



# Charter for Local Health Network Governing Boards

established under the *Health Care Act 2008*

## Volume 1

June 2021



Government  
of South Australia

SA Health

## DOCUMENT HISTORY AND APPROVAL

Version	Date	Additions/Modifications	Author/Endorsement
1.2	17 June 2021	Incorporating <i>Health Care (Governance) Amendment Act 2021</i>	Legal and Legislative Policy
1.1	29 June 2019	Addition of section on Offences under the Criminal Law	Minister for Health and Wellbeing
1.0	2 May 2019	Endorsed	Minister for Health and Wellbeing
0.2	9 Apr 2019	Final draft for endorsement	Governance Reform Unit
0.1	14 Mar 2019	Draft Charter for feedback	Governance Reform Unit

# CONTENTS

1.	INTRODUCTION .....	1
2.	PURPOSE AND STRUCTURE OF THE CHARTER .....	1
3.	PRINCIPLES .....	1
4.	GOVERNANCE .....	2
4.1	Governance Framework .....	2
4.2	Board Composition .....	2
4.3	Role of the Board .....	2
4.4	Role of the Chairperson .....	3
4.5	Role of the Deputy Chairperson .....	3
4.6	Role of the Chief Executive Officer (CEO) .....	4
4.7	Role of the Board Secretariat .....	4
4.8	Terms of Office .....	4
4.9	Appointment of an Adviser .....	4
4.10	Removal of a Board Member .....	5
4.11	Board Vacancies .....	5
4.12	Dismissal of a Governing Board .....	5
4.13	Appointment of an Administrator .....	6
4.14	Member Remuneration .....	6
4.15	Member Recruitment and Appointment .....	6
4.16	Member Induction and Training .....	6
5.	BOARD FUNCTIONS .....	7
5.1	Board Meetings and Minutes .....	8
5.2	Requirement for an Annual Public Meeting .....	8
5.3	Engagement Strategies .....	8
6.	ACCOUNTABILITY AND COMPLIANCE .....	9
7.	REQUIREMENTS OF BOARD MEMBERS .....	10
7.1	Members to Act in Public Interest .....	10
7.2	Disclosures and Conflicts of Interest .....	10
7.3	Confidentiality .....	11
7.4	Duties of Corporate Agency Members .....	12
7.5	Offences under the Criminal Law .....	13
7.6	Media and Communications .....	13
7.7	Indemnity .....	14
7.8	Use of Government Email .....	14
7.9	Storage and Disclosure of Information .....	14

8. COMMITTEES AND SUB-COMMITTEES ..... 14

9. BOARD EFFECTIVENESS ..... 15

    9.1 Board Self-Evaluation ..... 15

    9.2 Departmental Evaluation ..... 16

## 1. INTRODUCTION

The Local Health Network (LHN) Governing Boards are accountable to the Minister for Health and Wellbeing for the oversight of the delivery of local health services within their geographic area, in accordance with a Service Agreement negotiated between the LHN and the Department for Health and Wellbeing. They will engage with clinicians, the community and local service providers to ensure the services provided are reflective of local needs and priorities, and are able to be provided within the resources available. The protection of the public and the interests of people in need of health care remain the highest priorities in the provision of health services.

The Governing Boards operate within a government context, as one part of the broader South Australian public health system. Boards are subject to the direction of the Minister for Health and Wellbeing and the Chief Executive of the Department for Health and Wellbeing, who may set policies or directions with which Boards are required to comply with as part of their functions. Under the revised system governance arrangements, the Department for Health and Wellbeing will retain an important system leadership role.

These governance arrangements will provide a greater focus on accountability and transparency across the public health system.

## 2. PURPOSE AND STRUCTURE OF THE CHARTER

The Governing Board Charter consists of two Volumes:

- Volume 1: endorsed by the Minister for Health and Wellbeing, setting out the governance arrangements, functions, roles and responsibilities of the Governing Boards, including as established by legislation. Volume 1 also sets out information about requirements for Board members, and expectations for evaluations of Board effectiveness.
- Volume 2: developed by each LHN Governing Board to outline Board governance mechanisms, policies, procedures and processes of the Board.

## 3. PRINCIPLES

In performing their duties members of the Governing Board will carry out their roles and responsibilities:

- in good faith and in the best interests of the LHN, its health professionals and its health consumers and community;
- honestly, ethically, fairly and free from any bias or discrimination;
- with mutual respect amongst Board members;
- with due diligence and care, taking responsibility for actions and decisions made;
- using knowledge gained from the Board only for the benefit of the Board and not for personal gain or benefit;
- in a financially responsible and transparent manner, and
- in accordance with the *Health Care Act 2008* or any other Act that places requirements on the Board's operations, for example the *Public Sector (Honesty and Accountability) Act 1995*, *Independent Commissioner Against Corruption Act 2012*, *State Records Act 1997*, *Freedom of Information Act 1991*.

