Government of **Western Australia**
Department of **Health**

OFFICIAL

Health Service Provider Boards – Governance Guide

April 2025

Important Disclaimer:

All information and content in this document is provided in good faith by the WA Department of Health and is based on sources believed to be reliable and accurate at the time of development. The State of Western Australia, the WA Department of Health and their respective officers, employees and agents, do not accept legal liability or responsibility for the document or any consequences arising from its use.

Note this document is not a mandatory policy document and does not cover the field in respect to legislation, government policies and accountabilities that are applicable to Board Members of a Health Service Provider Board. The intent of this document is to provide a guide to Board Members in the performance of their duties and discharging their responsibilities under the *Health Services Act 2016* (WA).

Owner:	Department of Health, Western Australia
Contact:	System-wide Governance and Reform Directorate
Date:	April 2025
Relates to:	Statutory Board Operations Policy Framework Health Service Provider Board Governance Policy

Version	Date	Description
1.0	10 May 2019	Publication
1.1	6 March 2020	Update to remuneration rates and minor terminology changes.
1.2	October 2021	General updates including revised Statutory Framework and WA Health Governance Model.
1.3	11 April 2025	• Update to the changes required by the Commissioners Instruction 40: Ethical Foundations. • Update to the changes required by the Premier's Circular 2023/02 State Government Boards and Committees • Update to the changes required by the Premier's Circular 2021/02: Guidelines for Official Air travel by Minister, Parliamentary Secretaries and Government Officers.

TABLE OF CONTENTS

About this document

This document is applicable to WA board governed Health Service Providers and boards and has been prepared to:

- Provide supporting guidelines and materials to support the *MP 0107/19* Health Service Provider Boards Governance Policy.
- Provide information about the governance structures, functions, roles, responsibilities, and accountabilities of WA health system as prescribed by the *Health Services Act 2016* (WA).
- Provide an overview of the accountability framework applicable to WA health service providers and boards.
- Provide a reference point for further information relevant to the role of health service provider boards.

If there are any questions in respect to the content within this document, they should be directed to:

Board Assurance
System-wide Governance and Reform Directorate
Department of Health
189 Royal Street
East Perth WA 6004

Email: boardassurance.doh@health.wa.gov.au

Legislation and policy references in this guide:

For ease of reference and to assist in understanding mandatory and non-mandatory requirements, within this Guide references are made as appropriate to the *Health Services Act 2016* (WA) (HSA) and to *MP 0107/19* Health Service Provider Boards Governance Policy (Governance Policy).

1. INTRODUCTION

1.1 WA health vision, values and strategic priorities

Vision

To deliver a safe, high quality, sustainable health system for all Western Australians, regardless of location or circumstance.

Values

As outlined in *MP 0124/19* Code of Conduct Policy, WA health entities must ensure that their values and principles are consistent with the WA health system CORE values:

1. Collaboration
2. Openness
3. Respect
4. Empowerment

Strategic priorities

Our strategic priorities are focused on a continuum of care to support and guide health care through integrated service delivery from prevention and health promotion, early intervention, primary care through to diagnosis, treatment, rehabilitation, and palliation and include:

- prevention and community care services
- health services
- chronic disease services
- Aboriginal health services.

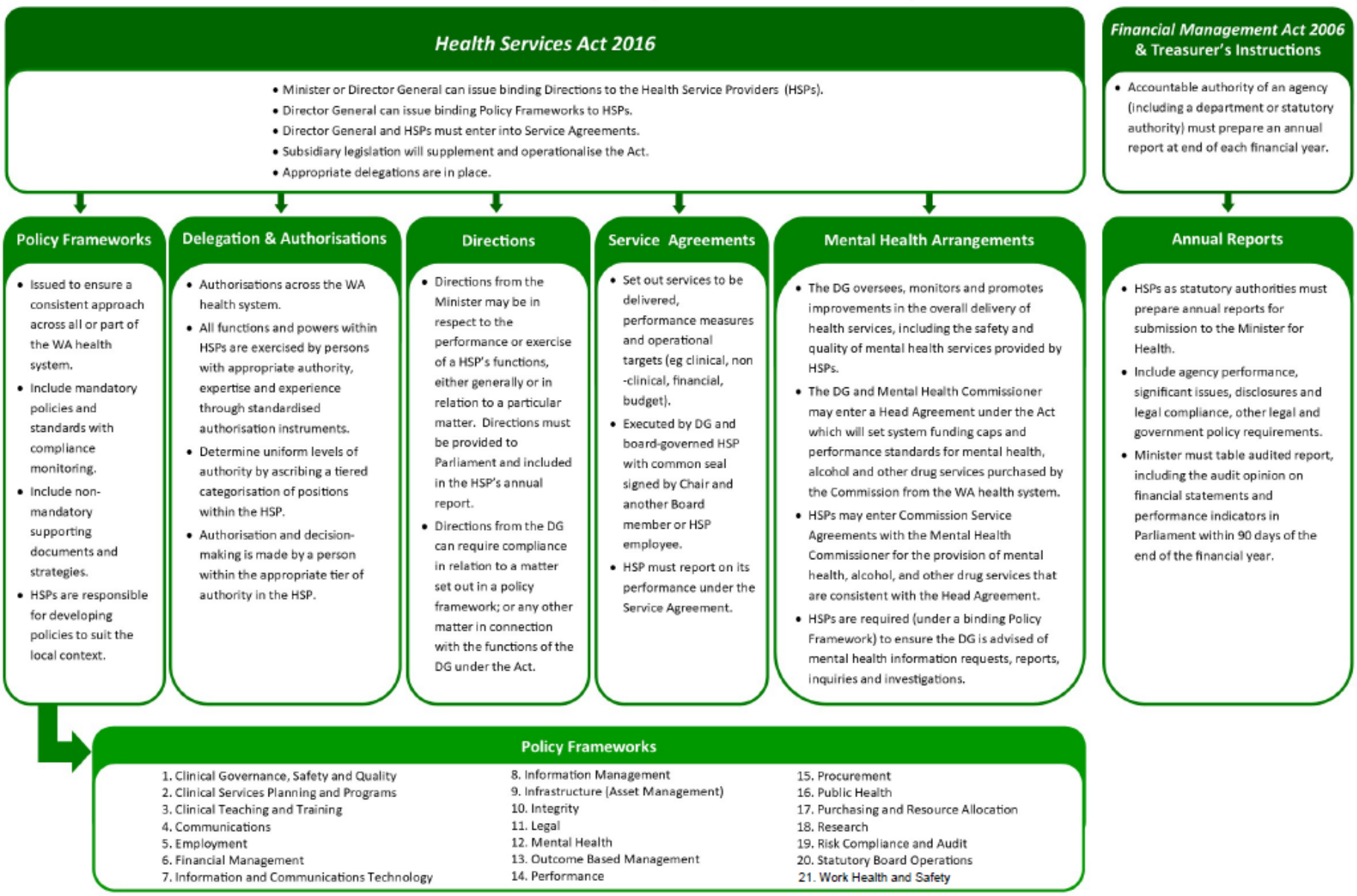
2. DEFINING GOVERNANCE ROLES

2.1 Statutory framework

As statutory authorities, Health Service Providers (HSPs) are accountable to the Western Australian public for their operations and subject to a range of legislation. The Statutory Board Operations Policy Framework includes a non-exhaustive list of applicable legislation: The Key State Legislation Which May Impact WA Health Service Boards at Appendix 3.

The statutory framework is depicted in Figure 1 on the next page and is intended to provide context to the governance framework under which HSPs operate. It does not include the broader statutory obligations of HSP boards under relevant State and Australian Government legislation.

Figure 1: Overview of the WA health statutory framework



Policy Frameworks

The *Health Services Act 2016,* under section 26, grants power to the Director General of the Department of Health (Director General), as the System Manager, to issue a policy framework that may bind HSPs either individually or collectively.

The current Policy Frameworks issued by the Director General are:

1. Clinical Governance, Safety and Quality	2. Clinical Services, Planning and Programs
3. Clinical Teaching and Training	4. Communications
5. Employment	6. Financial Management
7. Information and Communications Technology	8. Information Management
9. Infrastructure (Asset Management)	10. Integrity
11. Legal	12. Mental Health
13. Outcome Based Management	14. Performance
15. Procurement	16. Public Health
17. Purchasing and Resource Allocation	18. Research
19. Risk, Compliance and Audit	20. Statutory Board Operations
21. Work Health and Safety	

Further detail and links to the Policy Frameworks are located on the website of the WA Department of Health (the Department).

2.2 WA health reform

The HSA introduced changes to the governance of the WA health system from July 2016 by clarifying the roles, responsibilities, and accountabilities at each level of the WA health system, and by devolving decision making to the local level. The HSA modernised the governance and delivery of the health system in WA by implementing a model based on the successful elements of the Victorian, New South Wales, and Queensland health systems.

The Department, led by the Director General, was established as the System Manager responsible for the overall management, performance, and strategic direction of the WA public health system to ensure the delivery of high-quality, safe and timely health services.

Health services were established as HSPs, including five separate board-governed statutory authorities, legally responsible and accountable for the delivery of health services for their local areas and communities.

Health Support Services (HSS) and PathWest Laboratory Medicine WA (PathWest) were established as chief executive governed HSPs from 1 July 2016 and 1 July 2018 respectively. Following a recommendation of the Sustainable Health Review, HSS and PathWest have been board governed HSPs since 1 July 2020.

The Quadriplegic Centre is a chief executive governed HSP.

2.3 Board governed health service providers

Section 32 of the HSA provides for the establishment of HSPs. The Minister is responsible for declaring health service areas and may establish a HSP for the health service area under section 32(1)(b). The Minister may also specify whether a HSP is to be a board governed or chief executive governed provider under section 32(1)(d).

Section 70(1)(b) of the HSA sets out that the board is to perform or exercise all of the functions of the HSP under the HSA or any other written law, in the name of the HSP.

Statutory authority

The term public sector refers broadly to the entities that exist and the people employed for a public purpose. The public sector supports all three arms of government – the legislature (Parliament), the executive arm (the Government of the day) and the judiciary (judges of the various courts). The public sector can be considered as comprising a number of categories – public service departments, senior executive service (SES) and non-SES organisations, other organisations and independent offices.

The *Public Sector Management Act 1994* (WA) (PSMA) provides the legislative framework for the structure, administration, and management of the public sector. The PSMA covers areas such as:

- public sector conduct obligations
- the role and functions of the Public Sector Commissioner
- functions and responsibilities of Chief Executive Officers
- dealing with substandard performance and disciplinary matters for some employees
- appointments in the SES.

HSPs are non-SES organisations, which means they are entities created for a public purpose and are subject to the PSMA.

A HSP is a body corporate with perpetual succession. This means if the board chair or board members of the board change, or if the entire board is removed, the HSP will continue to operate. Legal proceedings may be taken by or against a HSP in its corporate name, that is, the HSP can sue or be sued.

Use of the common seal

Section 41 of the HSA sets out the requirements for execution of documents by an HSP. Section 41(5) states that the common seal of a board governed HSP must be affixed to a document in the presence of the board chair and another member of the board, or the board chair and a person employed in the HSP, and each of them must sign the document to attest that the common seal was so affixed. Guidelines on the use of the common seal are provided in Appendix 4.

Board functions and role

The functions of the board, in the name of the HSP, are set out in section 34 of the HSA, which states the main functions are to provide health services stated in the service agreement for the HSP; teaching, training and research that supports the provision of health services as agreed with the Director General; and any other services agreed with the Director General.

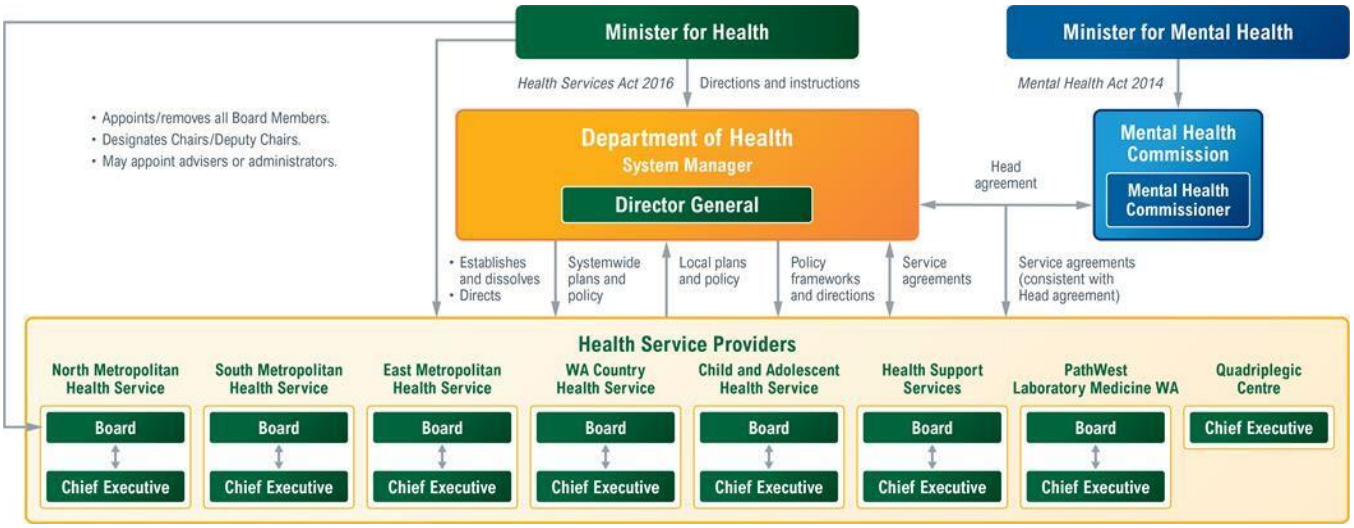
The other functions of the board include:

- providing safe, high quality, efficient and economical health services to their local communities
- developing and implementing corporate and clinical governance arrangements for the HSP
- monitoring and improving the quality of health services
- delivering health services in accordance with service agreements with the Director General including funding, performance measures (for example clinical, financial, safety and quality, audit), and operational targets
- employing HSP staff
- contributing to, implementing and keeping under review systemwide strategies issued by the Director General
- complying with the policy frameworks and Director General directions that apply to or relate to the HSP
- establishing an efficient and effective procedure for dealing with complaints about the provisions of health services by the HSP
- maintaining land, buildings and assets controlled and managed by the HSP
- consulting with health professionals working in the HSP, consumers and community members about the provision of health services
- cooperating with other providers of health services, including of primary health care, in planning for and providing health services.

