Independent Governance Review of the Health Services Act 2016

HSUWA Submission

Health Services Union WA

Introduction

The Health Services Union of Western Australia (**HSUWA**) is a specialised union of health workers in Western Australia with thousands of members. Our members' jobs make up a significant part of the health workforce, for example Pharmacists, Physiotherapists, Medical Scientists and Researchers, Medical Imaging Technologists, Laboratory Technicians and Administrators (**Members**). We are dedicated to our purpose - to empower our members to advance their collective interests through organising, support, advocacy and influence.

In total, the HSUWA collective agreement (**Union Agreement**) covers more than 18,000 employees across the WA public health system (**WA Health**). Our Members work at every board-led Health Service Provider (**HSP**) set up under the devolved governance structure (**Structure**) by the *Health Services Act 2016* (**Act**).

We are mindful in making this submission of the thousands of hardworking and dedicated staff across WA Health. This submission is not a reflection on their enormous efforts. Rather it seeks to address how the Structure is letting them and public health patients down and why we think a much clearer networked governance model that simplifies, rather than adds complexity, is urgently needed.

Our submission to the Panel is that the Structure is neither efficient nor effective from a workforce perspective. We make recommendations in response to areas where we consider the Structure has served to frustrate, rather than foster, positive change for the workforce.

HSUWA has had the opportunity to read the submissions of the AMA (WA) and United Workers Union and supports:

- Recommendations A, B and C of the United Workers Union submission; and
- Recommendations 1B and 3 of the AMA (WA) submission.

In summary we consider:

1. The Structure drives each HSP to put their own interests first, not the interests of WA Health. This has meant WA Health is split into multiple silos, weakening workforce co-ordination and collaboration.

2. There is a growing divergence between the HSPs and increasing irrelevance of the stewardship role of the System-Manager, despite the overwhelming need for an effective, central representative agency for all WA Health employers.

3. After nearly six years there is ongoing confusion about who is responsible for which key functions (such as industrial relations, workforce strategy and work health and safety).

4. The failure to properly consider mental health services and the muddled role of the Mental Health Commission (**MHC**) in the Structure has contributed to the serious issues affecting the workforce delivering public mental health services.

5. The workforce must become a priority in WA Health governance and planning. This will require a complete shift in thinking, including about the role of unions.

Employment

Central Employment

Between the Union Agreement, relevant legislation and the public sector standards, there should be consistency in the employment conditions that apply to Members. However, the decision to devolve employment to the HSP level has led to a cascade of duplication, inconsistency and complexity.

There are a wide range of matters where each HSP has developed a unique policy and/or approach to the application of employment conditions or entitlements. In addition to this unnecessary duplication, there is an absence of thought for the many people who work across HSPs and must navigate different expectations and systems depending on where they are working that day.

Example: Disciplinary processes and Integrity and Ethics
Although there is a single WA Health Disciplinary Policy, there is varying management of the disciplinary process across HSPs. These management of disciplinary processes are not transparent. In recent years, some have implemented an Integrity and Ethics unit separate to the existing HR and IR structures or changed the functions and scope within their Integrity and Ethics units.

This has led to a situation where we commonly observe that Members do not receive like treatment for similar conduct across HSPs.

Some HSPs made changes with the laudable aim of increasing efficiency, however we have not observed this outcome. Currently a six-month turnaround would be considered expedient. It is not uncommon for members to wait more than 12 months or more for the outcome of a disciplinary process. Many of these Members are stood down on pay pending the outcome of their investigation, at a significant cost and there are often impacts to ongoing industrial issues or workforce resourcing related to individuals under investigation.

Example: Working From Home (WFH)
Recent history has seen a significant societal change towards WFH. While many Members are frontline staff, Members also work in areas such as finance and other administration. At various points over the last two years, the Government requested workers to WFH to limit the community spread of COVID-19. In response to each of these circumstances, each HSP plotted a separate course and different communications, sometimes in direct contradiction to the messaging of the System-Manager and of the Government. Some *supported a practical WFH process, while others resisted it completely. It created needless confusion and frustration for staff.*

Permanent Employment

Despite the long standing and clear Government public sector workforce priority for permanent employment, more than a third of HSUWA covered positions in WA Health are employed insecurely on either a fixed term or casual basis. Neither the ongoing effect of this on workers' lives, workforce culture, safety, administration costs and training (to name a few), nor Government policy, has changed practices.