## 4. GOVERNANCE

### 4.1 Governance Framework

The Governing Board is accountable to the Minister for Health and Wellbeing for the strategic oversight and monitoring of the LHN's financial and operational performance.

The Governing Board will be subject to the direction of the Minister or the Chief Executive of the Department for Health and Wellbeing, and must comply with any policies of the Department specified by the Minister or Chief Executive to apply to the Board in the performance of its functions. The LHNs and their staff must comply with any policies issued by the Chief Executive of the Department for Health and Wellbeing.

The Chief Executive Officer (CEO) of the LHN is responsible to the Governing Board for managing the operations and affairs of the LHN. The CEO is subject to the direction of the Governing Board.

### 4.2 Board Composition

In accordance with section 33B of the *Health Care Act 2008* a Governing Board consists of 6 to 8 members appointed by the Minister.

As far as practicable the membership of a Governing Board must comprise persons who between them have knowledge of, and experience and expertise in:

- (a) health management;
- (b) clinical governance;
- (c) commercial management;
- (d) financial management;
- (e) the practice of the law;
- (f) the provision of health services; and
- (g) other knowledge, experience and expertise that, in the opinion of the Minister, will enable the effective performance of the Board's functions.

In addition to these requirements:

- at least 2 members must be health professionals; and
- at least 1 member must be a person who has expertise, knowledge or experience in relation to Aboriginal health.

A Governing Board must, as far as practicable, be comprised of equal numbers of women and men.

A person is not eligible for appointment to a Governing Board of an LHN if the person is employed or engaged to work at that LHN; or if the person is an employee of the Department for Health and Wellbeing. This does not prevent a person employed or engaged to work at an LHN to be appointed to the Governing Board of a different LHN.

### 4.3 Role of the Board

The Governing Board is responsible for the overall governance and oversight for local health service delivery by the LHN, including governance of performance and budget achievement, clinical governance, safety and quality, risk management and achievement of the Board functions and responsibilities.

The Governing Board is also responsible for the development and publication of a *clinician engagement strategy* to promote consultation with health professionals working in the LHN and a *consumer and community engagement strategy* to promote consultation with health consumers and members of the community about the provision of health services by the LHN.

All Board decisions are made collectively and all Board members share equal responsibility for Board resolutions.

The Governing Board cannot give a direction concerning the clinical treatment of a particular person, or the appointment, transfer, remuneration, discipline or termination of an LHN employee, other than the CEO.

#### **4.4 Role of the Chairperson**

The Chairperson of the Governing Board acts as an important link between the Board and the LHN's management, through the CEO.

The Chairperson will ensure the Board acts impartially and in the public interest by providing leadership, capability and experience necessary for the Board to fulfil its governance obligations. This will include:

- providing leadership and developing Board members into a cohesive and effective team;
- facilitating the effective functioning of the Board, including managing the conduct, frequency and length of Board meetings;
- setting the agenda for the matters to be considered by the Board;
- seeking to ensure that the information provided to the Board is relevant, accurate, timely and sufficient to keep the Board appropriately informed of the performance of the organisation and of any developments that may have an impact on the organisation and its performance;
- seeking to ensure that health professionals working in the LHN and its health consumers and communities are genuinely engaged and communications are accurate and effective;
- seeking to ensure that the Board as a whole has the opportunity to maintain adequate understanding of the LHN's financial position and operations generally and the opportunities and challenges facing the LHN;
- facilitating open and constructive communications amongst Board members and encouraging their contribution to Board deliberations;
- overseeing and facilitating Board, committee and Board member evaluation reviews and succession planning;
- liaising and interfacing with the CEO as the primary contact between the Board and management;
- overseeing negotiations for the CEO's employment and evaluating the CEO's performance;
- retaining an effective Board with the necessary skills, knowledge and experience;
- ensuring appropriate processes are in place for risk management, and reporting concerns to the Minister;
- establishing an effective and constructive working relationship with the CEO; and
- ensuring a strategic plan, engagement strategies and an annual report are delivered.

#### **4.5 Role of the Deputy Chairperson**

The Minister may appoint a member of the Governing Board as a Deputy Chairperson.

Where appointed, the Deputy Chairperson has the following responsibilities:

- to perform the roles and functions of the Chairperson in the absence of the Chairperson for any reason, and

- at the request of the Chairperson, to support the Chairperson in the performance of the role and function of the Chairperson.