2.4 WA Health governance structures

Roles and relationships under the current governance model are illustrated in Figure 2 and described below:

Figure 2: WA health governance model



Minister for Health

- Overall portfolio responsibility for the WA health system.
- Accountable to the WA Parliament for the operation of the WA health system, including planning, service delivery and performance.

- Approves distribution of the health portfolio budget to HSPs on the Director General's recommendation.
- Has the power to issue directions or instructions to the Director General.
- Can give directions to any HSP including to cease or limit the performance of any of its functions.
- Establishes and dissolves HSPs and health service areas that they are responsible for and can change their configuration.
- Appoints and removes board members, designates a board chair and board deputy chair.
- If a board is not performing, may appoint advisers or dismiss board members and appoint an administrator.
- Can request information from any HSP.
- Can delegate authority to the Director General.
- Can enter into business arrangements and acquire, hold, manage, improve, develop, dispose of and otherwise deal in property.

Minister for Mental Health

- Accountable to Parliament for the operation of the *Mental Health Act 2014*.
- Approves distribution of the mental health portfolio budget.
- May initiate an inquiry into the mental health treatment, care or other services provided by a HSP to a person or a class of persons. The inquiry will have broad ranging, compelling powers upon individuals and entities, including HSPs.
- Can direct the Health and Disability Services Complaints Office (HaDSCO), the Chief Mental Health Advocate and the Chief Psychiatrist to investigate and report on treatment and care.

Director General of the Department of Health

- Responsible for strategic leadership, oversight, performance, planning, policy setting and direction of WA health system.
- Oversees, monitors, and promotes improvements in the overall delivery of health services, including safety and quality of health services.
- Issues binding policy frameworks and directions to HSPs.
- Enters into service agreements with HSPs setting out services, performance measures and operational targets.
- Monitors performance and when performance does not meet the expected standards, the Director General can use the powers available under the HSA to take remedial actions. These powers include issuing binding policy frameworks, directions, as well as conducting investigations and inquiries.
- Holds powers of investigation, inspection, and audit to assess compliance, performance, safety and quality.
- Holds powers to conduct an inquiry into the functions, management, or operations of HSPs.
- Manages systemwide industrial relations and sets conditions of employment for HSP employees.
- Appoints and dismisses chief executives of HSPs.

Mental Health Commissioner

- Responsible for development of mental health policy and strategy, determining the range of mental health services required for the State, and for specifying activity levels, ongoing performance monitoring and evaluation of key mental health programs.
- Co-ordinates research into causation, prevention and treatment of alcohol and other drug use problems.
- Provides assessment, treatment, management, care, and rehabilitation of persons experiencing alcohol or other drug use problems or co-occurring health issues (including mental health issues) and establishes and maintains premises and/or accommodation for those purposes (subject to the consent of the Minister for Mental Health).
- Purchases mental health, alcohol and other drug health services and support across the State from the WA Health system and other non-government health providers. Purchasing of mental health, alcohol and other drug health services is through a Head Agreement entered into with the Director General and through Commission service agreements with each HSP (that are consistent with the Head Agreement).
- Section 572 of the *Mental Health Act 2014* provides that the Commissioner may request disclosure of relevant information about mental health treatment and care and service evaluation by the Director General and HSPs. HSPs and the Director General are not bound to disclose information requested by the Commissioner under this section.

Health Service Providers

- Responsible and accountable for providing safe, high quality, and efficient health services to their local communities, in accordance with service agreements.
- Must comply with policy frameworks and directions issued by the Director General and develop policies to suit the local context, within the frameworks set by the Director General.
- Will enter into service agreements with the Director General setting out services, performance measures and operational targets for the provision of health services.
- Enter into Commission service agreements with the Mental Health Commissioner for the provision of mental health, alcohol and other drug services. Commission service agreements must be consistent with the Head Agreement.
- Required (under a binding policy framework) to ensure the Director General is advised of mental health information requests, reports, inquiries, and investigations.

2.5 Differentiating the role of the board and the role of management

One of the most important aspects of good governance is establishing a clear understanding of the delineation of responsibilities and accountabilities of the board from those of management and maintaining the separation of those roles.

It is the responsibility of the board to achieve agreed strategic directions and priorities consistent with their HSP and broader, statewide WA health system and public sector objectives. The board should focus on their strategic decision making and oversight of the

implementation of the core policies and procedures and oversee the activity of the HSP, including systems of financial control, internal control, and performance reporting. Boards should avoid becoming involved in day-to-day operational decisions.

It is the role of management to deal with day-to day operational decisions and issues. Where board members need to become involved in operational matters, they should separate their strategic role from their operational role (where they should act in consultation with management).

2.6 Role of the board

HSP boards are responsible for setting the strategic direction for the health service. Each HSP, as a statutory authority, is responsible for ensuring compliance with WA health system policy frameworks, legislation, regulations, policies, and standards.

Accountability for service delivery and performance rests with HSP boards and is monitored by the Department through the relevant policy frameworks (e.g. Performance Management Policy Framework, Statutory Board Operations Policy Framework), health service performance reports and regular performance discussions with boards and chief executives.

The key role of the board chair is to lead and direct the activities of the board by demonstrating values and behaviours desired in board members, which include professionalism, integrity, and respect.

Section 73 of the HSA sets out the key role of the board deputy chair is to act during a vacancy in the office of the board chair and during all periods when the board chair is absent from duty or for any other reason is unable to perform the duties of office. The board deputy chair also works closely with the board chair to support governance structures including the coordination of board committees and chairing board committees at the request of the board chair.

Board members work with the board chair to achieve agreed strategic directions and priorities consistent with HSP and broader, statewide WA health system and public sector objectives. It is expected that board members participate in all board and relevant board committee meetings, as well as undertake decision-making and business in accordance with board policies, Department and public sector policies and policy frameworks.

Role of board committee chairs and members

Currently, board working groups have been established as an alternative to board committees (for further details see section 3.4). Board committees may be established in the future as set out in section 92 of the HSA.

Functions of the board secretariat

It is the responsibility of the board chair to agree on the specific duties of the board secretariat and the functions, which may be performed by one or more individuals. In general terms the role of the board secretariats is to assist HSP boards to meet the minimum standards and expectations for board operations that are set out in the Statutory Board Operations Policy Framework and MP 0107/19 Health Service Provider Governance Policy.

2.7 The board and the chief executive

Responsibilities of the board

It is the responsibility of the board to make strategic decisions, establish and maintain policies and procedures and oversee the activity of the HSP including systems of financial control, internal control, and performance reporting.

Oversight is an important function of the board. For example, in the area of safety and quality, the board's oversight role includes setting the tone for the HSP's commitment to quality and patient experience, establishing safety and quality policies such as credentialing and ensuring mechanisms are in place to monitor the implementation of safety and quality plans.[1]

It is the responsibility of the board to clearly allocate functions and delegate to board committees, the chief executive, other staff, and agents.

Responsibilities of chief executive

It is the responsibility of the chief executive to address key management and operational issues within the direction and policies laid down by the board or Director General.

Chief executives are, in the exercise of their functions, accountable to their board. Management of the chief executive's individual performance occurs via the Director General as their employer, in consultation with the relevant board chair.

Chief executives of HSPs are employed by the Director General as part of a WA Health executive service. Chief executives of HSPs are the 'chief employees' of HSPs for the purposes of the PSMA as set out in section 106(2) of the HSA.

Chief executives manage the day-to-day operations of the HSP and are responsible for the employment and management of HSP employees.

The role of the chief executive is described in section 107(2) of the HSA and includes:

- managing day-to-day operations of the HSP
- ensuring that advice and information is available to the board to enable informed decisions to be made
- implementing board decisions
- advising the board in relation to the functions of the HSP under the HSA and other written laws
- responsibility for the employment, management, supervision, transfer, direction, and dismissal of other employees of the HSP
- to perform any other function specified or delegated by the board or imposed under the HSA or any other written law.

2.8 Engagement between board chairs and the Director General

The Director General, in their System Manager role, has responsibility for strategic policy and planning, system performance monitoring and intervention (where required), purchasing linked to statewide planning, budgeting, system assurance and regulation.

[1] Don L. Arnwine, *Effective Governance: the roles and responsibilities of board members* (Baylor University Medical Center Proceedings, 2002) at https://pmc.ncbi.nlm.nih.gov/articles/PMC1276331/pdf/bumc0015-0019.pdf

Planning and performance parameters and requirements are communicated through systemwide plans, policy frameworks and directions. Annual service appropriations flow to the Department from Government, with the Department using this funding to purchase health services and shared services through service agreements.

2.9 Further information

Further information on board governance principles can be found on the website of the Public Sector Commission (PSC): Governance of WA government boards and committees (www.wa.gov.au)

3. STRUCTURE OF WA HEALTH SERVICE PROVIDER BOARDS

3.1 Board composition

Section 71(1) of the HSA requires a HSP board to have between six and ten board members appointed by the Minister for Health (the Minister). From this pool, the Minister must appoint ('designate') one member to be the chair and another member to be the deputy chair.

The Minister must also appoint, as a minimum, three health professionals to the board, two of whom must currently be practising. The HSA defines a practising health professional to mean a health professional that is registered under the *Health Practitioner Regulation National Law (Western Australia)* and who is currently directly or indirectly providing care or treatment to persons.

Each other board member is required to hold one or more of the following qualifications, skills, and experience:

- expertise and experience in health management, business management, financial management and human resource management
- legal expertise
- expertise and experience in the provision of clinical and other health services
- expertise and experience in primary healthcare
- expertise in the education and training of health professionals
- knowledge and understanding of the community serviced by the HSP
- experience as a consumer of health services or a carer
- any other background, skills, expertise, knowledge or experience appropriate to health service delivery.

HSP employees (including contracted employees) cannot be appointed to the HSP board or HSP board committee under which they are employed. Employees of the Department or the Mental Health Commission are ineligible to be appointed to a HSP board.

3.2 Board appointment

Selection of board members

A public expression of interest process may be used to source applicants for board positions in circumstances of partial board renewal. Individual board members may also be sourced from the Government's board register, OnBoardWA, or through a targeted approach. For

example, a targeted approach may be used where casual vacancies arise for reasons that may include resignation of a board member or removal of the board member from the HSP board by the Minister. Similarly, a targeted approach may be used where a specific skill set or area of expertise is required by the board, in line with the board composition requirements of the HSA.

Applicants are selected and recommended for appointment based on their qualifications, skills and experience for the position and ability to commit adequate time to the appointment. A selection panel will be established by the Director General with members including the board chair, senior executives from the Department and if required other Government agencies.

Appointment to a health service provider board

The Department, as System Manager manages the process for appointment (including appointment for a further term – 'reappointment') to a HSP board. Decisions on appointment are made by the Minister on the recommendation of the Director General as set out in section 71(2) of the HSA. Board members are appointed following Cabinet approval of the Minister's recommendations. The Department manages board appointment processes, including the coordination of the recruitment process, liaison with the Minister's office and securing of Cabinet approval. The Department may choose to engage recruitment support services from the private market should this be considered warranted.

Applicants are required to consent to formal probity checks by the System Manager prior to appointment or reappointment. Appointment (including reappointment) to a HSP board is subject to the consent to and satisfactory completion of the following probity checks:

- criminal record screening
- verification the board member is not a disqualified director listed on the Australian Securities and Investments Commission Director Disqualification Register
- verification the board member is not an undischarged bankrupt listed on the National Personal Insolvency Index.

Applicants are also required to declare any interests or conflicts of interest to enable consideration of any matters that might preclude their appointment to a board.

