

## Special Commission of Inquiry into Healthcare Funding

### Statement of Philip Gregory Minns

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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 have previously provided the Inquiry with a statement dated 9 April 2024 (MOH.9999.0764.0001) which sets out my role and responsibilities and the organisational and governance structure of NSW Health. A copy of my CV (MOH.9999.0779.0001) was exhibited to that statement.
3. This outline addresses NSW Health process for workplace grievances and complaints, dispute resolution and staff consultation and does not re-canvas my statement of 9 April 2024, unless necessary to explain those areas, and should be read in conjunction with that statement. In addition, in answer to a question posed by the Inquiry in its letter of 19 April 2019 regarding St Vincent's Hospital Network, I have addressed transferability of staff between Affiliated Health Organisations (**AHOs**) and NSW Health.

#### **Transferability of Staff**

4. Generally the fact that AHOs employ their own staff brings neither significant benefits nor limitations for NSW Health. Under the *Health Services Act 1997*, since 2006 AHOs have been able to utilise staff from the NSW Health Service to operate their recognised establishments or services, by becoming a "declared" AHO. To date no AHO has sought to utilise this provision. As a result, AHOs employ their own staff on their own terms and conditions of employment. The *Health Services Regulation 2018* provides for the transfer of accrued leave between AHOs and NSW Health to assist employees moving between organisations. That said, in my experience, the workforce arrangements relating to AHOs

has not had any material impact on workforce within NSW Health overall, bearing in mind that the proportion of staff employed in AHOs is relatively modest compared to the rest of the NSW Health system.

### **Ministry of Health's role in complaint management and dispute resolution**

5. Although my portfolio includes People and Culture, it is important to observe that MOH sets system wide policy in relation to complaint management and dispute resolution but does not oversee compliance and implementation. MOH provides the resources and tool kits designed to achieve positive staff and patient outcomes, and direct support and assistance where required, but as part of the devolved governance model, Local Health Districts (**LHDs**), Specialty Health Networks (**SHNs**), shared services and state-wide services manage these processes locally.
6. From time to time, and generally by exception, MOH may become more actively involved in the response to a local complaint or dispute. This may arise where there is a conflict of interest or other consideration that makes local management challenging or impracticable. This might arise, for instance, where there is a complaint about a health service board or senior management, or where a breakdown of trust at a local level warrants Ministry involvement as a potential "circuit breaker". This assessment is made on a case-by-case basis. The Ministry's role in individual matters is variable, and can range from providing advice on the appropriate approach to a complaint the management of which otherwise remains at a local level, through to the Ministry assuming carriage of an investigation or facilitating support in respect of a local restorative process. It is relatively rare for the Ministry to undertake such an active role given the size and devolved nature of NSW Health, but also because the frameworks and processes that I describe generally result in the effective local resolution of complaints and concerns.

### **Concord Hospital**

7. I am aware that my colleagues at Sydney Local Health District (**SLHD**) will provide evidence on the development of the matters of concern involving the Medical Staff Council at Concord Hospital. I am not best placed to discuss the origins and initial management of these matters of concern, as consistent with MOH's approach to complaint resolution the matters were initially managed locally. I am able to speak to the decision to appoint an external party to assist in resolution, but will otherwise address the issues at a systems level.

8. The Medical Staff Council's vote of no confidence in the Chief Executive of SLHD was advised to MOH and the Minister's Office by email. The Secretary of NSW Health and I discussed with the SLHD Board that an external intervention would be beneficial to identify issues related to workplace culture at Concord Hospital and to design and begin implementation of a process to address matters raised. The external intervention was supported by the SLHD Board and the Secretary of NSW Health. MOH undertook a procurement exercise and engaged ProActive ReSolutions.
9. MOH supported the work of ProActive ReSolutions by providing additional resourcing. Two additional staff members, seconded from within the NSW Health system, were provided to the General Manager of Concord Hospital. A document of restorative actions, summary of progress and future actions was produced by the General Manager's Office at Concord Hospital which responded to the learnings of the restorative workshops led by ProActive ReSolutions and other cultural and operational learnings (MOH.0002.0149.0001).

