# AMA (WA) SUBMISSION TO INDEPENDENT GOVERNANCE REVIEW OF THE HEALTH SERVICES ACT 2016 (WA)

20 May 2022

## PREAMBLE

The AMA (WA) welcomes the opportunity to contribute to the Independent Governance Review of the *Health Services Act 2016* (WA) ('the Review'). The objective of the AMA (WA) in this submission is to assist in the development of a better corporate governance structure for WA Health. In doing so, we hope that the health system can achieve optimum transparency, accountability, efficiency, fiscal and clinical responsibility, safety, and quality. A high-quality governance structure should also allow WA Health to become a preferred employer, and to function as a system that can identify its own problems and fix them. Ultimately, the system should be set up to achieve the best patient outcomes with the resources available. The AMA (WA) acknowledges that WA Health employees are hard-working people with good intentions. The examples we provide in this submission of poor corporate governance are given in general terms and should not be seen to implicate any individual.

## HISTORY OF WA HEALTH GOVERNANCE

Having the Director-General (DG) as the bearer of ultimate responsibility for health care delivery has previously been recognised as being inappropriate for the size and complexity of modern health care delivery. Total reliance on one individual creates 'key person risk' in terms of potential losses, as well as performance. Boards are routinely employed to solve this risk, distributing responsibility, corporate knowledge, and skills amongst appropriately qualified people.

However, the success of a Board is not guaranteed simply by its formation. Evidence shows that governance can often made worse by Boards, especially where boards are not given full governing powers that they require to be effective.[1] Recent iterations of WA Health's governance structure have included reliance on a single Board, but this ultimately failed. It was not a true skills-based Board, and the directors were political appointees.

The current governance structure of WA Health is such that health service provider (HSP) Board members are appointed by the Minister. They are not true skills-based Boards, despite the *Health Services Act 2016* (WA) ('the Act') providing some general skill outlines. The Boards do not employ their CEO, which means they are not able to direct, mentor, monitor or control them. They do not control their budget, and they can only develop policies and strategies that comply with the overarching WA Health policy and strategy. Effectively, each Board currently has the Minister for Health and DG as shadow directors.

CEOs are instead employed by the DG, which results in asymmetric communication, dual reporting, and split loyalties. An example of the difficulties associated with this model was the governance of Princess Margaret Hospital (PMH) and the Child and Adolescent Health Service (CAHS) Executive around 2016. Convoluted reporting pathways resulted in the near destruction of PMH culture and created an

[1] Uhrig, J. (2003). Review of the Corporate Governance of stutory Authorities and Office Holders. [online] Trove. Available at: https://nla.gov.au/nla.obj-922761191/view?partId=nla.obj-924283006#page/n0/mode/1up [Accessed 16 Jun. 2021].

environment that was heading for a Mid-Staffordshire-esque scenario, resulting in ministerial intervention and the Geelhoed Report.[2]

Other evidence of poor corporate governance in WA Health includes:

- fraud amongst North Metropolitan Health Service (NMHS) executives in 2018 and 2020
- ambulance ramping reaching record levels
- wrong babies' bodies being given to parents at King Edward Memorial Hospital (KEMH)
- Record ongoing waitlists for elective surgery
- Routine code yellows across HSPs
- Inability of the mental health workforce to keep up with demand
- the death of a child in the emergency department at Perth Children's Hospital in 2021
- Bunbury Regional Hospital having had a WorkSafe investigation regarding a dangerous work environment with poor culture and bullying

## OVERARCHING PRINCIPLES

There are broad overarching principles that in our view should be integrated into any future corporate governance model for WA Health. These include:

- increased transparency and accountability
- direct, responsive communication
- decision-making authority should be closer to clinical delivery, with direct local clinical input
- avoiding reliance on single individuals, for example, the Director-General
- all parties having clear lines of accountability and reporting
- all decisions should have a sponsor as an individual or chair of the committee
- provisions in the Act regarding skills of Board members to be more specifically defined

## RECOMMENDATIONS IF HSP BOARDS ARE RETAINED

If HSP true boards are retained, they should be given greater if not full powers of independence and autonomy. This could be achieved by Boards:

- employing their CEO
- having the Minister for Health appoint the Chair, with other directors having power to veto only
- appointing the Chair of Medical Advisory Committee as a clinical member of the Board
- removing the restriction in the Act of a HSP employee being a Board member, and manage conflicts of interest appropriately

## RECOMMENDATIONS IF HSP BOARDS ARE NOT RETAINED (SINGLE BOARD MODEL)

Having the DG as the system manager and not directly responsible for care delivery allows a transfer and denial of responsibility, reduced transparency, and erodes the very core of good corporate governance. Persisting with the DG as the single person responsible for overall integrity of the system perpetuates the problem that the use of Boards was intended to solve. In our view, this should not be part of a future solution.

From a corporate governance perspective, if HSP Boards are not retained, the most logical option is a single overarching, skills-based Board, which has oversight of executive management. This is similar to

[2] Geelhoed, G. (2017). *Review of the morale and engagement of clinical staff at Princess Margaret Hospital*. [online] ww2.health.wa.gov.au. Available at: https://ww2.health.wa.gov.au/Reports-and-publications/Review-of-the-morale-and-engagement-of-clinical-staff-at-Princess-Margaret-Hospital [Accessed 21 Jun. 2021].

the Wesfarmers corporate governance structure that has a turnover three times and twice the number of employees as WA Health. There is also precedent in other government departments, and internationally.

In Australia, the federal Department of Human Services (DHS) was established in 2004. DHS had oversight of six agencies, all with Boards. All of those Boards were abolished, and an Advisory Board of Human Services appointed that would coordinate the six agencies.[3] In New Zealand in 2021, 20 district health boards were being abolished and replaced by a single national body similar to the National Health Service (NHS) in the UK. This was triggered by the identification of chronic under-resourcing and variability of health care quality and accessibility between districts. Hong Kong also has a single board responsible for hospital health care delivery.

Wesfarmers has a single Board, with a 'group CEO' for each Strategic Business Unit (SBU).[4] Each group CEO chairs an executive management committee (which is 'board-like' in its function). Each SBU has its own CEO, CFO and COO. This structure, with clear delineation of roles, is the key to its success. The group CEO does not function as a CEO of the SBU, but as the management chair of the SBU. This allows direct and flat management, and bilateral communication, transparency and accountability. The group CEO has their own 'C suite', which are the chief management officers of Wesfarmers.