Appointment to a health service provider board committee

When they are established, Cabinet approved board committees may include persons who are not members of the board of the HSP but must include at least one member of the board as set out in section 92(2) of the HSA. It is recommended that the board committee be chaired by a board member. A person who is a staff member of the HSP is not eligible to sit on a board committee of that HSP as set out under section 92(3) of the HSA.

The board chair will consult with the board on the membership of all board committees and the board chair will notify the Department with details of the proposed appointments in writing. Formal appointment of committee members may be subject to Cabinet approval.

Under the Governance Policy, boards must be responsible for maintaining registers that record the membership of each approved board committee including the term of appointment and remuneration for each board committee member.

Appointment of alternate members

The board chair in consultation with the Director General can consider whether it is appropriate to request the Minister to appoint an alternate member for a board member's period of absence. The Minister can temporarily appoint alternate members, other than the board chair, in circumstances of a board member being ill, absent, or precluded from voting or from being present at a board meeting due to consideration of a matter in which they have a material personal interest (set out in section 74 of the HSA), subject to Cabinet approval.

Alternate members have the same entitlements as board members whilst acting in accordance with their appointment including an entitlement to remuneration.

If the board deputy chair is unable to act in place of the board chair at a meeting the board members present may elect one of their number to act as board chair as provided for under section 74(3) of the HSA.

Term of appointment

Appointment of board chairs and board members is staggered to ensure business continuity and stability of the boards as terms of appointment expire. For example, a combination of one, two or three year terms may be utilised at the discretion of the Minister. The maximum total length of appointment permissible for a board chair or board member is nine years, with each term of appointment to be no more than three years as set out in section 76 of the HSA.

Renewal and replacement of members

A board member who intends to resign must provide a formal notice of resignation in writing by way of a letter addressed to the Minister and submitted to the Department (section 77(3) of the HSA).

Section 77(2) of the HSA deems a board member's position to be vacant if the person:

- dies or resigns
- is removed from office under section 76A
- becomes a bankrupt or a person whose affairs are under insolvency laws according to the *Interpretation Act 1984*
- is convicted of an offence punishable by imprisonment for more than 12 months
- is convicted of an offence created by section 80(1) of the HSA, which is a failure to disclose a material personal interest in a matter being considered or about to be considered by the board.

Section 76A) of the HSA provides the Minister with the power to remove a board member on the grounds of:

- neglect of duty
- misconduct or incompetence
- mental or physical incapacity, other than temporary illness, impairing the performance of the board member's duties
- absence, without leave, from three consecutive ordinary board meetings of which the board member has had notice.

3.3 Board meetings

The HSA provides at section 87 that a board must determine its own meeting procedures to the extent that they are not fixed in the Act. Suggested procedures are detailed in this section in respect to meeting procedures.

Where the procedure is set out in the HSA, and is therefore a legislative requirement, the relevant section of the HSA is quoted and details of the provision provided. The provisions of the HSA are noted for ease of reference, however, it is the responsibility of board chairs and board members to ensure they fully understand their obligations for the conduct of board and board committee meetings as mandated in the HSA.

The board chair should preside over all board meetings. The first board meeting is convened by the board chair and subsequent meetings are to be held at times and places determined by the board (section 85(1) of the HSA.) Boards may put in place a board calendar for board meetings at their discretion to ensure the efficient planning of board meetings and to enable board members to appropriately notify the board chair of periods of absence.

Notice of board meetings
It is suggested that notice of each board meeting be circulated to board chairs and board members at least seven days before each meeting, with an agenda and papers circulated at least three days before each meeting. Appropriate consideration should be afforded to board members who are based in regional areas to enable adequate time to book flights and accommodation, where necessary.

Attendance at board meetings
Members may attend meetings by video or tele-conference at the discretion of the board chair and as permitted by the HSA under section 89. It is suggested that board members provide requests for tele-conferencing facilities to board chairs at least three days prior to the meeting date to enable adequate time for technical set-up. Additional procedures may be noted in the local board governance manual for the technical set-up for the holding of meetings remotely.

Proxies
It is recommended that board members not be permitted to send a proxy to a meeting of the board to act on their behalf. Proxies are not the same as alternate members who may be temporarily appointed by the Minister as detailed above.

Absences and leaves of absence
The Governance Policy requires that boards ensure that they implement appropriate practices and management strategies for board meetings.

Should the board chair not be able to attend a board meeting, it is recommended the board deputy chair step in to fulfil the board chair's obligation to preside over the board meeting.

Section 74 of the HSA provides that should the board deputy chair be unavailable for any cause to act in the place of the chairperson at a meeting, the members present may elect one of their number to act as chairperson.

It is recommended that board members attend all board meetings as is reasonably practicable.

The Governance Policy notes that the board must consider including in their code of conduct the following meeting procedures:

- if a board member is unable to attend a meeting, the board member must offer an apology in writing to the board chair
- apologies and leaves of absence must be recorded in the board meeting minutes
- if the board member plans to be absent for a period of time they must request a leave of absence from the board chair in writing.

A board may grant a board member a leave of absence as stated in section 78 of the HSA. The Governance Policy requires that the board chair consult with the Director General for the purpose of considering whether it is appropriate to request the Minister to appoint an alternate member for the period of the absence.

Meeting frequency

Boards can determine the frequency of board meetings. It is anticipated that at least ten board meetings would be held within a calendar year.

Out-of-Session business and special meetings

Circumstances where it may be appropriate to handle matters out-of-session include:

- urgent items that must be considered before the next scheduled meeting
- when scheduling a face-to-face meeting is not possible and business is required to be progressed.

Consistent with requirements for board meetings under section 91 of the HSA, it is suggested that out-of-session matters be minuted and that this occurs at the next board meeting and conforms to the requirements of a quorum of the board (see below). Further HSP specific requirements for dealing with out-of-session business may be included in the local health service board manual.

Section 90 of the HSA provides that a resolution in writing signed or assented to in writing by at least half of the number of board members in office has the same effect as if it had been passed at a meeting of the board. An email meets the 'writing' requirement, as permitted by section 10 of the *Electronic Transaction Act 2011* (WA), provided that the board member concerned gives their consent to their writing requirement being met through the use of email.

A special meeting of the board may be convened by the board chair at any time as permitted by section 85(2) of the HSA.

Quorum and voting at meetings

The board meeting quorum requirement is set out under section 86 of the HSA and is equal to at least half the number of board members of the HSP board. If one-half is not a whole number, it is suggested a quorum be the next highest whole number.

The following procedures describe the minimum procedures that are recommended for the conduct of voting at meetings. Sections of the HSA are noted where the procedure is mandatory under the legislation:

a) If the board chair or a board member abstains from voting at a board meeting because of a conflict of interest, whether actual, perceived or potential, the remaining board members constitute a quorum for that vote i.e. at least half the number of board members who are entitled to vote are present.
b) A board member may participate in a board meeting by telephone or other electronic means that allows the participants to hear each other and is not required to be physically present to be counted as part of the quorum.
c) The board meeting minutes should note the board member was not present for the vote, but the vote was registered with the board chair (or board deputy chair where appropriate). The board member can be counted towards the quorum.
d) In the event a board meeting cannot be held due to a lack of quorum, the meeting should be deemed to be adjourned to a future date set by the board members present at the meeting.
e) The date of the adjourned meeting should allow sufficient time for notice of adjournment to be given to all board members.
f) Each board member should be entitled to vote at all board meetings. Where a board member is expected to be absent from a meeting or is unexpectedly ill, incapacitated or otherwise unavailable to be present during voting, that person may inform the board chair (or board deputy chair if it is the board chair that is absent) in writing on how he or she wishes to vote on a particular resolution that is before the board for decision.
g) Each board member's vote, including the board chair's, has the same weighting, (provided under section 88(1) of the HSA). In the case of an equal number of votes, the board chair shall have a casting vote in addition to their deliberative (i.e. normal) vote as a board member as permitted by section 88(2) of the HSA.
h) Voting can be by a show of hands unless determined otherwise by the board for a particular resolution in order to accommodate a board member participating by telephone or video conference call.
i) The majority of affirmative votes of the quorum that is present at the board meeting are sufficient to pass a resolution (section 88(3) of the HSA).

Meeting procedures for declaration of material personal interests

Board members and board committee members have a legal duty, respectively set out under section 80(1) and section 80(2) of the HSA, to disclose a 'material personal interest' in a matter to be considered or about to be considered by the board or board committee at a meeting, as soon as possible after the relevant facts have come to the board member's or board committee member's knowledge. Under section 80(3), this requirement also applies to board members operating in the capacity as a board committee member even if they have already disclosed the interest at a board meeting. Failure to do so is an offence under the HSA and may result in a fine of up to $25,000.

A board member should notify the board chair (or deputy chair or other member should they be a board chair) of their interest in a matter to be considered at the board meeting. A board committee member should notify the board committee chair (or board chair should they be a board committee chair). Such notifications must be documented in the minutes of relevant board meeting(s), or board committee meeting(s) as required by section 80(4) of the HSA. In addition, if the material personal interest represents a conflict of interest it must also be recorded in a register of conflicts of interest. Procedures and templates which boards may wish to use are included at Appendix 5 – *Conflict of Interest Management Procedures* and Appendix 6 *Conflict of Interest Management Templates.* A board member or board committee member who has a material personal interest, as deemed by the board or board committee must not be present while the matter is being considered at the board meeting, or vote on the matter, as required by section 81(1) of the HSA.

A board member (or board committee member) may vote on the matter where the board (or board committee) has passed a resolution that specifies the board member (or board committee member) has an interest, but the board (or board committee) considers the interest:

- as so trivial or insignificant as to be unlikely to influence the disclosing board member's (or board committee member's) conduct
- they should not be disqualified from considering or voting on the matter in question (section 82 of the HSA).

The capacity of the board or board committee to pass such a resolution is provided in section 82 of the HSA. The board member or board committee member concerned must not vote on the proposed resolution on the matter of the significance of their material personal interest or be present when the matter is being considered at the meeting, as required by section 81(2) of the HSA.

Considerations for determining the materiality of personal interests

The board should determine whether the declared interest of the board member or board committee member is material. In doing so, as a guide, the board may take into account all the relevant factors and circumstances, including (but not limited to):

- the objectives and functions of the HSP
- the matter that is to be discussed and determined by the board
- the nature of the interest and whether it could present a real, potential or perceived conflict of interest in considering the amount, scope and likelihood of any expected benefit and any other relevant circumstances
- the potential effect of the interest including the extent to which the board member's ability to make an impartial decision in the public interest could be compromised (or could reasonably be seen to be compromised)
- the overall likelihood that the interest may affect public confidence in the integrity of the board and its decisions.[2]

[2] Victorian Public Sector Commission, *Model Conflict of Interest Policy for Boards of Victorian Public Entities* (Melbourne: Government of Victoria, 2016) at https://vpsc.vic.gov.au/ethics-behaviours-culture/conflict-of-interest/

Board papers

Board papers and associated materials should be made available on 'Board Connect', the web portal system that is administrated by individual HSPs and supported by HSS, or another suitable platform that the HSP has in place for this purpose. On appointment, board members are to be granted access to Board Connect by board secretariats.

It is recommended that the board secretariat have the function of documenting the board's own processes in the local health service board manual with regard to agenda items, drafting of board meeting papers, and the distribution and tabling of board meeting papers including loading documents on Board Connect or another relevant portal. Board papers are official records and must be stored in accordance with the State Records Act 2000 (WA). Board Connect or other portals used to distribute board papers are not official recordkeeping systems for the storage of documents and existing HSP document management systems (e.g. RM8/TRIM) should still be used.

Board minutes and publication

Boards must keep accurate minutes of the proceedings at each board meeting as required under section 91 of the HSA. The board minutes, once approved by the board, serve as the official record of the board meeting, and must be stored in accordance with *State Records Act 2000* (WA).

The Governance Policy requires that boards ensure that information about board meetings is made publicly available on the relevant HSP's website. The Communique Template for board meeting publications found in the attached related documents to the Governance Policy must be used by HSP boards as the standard mechanism to communicate board meeting information, to ensure consistency across HSPs. This is not required in relation to board committee/working group meetings.

Information Communication Technology Policy for Mobile Device/s

The Governance Policy requires boards that enable board members to use WA health system computing /mobile device resources or BYOD (bring your own device) resources that utilise the WA Health system information and communications technology network, to ensure their board members complete and record the *'Board Member Mobile Device User Agreement.'*

This user agreement has been developed to confirm that board members understand their roles, responsibilities and obligations when using WA Health system computing /mobile device resources or BYOD resources that utilise the WA Health information and communications technology system. The user agreement is a supporting document to the Governance Policy.

3.4 Board committees / working groups

The HSA, under section 92, enables a board governed HSP to appoint board committees to assist the board to perform its functions. The establishment of all board committees is subject to the approval of the Minister and of Cabinet. The Department will facilitate the required Ministerial and Cabinet approval processes for the establishment of board committees on behalf of HSP boards.

The board should seek to provide for consistency in the way their board committees/working groups are constituted and governed. This may be achieved through ensuring there is consistency in the manner in which the terms of reference for each board committee/working group set out roles, responsibilities, operations and obligations. Board working groups have currently been established as an alternative to board committees.