#### **Grievance, complaint and dispute resolution policies**

10. PD2015\_049 NSW Health Code of Conduct (MOH.0001.0359.0001) defines standards of ethical and professional conduct that are required of everyone working in NSW Health.
11. The key NSW Health statewide policies relating to workplace grievances, complaints and dispute resolution are:
  - a. PD2016\_046 *Resolving Workplace Grievances* (MOH.0002.0047.0001) is directed to resolving workplace grievances through early intervention, self-resolution and manager assisted resolution. It does not apply to complaints of discrimination, bullying, harassment or misconduct which need to be managed in accordance with other NSW Health policy.
  - b. PD2021\_030 *Prevention and Management of Workplace Bullying* (MOH.0002.0087.0001) defines workplace bullying, implements risk controls to prevent bullying and sets out the process and timeframes for complaint making and resolution.
  - c. PD2018\_031 *Managing Misconduct* (MOH.0001.0391.0001) sets procedures and timeframes for managing complaints of potential misconduct or misconduct.

- d. PD2018\_032 *Managing Complaints and Concerns About Clinicians* (MOH.9999.0933.0001) is directed to managing serious complaints and concerns assessed as alleged misconduct or alleged unsatisfactory conduct requiring action to manage patient or staff safety and or notifications to external agencies and/or a disciplinary response.
  - e. PD2021\_017 *Service Check Register for NSW Health* (MOH.0001.0335.0001) outlines the requirements for the use of the service check register for individual staff with pending and finalised matters of serious misconduct.
  - f. PD2021\_030 *Prevention and Management of Unacceptable Workplace Behaviours JMO Module* (MOH.0002.0088.0001) provides mandatory requirements for the prevention and management of bullying, sexual harassment and discrimination in NSW Health. This document also outlines additional considerations and specific processes in the management of unacceptable workplace behaviour complaints arising from the junior medical workforce.
  - g. PD2020\_004 *Managing Child Related Allegations, Charges and Convictions Against NSW Health staff* (MOH.0002.0150.0001) sets out procedures for managing child related allegations, charges and convictions against anyone working in NSW Health, where the alleged victim was under 18 years of age at the time of the alleged conduct. This extends to child abuse material, and non-work related and historical matters.
12. The following additional policies relate only to complaints from patients and/or their families, ie people external to NSW Health:
- a. PD2020\_013 *Complaints Management Policy* (MOH.9999.0837.0001) deals with management of complaints which are not covered by another NSW Health policy, and which are made by patients, carers or members of the public about NSW Health.
  - b. GL2020\_008 *Complaint Management Guidelines* (MOH.9999.0838.0001) gives guidance on the implementation of the *Complaint Management Policy*.
  - c. PD2020\_047 *Incident Management Policy* (MOH.9999.0803.0001) directs how clinical and corporate incidents, near misses and complaints are to be recorded in the incident management system, ims+.

13. Although these policies apply state-wide, Local Health Districts (**LHDs**) and Specialty Health Networks (**SHNs**) may also develop their own local procedure documents to implement the state-wide policies.
14. Each NSW Health entity must host the Addressing Grievances and Concerns portals for managers and staff, which replicate the requirements of State-wide policies in easy to access step through menus, providing guidance on identification of a grievance or low level complaint versus a more serious complaint and toolkits reflecting the different processes for resolution. These portals are not a complaints lodgement system or a repository of complaints, rather they are designed to provide staff, including managers, with the information and skills to resolve disputes. The initiative was first launched with the explicit aim of improving the capability and consistency of NSW Health managers in resolving workplace issues. For this reason, the Managers portal was developed and launched first. Then the staff member portal was developed and launched.
15. The development of these portals, which was interrupted during the COVID-19 pandemic but is now complete, was designed to make the state-wide policies more accessible, but with links to policies for those who prefer to be informed by written policy. There are multiple ways to engage with the material to enable people to choose their method of reviewing the materials. In particular, there is a focus on case examples that enable people to consider whether their situation is similar to the case being described. This approach is designed to assist people who rarely have to deal with these issues to be able to find a way into the complexities of policies related to workplace issues. The portals are designed to ensure that a standardised approach to complaint management is adopted across NSW Health, while preserving local level decision making as to the most appropriate process for the particular situation.

#### **Risk management and prevention**

16. The resolution of grievances early is part of the risk management approach to preventing more serious conduct, along with local monitoring of other risk factors such as absenteeism and staff turnover.
17. A risk assessment template has been created by MOH (see Information Sheet 9 to PD2018\_031 Managing Misconduct (MOH.0001.0391.0001)) to assist local managers to assess whether there is any significant ongoing risk in the workplace to be managed, which may meet the criteria for entry into the NSW Health Service Check Register.

