

Special Commission of Inquiry into Healthcare Funding

Statement of Vanessa Clements

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

My role

2. I am the Director - Planning, Redevelopment and Project Management Office (**the Office**) for the Nepean Blue Mountains Local Health District (**NBMLHD**). I have held that role since January 2022.
3. In my role, I am responsible for the project management of the Office. I take the lead for coordinating many district-wide or strategic projects for NBMLHD. When I commenced at NBMLHD I became responsible for coordinating the negotiations with St John of God Healthcare Inc (**SJGHC**) for a new Services Agreement.
4. This outline provides:
 - a. An overview of the history of the relationship between SJGHC and NBMLHD;
 - b. Detail regarding the negotiations between NBMLHD and SJGHC regarding the renewal of the Public Private Partnership (**PPP**) for the operation of HDHS, and
 - c. Circumstances surrounding the transfer of the Hawkesbury District Health Service Ltd (HDHS) from SJGHC to NBMLHD.

Overview

5. Below I have set out at an overview of the history of the Services Agreement between NBMLHD and St John of God. As the arrangement has been in place since 1994, and I commenced employment at NBMLHD in January 2022, my overview of the history of the arrangement below is based on my review of relevant NBMLHD files and enquiries that I have made within NSW Health.

6. On 14 December 1994 the Health Administration Corporation (**HAC**) and Wentworth Area Health Service (**WAHS**), the predecessor to NBMLHD, entered into a PPP contract with Hawkesbury District Health Service Ltd (**HDHS Ltd**) (**the Services Agreement**), controlled by Catholic Health Care Services (**CHCS**), later Catholic Health Care, and sub-agreements with CHCS's finance and construction partners. The HDHS facility commenced operation on 7 August 1996. The Services Agreement had an end date of 6 August 2014, with option to extend, after which the HDHS facility would return to the ownership of WAHS, as it then was.
7. The Services Agreement was amended by a Deed of Amendment to the Services Agreement entered into between WAHS and HDHS Ltd dated 23 June 2000.
8. On 27 May 2015, Catholic Health Care exercised the option to extend the Services Agreement for a period of 5 years commencing on 1 July 2017 and ending on 30 June 2022.
9. With the consent of NBMLHD, HDHS was subsequently transferred from the control of Catholic Health Care to St John of God District Health Campus Ltd, operated by SJGHC on 4 November 2015.

Negotiations between NBMLHD and SJGHC regarding the renewal of the Public Private Partnership for the operation of the Hawkesbury District Health Service (HDHS)

10. When I joined NBMLHD, I became responsible for coordinating the negotiations with SJGHC to obtain a new long term Services Agreement with SJGHC for the operation of HDHS. At this time the Services Agreement was due to expire on 30 June 2022.
11. With the assistance of the MOH, Herbert Smith Freehills were retained to assist with the drafting of the new agreement. SJGHC and NBMLHD agreed the negotiation would be undertaken in two parts:
 - a. Development of a Terms Sheet which describes the principles of the future agreement, and
 - b. Development of a detailed Services Agreement based on the principles in the Terms Sheet.
12. In March 2022, approval to extend the Services Agreement with SJGHC was granted by the Ministry of Health (**MOH**). To enable discussions for a new long-term Services

Agreement, the parties entered into a Deed of Extension of Services Agreement on or around 30 June 2022, under which the parties agreed:

- a. to extend the term of the Services Agreement to 31 December 2023;
- b. to use best endeavours to agree on the principles of a new services agreement by 31 December 2022;
- c. if the parties have agreed on the principles of a new services agreement, but have been unable to agree a new binding services agreement, by 30 April 2023, then the term of the Services Agreement will be extended to 30 April 2024, and
- d. if the parties fail to agree on the principles of a new services agreement by 31 December 2022, then SJGHC will transition services back to NBMLHD by no later than 31 December 2023, when the Services Agreement will terminate.

13. From September 2022, regular meetings with SJGHC took place to discuss the terms of the new Services Agreement. The first meeting was held in September 2022 to discuss the high-level principles of the new Services Agreement which formed the basis of the first draft Terms Sheet. Subsequent meetings were held to discuss various iterations of the Terms Sheet.

14. During this process it became clear that agreement on the Terms Sheet was not going to be reached between the parties by 31 December 2022. Accordingly, an Amending Deed was executed on 29 December 2022 under which the parties agreed:

- a. to extend the term of the Services Agreement to 31 March 2024,
- b. to use best endeavours to agree on the principles of a new services agreement by 28 February 2023,
- c. if the parties have agreed on the principles of a new services agreement, but have been unable to agree a new binding services agreement, by 30 June 2023, then the term of the Services Agreement will be extended to 30 June 2024, and
- d. if the parties fail to agree on the principles of a new services agreement by 28 February 2023, then SJGHC will transition services back to NBMLHD by no later than 31 March 2024, when the Services Agreement will terminate.

