# 3 Roles of Boards & Chief Executives

There are several types of public health organisations within the New South Wales public health system. These are:

- Local health districts.
- Statutory health corporations, being either network governed (specialty networks), board governed or chief executive governed.
- Affiliated Health Organisations, in relation to establishments or services recognised under the *Health Services Act*.

## 3.1 Local Health District and Specialty Networks

This section outlines the roles and accountabilities for the Local Health Districts and Specialty Networks (being the Sydney Children's Hospitals Network and the Justice Health and Forensic Mental Health Network), their boards and the chief executives and their key governance relationships.

### 3.1.1 Role of boards

The role of the board is focused on leading, directing and monitoring the activities of the local health district and specialty network and driving overall performance.

The Board has specific statutory functions, outlined in section 28 of the *Health Services Act 1997*. Those functions are:

- 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 local health district and to approve those frameworks,
- to approve systems:
  - to support the efficient and economic operation of the local health district, and
  - to ensure the district manages its budget to ensure performance targets are met, and
  - to ensure that district resources are applied equitably to meet the needs of the community served by the district,
- to ensure strategic plans to guide the delivery of services are developed for the local health district and to approve those plans,
- to provide strategic oversight of and monitor the local health district's financial and operational performance in accordance with the State-wide performance framework against the performance measures in the service agreement for the district,
- to make recommendations for the appointment of the chief executive of the local health district and, where it considers it appropriate to do so, to make recommendations concerning the removal of the chief executive,
- to confer with the chief executive of the local health district 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 (NHRA)[2],
- to approve the service agreement for the local health district under the NHRA,

2 Under the *Health Services Act*, the National Health and Hospitals Network Agreement (NHHN) 2010 is a defined term that also means any agreement that replaces or supersedes that agreement. This would include the National Health Reform Agreement (NHRA).

- to seek the views of providers and consumers of health services and of other members of the community served by the local health district, as to the district's policies, plans and initiatives for the provision of health services, and to confer with the chief executive of the district on how to support, encourage and facilitate community and clinician involvement in the planning of district services,
- to advise providers and consumers of health services and other members of the community served by the local health district, as to the district's policies, plans and initiatives for the provision of health services,
- to endorse the local health district's 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 are in the nature of 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 the annual performance agreement with the chief executive and undertakes their annual performance review as provided for under the Health Executive Service Framework.

### 3.1.2 Role of the Chief Executive

Chief executives of Local Health Districts and Specialty Networks are employed in the Health Executive Service (part of the NSW Health Service) by the Secretary, NSW Health under section 116 of the *Health Services Act* on behalf of the NSW Government.

The role of the chief executive is set out in section 24 of the *Health Services Act.*
The chief executive *manages* and *controls* the affairs of the Local Health District.
The chief executive can commit the District contractually and legally and is the employer delegate for all staff working in the organisation. Chief executives are, in the exercise of their functions, accountable to their Board.

### 3.1.3 Board appointments and procedure

#### 3.1.3.1 Appointments

Boards consist of 6 to 13 members appointed by the Minister for Health. The selection criteria for board members in the Act aim to ensure an appropriate mix of skills and expertise to oversee and provide guidance to large, complex organisations. These include:

- expertise and experience in matters such as health, financial or business management;
- expertise and experience in the provision of clinical and other health services;
- representatives of universities, clinical schools or research centres; and
- 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

The Model By-Laws for LHDs also establish processes for medical, nursing and midwifery and allied health staff to nominate short lists of interested clinicians for the Minister to consider when making appointments to the board, providing for local clinical input on the Board.

### *Terms of Office*

Board members are appointed for a specific term with a maximum term of up to four years. The position of a board member is vacated if the member resigns, dies, becomes bankrupt or mentally incapacitated, is convicted of certain criminal offences, or if the member or board is removed by the Minister.

### *Duties as a board member*

Board members are appointed for the good of the organisation and are not there to represent the group or interest that 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 organisation and the community it represents as a whole. For a comprehensive list of Board member duties, see the table at section 3.4.