Board working groups

At the board's discretion, board working groups have been established as an alternative to board committees. This approach is outlined below:

- Board working groups operate in an advisory capacity to the board.
- Board working groups generally comprise existing board members only.
- Board working group members are not entitled to remuneration if current board members. External members may be engaged through general procurement methods.
- Board working groups record their advice through notes, not formal minutes.
- No formal terms of reference are issued for board working groups by the Department: the scope of work is determined by Board Chairs.
- The board chair in consultation with the board decides the membership of board working groups.
- The transition to formal board committees is to be considered again at a later date, with the benefit of the learnings and experiences of board working groups.
- Board chairs give ongoing consideration to the rationalisation or streamlining of existing committees and working groups.

Appointment of board committee members

Once they are established, Cabinet approved board committees may include persons who are not members of the board of the HSP but it is recommended that the board committee be chaired by a board member.

A person who is a staff member of the HSP is not eligible to sit on a board committee of that HSP as set out under section 92(3) of the HSA.

3.5 Eligibility for remuneration

Board chairs, board deputy chairs, board members, alternate members and external board committee members are entitled to be paid fees and allowances as recommended by the Public Sector Commissioner and determined by the Minister. It should be noted that board members that are also board committee/working group members are not currently eligible for additional remuneration, as the annual remuneration rates are inclusive of board committee duties.

In accordance with Premier's Circular 2023/02 – State Government Boards and Committees, board members and board committee members may not be eligible for remuneration (other than reimbursement for travel expenses) if they are currently being paid from public monies, including all current full-time State[3], Commonwealth and local Government employees; Members of Parliament; current and retired judicial officers (except Magistrates); and current non-academic employees of public academic institutions; or a person who was a Member of Parliament within the last 12 months.

[3] Refers to WA State employees, not employees of other Australian States

Remuneration of board chairs, board members, alternate members and external board committee members must be reported in the HSP's annual report, consistent with the PSC guidelines issued annually for the preparation of such reports.

Part-time (defined as any working arrangement that is less than 1.0 FTE) public sector employees are eligible for remuneration for membership on Government boards and committees:

- where the relevant Minister is satisfied that the work relating to the board or committee will occur outside of their employment
- all other potential conflicts of interest are appropriately managed.

The Governance Policy refers to requirements that:

- All HSP employees serving as board members will not be paid remuneration as it is considered that board duties will occur during work hours. Instead, time off will be granted by the employing HSP to the HSP employee without loss of pay to enable board duties to be performed.
- HSP employees serving on HSP boards and board committees/working groups must formally obtain secondary employment clearance from their chief executive as part of their application process and prior to accepting an appointment to a HSP board or board committee/working group.

Remuneration rates

The current remuneration rates for board chairs, board members and alternate members were set with effect from 1 July 2019 (or 1 July 2020 for HSS and PathWest Boards) and are:

Board chair:	$76,230 per annum
Board deputy chair:	$41,926 per annum
Board member:	$41,926 per annum
Alternate members:	$825 full day (over 4 hours)
	$537 half day (4 hours or less)

For those board members that are appointed as the board deputy chair, the board member remuneration rate applies. Deputy chairs may be entitled to the chair remuneration rate when performing the full duties of the chair for a significant period of time.

Travel reimbursements

Board chairs and board members may be required to travel to scheduled meetings and engagements. The Governance Policy notes that reimbursement of outlays made for travel expenditure (that include air travel and travel made by a motor vehicle greater than 50km) must comply with the:

- *Public Sector Commission, Remuneration for Government Board and Committee members, Guidelines for the payment of Government Board and Committee members - Reimbursement of travel expenses section. (website).*
- *Department of Premier and Cabinet, Premier's Circular: 2021/02: Guidelines for Official Air Travel by Minister, Parliamentary Secretaries and Government Officers.*

- MP 0017/16 WA Health Staff Air Travel Policy
- Public Service Award 1992 sets out the rates for meals, incidentals and accommodation rates for various locations within Schedule I.

The cost of travel, accommodation and meals will be reimbursed for board chairs and board members. As a guide, reimbursement of travel expenses to and from meetings is acceptable where the round trip, by motor vehicle is greater than 50km.

Board chairs and board members are not entitled to be paid for travel time, or where the board chair or board member acts as a representative of another body that pays the board chair or board member's travel expenses.

Accommodation, meal, and other expenses, including taxi fares reasonably and necessarily incurred on official business, shall also be reimbursed, on production of receipts, up to Public Service Award rates.

Reimbursements will not apply if the Department or HSP has already provided for the cost of the travel and/or accommodation by coordinating this on behalf of the board member, particularly in relation to regional travel.

Annual budget for board operating costs

The Governance Policy notes that the annual budget for board remuneration and board operating costs is held by each board's HSP. Boards must exercise discretion in regard to their expenditure, which is subject to budget priorities and availability, and is determined in consultation with the chief executive.

The budget line item for board operations is included within the annual service agreements signed between the Director General and the board.

3.6 Indemnity and insurance provisions

Section 226 of the HSA states:

"226. Protection from liability for persons exercising functions

(1) An action in tort does not lie against a person other than a health service provider for any thing that the person has done, in good faith, in the performance or purported performance of a function under this Act.

(2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

(3) Despite subsection (1), neither a health service provider nor the State is relieved of any liability that it might have for another person having done any thing as described in that subsection.

(4) In this section, a reference to the doing of any thing includes a reference to the omission to do any thing"

Directors and Officers Insurance for board chairs and board members is provided through the State Government insurer, RiskCover. Details of the current Directors and Officers Insurance policy should be sought from each of the HSP board secretariats.

3.7 Fiduciary duties of a board member

Board members are subject to the same fiduciary responsibilities and duties of loyalty and good faith as are owed by company directors to their company. The *Statutory Corporations (Liability of Directors) Act 1996* (WA) codifies these obligations and provides a mechanism in section 5(2) by which they are enforceable by the responsible Minister or Attorney General.

Section 5(1) of the *Statutory Corporations (Liability of Directors) Act 1996* (WA) declares that "*a director of a corporation has the same fiduciary relationship with the corporation and the same duties to the corporation to act with loyalty and in good faith as a director of a company incorporated under the Corporations Law has with and to the company*."

3.8 Duties of board and committee members

Section 79 of the HSA describes the duties of board and committee members. It states:

(1) A member of a board or committee must act impartially and in the public interest in the exercise of the member's functions as a member.

(2) Accordingly a member must put the public interest before the interest of the Health Service Provider.

(3) Subject to subsections (1) and (2), a member of a board or committee has a duty —

(a) to act in good faith and in the interests of the health service provider; and

(b) not to have a personal interest in conflict with the interests of the health service provider, unless the member has the consent of the board or committee of which the member is a part; and

(c) if the member has the consent of the board or committee of which the member is a part under paragraph (b) — to appropriately manage the personal interest that conflicts with the interests of the health service provider; and

(d) not to act with an improper purpose; and

(e) not to profit at the expense of the health service provider or the State, unless the member has the consent of the board or committee of which the member is a part; and

(f) not to use the member's position, or information or knowledge received in that position, to obtain an advantage for a person or disadvantage the health service provider or the State; and

(g) not to be employed or engaged by, or act on the behalf of, another person in any capacity that is inconsistent with the interests of the Department, the Department CEO and health service providers, unless the member has the consent of the board or committee of which the member is a part.

Section 79 also requires that if a board, committee, or the Department CEO (the Director General of the Department of Health) considers that it is reasonably likely that a member of the board or committee has breached a duty referred to in this section, the board, committee, or Department CEO must advise the Minister of the likely breach of the duty.

3.9 Code of ethics and code of conduct

Section 9(a) of the PSMA requires all public sector bodies and employees to observe the principles of conduct and to comply with the provisions of:

- the PSMA and any other Acts governing their conduct
- the Commissioner's Instructions, public sector standards and codes of ethics
- any code of conduct applicable to the public sector body or employee concerned.

Commissioner's Instruction 40 – Ethical Foundations (CI 40) applies to all public sector bodies and employees as defined under section 3 of the PSMA, including Boards and Board Members.

The Governance Policy requires that each board must comply with all the mandatory instructions contained within the CI 40 with regard to the establishment of a board code of conduct and integrity framework. The Governance Policy also requires that boards ensure that their established Code of Conduct is,

- reviewed no less than 3 yearly or on full Board renewal
- provided to new Board Members on appointment to the Board
- supported by internal processes that facilitate Board Member acknowledgement of the requirements of and compliance with the Code.

Dismissal and discipline of board members

If the board established code of conduct is breached by a board member, this may result in the dismissal of the board member by the Minister pursuant to section 76A. of the HSA. For the purposes of this sub-section, the HSA defines misconduct in section 76A to include:

- conduct that renders the board member unfit to hold office as a board member even though the conduct does not relate to a duty of the office.
- a breach of duty of a board member under —

  (i) section 79 (duties of board and committee members); or

  (ii) the *Statutory Corporations (Liability of Directors) Act 1996*; or

  (iii) common law or equity.

The Governance Policy requires boards to have adequate escalation procedures in place to ensure suspected reportable misconduct (including breach of policy and/or relevant legislation) is managed appropriately.

If a board member is alleged to have breached their duty as outlined by the Act, this should be reported to the Minister.

Where the alleged breach gives rise to a suspicion of misconduct under the *Corruption, Crime and Misconduct Act 2003* (CCM Act), the allegation should also be reported to the Corruption and Crime Commission (CCC) or the PSC, consistent with reporting obligations outlined in the CCM Act.

If a board member is suspected of any other reportable misconduct breach by the board not already mentioned in the policy, then this must be reported to either the WA Police, the Minister for Health (as the employing authority), the CCC or the PSC as appropriate. Any misconduct not required to be reported to the Minister for Health, CCC, or PSC should be managed by the Board.

Confidentiality

The Governance Policy states that board chairs and board members may receive information that is regarded as commercial in-confidence, clinically confidential or have privacy implications.

The policy requires that boards be responsible for maintaining confidentiality in respect of all confidential and sensitive information obtained in the performance of the board's functions. Boards must ensure that board members understand they must not use WA Health system information or other information obtained in the course of their duties for any personal, commercial or political gain for themselves or others, or to the detriment of others, or in any manner that would be contrary to their duties, the law or the board code of conduct.

The Governance Policy requires that the board code of conduct should ensure that board members:

- maintain confidentiality and do not divulge information deemed confidential or sensitive, other than as required by law or where proper authorisation is given
- do not make improper use of information obtained in the course of their duties, or use for direct or indirect personal or commercial gain, or to do harm to other people or entities, for example, speculating on shares on the basis of confidential information or disclosing the contents of any official papers to unauthorised persons
- respect the privacy of individuals and the security of personal information
- protect intellectual property
- raise concerns of improper communications or use of information through the appropriate channel(s)
- adhere to applicable legal requirements, policies, and all other lawful directives regarding communication with Parliament, Ministers, ministerial staff, lobbyists, the media and members of the public.

3.10 Conflict of interest

Public bodies require high levels of probity and are subject to public scrutiny. It is important that board chairs and board members do not act in a way that would compromise the reputation of the HSP. The requirement for board members to act impartially and in the public interest in the exercise of their duties is specified in section 79 of the HSA.

A conflict of interest is a conflict between a board member's public duty to act in the public interest and their private interests. A conflict of duty is also considered as a conflict of interest and can occur even if a board member does not have any private interest at stake but there is a conflict between a board member's public duty to act in the public interest and their duty to another public, private, or not-for-profit sector organisation.

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 HSP.

Management of conflicts of interest

The Governance Policy requires that boards ensure that they implement appropriate strategies and practices for conflict of interest identification, reporting and management for board members and that these strategies and practices are documented. Boards must have in place a conflict of interest register to ensure all declarations of conflicts of interest are recorded and managed appropriately.

Templates are included in the Board Connect portal which boards may wish to use for the declaration and management of a conflict of interest.

The PSC's *Governance Manual for WA Government Boards and Committees* provides further guidance on the management of conflicts of interest.

Offers of gifts and maintenance of a gift register

The Governance Policy:

- requires boards to have in place appropriate policy and procedures in relation to the acceptance of gifts. This includes maintenance of an accurate gift register.
- notes that gift registers are official records and subject to disclosure in response to parliamentary questions, ministerial inquiries and freedom of information requests
- notes that from time to time, gifts will be offered to the board and its board members during the course of, or incidental to their appointment
- requires the board to ensure that board members declare to the board the offer that was made and record this on the gift register. The board must then determine if the gift should be accepted or declined. Boards should not allow board members to accept unauthorised gifts.
- requires that in all offers of gifts, boards assess the possibility for an actual, perceived or potential conflict of interest before the gift can be accepted.

By way of general guidance, it is generally considered that board chairs and board members should not accept gifts. Acceptance of gifts has the potential to place a board chair or board member under an actual, perceived or potential financial or other obligation to another organisation or individual.