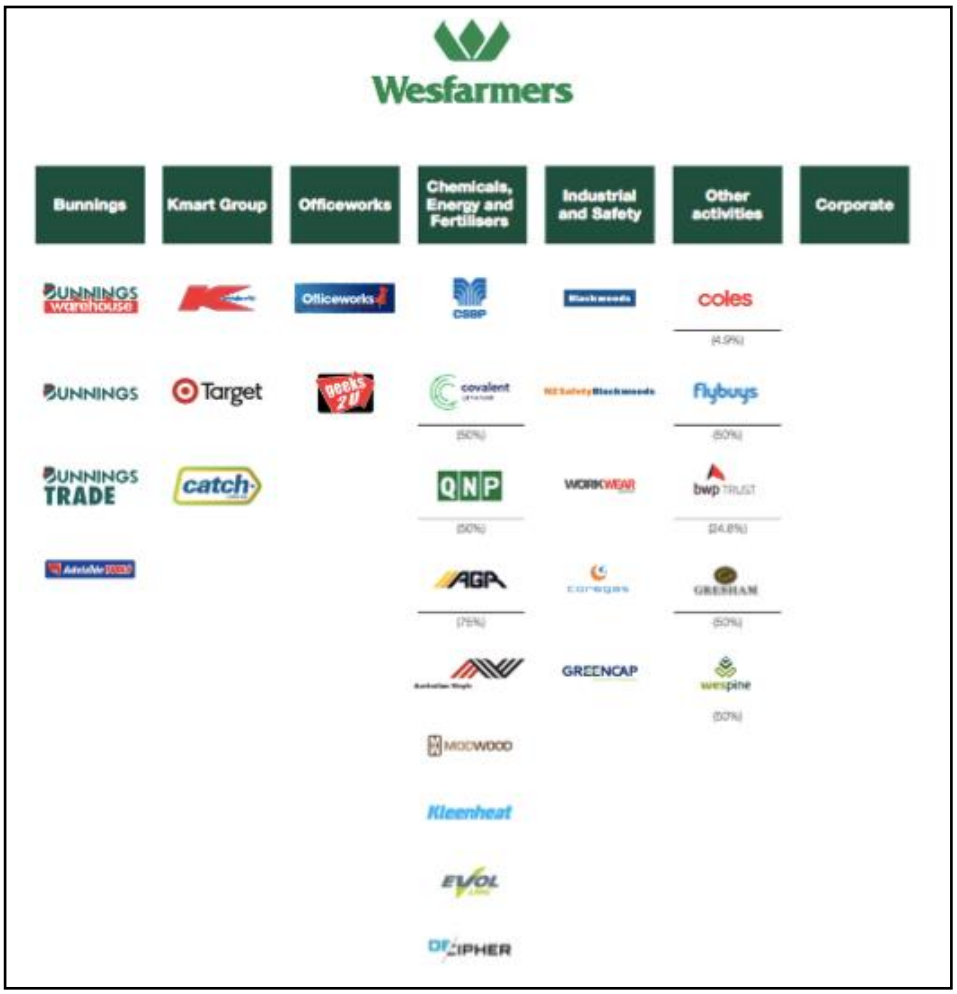


**Figure 1. Wesfarmers governance structure.**

The same system could be applied to WA Health (see Figure 3). In this model, the Minister appoints the Chair of the WA Health Board, and the Chair appoints other members. The Minister only has power of veto of other members. This maximises the formation of a skills-based Board and allows it to function

[3] Grant, R. (2005). *The Uhrig Review and the future of statutory authorities*. [online]. Available at: https://www.aph.gov.au/binaries/library/pubs/rn/2004-05/05rn50.pdf [Accessed 16 Jun. 2021].
[4] See Appendix 1; Wesfarmers 2021 Wesfarmers 2021 Annual Report <https://www.wesfarmers.com.au/docs/default-source/asx-announcements/2021-full-year-results-briefing-presentation.pdf?sfvrsn=801412bb_0> [Accessed 28 April 2022].

effectively. The Chair can then report directly to the Minister, while the Board can get on with the business of governing health care delivery. In this model, the CHO and/or the DG report directly to the Minister and are responsible for statutory requirements, public health and disaster management.

The Board should maintain adequate health care professional input and have stakeholder engagement such as a general worker representative.

**Recommendation 1a: If HSP Boards are retained, key responsibilities should be fully delegated, especially in relation to the employment of CEO. The Board should also have the authority to appoint the Chair of Medical Advisory Committee as a clinical member of the Board.**

**Recommendation 1b: If HSP Boards are not retained, WA Health should be governed by a single skills-based Board, with the Chair reporting directly to the Minister.**

**INDUSTRIAL RELATIONS**

The AMA (WA) provides industrial relations services to its publicly employed members in line with the *WA Health System – Medical Practitioners – AMA Industrial Agreement 2016* ('the Agreement'). When the HSPs were established under the 2016 Act, we were assured by the Department that the devolved governance structure would not impact negatively on the entitlements of employees. However, we have found that there have been negative impacts related to having multiple employers. We can provide specific examples on request circumstances under which employees' entitlements have been impacted where, in our view, under one employer they would not have been.

A lack of consistency is problematic in several ways. First, it results in poor efficiency. Clarifying the interpretation of Agreement provisions for each individual HSP is a task that simply should not need to be undertaken. It is true that some provisions will require clarification based on an employee's particular circumstances, but there should be a central point at which the interpretation of those provisions is made. WA Health has the System-Wide Industrial Relations service which should act us such, but in our experience, more often than not issues are referred back to the relevant HSP to make their own decision. These back-and-forth conversations take up ample time of both the AMA (WA)'s, and of WA Health workplace relations officers. It is not an efficient use of resources from the AMA (WA)'s perspective, nor for WA Health, to have multiple versions of similar policies.

