

# Information Resource

## PRIMARY CARE PARTNERSHIP GOVERNANCE REQUIREMENTS

March 2010

The Department of Health (Department) has produced this Information Resource to communicate the requirements for Primary Care Partnerships governance arrangements.

The attachment offers general guidance to assist organisations in transitioning to the new arrangements.

Please note that this Information Resource and attachment does not constitute legal advice. Organisations unsure about any matters in relation to contractual arrangements with others should seek their own independent legal advice.

### NEW GOVERNANCE REQUIREMENTS

The Department requires Primary Care Partnerships to implement more formal governance arrangements by 1<sup>st</sup> July 2010.

**As a minimum requirement, each Primary Care Partnership (PCP) will require a formal governance body to govern and operate the PCP, together with a legally binding partnering agreement providing for members accountability to each other.**

PCPs may **continue to take the form of unincorporated alliances** however they are required to implement a legally binding partnering agreement which establishes, amongst other things, the formal governance body.

PCPs may choose to implement more formal governance arrangements beyond the minimum requirements set out in this Information Resource.

### REQUIREMENTS FOR THE FORMAL GOVERNANCE BODY

The formal PCP governance body is the formal decision-making group of the PCP. The governance body may exist in a number of forms, for example as an Executive Committee, a Steering Committee or a Management Team. The governance body is responsible for internal accountability and the implementation of management structures and mechanisms to enable coherent planning and effective implementation of change within and between PCP Partners.

It is a requirement that, as a minimum, the governance body include representatives from each of the core service providers listed below and from at least two of the specialist service providers.

*At least one representative from each of the following core service providers:*

- Aged Care Assessment Service;
- Community Health;
- Hospital or Health Service;
- Division of General Practice;
- Local Government; and
- District Nursing Service or its equivalent in rural or regional Victoria.

*At least two representatives from the following specialist service providers:*

- Mental Health Service;
- Drug Treatment Service;
- Ethno-specific Service;
- Women's Health Service; and
- Sexual Assault Service.

PCPs may include additional representatives on their governance bodies. For example including sectors more recently engaged with PCPs, such as disability, housing, homelessness and others. In addition the requirements of other funding sources may expect additional representatives to be included on the governance body.

## **COMMUNITY REPRESENTATION/PARTICIPATION**

Consistent with existing requirements, each PCP should provide a mechanism to ensure the incorporation of community/consumer/carer representation within the planning and decision-making processes of the PCP.

The approach that is adopted by each PCP should ensure that; consumer representatives are accountable to consumer groups within their catchment; that feedback mechanisms are put in place to ensure that consumers are aware of the issues raised by PCPs and are able to make contributions on the community's behalf; and that the PCP's management structures are accountable for the amount of consumer and community participation and the consideration given to this issue in PCP planning and decision-making processes.

## **CURRENT STRUCTURE OF PRIMARY CARE PARTNERHSIPS**

Most PCPs have taken the form of unincorporated alliances and have documented the commitment of partner organisations to each other through a locally developed memorandum of understanding (MoU). Unincorporated alliances allow each party to maintain a separate legal, cultural and organisational identity while undertaking joint projects and activities.

## **RATIONALE FOR MORE FORMAL GOVERNANCE ARRANGEMENTS**

While generally MoUs are not legally binding, PCP MoUs which have been in place for several years may have an ambiguous legal status. For example, the non-binding status can become compromised if parties act in a way that results in others reasonably acting in reliance. Resolving disputes can be more difficult due to the absence of detail in an MOU.

More formal governance arrangements with clear business rules can provide:

- increased accountability of members to each other;
- greater clarity in PCP operation and governance; and
- improved clarity regarding use and holding of funds and property and employment of staff.

The development of the partnering agreement presents an opportunity to address issues such as: reviewing business rules for the participation of member organisations, clarifying the role of the funds holder, establishing the formal governance body, employment of staff, small agency engagement and community engagement.

The current 2009-2012 program of work for PCPs requires increased engagement of general practice and other privately funded service providers. Having robust and clear local partnering arrangements will be essential for their engagement in PCPs.

PCPs are increasingly attracting funding from a range of sources. Based on consultation feedback, existing and potential funding bodies support more formal governance and accountability arrangements for PCPs. Accordingly the establishment of legally binding partnering arrangements will potentially facilitate further investment in PCPs.