18. The role of MOH in prevention of conduct such as workplace bullying is generally not one of direct intervention, however an analytic index has recently been developed that enables the Ministry to look at data sources to determine when a hospital facility or department starts to demonstrate a concerning trend. This index involves analysis of a series of cultural indicators and engagement scores. MOH will be assessing data from the annual People Matter Employee Survey (**PMES**) to identify trends in particular NSW Health facilities or departments.
19. The analytical index is not a single index measure and it does not produce a single composite index score. Rather the analysis to identify potential units with a concerning trend is based on a number of measures from the PMES survey. The results identify units of concern thematically so as to provide NSW Health organisations with an area/s of focus for any identified unit. A 'unit' in this context is a work team identified by the health organisation, and may vary across the health system dependent upon local organisational structures.
20. This analysis identifies units with low overall PMES scores across a number of core domains and topics within the survey. A diagnostic analysis is then conducted on specific questions of interest including those in the domains of engagement, senior managers, and wellbeing, as well as specific questions on bullying, racism, pride in place of work, burnout, and career intentions, among others. The analysis makes comparison to the broader NSW Health portfolio results, as well as the statistical significance of the results within the various levels of the organisation. Results for a particular unit may therefore be compared to the hospital or Local Health District, or other units that may be relevant or similar. The Ministry is continuing to enhance the methodology of this analysis to encompass other datapoints which may support further identification of units or of concerns.
21. Analysis of data from NSW Health's clinical incident management system ims+ (or its predecessor IIMS) is also used to identify trends and risks in relation to clinical incidents.
22. The intent of the Ministry is to commence providing entity Chief Executives with the results of this analysis at the time their annual PMES results are made available to encourage each entity to focus on the areas with the most potential concern relating to the underlying workplace culture.

### **Grievances and low level complaints and dispute resolution**

23. NSW Health has approximately 180,000 employees and in an organisation of this size, it is important to ensure that minor workplace grievances or low level complaints are addressed as quickly as possible. MOH's focus, through policy and the development of the Addressing Grievances and Concerns Portals to guide that policy, is on self-resolution at an early stage or manager assisted resolution if required, but local to where the grievance arises.
24. Grievances are tiered into 3 levels of seriousness, 1 being the least serious, one off or irregular grievance, for which self-resolution is recommended. A staff member is still able to seek managerial assistance if required, but the approach to these types of grievance is to resolve quickly and locally before they escalate. In this local resolution process, the focus should be to assess what behaviours or practices an employee wants to see ceased or commenced in order to generate a better workplace experience.
25. Level 2 grievances relate to more complex issues including disputed views or a pattern of behaviour, for which a manager becomes involved and undertakes a documented assessment and resolution process.
26. Level 3 grievances are more serious matters such as conduct which may amount to bullying, harassment, misconduct or require performance management. Conduct of the more serious kind is dealt with by specific policy and processes and is discussed further below.
27. Through the provision of case examples and question prompts, the portal assists staff members to identify if their concern is a grievance or a more serious issue which may lead to a formal complaint. Assisting staff to draw this distinction is an important feature in setting expectations as to what appropriate dispute resolution of the concern will look like, and this is aided by a self-reflection tool.
28. Where a user moves through the questions in the portal and identifies that their concern is a grievance or a very low level complaint, not conduct potentially constituting serious misconduct or serious performance issues, then the portal directs them to processes and toolkits for self-resolution of the grievance. This includes suggested forms of words to start conversations with a colleague about a grievance or concern.
29. Where a manager's assistance is required, the manager's portal provides guidance to the manager on how to respond. All staff can access every aspect of the staff portal and