15. During this time, meetings were also variously held with Deputy Secretary Health System Strategy and Planning, the Chief Financial Officer, the Chief Procurement Officer and myself to seek advice on the negotiations, propose next steps and obtain various approvals. In February 2023, SJGHC were also invited to participate in discussions with the Deputy Secretary, Health System Strategy and Planning, which I attended. SJGHC also accepted the proposal to undertake joint clinical services planning.
16. Between 27 October 2022 and 1 September 2023, at least 9 different iterations of the Terms Sheet setting out the principles of a new services agreement were distributed between the parties. This is in addition to around 5 iterations of extracts of certain provisions of the Terms Sheet which were individually negotiated, developed and distributed. There was also a number of iterations of correspondence on high level principles between the parties.
17. Examples of key issues included:
 - a. End-of term transition arrangements and handover of staff provisions;
 - b. The duration of the new Services Agreement;
 - c. Grounds for termination of the new Services Agreement. In particular SJGHC requested a mechanism to terminate the Agreement in the case of financial unsustainability;
 - d. The HDHS Facility; SJGHC did not want obligations surrounding the facility being fit for purpose or to meet any kind of handover condition;
 - e. SJGHC were requesting either an increase in capital contribution, upgrades to the facility or relief from KPI's/abatements in respect of the LHD's failure to refurbish, update or expand the facility;
 - f. SJGHC would not agree to any abatement regime which penalised SJGHC in the event of being inadequately funded or resourced by NBMLHD, and
 - g. SJGHC wanted greater transparency regarding KPIs and the ability for KPIs to be individually negotiated.
18. In my view, SJGHC's interest in reducing the length of the new services agreement, and strengthening its ability to terminate the new services agreement, indicated some uncertainty about its interest in continuing the PPP with NBMLHD. By this point however,

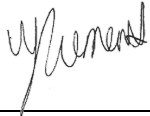
SJGHC had been negotiating with NBMLHD on the Terms Sheet for a lengthy period of time which strongly indicated to NBMLHD its intention to enter into a new services agreement and continue operation of HDHS.

19. On 1 September 2023, SJGHC advised that it agreed to the Terms Sheet. Lee Gregory commenced as the Acting Chief Executive of NBMLHD on 4 September 2023.
20. On 18 October 2023, the Terms Sheet was also accepted on behalf of NBMLHD by Lee Gregory, Chief Executive of NBMLHD (MOH.0002.0122.0001) who informed SJGHC that Herbert Smith Freehills had been instructed to commence drafting the new services agreement to give effect to the Terms Sheet, in accordance with the agreed plan of negotiation.
21. By this point, I understood from my discussions with the HDHS CEO that HDHS had already started to show a loss for the first quarter of the 2023/24 financial year and I understood this was an area of concern of the SJGHC board. On 8 November 2023, I understand the Deputy Secretary of Health Strategy and Patient Experience met with NBMLHD Chief Executive and the Chief Executive, SJGHC.

Transfer of HSHD back to NBMLHD

22. On 5 December 2023, a letter from SJGHC to Deputy Secretary of Health Strategy and Patient Experience was received (MOH.0002.0166.0001), advising of its intention to return the service to NBMLHD. On 25 January 2024 a Second Amending Deed of Extension was executed under which it was agreed to extend the term of the Services Agreement from 31 March 2024 to 30 June 2024 to enable the transfer of HDHS back to NBMLHD to occur smoothly. As at the date of finalising this outline, SJGHC and NBMLHD are still in discussion about payment SJGHC is to receive in extending the Services Agreement from 31 March 2024 to 30 June 2024.
23. Once SJGHC communicated its intention not to enter into a new Services Agreement, NBMLHD, and MOH immediately started to plan its next steps to transfer HDHS back into NBMLHD, with the assistance of SJGHC.
24. I am responsible for overseeing the transfer of HDHS back into NBMLHD. I am a conduit between the legal team, MOH, SJGHC and the six Working Groups that are operating to implement the handover.

25. The Working Groups include: ICT, Finance and Legal, Facilities, Stakeholder Engagement and Communication, Service Delivery and Governance, HealthShare (shared services).
26. The project governance also includes a Project Control Group (which includes the Chairs of the six working groups), an overarching Steering Committee and a Ministry Oversight Committee.
27. The handover has been a very collaborative process between SJGHC and NBMLHD. We have been working together to ensure a smooth transition for staff and the community and I hope that is evident once the transfer has occurred.



Vanessa Clements

6 June 2024

Date



Witness:

6 June 2024

Date