The Victorian PCP strategy is well recognised across State and Commonwealth Health Departments. The achievements to date places Victoria in a strong position to respond to the National health care reform agenda. Progressing to more formal PCP governance arrangements further strengthens this position.

**BACKGROUND TO THE REVIEW**

Consultations and workshops were conducted between June 2008 to October 2009 with PCP Chairs and Executive Officers, peak bodies and government departments, in relation to strengthening PCP governance and accountability arrangements. The review of PCP governance and accountability arrangements was undertaken in response to issues raised by PCP Chairs arising from the relatively informal way in which PCP members commit to cooperate.

The diagram below is an extract from the PCP Governance Options Paper circulated to PCPs in December 2008 and depicts the governance continuum from least to most formal.

1	2	3	4	5
MOU: Non-binding commitment to cooperate	Legally binding Partnering Agreement	Legal binding Partnering Agreement + formal governance body	Incorporated Association	Incorporated PCP Company
Not a legal entity	Not a legal entity	Not a legal entity	Legal entity	Legal entity

Least formal ←—————→ Most formal

The review has led to a range of outcomes which will strengthen PCP governance and accountability and promote shared responsibility of PCP activity amongst its members. They include:

- A. improved PCP planning and reporting requirements;
- B. the application of the existing business rule associated with the Consortia Agreement (the Funding and Service Agreement) between PCPs and the Department; and
- C. more formal PCP governance arrangements (focus of this document).

**MORE INFORMATION**

Should you have any questions about the changes to PCP governance arrangements, please contact your regional office.

## **General guidance for PCPs**

This section provides **general guidance** about the establishment of the governance body and related governance and accountability issues.

### **GOVERNANCE AND ACCOUNTABILITY**

Governance relates to how an entity is controlled and managed, which affects an entity's performance. Governance involves accountability, probity, risk management, and the direction and control of an organisation. Most importantly, in this context, it involves the relationships between the members of a PCP, including its governance body.

#### **1. Overriding Principles**

- 1.1. Members of the governance body must be signatories to the Consortia Agreement.
- 1.2. The scope and nature of each PCP partnering agreement will depend on the nature and extent of the activities of that PCP.

#### **2. Governance**

- 2.1. The governance body may seek to satisfy itself that all partner organisations on the governance body are being effectively represented by an authorised representative.

#### **3. Management**

- 3.1. The governance body may seek to satisfy itself that the policies and practices of the partner organisations are suitable to deliver the activities of the PCP.
- 3.2. The PCP partnering agreement can include an appropriate reporting regime based on the size and duration of the activity/ project under the agreement. The reporting regime can cover the quantity and regularity of reports required of partner organisations and in addition it should cover the reports to be provided to the Department.

#### **4. Capacity**

- 4.1. The governance body may need to establish that partner organisations represented on that body are able to deliver their commitment.
- 4.2. The governance body may need to establish that partner organisations are able to deliver their commitment to participate in the PCP more broadly including its planned activities.

#### **5. Probity**

- 5.1. The governance body may seek to satisfy itself that the partner organisations have a code of conduct and standards that enables effective governance of the PCP and to meet funding and accountability requirements.

#### **6. Financial Viability**

- 6.1. The governance body may seek to satisfy itself that partner organisations (particularly if they hold PCP funds) are financially viable and solvent and that there are no unusual risks or exposures which would increase the likelihood of insolvency occurring which may jeopardise the PCP.
- 6.2. Where a partner organisation is placing significant reliance on another partner organisation, the governance body may seek to satisfy itself that appropriate financial controls and systems are in place.

#### **7. Risk Management**

- 7.1. Each PCP partner organisation may seek to satisfy itself that they are able to manage the risks associated with their activity through the PCP.
- 7.2. Each PCP partner organisation may seek to satisfy itself that they have risk management systems and policies appropriate for the risks which may arise from the PCP and any functions being allocated to it.
- 7.3. Each PCP partner organisation may need to address the additional risks arising from involvement in the PCP and take steps to identify and mitigate those risks.

## **PARTNERING AGREEMENTS**

This section sets out some general terms which could be included in the PCP partnering agreement. While all partnership agreements should address the elements described in this guide, each individual PCP may tailor their agreement to reflect their specific needs.