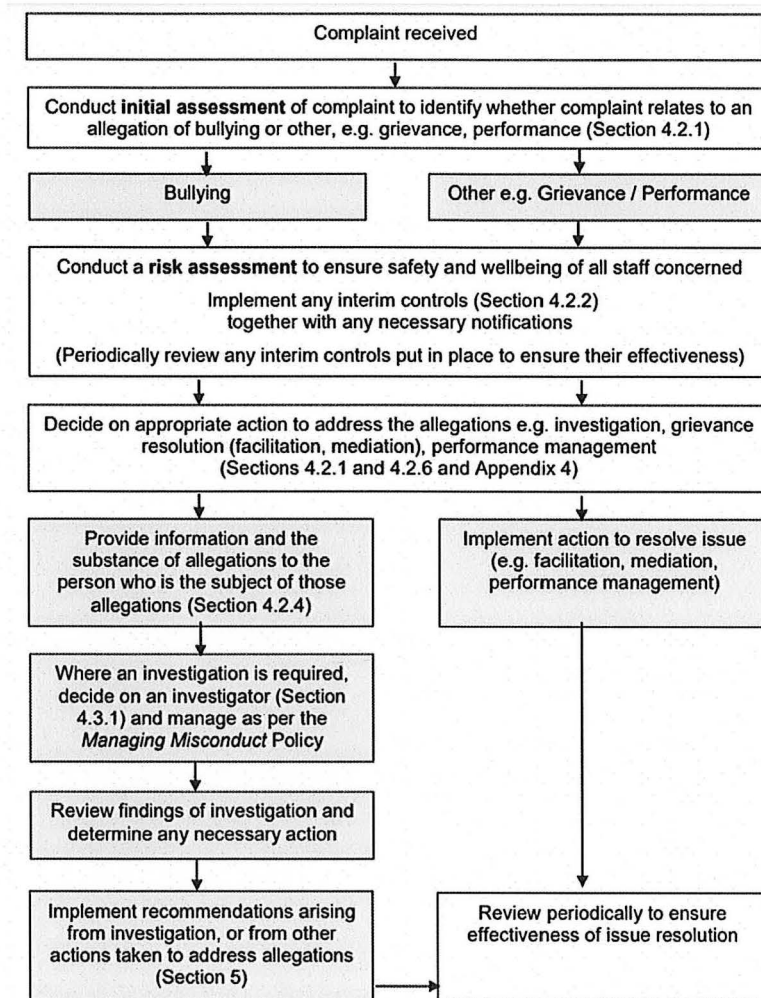
the manager's portal regardless of whether they have a management role, giving transparency to the process.

### **Serious non-clinical complaints and dispute resolution**

30. Where there is uncertainty as to the seriousness of the issue, the initial examples and questions in the portal also assist in identification of more serious complaints, beyond grievances, including categorisation of complaint type, for example bullying, to link to appropriate processes and policies.
31. Once a user has identified that their concern may amount to serious misconduct or conduct requiring performance management, they are provided with further guidance as to relevant processes for lodging a complaint. Further guidance about reporting conduct is available in the applicable policy directives.
32. The stepped through questions and information in the portal separates out the making of a complaint from the investigation of a complaint, again to manage staff expectations of the outcome of any complaint. The processes following the receipt and investigation of a complaint are explained in an easily accessible format summarising policy requirements, as are the requirements of notification and confidentiality.
33. In addition to the possibility of formal investigation, where identification of the concern indicates a potential notification to an external body is required, such as the Independent Commission Against Corruption, the portal will identify this requirement. For clinicians, notification to the relevant health profession council or the Australian Health Practitioners Regulatory Authority may need to be considered in appropriate cases.
34. The process for a manager's response is similar to that for responding to a grievance, up until the point of investigation, which is required only for more serious conduct. The manager's portal provides guidance on policy requirements for procedural fairness.
35. The form of the response following investigation is determined on a case by case basis, in accordance with policy, with the portals providing guidance as to the available options and direction regarding external notifications, for example in the case of findings of misconduct where a visiting practitioner's appointment is terminated, all other health organisations where he or she is appointed must be notified. The portal also provides guidance on rights of review, although it is envisaged that local managers would be supported by their local Human Resources Department.



36. The process for managing a more serious complaint such as bullying is best demonstrated through this flow chart:



37. In addition to the assistance provided in the portal for managers, staff with a management role have access to training programs to support performance management skills and knowledge that are delivered locally and by the Health Education and Training Institute (**HETI**).
38. From time to time LHDs have required additional assistance and resources where local resolution has been unsuccessful. Similarly to the engagement of ProActive ReSolutions to assist Concord Hospital, in 2020 MOH engaged an external provider as a pilot to assist Mid North Coast LHD in a “deep dive” analysis and resolution of suspected cultural concerns in the Mental Health Division across the LHD. The pilot aimed to develop a methodology for diagnostic analyses and cultural intervention using an expert provider to support the health organisation in sustaining culture change. The learnings from the

pilot informed the diagnostic approach and highlighted the need to have a range of external providers with varying expertise to support the health system dependent upon the issues identified.