The position of Deputy Chairperson is vacated if they resign in writing to the Minister, are removed by the Minister, or cease to be a member of the Board.

In the absence of the Chairperson and the Deputy Chairperson (if appointed by the Minister), Board members present may elect another member to chair the meeting of the Governing Board.

For a Governing Board where the Minister has not appointed a Deputy Chairperson, if the Chairperson is absent from a Board meeting the members present may elect a member to chair the meeting of the Governing Board.

#### **4.6 Role of the Chief Executive Officer (CEO)**

The CEO of the LHN is accountable to, and subject to the direction of, the Governing Board for managing the operations and affairs of the LHN.

The CEO is appointed by the Governing Board after confirmation of the appointment by the Chief Executive of the Department for Health and Wellbeing.

The Board may revoke the appointment of the CEO at any time subject to confirmation of this course of action with the Chief Executive of the Department for Health and Wellbeing.

#### **4.7 Role of the Board Secretariat**

The Governing Board is supported by a Board Secretariat, responsible for ensuring that Board business is conducted in a manner consistent with good governance practice including:

- consulting with the Chairperson and CEO in the preparation of Board agendas, supporting papers, meeting agenda;
- assist the Board to meet its statutory obligations in the publication of minutes of its meetings, remuneration, allowances and expenses payable to Board members, and expenses incurred and paid to Board members;
- maintaining an electronic register of decisions made by the Board and circulation of relevant Board decisions and discussions to stakeholders;
- maintaining a Conflict of Interest Register for Board members;
- facilitating induction of all members; and
- arranging workplace inductions and mandatory Board practice.

#### **4.8 Terms of Office**

In accordance with Schedule 3 of the *Health Care Act 2008* a member of a Governing Board may be appointed for a period not exceeding 3 years. A member is eligible for reappointment at the end of their term.

A member of a Governing Board whose term expires (other than by resignation or their removal from office) without a person having been appointed to fill the vacancy may continue in office until a person is appointed to fill the vacancy or a period of 3 months elapses after the expiry of the term of office, whichever occurs first.

A member may not hold office for more than 9 consecutive years.

Members must resign in writing to the Minister.

#### **4.9 Appointment of an Adviser**

In accordance with Schedule 3 of the *Health Care Act 2008* the Minister may appoint an Adviser to a Governing Board. The role of an Adviser is to assist the Board to improve the performance of the Board or the LHN governed by the Board.



In deciding whether to appoint an Adviser to a Governing Board the Minister may have regard to the performance of the Board or the LHN in relation to:

- (a) the safety and quality of health services being provided by the LHN;
- (b) the compliance of the Board with the *Health Care Act 2008* and any Service Agreement applying to the LHN; and
- (c) the financial management of the LHN.

The Minister may not appoint more than two Advisers to a Board at the same time.

Appointments may be made for a term not exceeding one year, with terms and conditions, including remuneration, decided by the Minister.

#### **4.10 Removal of a Board Member**

In accordance with Schedule 3 of the *Health Care Act 2008*, the Minister may remove a member of a Governing Board for:

- (a) breach, or non-compliance with, a condition of appointment;
- (b) misconduct; or
- (c) failure or incapacity to carry out official duties satisfactorily.

The Minister for Health and Wellbeing must within 14 days of removal of a member of a Governing Board publish a notice in the South Australian Government Gazette setting out the removal.

#### **4.11 Board Vacancies**

The office of a member of a Governing Board will become vacant if the member:

- (a) dies;
- (b) completes a term of office and is not reappointed;
- (c) resigns in writing to the Minister;
- (d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the governing board;
- (e) becomes insolvent under administration within the meaning of the *Corporations Act 2001* (Cw);
- (f) is convicted in South Australia of an offence that is punishable by imprisonment for a term of 12 months or more, or is convicted elsewhere than in South Australia of an offence that, if committed in South Australia, would be an offence so punishable; or
- (g) is removed from office as referred to in 4.10 above.

#### **4.12 Dismissal of a Governing Board**

The Minister may at any time dismiss all the members of a Governing Board if satisfied that:

- (a) the Board had failed to perform its functions effectively;
- (b) the Board has failed to comply with a provision of the *Health Care Act 2008*; or
- (c) the Board has failed to comply with a direction of the Minister or the Chief Executive, Department for Health and Wellbeing.

If a Minister dismisses all members of a Governing Board the office of each member becomes vacant.

The Minister must within 12 sitting days after the dismissal of a Governing Board cause notice of the dismissal to be laid before both Houses of Parliament.