### *Deputy Chairperson*

In addition to the Chairperson appointed by the Minister, the board may nominate a Deputy Chairperson. The Deputy Chairperson may act and exercise all the functions of the office of the Chairperson during the Chairperson's absence.

### *Attendance of chief executive at board meetings*

The chief executive is not a member of the board, but under the *Health Services Regulation 2013* is entitled to attend board meetings *ex officio*.

### *Other Invitees*

The Regulation also provides for the Chair of the Medical Staff Executive Council to attend board meetings and also provides guidance on board meeting procedures.

## 3.1.3.2 Meeting Times and Procedures

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.

Each local health district should establish procedures for the board and each of the board approved committees, in accordance with the Act, Regulation and by-laws. The procedures should be documented and readily accessible and cover matters such as (but not limited to):

- distribution of minutes, reports to be received (and frequency), types of matters that must be approved; types of matters that should be noted
- key priority areas relating to Aboriginal health
- declarations of conflicts of interest
- matters to be dealt with in confidence
- media spokespersons
- training and development; attendance at conferences specific to board roles and responsibilities
- remuneration and petty cash reimbursements
- fundraising activities

More detail on Board procedures can be found in the Model By-Laws and Schedule 1 to the *Health Services Regulation 2008*.

### 3.1.3.3 Confidentiality

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.

At an operational level, it is the responsibility of the Board to ensure minutes of the meeting are publicly available and there is 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.

For further information see: http://www.health.nsw.gov.au/LHDBoards.

#### *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.

### 3.1.3.4 Legal Protections

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.

Section 133B of the *Health Services Act 1997* 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 organisation, in relation to acts or omissions done in good faith for the purposes of executing that or any other Act.

The Treasury Managed Fund Statement of Cover for public health organisations includes directors and officers cover, which provides an indemnity for actions committed by board members or committees in good faith for the purpose of discharging their governing board or committee duties.

### 3.1.4 Key Governance Relationships

#### 3.1.4.1 Minister for Health and Secretary, NSW Health

The Minister and Secretary, NSW Health each have important governance roles in relation to the local health districts and specialty networks.

*Minister*

The Minister is responsible for the appointment and dismissal of individual board members. The Minister may also remove the entire board and appoint an administrator in their place. Where an administrator is appointed, the Minister is required to make a statement to Parliament that sets out the basis for that decision. These provisions are required to enable action to be taken where a local health district is failing and urgent intervention is required.

The Chairs of Local Health District Boards and Specialty Networks come together on a regular basis as the Council of Board Chairs to confer with the Minister for Health and the Secretary, NSW Health. The Council provides a key leadership group for NSW Health.

*The Secretary, NSW Health*

The Secretary, NSW Health is responsible for the overall governance, oversight and control of the NSW public health system and public health organisations, including public health system performance.

In this capacity, the Secretary, NSW Health has the function of giving directions to local health districts, to ensure that they fulfill their statutory and financial obligations and to assist the State meet its own obligations as system manager.

The Secretary, NSW Health is also responsible for entering into performance and Service Agreements with local health districts and employing staff of local health districts on behalf of the State.

## 3.2 Board Governed Statutory Health Corporations

This section outlines the roles and accountabilities for board governed statutory health corporations, recognising that the governance structure applying to these organisations (such as the ACI, CEC) is different from those applying to the local health districts and specialty networks.

### 3.2.1 Role of the Board

Under section 47 of the *Health Services Act*, the affairs of a board governed health corporation are controlled by the board, which is in turn subject to the direction and control of the Minister and Secretary, NSW Health (by delegation).

The *Health Services Act 1997* does not set out a specific list of functions for a statutory health corporation board, but their broad role is to guide and direct the operation of the organisation through establishing operating policies and charting the course of each organisation. This will include setting directions for the organisation and within the bounds of statutory, Government and Ministry of Health requirements and available resources;

- ensuring the effective and efficient management of the organisation;
- ensuring that the community is well informed about the organisation, its goals and performance;
- being accountable to the Secretary, NSW Health for the organisation's output;

- having a leadership role, with and through the chief executive, in motivating staff and creating the culture of the organisation;
- being responsible for safeguarding assets and ensuring the financial viability of the organisation;
- establishing monitoring and management reporting mechanisms to fulfil its accountability for governing the organisation;
- ensuring proper working relationships exist with government, other agencies, unions and the community in general;
- ensuring business continuity planning is undertaken to sustain service delivery during emergencies;
- ensuring organisations adopt an outcomes-focused approach when identifying and responding to the specific health needs of Aboriginal people.

