

Health Services Act 1997
Section 126C
NSW Health Pathology Board

INSTRUMENT OF CONSTITUTION

The NSW Health Pathology (NSWHP) Board (the Board) was established in 2012 by the then Director-General, NSW Health to oversee the overall strategic direction and performance of NSWHP which was established as a Division of the Health Administration Corporation.

NSWHP provides clinical and forensic services delivered through an integrated, connected statewide system to help create better health and justice systems for the people of NSW. This includes, in addition to the provision of pathology testing and clinical advice to support treatment decisions, independent, objective analysis for the NSW criminal and coronial justice systems, together with environmental health testing and other services to a range of government and other organisations. NSWHP is committed to research and training to secure the next generation of specialist staff, establish an evidence base for pioneering diagnostic practices and best practice in service delivery, and ensure NSWHP's reputation as a world leading service.

This Constitution sets out the governance framework for the Board and defines the roles, responsibilities and authority of Board members.

Role and Functions

1. The role of the Board is to:
 - i. Provide effective and ethical governance of NSWHP in relation to the provision of sustainable, responsive, efficient and high quality pathology, forensic and analytical science services.
 - ii. Endorse the strategic direction and plan for NSWHP and make decisions for the collective benefit of the public health and justice systems, and approve and monitor compliance with the Strategic and Annual Operational Plans.
 - iii. Ensure effective and comprehensive corporate and clinical governance frameworks are established and approved by the Board to support the maintenance and improvement of standards and quality of services provided by NSWHP.
 - iv. Provide strategic oversight of and monitor NSWHP's performance (clinical, operational and financial) in accordance with the objectives and measures set by the Secretary and ensure appropriate internal controls and robust systems are in place including:
 - Financial and other internal reporting mechanisms from which to provide adequate, accurate and timely information about the performance of NSWHP to the Board and the NSW Ministry of Health and other key stakeholders.
 - Risk management framework and with ongoing monitoring of the effectiveness of risk management systems for NSWHP.
 - Clinical governance and quality frameworks to monitor quality of care and service delivered across NSWHP.
 - Effective compliance and quality standards for accreditation
 - v. Ensure effective clinical and capital planning in NSWHP which also aligns to NSW Health's strategic goals

- vi. Champion a strong values driven culture with a focus on staff engagement within and across NSWHP
- vii. Provide advice to the Secretary on the provision and integration of pathology and forensic services in the wider health and justice systems.
- viii. Champion innovation to achieve best practice across all NSWHP services.
- ix. Review and evaluate present and future opportunities, threats and risks in the external environment and identify appropriate responses to maximise the position of NSWHP.
- x. Ensure an appropriate focus and accountability in meeting the needs of all stakeholders including internal and external stakeholders and confer with the Chief Executive about how to support, encourage and facilitate stakeholder and clinician involvements in the planning of NSWHP services.
- xi. Oversee the work of Board sub-committees and consider any recommendations of those sub-committees including endorse and oversee the implementation of annual audit plans via the Audit and Risk Management Committee

Membership of Board

2. The Board is to consist of up to nine members appointed by the Secretary, selected in accordance with clause 3.
3. The Secretary is to select the membership of the Board to ensure diversity and an appropriate mix of skills and expertise required to oversee and provide guidance to NSWHP, including members who:
 - i. have expertise and experience in health management, business management, and financial management, and
 - ii. have relevant expertise and experience in the provision of clinical, scientific and other health services, including at least two senior medical clinicians (at least one pathologist) employed in the public hospital system (excluding a NSWHP employee), and
 - iii. have knowledge and understanding of the community and stakeholders served by NSWHP, and
 - iv. expertise, knowledge or experience in relation to Aboriginal health, and preferably to be an Aboriginal person
 - v. have other backgrounds, skills, expertise, knowledge or experience appropriate for NSWHP.
4. A member of the Board holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for reappointment (section 26(5) of the *Health Services Act 1997*).
5. A member that has held office for 10 years in total (whether or not the appointments are consecutive) cannot be reappointed, even if otherwise eligible and qualified (section 26(6) of the *Health Services Act 1997*).
6. One of the members of the Board, is by relevant instrument of appointment, to be appointed as the Chairperson of the Board.
7. The Chairperson may request a meeting with the Secretary from time to time, with or without the presence of the Chief Executive.
8. Remuneration for eligible Board members is to be paid as per the Public Service Commission Directive (December 2012): *Classification and Remuneration Framework for NSW Government*

Boards and Committees. Eligibility of remuneration applies only to independent members of the Board.