When considering whether or not to seek approval to accept a gift, board chairs and board members may follow the PSC's 'GIFT' test[4]:

- Gift – who is providing the gift, benefit or hospitality?
- Influence – are they or could they at some point in the future be seeking to influence decisions or actions?
- Favour – are they or could they at some point in the future be seeking a favour in return?
- Trust – will public trust be enhanced or diminished by accepting the gift?

Maintenance of an accurate gift register provides an evidentiary and transparent record of the offer, acceptance, and non-acceptance of gifts.

[4] Public Sector Commission - Managing the Risks of Gifts, Benefits and Hospitality (www.wa.gov.au)

Declining offers of gifts

Where an offer of a gift is made and the board chair or board member declines the gift, it is suggested that board chairs and board members declare within 14 days the offer that was made to the board secretariat. It would be prudent for the board secretariat to ensure the information provided by the board chair or board member is promptly recorded on the board gift register.

Accepting offers of gifts

Where a board chair or board member proposes to accept a gift, it is suggested that approval first be sought from the board chair or, if it is the board chair that is making the application, the chief executive. The request for approval for acceptance of a gift should preferably be in writing and submitted promptly to the board chair or chief executive through the board secretariat. It is suggested the board secretariat advise the board chair or board member of the decision about the gift as soon as practicable to enable the board chair or board members to accept or decline. The outcome should be recorded on the gift register required by the policy.

Definition of a gift

For the purpose of these guidelines a gift is considered to include a benefit of any description over the value of $50. Gifts of a lesser value may also be declared when it is considered the nature of the gift or type of organisation or individual offering the gift gives rise to an actual, perceived or potential influence. Boards may wish to consider including in their guidelines examples of gifts that would require declaration such as those below:

- any hospitality including theatre, sporting or other event tickets
- laptop computers, mobile phones or other consumer goods
- specially discounted products.

What is not considered a gift

Boards may wish to consider including in their guidelines items not considered as gifts, for example:

- Token items of appreciation given by a patient or their family (e.g. a box of chocolates or a bunch of flowers of a nominal value up to $50) and refusal would be likely to cause offence or embarrassment to the person offering the gift. It may be appropriate to accept these items in the spirit that they are offered and for them to be shared with staff (where possible).
- Token items of appreciation given to board chair or board member for attending an event to give a speech or presentation (e.g. bottle of wine) and refusal would be culturally or otherwise inappropriate to refuse to accept in a public forum. It may be possible to politely leave the item at the venue or return it to the organisation or individual offering the gift. If it is not practical to do so the item could be shared with staff (where possible) and declared on the gift register.
- Attendance costs including hospitality, travel, accommodation, and registration fees to attend a conference where a board chair or board member is presenting at the conference in their capacity as board chair or board member and the appropriate approval has been secured from the board chair (or Minister) to attend.

Relationship between a gift and a conflict of interest

It should be noted that where a board chair or member attends conferences, seminars, professional development, or other similar events in their capacity as a member of another board or organisation, these arrangements are not considered as gifts in the context of these guidelines. Instead, careful consideration must be given as to whether the attendance of the board chair or board member at such events could give rise to an actual, perceived or potential conflict of interest or conflict of duties situation. In this instance the board's conflict of interest procedures should be followed.

3.11 Sponsorship

The Governance Policy requires boards to have in place appropriate policy and procedures in relation to sponsorship. These arrangements for sponsored or financially supported events must take into account any government and agency policies and other guidelines, instructions and delegations relevant to each of these sponsorship arrangements. In all sponsorship arrangements, boards must assess the possibility for an actual, perceived or potential conflict of interest before the arrangement can be accepted.

The Department of Finance provides guidance about sponsorship within government, and has developed the Sponsorship in Government Guidelines which is a useful reference point for all government bodies. It defines sponsorship as follows:

'Sponsorship is the right to associate the sponsor's name, products or services with the sponsored organisation's service, product, or activity, in return for negotiated and specific benefits such as cash or in-kind support or promotional opportunities. It involves a negotiated exchange and should result in tangible, material, and mutual compensation for the principal parties to the arrangement. Sponsorship can take the form of cash and/or in- kind support.'

Government and agency policies and other guidelines, instructions and delegations relevant to each of these arrangements include the following:

- PSMA, section 7 Public Administration and Management Principles and section 9 Principles of Conduct.
- Department of Finance, Sponsorship in Government Guidelines.
- Department of Finance, Delivering Community Services in Partnership Policy.
- PSC, Managing the risks of gifts, benefits and hospitality.
- PSC, Conflicts of Interest Guide
- PSC, Commissioner's Instruction 40 – Ethical Foundations
- PSC, Accountability for managing tickets and hospitality

For arrangements such as sponsored and financially supported events involving the allocation of funds, boards should be aware of where approval is required through compliance instruments and internal delegations. If boards require further guidance around this matter, the board chair should contact the PSC to discuss.

Sponsored travel

The Governance Policy requires that sponsorship funding for travel not be accepted directly by individual board members but considered by the board collectively. The policy requires

that in all offers of sponsored travel, boards must assess the possibility for an actual, perceived or potential conflict of interest before the funding for travel can be accepted.

3.12 Complaints management

The Health and Disability Services Complaints Office has a legislated role to collect health complaints data from prescribed public, private and not-for profit health, and mental health providers in WA.

HSP boards must establish an efficient and effective procedure for dealing with complaints about the provision of health services by the HSP, as required by section 34(2)(f) of the HSA.

3.13 Access to legal or other professional advice

The Governance Policy notes that boards (collectively or individually), may seek legal or other professional advice in respect to HSP operational matters. In seeking such advice HSP processes must be followed and the request is subject to approval by the relevant authorised officer as identified in the applicable HSP Authorisations Schedule.

HSP chief executives are responsible for ensuring that legal or other professional advice is obtained. Requests for legal advice need to be in line with the processes outlined in the 'Obtaining Legal Advice Policy' contained in the Legal Policy Framework. HSPs would normally seek legal advice only from Legal and Legislative Services (LLS) within the Department or in some circumstances directly from the State Solicitor's Office ('SSO') as stated in the MP 0023/16 *Obtaining Legal Advice Policy*. HSPs must not seek legal advice directly from private law firms

Any such requests must be lodged by the board to the department by way of a 'Legal Request Form' submitted to legal.services@health.wa.gov.au. A template form can be located in the Legal Policy Framework document and is also available on the LLS website.

LLS operate a duty solicitor service for verbal advice on simple matters. Boards may access the duty solicitor during business hours via the LLS reception phone number (08) 9222 4038. Should a serious matter arise that requires immediate legal advice, boards can directly access the Director of LLS via the reception phone number.

4. EFFECTIVE GOVERNANCE

4.1 Board member induction

The Governance Policy requires that boards ensure that board members review the board induction reference material provided by the Department and the board during the induction process and as made available on the Board Connect web portal.

It also requires that boards complement this with local induction activities conducted by each HSP and states that these activities are the responsibility of the board chairs, chief executives, and the board secretariat function.

Consistent with the approach of other state health systems that have undergone governance reforms, board members will have access to a board induction program developed by the Director General. The key objectives of the induction program are to ensure boards have an

awareness of their statutory responsibilities and accountabilities, understand the objectives and operations of the WA health system and enable board members to acquit their obligations.

The department's board induction program resources are available to new members on the Board Connect web portal and from their board secretariats soon after appointment. Formal induction programs for new and recent members are conducted from time to time.

Mandatory training

The Governance Policy requires that all board members comply with the mandatory training requirements and the completion of the mandatory training modules is documented.

Current mandatory training modules are set out below and the training should be completed as soon as practicable upon appointment to a board. The modules are available via each HSP's HealthPoint learning and development sites:

- Aboriginal Cultural Awareness - Aboriginal Cultural Awareness eLearning aligns with the WA Aboriginal Health and Wellbeing Framework 2015 – 2030.
- Record Keeping Awareness – refer *State Records Act 2000* (WA).

Integrity Training (see *Commissioner's Instruction 40: Ethical Foundations* regarding integrity training for board members). Board chairs are responsible for coordinating the delivery of integrity training to the Board. Guidance for boards to provide formal and planned integrity training is available from the PSC's Learn and develop integrity knowledge and skills (www.wa.gov.au) website.

Professional development

The Governance Policy requires that boards ensure that all board members undertake relevant professional development as appropriate to enhance skills and knowledge required for good board governance and to support the development of a high performing board. Approval for board chair and board member professional development, such as professional training and development including attendance at professional conferences is at the discretion of each board and subject to budget priorities and availability, as determined in consultation with the chief executive.

4.2 Local Health Service Board Manual

The Governance Policy requires boards to maintain a local health service board manual that contains the localised and tailored processes and procedures for a board's operations that, as a minimum, are reflective of the minimum standards and guidelines contained within the policy. The local health service board manual must contain each board's self-evaluation tools and processes. The local health service board manual is prepared by each HSP.

4.3 Board self-evaluation

The Governance Policy requires boards to regularly self-assess and evaluate standards of governance, as well as the performance of the board and board members in the process of determining succession planning, appointment, and reappointment processes for board members.

It is recommended that HSP Boards assess their own performance in relation to the board's key responsibilities, which include:

- managing the relationship with the Minister and meeting the Minister's expectations as set out in the Minister's Statement of Expectation and corresponding Statement of Intent from the Board
- strategic planning
- discharging the board's legal and ethical obligations
- monitoring the HSP's performance
- monitoring and reviewing the performance of the chief executive
- managing relationships with stakeholders
- delivering services as prescribed in the service agreement.

The board chair is also responsible for evaluating individual board members' performance including mentoring, development, and meeting training needs. The board chair assists the Director General and the Minister with succession planning, appointment, and reappointment processes for board members.

The board chair is expected to offer appropriate feedback to the board and to individual board members and to provide assurance to the system manager that a process for assessing board and board member performance is in place and undertaken regularly. A board evaluation framework should be contained in the local health service board manual for each HSP board.

4.4 Board assurance

The Governance Policy requires that boards comply with board governance assurance activities conducted by the department to assist the Director General as System Manager to monitor the provision and maintenance of minimum governance standards for boards and facilitate board governance improvements.

This includes the annual governance attestation cycle completed by each board and governance reviews conducted by the department on behalf of the Director General. The assurance processes are set out in the Board Assurance Guidelines, a mandatory related document attached to the Governance Policy. The Annual Governance Attestation Statement template is attached to the Governance Policy as a mandatory related document.

5. Public sector accountability framework and key central agencies

The WA Public Sector Accountability Framework is articulated through a range of legislation, policies, and regulatory processes with oversight by a number of integrity agencies. An overview is provided below.

The Governance Policy notes that it is the responsibility of boards to ensure their board members have an understanding of their legislative obligations, and of relevant legislation, policies and processes. Boards are required to comply with the *Financial Management Act 2006* (WA), Treasurer's Instructions and other policy guidance issued by the Treasury.

WA Government integrity agencies

5.1 Corruption and Crime Commission

The CCC is a permanent anti-corruption body that works to improve the integrity of the Western Australian public sector and helps to minimise and manage misconduct and assists WA Police to reduce the incidence of organised crime. The CCC has jurisdiction over a range of public officers, including statutory board members.

The *Corruption, Crime and Misconduct Act 2003* (WA) places a statutory obligation on a HSP board to notify the CCC or the PSC of any matter that it suspects (on reasonable grounds) concerns or may concern misconduct. The CCC deals with allegations concerning serious misconduct by public officers in Western Australia, while the PSC is responsible for dealing with reports involving minor misconduct.

Pursuant to section 4 of the *Corruption, Crime and Misconduct Act 2003* (WA), reportable misconduct occurs where a public officer:

a) behaves corruptly in their role
b) corruptly takes advantage of their role to obtain a benefit
c) commits an offence which is punishable by two or more years of imprisonment while acting in their official capacity
d) engages in conduct that adversely affects or could adversely affect the honest or impartial performance of their role
e) performs the functions of their role in a manner that is not honest or impartial
f) engages in conduct that involves a breach of trust
g) involves the misuse of information acquired in connection to their role
h) involves conduct that could reasonably result in their dismissal.

Suspected misconduct may be reported by a board member to the CCC, the PSC or the chief executive of the HSP as the principal officer.

More information about the CCC can be found on the CCC website.

5.2 Public Sector Commission

The role of the PSC is to strengthen the efficiency, effectiveness, and capability of the public sector to meet existing and emerging needs and deliver high quality services. This includes maintaining and advocating for public sector professionalism and integrity.

The PSC publication Governance Manual for Western Australian Government Boards and Committees outlines the seven principles that guide the governance of government boards and has practical information for members to assist them to carry out their responsibilities. Useful template and guidance documents are included in the manual and separately on the website.

5.3 Public interest disclosure

The *Public Interest Disclosure Act 2003* (WA) (PID Act) facilitates the disclosure of public interest information and provides protection for those making such disclosures and those who are the subject of disclosures. The PID Act provides a system for the matters disclosed to be investigated and appropriately actioned.

Not all disclosures about government are classified as public interest disclosures protected by the PID Act. In order for a disclosure to be captured by the PID Act it must be:

- made by a discloser who believes on reasonable grounds that the information is or may be true
- a disclosure of public interest information
- made to the appropriate proper authority.