Second, the system creates a lack of certainty for employees. Not only do doctors, particularly junior doctors, frequently move between HSPs, but many doctors work for multiple HSPs concurrently. While we acknowledge that there are some benefits to having multiple employers, particularly for country health services which require a nuanced approach to service delivery, there should be, overall, consistent internal policies and procedures for when it comes to industrial matters. A lack of consistency means employees are confused about their entitlements, and they must wait unnecessary periods of time for an answer.

**Recommendation 2: Regardless of the corporate governance structure resulting from the Review, WA Health should ensure consistent and compliant implementation of industrial relations policies. This may include penalties for HSP that are non-compliant. This is consistent with the points of view of the Health Services Union and the United Workers Union.**

## MENTAL HEALTH CORPORATE GOVERNANCE

WA's mental health system in its current form is not providing adequate, co-ordinated and timely mental health care delivery. Corporate and clinical governance models are haphazard, and funding throughout the patient journey comes from a number of disjointed sources (see Table 1). The current organisational structure is such that no single person or entity is responsible for the operational delivery of mental health in WA. This results in poor coordination, communication, collaboration, accountability and, most importantly, poor patient outcomes. The failure to address the corporate governance structure of the mental health system is the reason that the multitude of reviews, mainly pertaining to clinical governance, over the past 10 years have failed to make a difference. Many of these reviews have pointed to the lack of a clear and coherent system, resulting in fragmented care.

| SITE | CLINICAL GOVERNANCE | CORPORATE GOVERNANCE | FUNDING |
|---|---|---|---|
| Calls Lifeline | Nil | NGO | Federal |
| Sees GP | GP | GP | Federal |
| Visits Safe Haven café | Nil | NGO | MHC |
| Visits Headspace | Nil | NGO | Federal |
| Community psychiatry | Local / HOD | MHC | MHC |
| Suicidal at ED | Tertiary Hosp | WA Health | Health from MHC |
| Inpatient Tertiary | Tertiary Hosp | WA Health | Health from MHC |
| Community accom. | Nil | NGO | MHC |
| GP ongoing | GP | GP | Federal |

**Table 1. Fragmented clinical and corporate governance, funding sources in mental health system**

The Sustainable Health Review (SHR) dedicated Strategy 2 to improving mental health outcomes.[5] It identified that the whole system required sustained, holistic and transformational reform, emphasising the need for mental health and physical health services to be integrated. How they are best integrated will ultimately be a question of governance structures, notwithstanding the complexities related to joint or severed ministerial portfolios. We propose two possible solutions below.

In the first model, the Health and Mental Health portfolios are combined (see Figure 2). The public mental health system could become its own HSP if individual HSP boards are retained, or a separate business unit with its own HSP Management Council in a single board model. In both scenarios, there is at least a single entity responsible for mental health delivery.

[5] Sustainable Health Review. (2019). Sustainable Health Review: Final Report to the Western Australian Government. Department of Health, Western Australia. https://ww2.health.wa.gov.au/~/media/Files/Corporate/general-documents/Sustainable-Health-Review/Final-report/sustainable-health-review-final-report.pdf [Accessed 28 April 2022].