Vacancy in Office

9. The Secretary may at any time remove the Chairperson (or an acting Chairperson appointed pursuant to clause 11) from the office as Chairperson of the Board.
10. The Chairperson of the Board is taken to have vacated the office as Chairperson if the person:
 - i. resigns as Chairperson by instrument in writing to the Secretary or
 - ii. ceases to be a member of the Board or
 - iii. is removed as Chairperson by the Secretary.
11. The Secretary may, from time to time, appoint a member to act in the office of Chairperson of the Board during the illness or absence of the Chairperson, and the member, while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.
12. The Secretary may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
13. A member of the Board is taken to have vacated his or her position if the member:
 - i. dies or
 - ii. completes a term of appointment and is not re-appointed or
 - iii. resigns his or her appointment by instrument in writing to the Secretary or
 - iv. is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for being absent from those meetings or
 - v. becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit or
 - vi. is disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001 or
 - vii. becomes a mentally incapacitated person or
 - viii. is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable or
 - ix. has his or her appointment revoked by the Secretary.
14. A member must immediately notify the Secretary if charged with a criminal offence carrying a maximum penalty of 12 months or more imprisonment.
15. The Secretary may terminate the appointment of a member of the Board at any time for any or no reason by notice in writing to the member.
16. A member who is removed from office or not re-appointed at the end of his or her term of office is not entitled to be paid any compensation by reason of ceasing to hold office.

Conduct of Board Members

17. The roles and responsibilities applicable to Board members are set out in the clause 3.4 of the Corporate Governance and Accountability Compendium – Duties of NSW Health Board

Members as relevant to a Board established by the Secretary. This includes the duty to act in the interests of the Board and NSWHP not the member's own or third party interests.

18. Each member must agree to comply with the NSW Health Code of Conduct and to sign a confidentiality undertaking in relation to the Board's affairs.

Disclosure of pecuniary interests and other information

19. A member:

- i. who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board and
- ii. whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

20. A disclosure by a member at a meeting of the Board that the member

- i. is a member, or is in the employment, of a specified company or other body or
- ii. is a partner, or is in the employment, of a specified person or
- iii. has some other specified interest relating to a specified company or other body or to a specified person, is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

21. Particulars of any disclosure made under clauses 21 and 22 are to be recorded by the members in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by an officer of the NSW Ministry of Health authorised by the Secretary for that purpose.

22. After a member has disclosed the nature of an interest in any matter, the member must not, unless the Secretary or the other members otherwise determine:

- i. be present during any deliberation of the Board with respect to the matter or
- ii. take part in any decision of the Board with respect to the matter.

23. A member does not have a pecuniary interest for the purposes of this section in relation to a matter merely because the member is employed or otherwise holds an appointment at a hospital or health service that is or may be affected by the matter.

24. A contravention of clauses 19 to 23 does not invalidate any decision of the Board.

25. The provisions of clauses 19 to 23 extend to meetings of a committee of the Board.

Conduct of Board Meetings

26. *Ordinary meetings of the Board*

- i. The Board is to hold ordinary meetings at times and places determined by the Board.
- ii. At least 6 ordinary meetings are to be held in any 12-month period and these meetings are to be held at regular intervals.
- i. Written notice of any ordinary meeting of the Board is to be given at least 7 days before the meeting.
- ii. Written notice is to be given by the Chief Executive or by another person authorised by the Board to give notice. Written notice is to be given to all members and persons invited to attend the meeting by the Board.

- v. The written notice to the member is to be accompanied by the following:
 - a. a copy of the agenda for the meeting;
 - b. a copy of the minutes of the previous ordinary meeting of the Board if a copy has not previously been distributed to members;
 - c. a copy of the minutes of any special meeting of the Board held since the last ordinary meeting of the Board, if a copy has not previously been distributed to members; and
 - d. a copy of the minutes of any meeting of a committee of the Board held since the last ordinary meeting of the Board, if a copy has not previously been distributed to members.

27. *Special Meetings of the Board*

- i. A special meeting of the Board can be called by the Chief Executive:
 - a. at the direction of the Chairperson or
 - b. within 48 hours of receipt by the Chief Executive, of a written request for a special meeting signed by at least 3 members of the Board.
- ii. A special meeting is to be held not later than 7 days after receipt by the Chief Executive of a request referred to in section 7(1) or as specified in the direction or request.
- iii. The Chief Executive is to give at least 24 hours' notice of a special meeting to each member and each person invited to attend the meeting by the board.
- iv. Notice of a special meeting is to specify the business to be considered at that meeting.
- v. Only business specified in the notice of special meeting is to be considered at the special meeting.

28. *Attendance at Board Meetings*

- i. The Chief Executive of the NSWHP is to attend all Board meetings as an ex-officio member. The Chief Executive may nominate a person to attend Board meetings in his/her absence.
- ii. The Chair of the NSWHP Medical Staff Council, or consistent alternative, is to be invited to be in-attendance at the NSWHP Board meetings.
- iii. The Board or the Chairperson of the Board may invite other persons to attend meetings of the Board as appropriate to matters being considered at the meeting.
- iv. The Board may exclude any person (other than a member) from attending any meeting or part of a meeting.
- v. Each invitee must agree to comply with the NSW Health Code of Conduct and sign a confidentiality undertaking in relation to the Board's affairs.
- vi. Once a confidentiality undertaking has been signed, in-attendance participants can be provided the full Board papers (unless otherwise specified by the Board Chair).