The important initiative of reviewing fixed term and casuals engaged for more than two years under *Commissioner's Instruction No. 23* in 2018 led to the positive outcome of permanency for some workers, and our Union Agreement 2020 embedded a similar ongoing review process.

However, after four years of these efforts which included going to the WA Industrial Relations Commission in 2021 to ensure compliance by HSPs (in matter which is still on foot while several HSPs continue to breach their conversion to permanency obligations under the Union Agreement terms), there is a higher proportion of employees in insecure jobs and resistance to address the structural reform needed to change practices.

The System-Manager has been unable to co-ordinate or affect any real change by the HSPs. Ultimately the Structure has not delivered any consequence to the HSPs choosing to frustrate Government priorities and the true costs are not quantified.

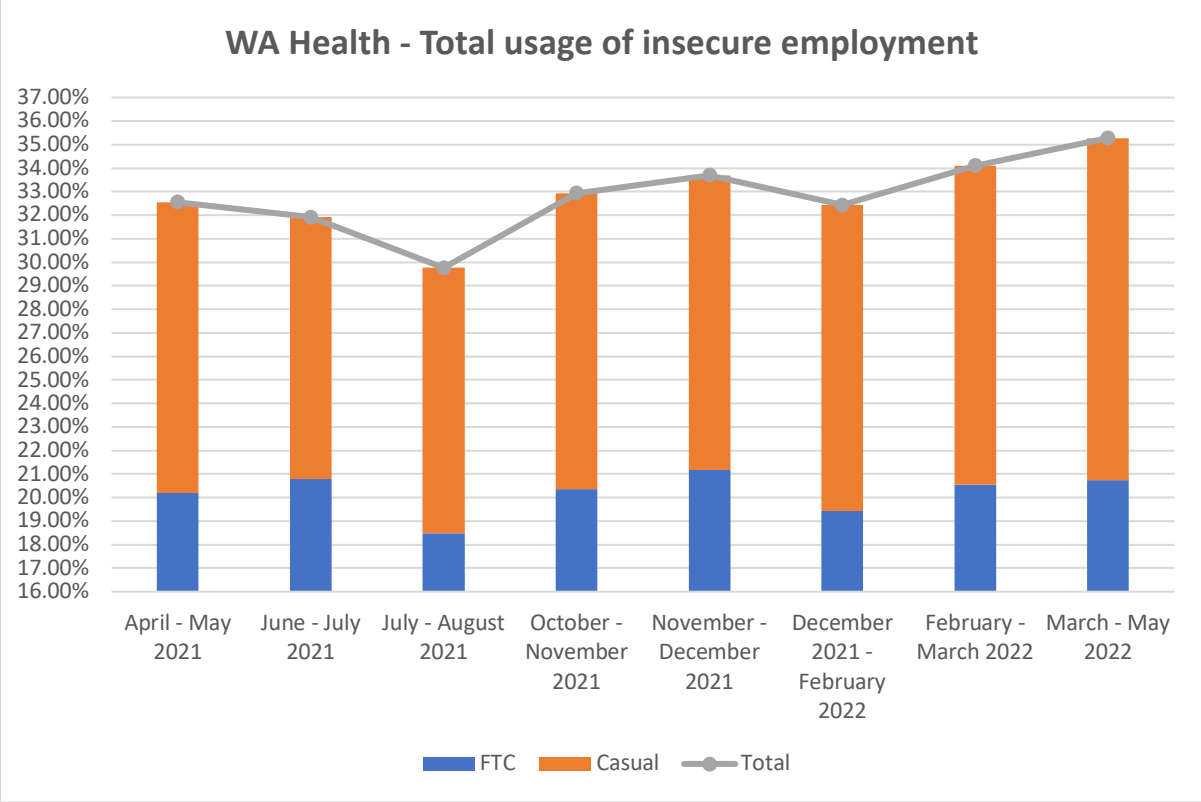
Example: New employees in March 2022 - HSUWA covered positions across WA Health

Casual	398
Fixed Term	360
Other	3
Permanent	69
	= 830

The above figures demonstrate that 91% of new starters in WA Health (as presented on the list supplied) were employed insecurely in March. While some appointments will be for valid reasons, this is broadly consistent with long term trends in how new workers are employed.