#### 4.13 Appointment of an Administrator

Where the Minister dismisses a Governing Board, or for some other reason, there are no members appointed to a Governing Board, the Minister may appoint the Chief Executive, Department for Health and Wellbeing or another qualified person to administer and perform the functions of the Governing Board.

An act done or decision made by the Administrator in administering and performing the functions of a Governing Board will be taken to be an act or decision of the Board.

#### 4.14 Member Remuneration

Members of the Board are entitled to remuneration, allowances and expenses determined by the Minister in line with the Department of the Premier and Cabinet Circular *PC016 – [Remuneration for Government Appointed Part-Time Boards and Committees](#)*.

Board members are entitled to reimbursement of expenses necessarily incurred in connection with their role as a Board member. Claims for payment of travel (where members are required to travel a distance of greater than 40 kilometres one-way to attend meetings), meal and accommodation expenses must be made in accordance with the Office for the Public Sector's Commissioner's Determination 3.2 – [Employment Conditions, Remuneration, Allowances and Reimbursements](#).

The reimbursement of expenses that are the member's responsibility, such as car parking and child care expenses, are not to be provided.

Government employees (including persons employed by a State Government department or agency and employees of public hospitals and health services) are not entitled to be paid for Board membership without the specific approval of the Chief Executive of the Department of the Premier and Cabinet, and the support of the Minister.

The payment of Board fees to government employees may occur where exceptional circumstances can be demonstrated. The Minister or responsible agency, on behalf of the individual who is seeking an exemption, must make a submission to the Chief Executive, Department of the Premier and Cabinet, outlining the member's particular circumstances and present a case as to why the individual may be entitled to remuneration.

Government employees are entitled to claim reimbursement of travel and other expenses necessarily incurred as a member of a Board.

#### 4.15 Member Recruitment and Appointment

The Minister for Health and Wellbeing is responsible for the appointment of members to the Governing Board pursuant to section 33B of the *Health Care Act 2008*; and will determine the conditions on which each member is appointed.

Members of the Governing Board will participate and support recruitment and appointment of members as required, and in line with any processes determined by the Minister.

The recruitment and appointment of Board members should consider the skills, knowledge, attributes and experience necessary to oversee the LHN, gender balance and other requirements for the composition of the Board (as outlined in 4.2 above).

The Minister for Health and Wellbeing must within 14 days of appointment of a member of a Governing Board publish a notice in the South Australian Government Gazette setting out the appointment.

#### 4.16 Member Induction and Training

All Board members will be provided with an induction upon their appointment by the Board and LHN. The key objectives of the induction will include ensuring that Board members are informed of:

- (a) the objectives and operations of the South Australian public health system;
- (b) their statutory responsibilities and accountabilities;
- (c) the functions and operational mechanisms of the Board;
- (d) the role of Board member; and
- (e) the current operations of the LHN.

Board members are able to receive training to support them in fulfilling the requirements of their role. Board members may request such training for consideration and approval by the Board Chair and the LHN CEO. The Board may undertake training and development activities tailored to its needs.

From time to time the Department for Health and Wellbeing may offer system-level information sessions for Board members on legislation, system priorities and/or other broader Government requirements to ensure that Board members are aware of relevant information to support them in fulfilling their obligations.

## 5. BOARD FUNCTIONS

Pursuant to section 33(2) of the *Health Care Act 2008* the functions of a Governing Board include the following:

- (a) 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 incorporated hospital (the term used within the Act to refer to an LHN) and to approve those frameworks
- (b) to ensure:
  - (i) the operations of the incorporated hospital are carried out efficiently, effectively and economically;
  - (ii) the incorporated hospital manages its budget so that performance targets are met; and
  - (iii) that hospital resources are applied equitably to meet the needs of the community served by the incorporated hospital;
- (c) to ensure strategic plans to guide the delivery of services are developed for the incorporated hospital and to approve those plans;
- (ca) to ensure that the incorporated hospital operates programs that promote preventative and primary health care, including the preventative and primary health care of Aboriginal and Torres Strait Islander people, within local communities;
- (cb) to ensure that the incorporated hospital—
  - (i) promotes a healthy workforce culture for and among staff employed to work within the incorporated hospital; and
  - (ii) implements measures to provide for and promote the health, safety and wellbeing of those staff within the workplace (including the psychosocial health, safety and wellbeing of staff); and
  - (iii) implements policies issued by the Chief Executive on workforce health, safety and welfare (including policies on workforce harassment and bullying), so far as those policies apply to the incorporated hospital.
- (d) to provide strategic oversight of and monitor the incorporated hospital's financial and operational performance
- (e) to prepare and keep under review strategies:
  - (i) for the provision of health services by the incorporated hospital;