### **Clinical complaints and dispute resolution**

39. Although the Addressing Grievances and Concerns portals may be used to give guidance about grievances involving clinicians, the portals are directed to workplace grievances rather than clinical incidents. There may be crossover between non-clinical and clinical incidents involving clinicians and the portals give guidance on appropriate avenues for complaint. Generally, complaints about clinical or safety matters, either from staff, patients or the public, are lodged through ims+. NSW Health's Incident Management Policy and ims+ is designed to provide a state-wide systematic process for identifying, notifying, prioritising and managing the outcomes of incidents, including near misses.
40. The management of complaints and incidents relating to patient safety is not within my portfolio unless the conduct is assessed as alleged misconduct or unsatisfactory conduct by a clinician requiring action to manage patient or staff safety and or notifications to external agencies and/or a disciplinary response.

### **Staff consultation**

41. The Ministry of Health conducts state-wide consultations on changes to policies and related resources through regular consultative channels with staff representatives such as a quarterly Peak Health Committee (between the Ministry and Peak Unions), and local Joint Consultative Committees (**JCC**).
42. NSW Health Awards have consultative provisions concerning workplace change. See, for example Clause 6 or Clause 35 of the Health Employees Conditions Award. Outside of JCC, the Ministry also collects feedback by circulating draft documents to staff representatives for comment and input.

### **Benefits and limitations of the NSW Health grievance, complaint and dispute resolution processes**

43. While the issues at Concord Hospital demonstrate a situation where NSW Health's dispute resolution processes – for whatever reason – have not been effective, on the whole the grievance, complaint and dispute resolution processes appear to be

developing greater consistency in implementation, particularly since being supported by the implementation of the Addressing Grievances and Concerns portals. These portals allow staff and managers to have confidence in how to operationally raise and resolve grievances and complaints.

44. The ability of MOH to centrally set policy and guide consistency in grievance and complaint resolution processes is an important benefit to the system, while allowing resolution close to where the issue occurs. This consistency and setting of expectations, but carried out quickly and locally, encourages staff to distinguish between low level and serious concerns and to deal with low level issues before they escalate.
45. It is difficult for MOH to drive local cultural change. The culture within a department or ward is a function of the daily workplace experiences in that environment and is crucially shaped by the local leadership response to issues that emerge. Culture in the many workplace environments in an organisation the size of NSW Health cannot be decreed by Policy or Directions. The Ministry works on the leadership approach of its managers and leaders through various leadership development initiatives. The entire point of the Addressing Grievances and Concerns portals was to build consistent capability across the system for how to respond to unhelpful and unhealthy workplace events. Another objective was to encourage people – by building their capability – to pursue the local and early resolution of matters – rather than avoiding addressing issues which over time can sometimes exacerbate. A final objective of the portals was to support people to develop a realistic sense of what kind of outcome could be available in their particular situation based on the proportionate seriousness of the behaviours leading to a grievance or concern. The initial launch of the portals was communicated to the Chief Executives of NSW Health organisations with supporting resources to promote the portals locally. The MOH has also presented the portals in numerous forums and continues to do. The MOH is also developing promotional materials for distribution to NSW Health organisations to further promote the usage of portals to staff. MOH continues to promote portal usage informally, in forums focused on resolving disputes and complaints between staff.

**Further areas for improvement in the NSW Health grievance, complaint and dispute resolution processes**

46. MOH aims to be more proactive in assisting LHDs, SHNs and pillar and state-wide shared services to strengthen their grievance, complaint and dispute resolution processes.

47. MOH has reviewed its misconduct policy framework and will publish a consolidated Policy Directive which refines and combines the currently separate misconduct, concerns and complaints about clinicians and child related allegations processes into a single policy document. The MOH is also finalising review of the *Bullying and Unacceptable Workplace Behaviour - JMO Module* policy; which are also being consolidated into a single policy document. It is anticipated these revisions will be available mid-2024. I have outlined above the intention of the Ministry from 2024 to advise health entity Chief Executives of the areas of potential concern that are observable from the Culture analytic index that is now being finalised. From this year onwards, in addition to the Secretary NSW Health requiring all CEs to respond with their plans to address their PMES results, there will now be a specific set of "units" and themes identified from the analytic index for each entity to canvas in their response.

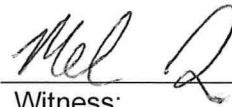


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Philip Gregory Minns

7.6.24

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Date

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7.6.24

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Date