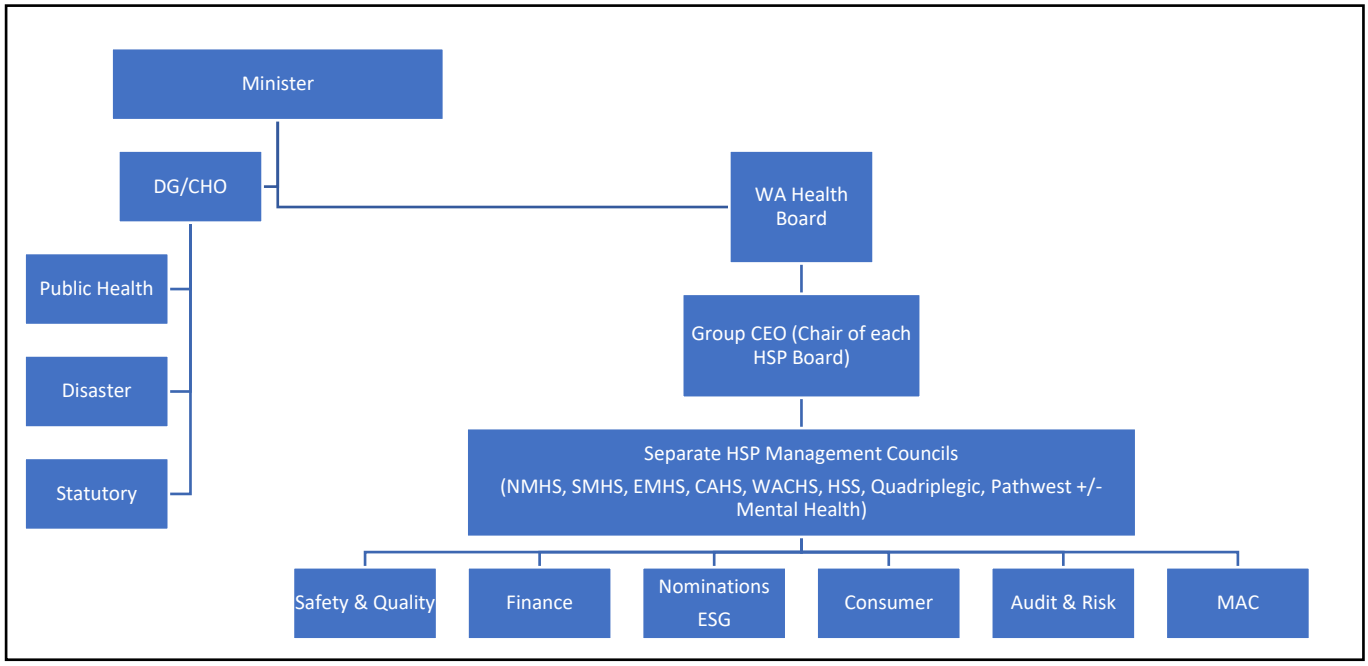


**Figure 2. Proposed governance model for a combined Health and Mental Health portfolio**

In the second model, mental health is kept as a separate portfolio, but remains under the same Minister as the Health portfolio. Each portfolio will have a DG, and separate budget (see Figure 3). The DG of Mental Health is the single person responsible for the operational delivery of mental health in WA. Given the nature of mental health and the needs of the community therein, we propose two distinct branches:

1. A 'Mental Health Commission' or equivalent that is responsible for society wellness, broad-scale, community mental health support
2. A Mental Health Department that supervises, controls, coordinates and delivers tertiary and community care of clinically diagnosed mental illnesses

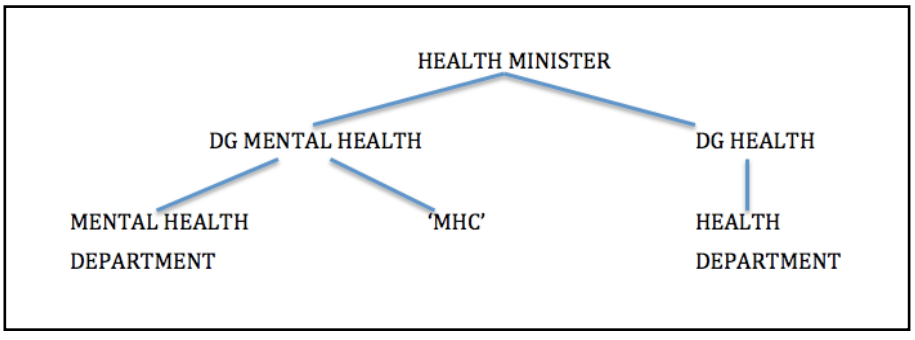


**Figure 3. Proposed governance model for separate Health and Mental Health portfolios (single Minister)**

**Recommendation 3: Mental health and WA Health activities must be better integrated, starting with governance structures. Ensuring collaborative and comprehensive clinical governance of mental health service delivery should be a priority for this Review.**

## Conclusion

The AMA (WA) welcomes the opportunity to provide input into this Review. We perceive the current governance structure of WA Health and the Mental Health Commission ripe for improvement, with many benefits to patients to follow as a result of reform. We see value in reviewing the makeup and hierarchy of the Director-General, the HSP Boards, and HSP Chief Executives. Under the Mental Health portfolio, we envisage enormous gains being made for staff and patients alike as a result of a well-structured, clinically-informed governance structure.