The Board has also been delegated with the responsibility of entering the annual performance agreement with the chief executive and undertaking their annual performance review.

### 3.2.2 Role of the Chief Executive

Under section 51 of the *Health Services Act*, the chief executive manages the affairs of a board governed statutory health corporation, and is, in the exercise of his or her functions, subject to the direction and control of the organisation's board. As with Local Health Districts and Specialty Networks, the chief executive is also the employer delegate for staff working at the organisation.

### 3.2.3 Statutory Health Corporation Board appointments and procedure

#### 3.2.3.1 Appointments

Statutory Health Corporation Boards consist of 5 to 11 members appointed by the Minister, plus the chief executive officer, who is an *ex officio* member of the board.

The only statutory requirement in relation to appointees is that organisations with more than 50 staff include a board member employed in the NSW Health Service. More generally, members will be appointed having regard to the knowledge or experience necessary to support the board, which may be in business, law or health administration, or other background, skills, expertise or knowledge that may be appropriate or relevant to the particular to role of the organisation.

##### *Terms of Office*

Board members are appointed for a period of up to four years, and may be reappointed. The position of a board member is vacated if the member resigns, dies, becomes bankrupt or mentally incapacitated, is convicted of certain criminal offences, or if the member or board is removed by the Governor.

#### 3.2.3.2 Duties as a board member

Board members are appointed for the good of the organisation and are not there to represent the group or interest that 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 organisation and the community it represents as a whole. For a comprehensive list of Board member duties, see the table at section 3.4.

### 3.2.3.3 Meeting times and procedures

Board governed statutory health corporations should establish procedures for the board and each of the board approved committees, in accordance with the by-laws. The procedures should be documented and readily accessible and cover matters such as (but not limited to):

- frequency of meetings, distribution of minutes, reports to be received (and frequency), types of matters that must be approved; types of matters that should be noted
- key priority areas relating to Aboriginal health
- declarations of conflicts of interest
- matters to be dealt with in confidence
- media spokespersons
- training and development; attendance at conferences specific to board roles and responsibilities
- remuneration and petty cash reimbursements
- fundraising activities

More detail on Board procedures can be found in the Model By-Laws and Schedule 5 to the *Health Services Act 1997*.

#### *Attendance at meetings*

The chief executive is *ex officio* member of the board, and attends as such. The Board may also invite such other persons as it chooses to attend from time to time.

### 3.2.3.4 Confidentiality

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.

At an operational level, it is the responsibility of the Board to ensure minutes of the meeting are publicly available and there is 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.

### 3.2.3.5 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.

### 3.2.3.6 Legal Protections

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.

Section 133B of the *Health Services Act 1997* also 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 organisation, in relation to acts or omissions done in good faith for the purposes of executing that or any other Act.

The Treasury Managed Fund Statement of Cover for public health organisations includes directors and officers cover, which provides an indemnity for actions committed by board members or committees in good faith for the purpose of discharging their governing board or committee duties.

## 3.2.4 Key Governance Relationships

### 3.2.4.1 Minister for Health and Secretary, NSW Health

The Minister and Secretary, NSW Health each have important governance roles in relation to board governed statutory health corporations.

#### *Minister*

Under section 48 of the *Health Services Act 1997*, statutory health corporation boards are subject to the control and direction of the Minister except in relation to the content of a report or recommendation or report made by the board to the Minister. The Minister is also responsible for the appointment and dismissal of individual board members.

The Minister may also remove the entire board and appoint an administrator in their place. These provisions are required to enable action to be taken where a board governed statutory health corporation is failing and urgent intervention is required.

#### *The Secretary, NSW Health*

The Secretary, NSW Health is responsible for the overall governance, oversight and control of the NSW public health system and public health organisations, including public health system performance.