### **Essential Elements of the PCP partnering agreement**

The partnering agreements used by PCPs should contain a number of key elements as outlined below.

#### **1. Parties to the Agreement**

The details of each party should be clearly specified.

#### **2. Introduction/Recitals**

Recitals (sometimes entitled 'purpose' or 'introduction') are a brief statement at the commencement of a document explaining or prefacing the main provisions of the agreement. They should be set out in narrative form and should introduce and explain the motive for, or purpose of, the document.

#### **3. Definitions**

Definitions are important and should clearly and unambiguously define the key terms used within a document. Likewise, all documents referred to in the agreement should be clearly defined.

#### **4. Objectives and Key Values**

Agreements should include a section outlining the objectives and shared values of the parties to the PCP. These should articulate the principles which underpin the PCP strategy and development and implementation of PCP Strategic Plans.

#### **5. Deliverables**

Agreements should clearly define what each party must deliver under the agreement and the obligations of each party. The partnership agreement may state that the deliverables of each party include those as outlined under the PCP Strategy Plan and the PCP Operational Plans (and as updated each year). In this instance all documents which are referred to should be attached to the partnership agreement.

#### **6. Term and renewal or extension**

The agreement should specify the term for which the arrangement is operative. From a practical point of view, it may be important that such arrangements operate for a period that is at least as long as the term specified in the Consortia Agreement with the Department.

The parties may wish to have the option of extending or renewing their arrangement for a specified period of time. If this is the case, a term providing for the parties to continue the arrangements can be included.

#### **7. Review**

It may be appropriate to include a clause in the agreement which states that the partnering agreement is to be reviewed prior to any extension of the agreement or any new partnering agreement being entered into.

## **8. Governing Board and Membership**

The agreement should provide that the PCP will be managed by the governance body and should outline the powers of the governance body. It should include the following details:

- a) Details of the governance body's composition: officers of the PCP and types of membership (this should include the Department's required representative groups as detailed on page 2 and 3).
- b) The officers of the PCP. For example, Chairperson, Vice Chairperson, Treasurer, and Secretary.
- c) The appointment of the officers of the PCP.
- d) The term of office of ordinary members of the governance body.
- e) Appointment of members in the event of vacancies.
- f) The election of officers and ordinary governance body members.
- g) Removal of governance body members.
- h) Annual meetings, meetings of the governance body including details such as notice, who presides, the formation of a quorum, voting, and minute keeping.
- i) Reporting obligations of the governance body to the PCP Partners.

## **9. Financial Management**

The agreement should describe the roles and responsibilities of the fund holder/s (that is, the member of the PCP which receives funds from the Department of Health or others or manages the PCP's accounts). It should specify the scope of the fund holder's authority to act. If it is intended that the funder holder should have no greater decision making power than any other member, this should be stated in the agreement.

The following matters should be dealt with in relation to this issue:

- a) The manner of distribution of funding should be specified in order to ensure that the fund holder is accountable to the members of the PCP.
- b) The grounds upon which the PCP may conduct an audit of the fund holder's accounts relating to the relevant funding.
- c) A procedure for appointing and/or replacing the fund holder as well as handover provisions (regarding details of mechanisms for the transfer of assets and unspent funds).
- d) The management and distribution of finances and responsibilities with respect to purchase of any assets.
- e) Whether the fund holder will be responsible for holding and administering funds.
- f) The vehicle for the holding and administration of funds, eg. a special purpose trust fund.
- g) Details of the role that agencies play in funding arrangements should also be included, eg, whether agencies will retain 'their right to determine use of funds they receive through individual funding/ service agreements/ funding arrangements'; and whether each party will have a designated decision making role in relation to 'resource allocation in planning and development of PCP activities'.

Where individual agencies make contributions to operational costs, PCPs should determine whether individual agencies will be called upon to share the operational costs and the manner in which those costs will be distributed.

Information should be provided in relation to whether the fund holder or organisation administering funds will be paid for carrying out that activity, which will be responsible for presentation and approval of budget expenditure statements.

## **10. Reporting**

Each PCP partner's reporting obligations should be set out in the agreement so that each member is aware of their own obligations as well as those of the other members. The agreement should also set out the purpose for which this information will be used, including who will be provided with this information.

## **Attachment - Primary Care Partnership Governance Arrangements**

Provision should be made for the control, inspection and copying of the PCP's books, documents and securities. Such provision should take into account the Department's requirements.