- (ii) to promote consultation with health professionals working in the incorporated hospital; and
- (iii) to promote consultation with health consumers and community members about the provision of health services by the incorporated hospital;
- (f) to advise providers and consumers of health services, and other members of the community served by the incorporated hospital, as to the hospital's policies, plans and initiatives for the provision of health services;
- (g) to manage performance against the performance measures in the service agreement between the incorporated hospital and the Chief Executive;
- (h) to cooperate with other providers of health services, including providers of primary health care, in planning for, and providing, health services;
- (i) to endorse the incorporated hospital's annual report; and
- (j) to liaise with the Boards of other incorporated hospitals and the Chief Executive in relation to both local and statewide initiatives for the provision of health services.

A Governing Board may also carry out any other function assigned to the Board under this Act or any other Act or by the Minister.

The Governing Board should develop an annual workplan outlining how it will deliver on its functions.

A Governing Board is not to:

- be involved in the operational management or day to day responsibility for health service delivery, for which the (CEO) is responsible;
- give a direction concerning the clinical treatment of a particular person; or
- give a direction regarding the appointment, transfer, remuneration, discipline or termination of an LHN employee.

## 5.1 Board Meetings and Minutes

The agenda for a meeting of the Governing Board must be published on a website accessible to the public at least 7 days prior to the meeting.

A Board member may participate in a meeting of the Governing Board by telephone or other electronic medium provided that notice of the arrangement is given to all Board members and the participating member is capable of communicating with every other member present at the meeting.

The approved minutes of a Board meeting must be published on a website accessible to the public within 7 days of the meeting at which the minutes were approved.

## 5.2 Requirement for an Annual Public Meeting

In accordance with Schedule 3 of the *Health Care Act 2008* a Governing Board must hold an annual public meeting between 1 October and 31 December in that year at which the annual report of the LHN for the previous financial years is presented to members of the public.

Notice of the meeting is to be advertised in at least one newspaper circulating generally within the geographic area of the LHN and by other means such as the LHN website.

Members of the public attending the annual public meeting should be provided with an opportunity to address the meeting.

## 5.3 Engagement Strategies

In accordance with Section 33A of the *Health Care Act 2008* a Governing Board must develop and publish:

- (a) a *clinician engagement strategy* to promote consultation with health professionals working in the LHN; and
- (b) a *consumer and community engagement strategy* to promote consultation with health consumers and communities about the provision of health services by the LHN.

The Governing Board must consult with health professionals working in the LHN and health consumers and communities within its geographic area.

The engagement strategies must include those matters outlined regulation 7A of the *Health Care Regulations 2008*; and must be published on the LHN website accessible to members of the public.

The Governing Board must ensure that engagement strategies are reviewed within three years from the date of first publication, and thereafter within three years after each review.

## 6. ACCOUNTABILITY AND COMPLIANCE

The Board is accountable to, and subject to the direction of, the Minister for Health and Wellbeing.

Under section 33B(4) of the *Health Care Act 2008* the Board is required to comply with any directions of the Chief Executive, Department for Health and Wellbeing, who is responsible for the overall management of South Australia's public sector health system. The Board must also comply with any policies of the Department for Health and Wellbeing specified by the Minister or Chief Executive to apply to the Board in the performance of its functions.

Under section 7 of the *Health Care Act 2008*, the Chief Executive of the Department for Health and Wellbeing may issue policies that are to be complied with by LHNs and their staff.

Under Part 4A of the *Health Care Act 2008*, the Chief Executive, Department for Health and Wellbeing must enter into an annual Service Agreement with the LHN for the delivery of health services.

The LHN is subject to performance monitoring by the Department through the Service Agreement, while the Board is responsible to the Minister for the performance of the LHN against targets in the Service Agreement.

As a public entity, the Board has a range of legislative obligations and must comply with various State Government policies, standards and instructions.

These include, but are not limited to:

- *Public Sector (Honesty and Accountability) Act 1995*
- *Freedom of Information Act 1991*
- *Independent Commissioner Against Corruption Act 2012*
- *State Records Act 1997*
- Department of the Premier and Cabinet Circulars
- Treasurer's Instructions
- State Procurement Policies and Guides

The Board is also responsible for setting the risk thresholds within which the CEO is expected to operate, and for determining the procedures and protocols that will apply to the Board's operations.