Public interest information must meet a number of criteria. It must:

- relate to a public authority, public officer, or public sector contractor ('a public body')
- relate to the performance of a public function of the public body
- tend to show that the public body is, has been, or proposes to be, involved in improper conduct.

The following are public authorities to which public interest information may relate:

- a department in the public service
- an agency within the public sector
- a local government or regional local government
- a body established under state law for a public purpose for example, government boards established by the Governor or a Minister (HSPs are considered to be public authorities).

Public interest information must tend to show the involvement of a public body in (the statute also includes involvement of a public officer or public sector contractor):

- improper conduct
- an act or omission that is an offence against state law
- a substantial unauthorised or irregular use of public resources
- a substantial mismanagement of public resources
- conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment
- conduct relating to matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman.

The PSC Public interest disclosures in WA public authorities (www.wa.gov.au) website, provides more information about the requirements of the PID Act.

Public interest disclosures must be made to an appropriately registered PID officer. The position of PID principal executive officer for each HSP is the chief executive. The chief executive as PID principal executive officer will designate PID Officers within the HSP, responsible for receiving disclosures of public interest information, including from board members.

5.4 Office of the Auditor General

The Office of the Auditor General (OAG) is an independent government body that reports directly to the WA Parliament and the people of Western Australia. The role of the OAG is to audit the finances and activities of the Western Australian state and local government entities and report their findings to Parliament.

Through its annual financial audits and a performance audit program, the Auditor General works to provide assurance to Parliament that public sector entities are providing services and using public money in accordance with Parliament's purpose.

More information can be found on OAG's website.

5.5 Ombudsman Western Australia

The Ombudsman is an independent officer of the WA Parliament established under the *Parliamentary Commissioner Act 1971* (WA).

The Ombudsman serves Parliament and Western Australians by investigating and resolving complaints about the decision making of government agencies, local governments, and universities, undertaking own motion investigations, reviewing child deaths and family and

domestic violence fatalities and other functions, including monitoring and inspecting the use of certain powers by government agencies.

More information can be found on the Ombudsman's website.

5.6 Office of the Information Commissioner

The Information Commissioner is an independent officer reporting direct to the WA Parliament who deals with complaints about decisions made by government agencies under the *Freedom of Information Act 1992* (FOI Act).

Freedom of information gives the public a right to access government documents, subject to some limitations. In Western Australia, under the FOI Act, the right applies to documents held by most state government agencies (such as departments, public hospitals, public universities, and state government authorities), Ministers and local government.

Documents accessible under the FOI Act include paper records, plans and drawings, photographs, tape recordings, films, videotapes, or information stored in a computerised or digitised form.

More information can be found on the Information Commissioner's website.

Key WA Government central agencies

5.7 Department of Treasury

The Department of Treasury (Treasury) provides the State Government with independent economic and financial advice and expert asset management, including the planning and delivery of the State's asset sales program.

Treasury administers the *Financial Management Act 2006* (FMA) and associated Treasurer's Instructions. Treasury also coordinates the production of the annual state budget papers.

Section 61 of the FMA and Treasury Instruction 904 requires the disclosure of financial performance information including key performance indicators in an agency's annual report. The information assists stakeholders and interested parties such as government, Parliament, the community and client groups to assess agency performance in achieving government desired outcomes and obtaining value for public funds from services delivered.

In addition, it assists agencies to understand their own performance, facilitate strategic planning, enhance resource management, and highlight areas for improvement. Section 64(1) of the FMA requires the Minister to table in Parliament each accountable authority's annual report within 90 days after the end of a financial year of an agency.

Treasury produces information about Treasury's Financial Administration Bookcase, a compendium of financial management legislation and related instructions administered by the Department of Treasury, and details on the current and previous WA State Budgets is available from the Budget Snapshots | Western Australia State Budget webpage.

5.8 Department of Finance

The Department of Finance (Finance) facilitates the efficient operation of Government, informed decision-making, and value-for-money outcomes for Western Australians. Finance administers revenue legislation and grants, and subsidy schemes, provides policy advice to government on economic reform and essential utility services and supports the planning, delivery, and management of the government's property portfolio.

Finance also leads a whole of government approach to the procurement of goods and services. Finance delivers value across the public sector through maintaining effective, competitive common use arrangements for the whole-of-government. These arrangements streamline the procurement process, minimise risk and ensure value-for-money.

Finance has developed a wide range of common use arrangements, with an estimated turnover of $1.13 billion involving approximately 830 suppliers. Finance also assists agencies to procure goods and services directly, minimising risk and maximising value-for-money.

Further information can be found on the Finance website.

5.9 Office of Digital Government

The Office of Digital Government is a discrete business unit of the Department of the Premier and Cabinet. The Office of Digital Government provides leadership for digital reform within the public sector to improve service delivery to the Western Australian community.

Its main focus areas are to:

- improve delivery of online services to the Western Australian community
- implement higher cyber security standards across Government
- develop policy and strategy to support a culture of data sharing
- build data analytics capabilities within the WA public sector to underpin good policy development and more targeted service delivery
- support the implementation of information technology procurement reforms across the sector.

The Office of Digital Government website provides more information about its initiatives.

5.10 Health and Disability Services Complaints Office

The Health and Disability Services Complaints Office (HaDSCO) is an independent statutory authority providing an impartial resolution service for complaints relating to health, disability

and mental health services provided in Western Australia and the Indian Ocean Territories.

It has a legislated role to collect health complaints data from prescribed public, private and not-for profit health, and mental health providers in WA.

Further information can be found on the HaDSCO website.

Appendix 1: Glossary

The following list is a set of defined terms contained within this document.

Term	Definition
Board	Refers to board governed health service providers (HSPs) constituted under section 71 of the HSA. References made to a 'Board' within this document do not encompass chief executive governed HSPs.
Board assurance guidelines	These guidelines assist the Director General as the System Manager to oversee and monitor the maintenance of minimum standards of board governance across the WA health system.
Board chair	Board member who is designated as board chair under s.72(1)(a) of the HSA. Role is described in Appendix 2.
Board committees	The HSA, section 92, enables a board governed HSP to appoint board committees to assist the board to perform its functions.
Board deputy chair	Board member who is designated as board deputy chair under s.72(1)(b) of the HSA. Role is described in Appendix 2.
Board secretariat	Refers to the group of functions to be performed by individual(s) deemed by the HSP as responsible for facilitating board business, providing reports to the System Manager as required and maintaining the Local Health Service Board Manual.
Board working groups	Board working groups have been established as an alternative to board committees.
Direction	The Director General may issue a direction requiring compliance in relation to: (a) a matter set out in a policy framework, or (b) any other matter in connection with the functions of the Director General under the HSA in respect of which the Director General considers it necessary or desirable to issue directions.
Director General	The role defined as the Department CEO in the HSA at section 6.

Term	Definition
Head agreement	The HSA at section 44 provides that the Director General and the Mental Health Commissioner may enter into a head agreement. The head agreement at a minimum must state the system wide funding caps and performance standards, the role, responsibilities and accountabilities of the Director General in relation to the provision of services and of the Mental Health Commissioner as a purchaser of services.
HSA	*Health Services Act 2016* (WA).
Health service area	Under section 32(1) (a) of the HSA the Minister may declare any or more of the following to be a health service area – (i) a part of State; (ii) a public hospital; (iii) a public health service facility and (iv) a public health service.
Health service provider (HSP)	Established under section 32(1)(b) of the HSA.
Local Health Service Board Manual	This document contains localised and tailored processes and procedures over and above the minimum standards and guidelines that are set out in the Governance Policy and support information.
Policy frameworks	Binding overarching instructions issued by the Director General to ensure consistent approaches are taken by HSPs on a range of matters.
Service agreement	The Director General and a HSP must enter into a service agreement for the provision of health services by the health service provider as mandated by section 46(2) of the HSA.
Statutory authority	Government entities which are established by separate Acts of Parliament overseen by boards of governance, boards of management or a Commissioner.
System Manager	Defined in section 19(2) of the HSA as the System Manager role held by the Department CEO, currently the Director General of the Department, with responsibility for the overall management of the WA health system.
WA health system	The meaning given in section 19(1) of the HSA. Comprises the Department, HSPs and to the extent that contracted health entities provide health services to the State, the contracted health entities.

Appendix 2: Board role descriptions

Board chair role statement

Leadership

- Lead and direct the activities of the board efficiently and seek consensus in decision making.
- Lead by example in demonstrating values and behaviours desired in board members, which include professionalism, integrity, and respect.
- Act impartially, in the public interest and for the good of the WA health system.
- Ensure all potential, perceived or actual conflicts of interest of board members are managed in accordance with board policies, PSC and Department of Health policies. Inform the Director General of the board chair's potential, perceived or actual conflicts in a timely manner.
- Provide input into the selection and recruitment of board members as requested by the Director General, particularly in ensuring the achievement of an effective skills and experience mix.
- Ensure that all new board members undergo an appropriate induction program. Review with all board members on a continuing basis their development needs and ensure that appropriate development occurs in accordance with Department of Health requirements.

Relationship management

- Ensure effective relationships with the chief executive and between the chief executive and the board.
- Ensure effective relationships with the Minister, Director General and other key stakeholders, and senior leaders in the WA health system, including with other board chairs and board members.

Strategic governance

- Ensure board member participation in the development and achievement of agreed strategic directions and priorities, consistent with the HSP and broader, statewide WA health system and public sector objectives.
- Ensure that board members collectively and individually understand and fulfil their roles, responsibilities, and accountabilities.

Board performance

- Lead the evaluation of the individual and collective performance of the board.
- Mentor and motivate board members and, where appropriate, deal with underperformance.
- Contribute to the chief executive evaluation process conducted by the Department.

Board operational management

- Set meeting agendas in relation to goals, strategy, budget and performance with a focus on the resolution of issues and risks.
- Preside over all board meetings and facilitate the flow of information, allowing for transparent and open discussion and decision-making.
- Ensure decision-making and business is conducted in accordance with board policies, Department of Health policy frameworks and policies and public sector policies and guidelines.
- Establish an annual board calendar which ensures that the board undertakes all its key responsibilities throughout the year.
- Ensure board minutes properly reflect board decisions.
- Authorise the expenses of board members.

Board deputy chair role statement

Leadership

- Act impartially in the public interest and for the good of the WA health system.
- Lead by example in demonstrating values and behaviours desired in members, which include professionalism, integrity, and respect.
- Inform the chair in a timely manner of all potential, perceived or actual conflicts of interest in accordance with board policy, PSC and Department of Health policies.
- Act as board chair during a vacancy in the office of the board chair and during all periods when the board chair is absent from duty or for any other reason is unable to perform the duties of office.
- Ensure that the business of meetings is carried out in accordance with prescribed governance standards and protocols.

Relationship management

- Work with the board chair to ensure effective relationships with the chief executive and between the chief executive and the board.
- Work with the board chair to ensure effective relationships with the Minister, Director General, and other key stakeholders and senior leaders in the WA health system, including with other board chairs and board members.

Strategic governance

- Work with the board chair to understand and fulfil the agreed roles, responsibilities, and accountabilities.
- Work with the board chair to achieve agreed strategic directions and priorities, consistent with HSP and broader, statewide WA health system and public sector objectives.
- Participate in all board and relevant board committee meetings, undertake decision-making and business in accordance with board policies, Department of Health policy frameworks and policies, as well as public sector policies and guidelines.

Board performance

- Participate in performance evaluation processes and activities, as instructed by the board chair.
- Develop capability as instructed by the board chair, including through participation in an induction program and capacity building activities.
- Support board committees and chair board committees at the request of the board chair.
- Participate in an appropriate induction program. With the board chair, review with all board members on a continuing basis their development needs and ensure that appropriate development occurs in accordance with Department of Health requirements.

Board member role statement

Leadership

- Act impartially in the public interest and for the good of the WA health system.
- Demonstrate values and behaviours including professionalism, integrity, and respect.
- Act in good faith and exercise due care when exercising duties.
- Commit the necessary time and energy to board matters to ensure that they are contributing their best endeavours in the performance of their duties for the benefit of the organisation, without placing undue reliance on other board members to fulfil these duties.
- Inform the board chair in a timely manner of all potential, perceived or actual conflicts of interest in accordance with board policy, PSC and Department of Health policies.

Relationship management

- Work with the board chair to ensure effective relationships with the chief executive and between the chief executive and the board.
- Work with the board chair to ensure effective relationships with the Minister, Director General, and other key stakeholders and senior leaders in the WA health system, including with other board chairs and board members.

Strategic governance

- Work with the board chair to understand and fulfil the agreed roles, responsibilities, and accountabilities.
- Work with the board chair to achieve agreed strategic directions and priorities, consistent with HSP and broader, statewide WA health system and public sector objectives.
- Participate in all board and relevant committee meetings, undertake decision-making and business in accordance with board policies, Department of Health policy frameworks and policies, as well as public sector policies and guidelines.