### **11.Roles and responsibilities of PCP members and allocation of risk**

The responsibilities associated with the PCP should be clearly outlined in the agreement. The roles and risks of each partner of the governance body should be defined. This may include matters such as the provision of resources and funding, participation in review of allocation and distribution of resources, and delivery of the PCP work program as outlined in the PCP Operational Plan which is a companion document to the three year PCP Strategic Plan (the Plans).

### **12.Insurance and Liability**

PCPs are insured by Victorian Managed Insurance Association (VMIA) in their own right as named insured's irrespective of any cross departmental funding.

Where a PCP has signed Consortia Agreement, each party to the PCP's partnering agreement will be a named insured under the DH Healthcare Agency Insurance Program in accordance with the conditions of the Consortia Agreement.

Where a Consortia Agreement is executed by the PCP's contact agency on behalf of its other members (without those members signing the Consortia Agreement), the contact agency is required to notify DH insurance unit of all members of the consortium so that they may become a 'named insured' and therefore also be covered by DH insurance.

It should be noted that all parties involved in PCP activities and projects specified in the Consortia Agreement will be covered by DH insurance. However, insurance coverage may be denied if they act beyond the scope of the activities and projects specified and agreed in the Consortia Agreement or associated Plans.

### **13.Confidentiality and Privacy**

PCPs may have information which is confidential. It is suggested that such information be clearly defined in the partnering agreement. This will ensure that the parties recognise which information is confidential. Likewise, a clause providing that the confidentiality clause survives the termination of the contract will ensure that sensitive information remains confidential after the contract has come to an end.

A clause may also be included stating that parties should treat confidential information as confidential and ensure that their employees and agents are also aware of the requirement to do so.

Each of the parties who have signed a Consortia Agreement must also comply with the Department's Information Privacy Principles and any relevant legislative provisions, irrespective of whether that party would normally be required to observe those Government guidelines or legislative provisions. A reference to this obligation should be incorporated into the partnering agreement.

### **14.Intellectual Property**

Intellectual Property is dealt with under the Consortia Agreement. Under the Consortia Agreement, the funded agency will own all intellectual property unless otherwise agreed or advised by DH. Therefore, all intellectual property developed under the agreement will by default vest in the funded agency.

## **Attachment - Primary Care Partnership Governance Arrangements**

The partnering agreement may include additional intellectual property clauses if appropriate. For example it may be appropriate to include a clause relating to the licensing arrangements between PCP Partners and third parties.

### **15. Dispute Resolution**

A series of steps and time-lines should be outlined for resolving disputes and grievances. Ordinarily dispute resolution mechanisms, such as mediation, provide for a process that brings parties together to resolve the dispute without having to institute court proceedings.

A clause indicating whether the parties must continue to perform their obligations under the agreement although the parties are involved in a dispute resolution process is also useful.

### **16. Termination and exiting the PCP**

A termination clause should be inserted into the partnering agreement which can be relied upon if the PCP Partners choose to terminate their relationship or if the PCP wishes to remove a PCP Partner for failure to perform its obligations. Details in relation to the payment of outstanding debts and the equitable distribution and sale of any remaining assets should also be provided for.

If assets have been purchased using the Department's funds and entered into the consolidated asset register in accordance with clause 7 of the Consortia Agreement, they should be transferred to the Department.

### **17. Conflict of Interest**

A clause should be inserted providing that each PCP Partner warrants that no conflict of interest exists between the activities undertaken by the PCP pursuant to the Consortia Agreement and its other activities. It may also specify that a PCP Partner must inform other PCP Partners as soon as it becomes aware of any matter that may give rise to a conflict of interest.

### **18. Communication to the PCP and Notices**

The mode of communication and relevant contacts should be included in the partnering agreement. Notices are a mechanism by which parties to the agreement may bring matters to the attention of other PCP Partners. A provision relating to notices should define what constitutes service of notice and when notice may be treated as having been given and received.

### **19. Variation**

At law, instruments may only be varied with the written consent of each party. Agreements should include a clause stating that all variations must be signed by all parties and will not be effective otherwise.

### **20. Execution Clauses**

The manner in which an agency executes an agreement will depend upon the entity type. It is important to ensure that each party signs the agreement in the proper way required by law for its entity type.