The Board should take a proactive approach to risk management, to:

- identify risks and mitigating strategies with all decisions and recommendations made; and
- implement processes to enable the Board to identify, monitor and arrange management of risks.

## 7. REQUIREMENTS OF BOARD MEMBERS

### 7.1 Members to Act in Public Interest

It is important that Board members act impartially and in the public interest in the exercise of their duties. Board members should ensure that the objectives and outcomes of their decisions are in the best interests of the LHN, its health professionals and its health consumers and community.

It is also important that the Boards processes and procedures support members in acting in the public interest by ensuring that members:

- act in accordance with their statutory powers;
- carry out functions fairly and impartially, with integrity and professionalism;
- comply with the principles of procedural fairness;
- act reasonably;
- ensure proper accountability and transparency; and
- avoid or properly manage situations where their private interests conflict or might reasonably be perceived to conflict with the fulfilment of their role as a Board member.

### 7.2 Disclosures and Conflicts of Interest

#### 7.2.1 Register of pecuniary and personal interests

Board Chairpersons and members are required, upon appointment and on an ongoing basis, to disclose all pecuniary and personal interests that could reasonably raise an expectation of a real or perceived conflict of interest, or could have a material interference with the proper performance of a member's public duties.

Pecuniary and personal interests may include business interests; contracts, agreements or understandings entered into by the Board member or a member of their family; other Board memberships; and membership of an association or union.

The LHN Board Secretariat will maintain a register of interests for its board, and cause an annual review to be undertaken by the Chairperson and all members.

Board Chairpersons and members should also advise the Board Secretariat of any change in their interests or positions since their last declaration as soon as practicable for recording in the register.

The Board Chairperson will table a consolidated register of all Board members' declarations of interests at the first scheduled meeting following the annual review of the register. Copies of the register should also be tabled at Board meetings following updates advised by the Board Chairperson or members.

A declaration of an interest may result in conflicts of interest at a Board meeting. All Board Chairpersons and members are required to carefully examine issues scheduled for discussion by the Board and identify any perceived or actual conflict of interest that may arise. Should this occur, the Board Chairperson or member should declare it in accordance with 7.2.2 below.

Persons appointed to a Board committee or sub-committee must also report their pecuniary and personal interests to the Board Secretariat for recording in the register of personal and pecuniary interests.

### 7.2.2 Conflicts of Interest

A conflict of interest is defined as a conflict between a Board member's public duty to act in the public interest and their private or personal interests.

A conflict of interest exists whether it is:

- actual – it currently exists;
- potential – it may arise, given specific circumstances;
- perceived – members of the public could reasonably form the view that a conflict exists (or could arise) that may improperly influence the Board member's performance of his or her duty to the Governing Board.

Under section 33D of the *Health Care Act 2008* a member of a Board who has a conflict of interest in a matter being considered or about to be considered by the Board:

- 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; and
- must not vote, whether at a meeting or otherwise, on the matter, and must not be present while the matter is being considered at the meeting.

However, the disclosing member may vote and be present in the room, if the Board passes a resolution that:

- specifies the member, the interest and the matter; and
- states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

The disclosing member may also vote and be present in the room where the Minister for Health and Wellbeing has declared, by instrument in writing, that the requirement not to vote nor be present while a matter is being considered, does not apply in relation to a specified matter either generally or in voting on particular resolutions. In these instances, the Minister for Health and Wellbeing must cause the declaration to be laid before both Houses of Parliament within 14 days of being made.

Notwithstanding these exceptions in which disclosing members may be absolved of their duty not to vote or be present in a room; a member cannot be absolved by the Minister for Health and Wellbeing or the Board of their duty to disclose the interest in the first place. The onus is on the member to ensure they comply, failure of which can attract a maximum fine of \$25,000.

Disclosures made at a meeting of the Board:

- must be recorded in the minutes of the meeting; and
- must be recorded in a register kept by the Board, which must be reasonably available for inspection by any person.

Disclosures must still be recorded in the minutes and register even where the disclosing member has been absolved of their duty to abstain from voting or be absent from a room.

The legislative obligations relating to disclosures of pecuniary or personal interests, also apply to members of committees and sub-committees of the Board.

### 7.3 Confidentiality

The maintenance of confidentiality at Board meetings is an essential aspect of good governance. A strong awareness of, and respect for, the importance of Boardroom

confidentiality will also be essential in order to build a strong culture of mutual trust, respect and openness.

Board members must keep all Board discussions and deliberations confidential. Members may receive information that is regarded as 'commercial-in-confidence', clinically confidential or have privacy implications. Members have a responsibility to maintain confidentiality of all information that is not in the public domain.