Board performance

- Participate in performance evaluation processes and activities, as instructed by the board chair.
- Develop capability as instructed by the board chair, including through participation in an induction program and capacity building activities.
- On a continuing basis participate in professional development in accordance with board policies and Department of Health requirements.

Appendix 3: The Key State Legislation Which May Impact WA Health Service Boards

The following is an indicative list of legislation impacting on the roles, responsibilities and accountabilities of board chairs and board members of HSP boards.

This list is not exhaustive of all the obligations that may apply to boards and their board members. There may be other obligations under common law or other legislation, including enabling legislation or subsequent legislation, which takes precedence over the legislation specified here.

- *Anatomy Act 1930*
- *Animal Resources Authority Act 1981*
- *Auditor General Act 2006*
- *Births, Deaths and Marriages Registration Act 1998*
- *Blood Donation (Limitation of Liability) Act 1985*
- *Carers Recognition Act 2004*
- *Charitable Trusts Act 1962*
- *Children and Communities Services Act 2004*
- *Coroners Act 1996*
- *Corruption, Crime and Misconduct Act 2003*
- *Cremation Act 1929*
- *Criminal Code Act Compilation Act 1913*
- *Disability Services Act 1993*
- *Duties Act 2008*
- *Emergency Management Act 2005*
- *Environmental Protection Act 1986*
- *Equal Opportunity Act 1984*
- *Fair Trading Act 2010*
- *Financial Management Act 2006*
- *Fines, Penalties and Infringement Notices Enforcement Act 1994*
- *Fluoridation of Public Water Supplies Act 1966*
- *Food Act 2008*
- *Freedom of Information Act 1992*
- *Guardianship and Administration Act 1990*
- *Health (Miscellaneous Provisions) Act 1911*
- *Health and Disability Services (Complaints) Act 1995*
- *Health Legislation Administration Act 1984*
- *Health Practitioner Regulation National Law (WA) Act 2010*
- *Health Professionals (Special Events Exemption) Act 2000*
- *Health Services Act 2016*
- *Health Services (Quality Improvement) Act 1994*
- *Human Reproductive Technology Act 1991*
- *Human Tissue and Transplant Act 1982*
- *Industrial Relations Act 1979*
- *Medicines and Poisons Act 2014*
- *Mental Health Act 2014*
- *Misuse of Drugs Act 1981*
- *National Health Funding Pool Act 2012*
- *Nuclear Waste Storage and Transportation (Prohibition) Act 1999*

- *Occupational Safety and Health Act 1984*
- *Parliamentary Commissioner Act 1971*
- *Pay-roll Tax Assessment Act 2002*
- *Pharmacy Act 2010*
- *Private Hospitals and Health Services Act 1927*
- *Prostitution Act 2000*
- *Public Health Act 2016*
- *Public Interest Disclosure Act 2003*
- *Public Sector Management Act 1994*
- *Public Works Act 1902*
- *Queen Elizabeth II Medical Centre Act 1966*
- *Radiation Safety Act 1975*
- *Spent Convictions Act 1988*
- *State Records Act 2000*
- *State Superannuation Act 2000*
- *State Supply Commission Act 1991*
- *Statutory Corporations (Liability of Directors) Act1996*
- *Surrogacy Act 2008*
- *Tobacco Products Control Act 2006*
- *University Medical School, Teaching Hospitals, Act 1955*
- *Western Australian Health Promotion Foundation Act 2016*
- *Workers' Compensation and Injury Management Act 1981*
- *Working with Children (Criminal Record Checking) Act 2004*

Regulatory and Administrative Requirements

- Administrative Instructions
- Department CEO Directions
- Ministerial Directions
- Policy Frameworks
- Premier's Circulars
- Public Sector Commissioner's Instructions
- Public Sector Commissioner's Circulars
- Public sector standards in human resource management
- Regulations, Orders and Determinations under the *Health Services Act 2016*
- Relevant subsidiary legislation under other Acts
- Service Agreements
- Treasurer's Instructions

Appendix 4: Guidelines for health service providers on usage of the common seal

1. Guidelines statement

Intent

The purpose of these guidelines is to standardise the use of the common seal by HSPs. The creation of a common seal for each HSP is mandated by section 41 of the HSA.

Objectives:

- to describe when the common seal ought to be affixed to documents
- to protect the integrity of the HSP's common seal and authorise the use of the seal.

2. Definitions

Board – means the board of a HSP established under section 32 of the HSA.

Chief executive – means the chief executive of a chief executive-governed HSP

Common seal – is a device which formally and solemnly records the collective will of the HSP.

3. Procedure and guidance notes

3.1 Keeping the common seal

For board governed HSPs, the board chair is responsible for the safe custody and proper use of the seal at all times.

For chief executive governed HSPs, the chief executive is responsible for the safe custody and proper use of the seal at all times.

3.2 Documentation

The board chair / chief executive is to record in a register each date on which the common seal is affixed to a document, the purpose of the document and the number of copies sealed.

3.3 Procedure

For board governed HSPs, the common seal must only be affixed to a document in a manner consistent with the following provisions of the HSA:

a) In accordance with section 41(5) of the HSA, the "*common seal of a board governed provider must be affixed to a document in the presence of the chairperson of the board and another member of the board, or the chairperson and a person employed in the provider, and each of them must sign the document to attest that the common seal was so affixed."*

b) Section 41(7) of the HSA provides that "a board governed provider *may, by writing under its seal, authorise a member or members of the health service provider board or an employee or employees in the provider to execute deeds or other documents on its behalf, either generally or subject to such conditions or restrictions specified in the authorisation.*"

The common seal must also be used for executing service agreements under Part 5 of the HSA.

3.4 Guidance notes

In the interest of consistency of use, it is strongly recommended that the common seal only be affixed to a document in the following circumstances:

a) for executing significant contracts where the total value of the contract exceeds $5 million[5] AUD or equivalent
b) to give effect to land or property transactions over $5 million[5] AUD or equivalent, including but not limited to sale, leases, assignments, subleases, transfers, lodgment and withdrawals of caveats
c) for executing loan documents, mortgages and guarantees
d) for documents of a ceremonial nature (where the affixing of the common seal is for posterity rather than as a legal requirement)
e) occasions where its use is required by a third party.

An example of the wording to accompany the application of the common seal is as follows:

"Dated this (date) day of (month) (year)
The Common Seal of the)
XXXX Health Service Provider)
was hereunto affixed in the)
presence of:)

……..... *……...*
(Insert name of Chair/Chief Executive) *(Insert name of other authorised person (board governed provider only)*

In accordance with Section 41 of the *Health Services Act 2016* (WA).

4. Statutory implications

Common law

Initially, at common law, the common seal of a body corporate was the only legally recognised expression of an act of that body corporate. However, that requirement has been progressively relaxed.

Corporations law

Sections 126 and 127 of the *Corporations Act 2001 (Cth)* address the use of a common seal by corporations. These provisions do not apply to HSPs which fall within the definition of "exempt public authority" in section 9 of that Act.

[5] A $5 million threshold is recommended as this aligns with the procurement delegations at a Tier 1 level.

Appendix 5: Conflict of interest management procedures

1. Overview of conflict of interest

Boards are responsible for setting and managing their own policies and procedures for the management of conflicts of interest. The exception to this is the management of interests and conflicts of interest associated with appointments and reappointments to a HSP board. These are managed by the Department as System Manager.

With the consent of board members, information they provide to the Director General as part of probity checking during the appointment/reappointment process is disclosed to the board to assist the board with the management of member interests.

The following guidelines are not mandatory and are provided to assist boards to develop their own procedures, as required by the Governance Policy.

Definition

A conflict of interest (COI) can be defined as:

"A situation arising from conflict between the performance of public duty and private or personal interests".[6]

It is important to note that it is not always possible to avoid a COI and in itself a COI is not necessarily wrong or unethical. What is important, however, is to appropriately identify, disclose and effectively manage any **actual, perceived or potential** COI situations.

Identifying a COI

There is no 'right' way to identify every possible COI situation. The PSC Conflicts of Interest Guide (www.wa.gov.au) webpage has developed supportive resources for identifying and managing COI.

This section provides guidance on how to manage conflicts of interest. The information aligns with the Integrity Coordinating Group's recommendations and the WA Auditor General's Report, Governance of Public Sector Boards 2014 regarding the identification and management of COIs.[7]

Localised COI support

The HSP board secretariat has responsibility for establishing and updating the board's COI register on an ongoing basis.

2. Recording a COI

It is recommended that a COI identified by appointed board chairs and board members be recorded on a COI register. The COI register should include COIs that are both of a continuing nature as well as those that are relevant to a specific board meeting or board decision.

[6] Western Australia Integrity Coordinating Group, *Conflicts of Interest – Guidelines for the Western Australia Public Sector,* (Government of Western Australia, 2011),

3. Reporting a COI

When making written notifications and declarations, it is recommended that they include the following details, where applicable:

- Introduction to issue and/or relevant background
- Step 1: Description of the issue.
- Step 2: Description of the relevant public or private duty.
- Step 3: Consideration of whether a conflict of interest situation exists.
- Step 4: Identification of the conflict of interest (i.e. actual, perceived, potential).
- Step 5: Identification of the type of conflict of interest (i.e. financial, partiality, role).
- Step 6: Proposed strategy for resolving or managing the conflict situation (e.g. record, restrict involvement, recruit an alternative person, remove from involvement completely, relinquish the personal or private interest, resign from the board position).

Approval Overview for COIs

Board chair initiated identification of a COI

The following is considered good practice when identifying a COI:

- When a board chair identifies an actual, potential or perceived COI related to their board role the board chair should advise the deputy chair (or nominated board member as appropriate) in writing as soon as possible.
- The deputy chair or nominated member should determine proposed actions for resolving the conflict, if required, and notify the board chair within an appropriate amount of time.
- If the actual, potential or perceived COI is identified in relation to an upcoming board or committee meeting it is important that the deputy chair is advised as soon as possible in advance of the meeting to enable the deputy chair to provide a determination and respond to the board chair in a timely manner.
- If the actual, potential or perceived COI is identified in situations where the proposed timeframe cannot be applied (e.g. the day before a board meeting) refer to the 'COI identified in a meeting' section below as this process will then apply.

[7] Auditor General Western Australia, *Governance of Public Sector Boards Report No 9*, (June 2014) at https://audit.wa.gov.au/reports-and-publications/reports/governance-public-sector-boards/

Board member initiated identification of a COI

The following is considered good practice when identifying a COI:

- When an actual, potential or perceived COI is identified in relation to their board role the board member is to advise the board chair in writing as soon as possible.
- The board chair will determine proposed actions for resolving the conflict, if required, and notify the board ember within an appropriate amount of time.
- If the actual, potential or perceived COI is identified in relation to an upcoming board or committee meeting it is important that the board chair is advised as soon as possible in advance of the meeting to enable the board chair to provide a determination and respond to the board member in a timely manner.
- If the actual, potential or perceived COI is identified in a situation where the proposed timeframe cannot be applied (e.g. the day before a board meeting) refer to 'COI identified in a meeting' section below as this process will then apply.

COI identified in a meeting

Board chair:

- In the event of a board chair identifying that they have a COI during a meeting, the board chair should verbally declare this to the meeting and ensure it is properly recorded in the minutes of the meeting.
- The board chair should then withdraw from all related discussions and not participate in any decision making associated with the identified COI (and must act in accordance with sections 80-83 of the HSA.)

Board member:

- In the event of a board member identifying a COI situation during a meeting, the board member should verbally declare the interest to the board chair, which is to be recorded in the minutes of the meeting. The board member should then withdraw from all related discussions and not participate in any decision making associated with the identified COI (and must act in accordance with sections 80-83 of the HSA.)

Working groups:

- Relevant requirements (e.g. conflict of interest) can also apply to working groups and working group members.

Following the meeting:

- Subsequent to the meeting, should the board chair or board member identify that the COI situation is ongoing and not a one-off matter, the general procedures for reporting a COI should be adopted.
- Should the interest declared not already be recorded in the COI register, it is recommended that board chairs and board members notify their HSP board secretariat and ensure the declared interest is recorded on the COI register.

COI identified by a third party

- If someone other than a board chair or board member concerned identifies a COI and reports it to the Department or the HSP, the Director General or relevant board chair will refer the matter to the board for resolution.
- Any such investigation should include a discussion with the board member concerned and further action will be determined.
- If a COI is found and it is one that should have been disclosed by the board chair or board member concerned, then their behaviour may amount to a breach of the HSA.

4. Consideration of whether a COI situation exists

A COI can be:

- an **actual** conflict
- a **perceived** conflict
- a **potential** conflict.

COI situations generally fall into the following scenarios (however other scenarios may arise and should be treated in the same consistent manner):

- private interest
- potential benefits
- perceptions.
- proportionality
- public scrutiny test
- promises and/or obligations.

5. Identifying the type of COI

COIs can generally be categorised into the following types:

- a **financial** conflict
- a **partiality** conflict
- a **role** conflict
- a **material personal** interest[8].

