not apply to Local Health Districts and specialty networks. As such, Board members are not subject to the criminal and civil penalty regimes under that legislation.

The Act (s133B) provides additional protection from personal liability for the Board, a member of the Board or a person acting under the direction of the Board or the SCHN, in relation to acts or omissions done in good faith for the purposes of executing that or any other Act. The Treasury Managed Fund Contract for Coverage for Public Health Organisations includes directors' and officers' cover, which provides an indemnity for actions committed by Board members or committed in good faith for the purpose of discharging their governing Board or committee duties.