29. *Quorum*

- i. A quorum shall consist of a majority of voting members.

30. *Minutes of the Board*

- i. The Chief Executive is to ensure that minutes are kept of all meetings of the Board.
- ii. A motion for the confirmation of minutes of a meeting is to be put to the next ordinary meeting.
- iii. No business is to be transacted until the minutes of the previous meeting have been confirmed or otherwise disposed of.

31. *Decisions of the Board*

- i. A decision supported by the votes of majority of members cast at a meeting of the board at which a quorum is present is the decision of the Board.
- ii. Decisions of the Board are to be stated in the minutes of the meeting at which they were decided.

- iii. The Board is to make available to staff of the NSWHP, information concerning the decisions of the Board, except where the Board considers that it is inappropriate to disclose that information.
- iv. The Board may make available to the public, information concerning the decisions of the Board except where the Board considers that it is inappropriate to disclose that information.

32. *Rescission*

- i. The Board may at any ordinary or special meeting vary or rescind any resolution carried at any previous meeting of the Board only if the motion to vary or rescind the resolution has been included in or with the notice of the meeting.
- ii. If a motion to vary or rescind a resolution is considered at a meeting of the Board and is not carried, the motion is not to be re-considered by the Board during a period of 3 months from the date of the meeting.

Board Committees

33. *Establishing Board Committees*

- i. The Chairperson of the Board is to establish committees and councils to provide advice or other assistance to enable the Board to perform its duties.
- ii. The committees may vary depending on requirements, including:
 - a. Audit and Risk Management Committee
 - b. Finance and Performance Committee
 - c. Pathology Clinical Council
 - d. Quality and Safety Committee
 - e. any such other committees as may be determined by the Board.

34. *Audit and Risk Management Committee*

- i. The establishment of the Audit and Risk Management Committee must comply with the requirements of the Accounts and Audit Determination for Public Health Organisations and relevant policy directives as issued by the Ministry of Health and NSW Treasury from time to time.

35. *Finance and Performance Committee*

- i. The establishment of the Finance and Performance Committee must comply with requirements of the Accounts and Audit Determination for Public Health Organisations and relevant policy directives as issued by the Ministry of Health from time to time.

36. *Committee chairpersons*

- i. The Board is to appoint a chairperson of each committee established under clause 35.
- ii. For the Audit and Risk Management Committee, the Chair and all members must be independent appointed in compliance with the requirements of the Accounts and Audit Determination and relevant policy directives as issued by the Ministry of Health and NSW Treasury from time to time.

37. *Functions of Committees*

- i. A committee is to provide advice or other assistance on issues as requested by the Board.
- ii. A charter shall set out the role and function of any committee established by the Board.
- iii. The Chairperson of the Board, in consultation with the Chief Executive, is to appoint at least one member of the senior staff of the NSWHP to each committee (other than the Audit and Risk Management Committee).

- iv. The Board may appoint any other person as a committee member, subject to any corporate governance guidelines issued by the Ministry of Health from time to time.
- v. The Board may remove any committee member, subject to any corporate governance guidelines issued by the Ministry of Health from time to time.

38. *Terms of Office*

- i. Any Board member appointed to a committee by the Board holds office for such period as the Board may determine, or until the person's appointment as a member of the Board expires and is not renewed; or until the office is otherwise vacated, whichever occurs first
- ii. Any other person appointed to a committee by the Board holds office for such period as the board may determine or until the office is otherwise vacated, whichever occurs first.

39. *Notice of Meetings*

- i. The chairperson of a committee, or a person authorised by the chairperson to do so, is to give written notice of a meeting to each committee member at least 7 days prior to the meeting.

40. *Special Meetings of Committees*

- i. When the chairperson of a committee considers that a matter is of such urgency that a special meeting of a committee should be held the chairperson may request the Chairperson of the Board to give written approval to the conduct of such a special meeting. The written approval of the Chairperson of the Board may determine, subject to this clause and these procedures, the business and conduct of such a special meeting
- ii. A special meeting shall be held, if approved, at least 48 hours but not later than 7 days after receipt by the Chairperson of the Board of such a request.
- iii. The chairperson of a committee is to ensure that at least 24 hours' notice is given of a special meeting to every member of the committee and each person invited to attend the meeting.
- iv. Notice of a special meeting is to specify the business to be considered at that meeting.
- v. Only business specified in the notice of a special meeting is to be considered at the special meeting.

Medical and Dental Appointments Advisory Committee

41. *Establishment of Medical and Dental Appointments Advisory Committee*

- i. The Board is to establish a committee called the Medical and Dental Appointments Advisory Committee in accordance with Terms of Reference approved by the Secretary.

Signed the

Secretary

NSW Ministry of Health


8th October
day of 2018