In this capacity, the Secretary, NSW Health has the function of giving directions to statutory health corporation or local health districts, both to ensure that they fulfill their statutory and financial obligations and to assist the State meet its own obligations as system manager.

The Secretary, NSW Health has also been delegated the control and direction functions of the Minister under section 48.

The Secretary, NSW Health is responsible for entering into performance and Service Agreements with local health districts and employing staff of local health districts on behalf of the State.

## 3.3 Chief Executive Governed Statutory Health Corporations

This section outlines the roles and accountabilities for chief executive governed statutory health corporations, recognising that the governance structure applying to these organisations (such as HETI) is different from those applying to the local health districts, specialty networks and board governed statutory health corporations.

Under section 52B of the *Health Services Act*, the chief executive manages and controls the affairs of a Chief Executive governed statutory health corporation. As with districts specialty networks and board governed statutory health corporations, the Chief Executive is also the employer delegate for staff working at the organization.

The Secretary, NSW Health is responsible for the overall governance, oversight and control of the NSW public health system and public health organisations, including chief executive governed statutory health corporations.

In this capacity, the Secretary, NSW Health has the function of giving directions to both to ensure the organization fulfils their statutory and financial obligations and to assist the State meet its own obligations as system manager.

## 3.4 Duties of NSW Health Board Members

The following table sets out the key duties applying to board members as they undertake their role.

### General legal duties applicable to board members

*Compliance with laws and policy directives*

- Requirement to comply with relevant legislation including regulations (refer to section 4 for details).
- Requirement to comply with the Department of Premier and Cabinet Guidelines for Members of NSW Government Boards and Committees, and the NSW Health Code of Conduct.

*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.

*Duty to act honestly and properly for the benefit of the organisation*

- 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 health organisation, 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 health organisation, in preference, wherever conflict arises, to any group of which he or she is a member or which elected him or her.
- A board member has a duty to demonstrate leadership and stewardship of public resources.

*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.
- A statutory form of this duty is set out in the *Health Services Act 1997*. It requires a board member to remove themselves from deliberation and voting on a matter in which they have a direct or indirect pecuniary interest.

*Duty not to misuse the organisation's property, information or opportunities*

- Duty of confidentiality of information about the affairs of the board or its organisation obtained as a board member.
- Release of information by a board member must be both lawful and either required by law or authorised by the board.
- The use of the organisation's property, information or opportunities must be authorised by the board and be for the benefit of the organisation.

*Duty of care and diligence*

- Board members are required to exercise care and diligence in the exercise of their powers.
- A board member need show no greater skill than may reasonably be expected from a person of his/her knowledge and experience.
- A board member is not required to give continuous attention to the organisation's 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 organisation, a board member is justified in trusting the officer to perform the duties honestly.

## The Roles of Boards and Chief Executives – Resources & References

### Legal

- Relevant legislation: http://www.legislation.nsw.gov.au/
- The legislative framework that underpins the NSW Health system can be found at: www.health.nsw.gov.au/legislation/pages/default.aspx

### NSW Health

- NSW Health policy directives and guidelines: http://www.health.nsw.gov.au/policies/pages/default.aspx
- NSW Health Performance Framework: http://www.health.nsw.gov.au/performance/pages/frameworks.aspx
- NSW Health Local Health Districts and Specialty Networks Boards: http://www0.health.nsw.gov.au/lhdboards/about_lhdboards.asp

### NSW Government

- Department of Premier and Cabinet Guidelines for Members of NSW Government Boards and Committees: http://www.boards.dpc.nsw.gov.au/publications-for-agencies
- Appointment Standards http://www.psc.nsw.gov.au/About-the-public-sector/NSW-Government-Boards-and-Committees-
- Public Service Commission http://www.psc.nsw.gov.au
- Managing gifts and benefits – Public Service Commissioner Direction No.1 of 2014 http://www.psc.nsw.gov.au/Policies/Directions

## Local Documentation

- Board procedures
- Guidelines for Board members, for example training and development, declaration of potential conflicts of interest; media management, fundraising
- By-Laws for the public health organisation
- Approved Delegations Manual
- Terms of reference/purpose of committees established by the board (other than those listed in the by-laws)