Example: WA Health total use of Insecurely Employed workers under HSUWA coverage*

**We have created this graph from data obtained through HSP reporting obligations required by the WA Industrial Relations Commission due to their ongoing breach of conversion to permanency obligations under the Union Agreement*



Direct Employment

Despite the long standing and clear Government public sector workforce priority of direct employment and the Government's achievement of bringing two significant health services back into public hands, there is no transparency on the extent of outsourcing across WA Health. There is an extensive patchwork of outsourcing arrangements across the HSPs, from individual jobs to whole services. HSPs compete for contracts against NGOs for MHC funded services. Important long-term digital infrastructure and workforce strategy is outsourced to consultants.

The Structure does not support the transparency of the various outsourcing arrangements nor the true costs. We consider this arises from a number of factors, including a failure of longer-term planning to establish what capacity is needed within WA Health and the HSPs ignoring Government policy to fill the gaps. We consider the associated workplace safety risks of outsourcing arrangements in the hospital environment have been largely overlooked.

Example: Security Officers

Contracted Security Officers (SOs) were used to monitor patients at a secure Mental Health facility embedded in a metropolitan hospital. However, it was discovered that the contracted SOs had not been fit tested for N95 masks as this was not required by their employer.

As a result of not being test fitted, directly employed SOs were required to leave their normal duties and swap roles with the contracted SOs. This raised issues that contracted SOs:

- *were not trained to the same level as in-house security;*
- *did not have detailed knowledge of the hospital layout;*
- *were not trained to deal with "hospital" situations in accordance with procedures; and*
- *did not have the operational experience to be able to work instinctively with fellow SOs in an emergency situation.*

The use of contracted SOs without the experience and training of directly employed specialist Security Officers presents a risk to staff, patients and the public.

We believe that overcoming the issues above requires a different employment arrangement.

Recommendation 1:

A single employer for the staff of WA Health (preferably a Board) supported by investment in the capability needed to properly ensure:*

- *fair and consistent employment policies and practices are applied; and*
- *Government public sector workforce priorities of permanent and direct employment are met; across all of WA Health.*

**We note to manage this employment change successfully would require careful planning - there are a number of flow on effects to consider and risks to mitigate.*

Improve employee relations by engagement with unions and support of the role of Union Delegates

Employee trust and engagement have ebbed and flowed in response to events and the pandemic over recent years, but overall are at low levels and there is poor morale. Successive "Your Voice in Health" surveys have highlighted ongoing challenges and worrying trends. While there continues to be an incredible collective commitment to a quality public health system, highly skilled, experienced and committed staff are too often shut out from the decision-making process. We observe decisions being made in hierarchical silos, usually without meaningful input from frontline workers. We have witnessed damaging mistakes being made because of this.

There has been some improved engagement between HSUWA and HSPs during the pandemic and with the establishment of the Health Union Consultative Group (in 2020) and the Ministerial Advisory Panel (in 2021). However, these two forums are yet to move beyond process discussions and information sharing, as opposed to proper consultation. We observe a limited understanding of the work unions do and a historic reluctance to engage in a healthy, consultative, decision-making process at the most senior levels. The Director General is emblematic of this approach. He doesn't attend these forums normally and neither he nor his key staff reach out to HSUWA for input on significant matters about the workforce.

When unions are cut out of information and decision making, it forces unions to take a defensive position, lest changes leave our Members worse off. At HSUWA we see our role as working constructively with employers and improving employee/employer relationships. When senior managers are unwilling to cede any power or information - the health system is poorer for it and there is a real and direct impact on workforce culture.

> ***Example: Union request to address HSP Boards***
> *HSUWA wrote most of the HSPs in 2021 to raise out concerns that, amongst other things, workforce matters were not being given the prominence they needed. Not one HSP took us up on our offer to talk to their Board with Members, with CAHS declining twice.*

This high-level disregard for staff engagement is then, unsurprisingly, replicated at most junctures. Union Delegates play the role of conduit between employees and management and have a crucial role in improving staff engagement and trust. It should be the opposite of adversarial. There needs to be meaningful change, to support the role of Union Delegates and Union Health and Safety Representatives across WA Health workplaces. This includes providing union access to inductions, new employees and quality, accurate information.

We know that providing Union Delegates adequate paid time to be trained and perform the role in the workplace will lead to a more harmonised and supportive culture in the longer term. Employers and the union want workers to have a better, more positive experience at work and that is what our Union Delegates aim to achieve. In the context of the pandemic and the demands faced by our Members, this has never been more important.

Recommendation 2:

Governance reforms should support and encourage the role of Unions and Union Delegates in WA Health. There should be no capacity to exclude union voices in decision making. There should be a

transparent sharing of workforce data and information. This will help ensure workforce matters are given the critical importance needed and workers can confidently speak up and engage more positively at work.