6. Managing a COI

COIs can occur in many situations within WA health system. The following list is not exhaustive but provides examples that may arise in relation to a board chair and board member's role:

- financial and economic interests
- involvement with family or private businesses
- secondary employment
- affiliations with for-profit and not-for-profit organisations and associations
- affiliations with political, community, ethnic, family or religious groups (either in a personal or professional capacity)
- hostility or competition with another individual or group

- significant family or other relationships (e.g. clients, contractors or other board working in the same or a related organisation)
- specialist skills (e.g. if practitioners are in short supply)
- future employment prospects or plans.

Depending on the specific situation relating to the identified COI, there are many ways in which it can be managed appropriately. Boards should ensure that appropriate COI identification practices and management strategies are implemented and that these strategies are documented.

Strategies for the management of an identified COI

Strategies for the management of an identified COI include[9]:

a) **Record/Register**
Recording the disclosure of the COI in a register is an important first step, however, this does not necessarily resolve the conflict. It may be necessary to assess the situation and determine whether one or more of the following strategies are required.

b) **Restrict**
It may be appropriate to restrict involvement in the matter. For example, by refraining from taking part in debate about a specific issue, abstaining from voting on decisions (ensuring to act in accordance with sections 80-83 of the HSA 2016), and/or restricting access to information relating to the COI. If such a situation occurs frequently and if an ongoing COI is likely, other strategies may need to be considered.

c) **Recruit**
If it is not practical to restrict involvement in a matter, an alternate officer may be able to take on the relevant role, or an independent third party may need to be engaged to participate in, oversee or review the integrity of the decision-making process.

d) **Remove**
Removal from involvement in a matter altogether is the best option when recruitment or other strategies are not feasible, or appropriate.

e) **Relinquish**
Relinquishing the personal or private interest which prompted concerns about a COI may be a valid strategy. For example, this could be the relinquishment of shares or a membership of a club or association.

f) **Resign**
Resignation is usually a last option, but may be appropriate, if the COI cannot be resolved in any other way. For example, some cultural and political affiliations may not be able to be practically relinquished.

7. Annual COI declaration

Boards may wish to have a process of requiring members to declare on an annual basis interests or positions they hold currently or have held in the last three years, either paid or unpaid including: the name of the organisation or association, the role undertaken and the period of engagement.

[8] The penalty of not declaring a material personal interest is a fine of up to $25,000 (see section 80 of the *Health Services Act 2016.)*

[9] Based on the Integrity Coordinating Group, Conflicts of Interest – Guidelines for the Western Australian public sector , page 3

Appendix 6: Conflict of interest management templates

Boards may wish to use these templates for declaration of interest and management of conflict of interest.

Template 1 Declaration of interests

XXXXX HEALTH SERVICE BOARD

DECLARATION OF INTERESTS

Appointment/Annual Declaration Form

This non-mandatory form can be completed by board chairs and board members in the following situations:

- Within one month of an individual being first appointed to a health service provider board or board committee, and
- As an annual declaration by board chairs and board members to determine if a conflict of interest exists with being a board chair or board member, to be made by 31 August.

1. Personal and contact details

Question 1. Name and contact details

Name:	
Position:	
Health Service Provider:	
Telephone:	
Email:	

2. Employment

Permanent or contracted employees of the Department of Health Western Australia and the Mental Health Commission Western Australia are ineligible to be appointed as members of a HSP board.

Permanent or contracted employees of a Western Australian HSP are ineligible to be appointed as members of the HSP board in which they are employed.

Any employee, director, or board member of an organisation with which the HSP has material contractual relationships, is ineligible for membership of the HSP board with this contractual relationship.

Eligible applicants who are public sector employees, including HSP employees, are required to seek secondary employment approval as per the legislation and policies relevant to their current employing authority or HSP.

Question 2a. Current employer(s)

Provide details of current employment below. If more than one, list all. Include any current Western Australian HSP employment.
Details to include are: • employer name • your title, role or position • percentage of full-time occupation • permanent or contracted • if you are remunerated or not • if you have sought approval for the board member role (if WA public sector employee)

Question 2b. Current employer(s) – Contractual relationships

Are you currently a company director, employed by, and/or serving on a board or committee of an organisation that has a contractual relationship with the Department of Health Western Australia or any HSP?
☐ Yes ☐ No ☐ Unknown If Yes, provide brief details of the relevant organisation, your role and associated contractual relationship(s).

3. Professional memberships

Question 3. Professional memberships

Are you currently a member of any professional associations?
☐ Yes ☐ No If Yes, include details of the organisation, state or country and year commenced.

4. Board and committee memberships

Question 4a. Government Board memberships and committee positions

Provide a list and details of any current memberships of boards and committees of any WA State Government agencies, corporations, or services.

Question 4b. Other Directorships, board memberships and committee roles

Provide a list and details of any current directorships, board or committee roles that relate to any other agencies, corporations, companies or organisations.

5. Conflict of interests and integrity

HSP board members must disclose any material personal interests and act impartially in relation to their public duty.

The following definitions are used in this form:

- **Public duty:** The duty of a public officer to carry out the public role they hold due to their public position and authority. This is sometimes referred to as 'official duties.' The performance of public duty is best described as putting the public interest first.

  Public duty is outlined in a range of legislation, such as the public authority's establishing legislation, the *WA Public Sector Code of Ethics*, that public authority's code of conduct and policies.

- **Interests:** Interests are a personal connection or involvement a board member has with something or someone which might be thought to compromise one's impartiality in carrying out one's official duties.

  Interests may be personal, related to family members or close associates, and may be financial, commercial, employment, political or personal in nature. Examples include, but are not limited to, shareholdings; trusts; holdings in self-managed superannuation.

- **Conflict of interest:** A conflict of interest arises where there is a conflict between a board member's public duty to act in the public interest and their private interests. A conflict of duty is also considered as a conflict of interest and can occur even if a board member does not have any private interest at stake but there is a conflict between a board member's public duty to act in the public interest and their duty to another public, private or not-for-profit sector organisation.

  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 health service provider.

Question 5a. Interests

Do you have any interests that could be considered a conflict or prevent you from undertaking your public duty responsibilities to the Board?
☐ Yes ☐ No If Yes, provide brief details of your interests and associations.

Question 5b. Independence Issues

Are there any other issues of independence, impartiality or conflict of interest not disclosed elsewhere on this form that may prevent you from undertaking your public duty responsibilities to the Board?
☐ Yes ☐ No If Yes, list any positions and/or business interests, including those which are held by close associates, spouse and/or lineal relatives e.g. children, siblings etc., which could be perceived as a conflict of interest.

Questions 5c. Integrity

To the best of your knowledge and belief, have you been or are you currently the subject of any inquiry, investigation or disciplinary proceeding?

This includes any of the following:

- a police or law enforcement agency; and/or
- a department or agency of the Commonwealth; and/or
- a department or agency of a State or Territory of Australia; and/or
- a professional association; and/or
- a regulatory agency; and/or
- your current or a previous employer; and/or
- a consumer protection organisation.

☐ Yes ☐ No If Yes, provide a brief overview of the matter(s).

6. Declaration

I agree:

(1) this is a truthful and complete declaration of my interests;
(2) to immediately and truthfully declare any changes that may occur relative to the matters stated in this declaration; and
(3) to declare any conflict of interest relevant to my role as a board member as soon as reasonably practicable.

Board member:

Name:

Signature:

Date:

……

Witness:

Name:

Signature:

Date:

……

Board member - endorsed by:

Board chair (or nominated member):

Name:

Signature:

Date:

……

Board chair - endorsed by:

Board deputy chair (or nominated member):

Name:

Signature:

Date:

……

Template 2 Conflict of interest declaration board member (including board chair)

XXXXX HEALTH SERVICE BOARD

CONFLICT OF INTEREST

Board Member (including Board Chair)

This non-mandatory form can be completed when a matter is bought to the attention of the board member and an assessment needs to be carried out to determine if the board member has an actual perceived or potential conflict of interest and how the conflict should be managed.

NOTE: Board members (including board chair) have an obligation under the *Health Services Act 2016* (section 80) to disclose if he or she has a material personal interest in a matter being considered or about to be considered by the board or committee. The board member must, as soon as possible after the relevant facts have come to the board member's knowledge, disclose the nature of the interest at a meeting of the board or committee.[10]

How to use this form:

Board member to complete the following sections:

- Introduction
- Step 1: Description of the issue
- Step 2: Description of the public or private duty
- Step 3: Consideration of whether a conflict of interest situation exists
- Step 4: Identification of the conflict of interest
- Step 5: Identification of the type of conflict of interest
- Step 6: Proposed strategy for resolving or management the conflict situation.

Board chair/deputy chair or nominated board member to indicate acknowledgement at:

- Step 7: Acknowledgement and Approval.

INTRODUCTION:

Name:
Position:
Health service provider:
Telephone:
Email:

[10] The penalty of not declaring a material personal interest is a fine of up to $25 000.

Step 1: Describe the nature of the matter or issue that is the subject of the possible conflict of interest:

Step 2: Describe the conflict with your duties as a board member (e.g. involvement in a board decision that will positively or negatively impact on a public or private interest):

Step 3: Determine if a conflict of interest situation exists:

Please circle the most appropriate answer.

(Consider all the questions on the checklist below to ensure all relevant factors and risks have been taken into account. A 'yes' answer to any of the questions would indicate that a conflict exists and should be reported.)

(a) Private interest:

Do I have any significant ties, obligations, financial relationships and/or affiliations with organisations, clubs, groups, or individuals who stand to gain or lose from this matter?	Yes	No
Do I or anyone associated with me have a private business (or secondary employment) interest in this matter?	Yes	No
Do I have significant family or other relationships with clients, contractors or other people involved in the matter?	Yes	No
Does the matter relate to financial (pecuniary) interest as defined in legislation and regulations?	Yes	No
If there is a private interest, is it or does it have the potential to be sufficiently influential or motivating so that it may lead to a conflict of interest?	Yes	No
Do I have doubts about my ability to act impartially in my position as board member (i.e. to absolutely ensure that any private considerations do not affect my decisions/actions)?	Yes	No

(b) Potential benefits:

Could I or anyone associated with me benefit now or in the future from my actions or decisions in relation to the matter?	Yes	No
Could I, or anyone associated with me, be detrimentally affected now or in the future by my actions or decisions in relation to this matter?	Yes	No
Have I received a benefit, gift, donation or hospitality (e.g. meals, drinks, tickets, etc.) from someone who stands to gain or lose from a decision or action in relation to this matter?	Yes	No
Am I or anyone associated with me (e.g. a relative, friend or associate) likely to gain or lose financially if the matter is resolved a certain way?	Yes	No
Could the matter have an influence on my future employment opportunities?	Yes	No

(c) Perceptions:

Would it appear to a neutral or disinterested observer that my private interests were in conflict with my public duty?	Yes	No
Could a neutral or disinterested observer reasonably believe my private interests had influenced me?	Yes	No
Do I hold any private or professional views and biases that may lead others to conclude that I am not an appropriate person to deal with this?	Yes	No
Are there perception risks for WA Health or myself if I remain involved?	Yes	No
Would I think it was wrong or improper if I saw someone else doing this?	Yes	No

(d) Proportionality:

If I am not involved, is there a better way to ensure impartiality, fairness and to protect the public interest?	Yes	No
Is my involvement illegal?	Yes	No
Is my involvement contrary to WA Health policies and procedures and/or those of the public sector?	Yes	No
Do I need to seek advice from someone who knows about these things or who is an objective party?	Yes	No

(e) Public scrutiny test:

Is the matter one of significant public interest? Is it controversial and likely to attract significant public attention?	Yes	No
Would I be unhappy if my private connection or association was made public? Would I feel ashamed if my private interest was exposed on the evening news or the front page of a newspaper?	Yes	No
Would I find it hard to defend and justify my actions and/or involvement if questioned publicly?	Yes	No
Could my involvement result in negative consequences for others, WA Health or myself?	Yes	No

(f) Promises and obligations:

Have I made any promises or commitments, been involved in or contributed privately to the matter?	Yes	No
Do I have a current or previous relationship with interested parties that would place me under an obligation?	Yes	No
Do I have affiliations past or present (e.g. political, union, profession, religious) past or present that could place me under an obligation?	Yes	No

Step 4: The identified conflict of interest is:

An **actual** conflict	
A **perceived** conflict	
A **potential** conflict	

Step 5: The type of conflict is:

A **financial** conflict	
A **partiality** conflict	
A **role** conflict	

Step 6: Proposed strategy for resolving or managing the conflict of interest.

Step 7:

I agree:

(1) this is a truthful and complete declaration of the above mentioned matter;
(2) to adhere to the above mentioned management strategies; and
(3) to immediately and truthfully declare any changes that may occur relative to the matters stated in this declaration.

Board member:

Name:

Signature:

Date:

……

Witness:

Name:

Signature:

Date:

……

Board member (not including Board Chair) – acknowledged and approved by:

Board chair (or nominated member):

Name:

Signature:

Date:

……

Board chair – acknowledged and approved by:

Board deputy chair (or nominated member):

Name:

Signature:

Date:

This document can be made available in alternative formats on request for a person with a disability.