The Board Chairperson and members should accept they may acquire information of a confidential nature and agree they will not use confidential information obtained by them in their capacity as members improperly. This rule will generally prohibit the Board Chairperson and members from disseminating such information to outsiders unless they are given permission by the Board, in consultation with the CEO, to do so.

Members are subject to the confidentiality provisions of section 93 of the *Health Care Act 2008*, which makes it an offence to disclose personal information relating to a person that members have obtained as part of their duties. 'Personal information' is defined as information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion. This would include personal information relating to employees or patients of the LHN.

As corporate agencies, a Board is also subject to the Department of the Premier and Cabinet's [Information Privacy Principles Instruction](#) (PC012).

All proceedings of the Board, including papers submitted and presentations made, shall be kept confidential and will not be disclosed or released to persons other than members of the Board, except as required by law, for example, under the *Freedom of Information Act 1991*, or as agreed by the Board. Members of the Board must not improperly use confidential information to gain an advantage for themselves or someone else or to cause detriment to the LHN.

Members will not disclose publicly any business discussed while the public is excluded from a meeting, and or information for which good reason exists for it to be withheld from the public, unless the Board decides by resolution to make such information public.

The fiduciary and statutory duties of Board members demand that Board members remain loyal to the decisions of the Board, irrespective of any individual Board member's personal views on a matter, since speaking against a decision of the Board outside the Boardroom can damage the Board and the LHN and so may even amount to a breach of the duty of Board members to act in good faith in the interests of the LHN.

## 7.4 Duties of Corporate Agency Members

Board members are considered to be 'corporate agency members' for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*. The duties of corporate agency members under this Act that apply to Board members include:

- duty to act **honestly** – members should be open and transparent in their dealings, use power responsibly, not place themselves in a position of conflict of interest, strive and earn and sustain a high level of public trust;
- duty to **exercise care and diligence** – members should ascertain all relevant information, make reasonable enquiries, understand the financial, strategic and other implications of decisions;
- duty to **not be involved in unauthorised transactions** – members should not accept gifts or benefits such as fees, favours, rewards or gratuities as they may constitute an actual, potential or perceived conflict of interest to other organisations or individuals; and



- duty to **not hold unauthorised interests** – members should disclose any personal or professional matters that may lead to actual, potential or perceived conflicts of interests or conflicts of duties.

## 7.5 Offences under the Criminal Law

Part 7 of the *Criminal Law Consolidation Act 1935* sets out a number of criminal offences relating to current and former public officers, which includes current and former members of government boards.

These criminal offences include:

- **acting improperly** – a member is considered to act improperly if they knowingly or recklessly act contrary to ‘the standards of propriety generally and reasonably expected by ordinary decent member of the community to be observed by public officers’. However, a member will not be taken to have acted improperly unless their actions are considered to warrant criminal sanction.
- **bribery or corruption** – a member may not improperly seek, accept, or agree to accept a benefit from another person as a reward or inducement for:
  - an act or omission in their official capacity, or
  - the exercise of power or influence they have, or purport to have, by virtue of their public office.

Engaging in bribery or corruption may render a member liable to seven years’ imprisonment.

- **abuse of public office** – a member must not improperly:
  - exercise power or influence they have by virtue of their public office;
  - refuse or fail to perform an official duty of function; or
  - use information they have gained by virtue of their current or former public office,

with the intention of:

- securing a benefit for themselves or somebody else; or
- causing injury or detriment to somebody else.

If a member is convicted of abuse of public office, they may be liable to seven years’ imprisonment.

- **demanding or requiring benefit on basis of public office** – a member must not demand or require a benefit:
  - by suggesting or implying that their demand should be complied with because they hold a public office; and
  - knowing that they have no legal entitlement to the benefit.

If a member is convicted of demanding a benefit on the basis of their public office, they are liable to seven years’ imprisonment. However, this offence does not apply to demands made to a proper authority in relation to a member’s remuneration or conditions of appointment.

## 7.6 Media and Communications

Members have a requirement to ensure appropriate and consistent communication occurs. All public comment, including that to any media organisation on behalf of the Board, is to be made by the Chairperson.

The Chairperson may specifically authorise another person to comment on a particular matter. In the absence of the Chairperson, the Deputy Chairperson (if appointed) will address media enquiries on behalf of the Board.

On occasions members may be asked their opinions and when talking to the media members should:

- let the Board Chairperson and SA Health Media Unit know if they have been contacted by, or intend to speak to the media, in advance of making comment;
- make clear the capacity in which they are speaking i.e. whether they are expressing their own personal views or speaking on behalf of the Board;
- remember they are representing the Government and Minister;
- remember that decisions of the Board are made collectively, and members share equal responsibility for Board decisions; and
- be mindful of, and aligned to, the Board's governance role.