Recommendation 3:
The Health Union Consultative Group and the Ministerial Advisory Panel forums should be properly consultative, resourced appropriately and formally adopted in a new structure.

Recommendation 4:
Establish the "Your Voice in Health" survey as a bi-annual process and focus reporting not on how many staff fill in the survey but communicating what is done in response to the information collected.

Improved capability to respond to workforce matters

While it is understandable that the key focus of HSP's is on managing the day-to-day work of looking after patients, the Structure does not support planning for the medium and long-term future. The disruption of the pandemic exposed this; it did not cause it. We note that funding sources and methods and budget and political cycles all have a role in impeding the longer-term planning needed, but this cannot be an excuse for inaction.

There are many workforce areas where a proactive System-Manager could lead - including industrial relations, workforce planning, workplace safety, research and innovation, infrastructure planning and development. However, in these areas, efforts are at best piecemeal and all suffer from capacity and capability issues. We observe a lack of urgency, progressive thinking, transparency and accountability.

Workplace Safety

There is no central part of the Structure with any responsibility for the health and safety of the workforce. This means each HSP alone has responsibility, as an employer, and has their own discrete approach to workplace safety - including different reporting systems, with one HSP relying on their standard grievance process. Until HSUWA requested it through the Health Consultative Union Group forum, the System-Manager was not tracking WorkSafe Notices issued to HSPs.

HSUWA and the United Workers Union wrote to the System Manger in 2021 about the pending commencement of new WHS laws, and the System-Manager responded by organising with a WHS conference day in late 2021, where there was common agreement on the duplication, lack of data and inconsistency of workplace safety across WA Health. There was recognition that the HSPs are left to co-ordinate and help each other where they can. The fact workplace safety is not even considered important enough for there to be any formal central structures, standards or co-ordination is symbolic, we believe, of the failure to prioritise the workforce under the Structure and the failure to apply a workforce lens to governance and planning.

Workplace safety is critical for HSUWA members. In the context of the commencement of the WHS laws, there needs to be a clear and comprehensive commitment at all levels to improve the safety culture. These laws are a significant achievement of the Government and WA Health needs to take every opportunity to ensure safer workplaces across our health system by utilising and enhancing the structures and standards under the legislation. This includes improved understanding across the health sector of staff safety being as important as, and intrinsically linked to, patient safety.

Workforce Planning

There is a health workforce crisis unfolding in WA. Under the strain of the demand for services and the pandemic over the past two years, this lack of workforce planning means our Members are dealing with difficult and sometimes dangerous working conditions. The answer does not lie with advertising programs and immigration, although HSUWA recognises the short term need to turn to competing for trained staff from other countries.

The path out of crippling staff shortages is to look after the existing workforce and ensure rigorous mid-long term workforce planning. We must train local workers and provide secure, quality jobs.

The Structure has not been able to deal with the growing workforce supply issues, accelerated by the pandemic, in a responsive or effective manner. It is the experience of the HSUWA that the System-Manager lacks the capacity and willingness to co-ordinate workforce planning matters proactively and identify future workforce concerns. HSUWA is attempting to address the need to modernise the pay structures for senior health professionals – any of which WA Health cannot function without – during collective bargaining – because there is no other avenue.

Building capability in workforce planning was identified as a priority under the *Sustainable Health Review Final Report* 2019 Recommendation 26. The System-Manager has now outsourced the development of a workforce strategy (under Rec 26 due by July 2021) to a private consulting firm. We are deeply concerned with the decision to outsource this critical function and especially concerned with the implications this has in the longer term. This is not a one-off capability need and signals the lack of understanding of the depth and breadth of the WA health workforce supply issues, especially in the regions, as well the interactions with other areas – private allied health and pathology, the NDIS and Aged Care, for example.

The absence of a workforce planning capability, enabled to assess and drive future workforce needs means the HSPs are currently facing significant challenges in filling critical roles. A centralised workforce planning capability that actively manages sourcing channels could deliver a more balanced and timely supply of staff for the whole of WA Health. At present, it is standard for recruitment activities in key occupations to take six months. This leads to management hiring staff casually, increases the rates of contractor utilisation and presents significant risks to service delivery and stability. A centralised workforce capability could also underpin key workforce goals like improving gender equity and increasing employment of workers with disabilities.