Operational and management media and communications concerning LHNs are managed by the SA Health Media Unit in accordance with the SA Health Media Policy Directive.

## 7.7 Indemnity

Section 74 of the *Public Sector Act 2009* protects Board members from civil liability when exercising their official duties. Under this provision no civil liability will attach to Board members for an act or an omission in the exercise, or purported exercise, of their official powers or functions.

Any action that would lie against the Board member will instead lie against the LHN (i.e. the Crown) and will be covered under SA Health's Insurance arrangements through the State's Insurer.

However, this provision does not prevent the LHN from taking action against the Board member for acts or omissions not made in good faith.

Immunity under section 74 of the *Public Sector Act 2009* does not apply to criminal proceedings.

## 7.8 Use of Government Email

Each Board member will have a South Australian Government email account created. It is recommended that this email account is used for all messages sent in their capacity as a Local Health Network Board member. In this capacity, board members fall under the definition of a Public Officer.

South Australian Government email accounts are protected by comprehensive security standards, appropriate for managing communication of confidential and highly sensitive information.

Email messages made or received in the conduct of SA Health business, including those made by Board members, are considered to be official records as defined by the *State Records Act 1997* and must be managed accordingly, and may be accessed under the *Freedom of Information Act 1991*.

Should a Board member elect to utilise an alternative email account for email messaging, compliance with the *State Records Act 1997* is their own responsibility. The Board member must ensure the email account is secure and emails must be stored and managed in line with section 7.8 of this Charter, and be accessible and/or recoverable as required under the *Freedom of Information Act 1991*.

## 7.9 Storage and Disclosure of Information

Board members must ensure that all confidential or sensitive information is stored safely in accordance with the *State Records Act 1997*.

Board members should also ensure that the privacy and confidentiality of personal information that they may receive as part of Board proceedings is stored securely, taking necessary precautions to prevent the unauthorised disclosure of the information.

# 8. COMMITTEES AND SUB-COMMITTEES

A Governing Board may establish committees or sub-committees that the Board thinks fit to advise the Board on any aspects of its functions, or to assist the Board in the performance of its functions.

Any committees or sub-committees may make recommendations to the Board about matters within the scope of the Board's functions, referred by the Board to the committee or sub-committee.

Each committee or sub-committee will have Terms of Reference setting out its role, responsibilities, operations and obligations approved by the Board

A committee or sub-committee may include persons who are members of the Board or persons who are not members of the Board. The Board Chairperson in consultation with the Board will decide the membership of all Board committees or sub-committees.

A member of the committee or sub-committee is entitled to remuneration, allowances and expenses determined by the Board with the approval of the Minister. The remuneration will be in line with the Department of the Premier and Cabinet Circular *PC016* – [Remuneration for Government Appointed Part-Time Boards and Committees](#).

The Board Chairperson is responsible, in collaboration with the Board Secretariat, for maintaining registers that record the membership of each committee or sub-committee including the term of appointment and remuneration.

A Governing Board will establish the following committees to provide advice or assist the Board in its functions:

- Finance Committee;
- Clinical Governance Committee; and
- Audit and Risk Committee.

Other committees may be established as required.

## 9. BOARD EFFECTIVENESS

### 9.1 Board Self-Evaluation

The Board Chairperson is responsible for ensuring that the Board undertakes an annual self-assessment of its operations, performance and capability with a view to tracking and improving Board effectiveness over time.

The performance of the Board should be assessed against its key responsibilities and functions including, for example:

- managing the relationship with the Minister and meeting the Minister's expectations for the role of the Board;
- strategic planning;
- discharging the Board's statutory obligations;
- monitoring the LHN's performance;
- monitoring and reviewing the performance of the CEO;
- managing relationships with its health professionals, health consumers and the community;
- Board operations including for example Board meetings, functioning of sub-committees; and
- Board member performance, training and development of members, Board leadership and teamwork.

The Board Chairperson will provide advice on the outcomes of the annual self-assessment to the Minister for Health and Wellbeing, and Chief Executive, Department for Health and Wellbeing.

## 9.2 Departmental Evaluation

As system leader, the Chief Executive, Department for Health and Wellbeing may conduct from time to time, an external evaluation of Board effectiveness in line with processes and requirements determined by the Minister for Health and Wellbeing.

The Department for Health and Wellbeing will monitor Board and LHN performance against its Service Agreement on an ongoing basis, in line with the established performance framework of SA Health.