HSPs are now in open competition for staff to fill the significant number of vacancies across WA Health. This is particularly acute across public mental health services. Somehow all the evidence of the growing demand for mental health services (clearly recorded over the past decade) and the insights from numerous reviews, plans and reports, could not shake out the urgent direction and action needed - to deal with the circumstances and properly support the existing health professionals and prepare for a future workforce.

The layering of accountability for the delivery of mental health services with the separate entity of the MHC adds complexity and inefficiency to the delivery of public health services. This is relevant to the review. The failure of the Act to contemplate the role of the MHC is an extraordinary governance oversight. We observe public mental services continuing to be inadequately resourced, especially for young people, while the NGO sector has expanded and further fragmented the effective delivery of

mental health services in WA. It should not take further tragedy and crisis for a clear plan for public mental health services delivery.

Example: Workforce Planning at CAMHS
In an unprecedented step, in 2021, Members took industrial action over the chronic understaffing and safety concerns at the Community Clinics of Metro CAMHS and PCH Ward 5 (the secure mental health unit at the Children's Hospital). Critical services for acutely unwell young Western Australians were, and continue to be, not properly resourced.

The important commitment of the Government to additional 99 positions at CAMHS in last year's State Budget has been noticeably stalled by more than half of the positions not being filled more than 6 months later. The reality is that the public sector is no longer necessarily the employer of choice for health professionals nor competitive enough on pay and conditions to attract staff. This has significant flow on effects for the successful implementation of Government initiatives, for example the ICA Taskforce Final Report 2022.

Example: Library and Research
There is a shrinking pool of experienced library professionals (now under 25 FTE) in different arrangements, depending on the HSP, to support clinicians, researchers, educators, policy makers and planners across the breadth of WA Health. Quality medical library services and resources save time, money and ultimately patient's lives. They are also vital to the goal of clinical excellence.

Efforts by Members to map out a future workforce strategy under the Structure, given their invaluable role - which is growing in need and importance, faces challenges. To begin with - it is not clear who is even responsible for ensuring quality library and research capabilities in WA Health. What is clear is that a highly specialised, critical part of the health workforce, should not be neglected until an inevitable staffing crisis occurs.

Innovation

Despite all Government announcements and funding supporting for medical research and innovation there are deep and serious problems with the practical support provided to employees who innovate in WA Health, especially in relation to Intellectual Property rights and commercial pathways. There has been no progress despite the reviews and reports of recent years. We consider the situation of our Members being sued by their employer and other patents not being progressed due to a lack of a progressive and clear policy to be a monumental failure.

Infrastructure

While important work is under way to deal with some of the infrastructure gaps across WA Health that restrict progress and efficiencies – both digital and physical – HSUWA is concerned about the level of internal capacity and 'knowhow' within the System-Manager. We observe a lack of understanding of how the Structure, as well as public/private sites, should communicate and coordinate infrastructure projects. The experience of the HSUWA is that this lack of knowhow is compounded due to the lack of consistent consultation with front line workers.

Further, consideration of the intersection of infrastructure and climate change is critical to the success of future built infrastructure. While it is pleasing that the Sustainable Development Unit is up and running, it is staffed by only a handful of dedicated professionals. This is simply not enough investment for what is needed and the significant contribution to emissions and pollution by the health sector. It

is also deeply disappointing following the Government's own inquiry in 2020 and the recommendations of the draft State Infrastructure Strategy.

Recommendation 5:
Commit the system to using the new WHS laws to develop a strong safety culture by ensuring safety is seen as core business that is integrated across workforce, industrial, clinical and infrastructure decision making.

Recommendation 6:
Develop a clear set of workforce planning goals that reflects the breadth of the health workforce and use Service Agreements (or similar) to hold leaders in WA Health accountable to meeting those goals. Invest in the capability needed for long term workforce planning.

Recommendation 7:
Implement a fair and simple Intellectual Property policy across WA Health to ensure employees are incentivised to innovate and commit to delivering on commercialisation pathways - providing certainty and clarity to support the medical research and innovation strategies of the Government.

Recommendation 8:
Ensure all health infrastructure projects are:

- *part of an overall, long term, integrated infrastructure plan;*
- *involve a comprehensive worker consultation processes as standard operating procedure; and*
- *fully consider long-term needs and climate change.*

Recommendation 9:
Ensure a governance structure properly resources the Sustainable Development Unit so it has the capacity to action the recommendations of the WA Climate Health Inquiry Final Report and respond to future challenges that will only escalate in scale and urgency.