



# DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Victorian Hospitals' Industrial Association**  
(AG2022/4438)

**DOCTORS IN TRAINING (VICTORIAN PUBLIC HEALTH SECTOR)  
(AMA VICTORIA/ASMOF) (SINGLE INTEREST EMPLOYERS)  
ENTERPRISE AGREEMENT 2022-2026**

Health and welfare services

DEPUTY PRESIDENT MASSON

MELBOURNE, 2 NOVEMBER 2022

*Application for approval of the Doctors in Training (Victorian Public Health Sector) (AMA Victoria/ASMOF) (Single Interest Employers) Enterprise Agreement 2022-2026.*

[1] An application has been made for approval of an enterprise agreement known as the *Doctors in Training (Victorian Public Health Sector) (AMA Victoria/ASMOF) (Single Interest Employers) Enterprise Agreement 2022-2026* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by the Victorian Hospitals' Industrial Association. The Agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met.

[3] I note that clause 63.4(a)(i) may be inconsistent with the National Employment Standards. Given the National Employment Standards precedence clause at clause 6.3 of the Agreement, I am satisfied that the more beneficial entitlements of the NES will prevail.

[4] The Australian Salaried Medical Officers Federation being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 9 November 2022. The nominal expiry date of the Agreement is 28 February 2026.



DEPUTY PRESIDENT

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**Doctors in Training (Victorian  
Public Health Sector) (AMA  
Victoria/ASMOP) (Single  
Interest Employers)  
Enterprise Agreement  
2022-2026**

**PART A – PRELIMINARY**

**1. Title**

This Agreement is called the Doctors in Training (Victorian Public Health Sector) (AMA Victoria/ASMOF) (Single Interest Employers) Enterprise Agreement 2022-2026.

**2. Arrangement**

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### 3. Definitions

3.1 In this Agreement except where the context requires otherwise:

- (a) **Act** means the *Fair Work Act 2009* (Cth), as varied from time to time, and any successor to that Act.
- (b) **Agreement** means the Doctors in Training (Victorian Public Health Sector) (AMA Victoria/ASMOF) (Single Interest Employers) Enterprise Agreement 2022-2026 including all Schedules.
- (c) **Ambassador** means an appointed representative of the Association.

- (d) **Association** means the Australian Medical Association (Victoria) Limited (“**AMA**”) or the Australian Salaried Medical Officers Federation (Victoria Branch) (“**ASMOF**”).
- (e) **CMBS** means Commonwealth Medical Benefits Schedule.
- (f) **CME** means Continuing Medical Education.
- (g) **Doctor** means a registered medical practitioner employed by a Health Service as a Hospital Medical Officer, Medical Officer, Senior Medical Officer, Registrar or a person enrolled in a General Practice Training Program.
- (h) **DH** means the Department of Health, or it’s successor, however titled or styled.
- (i) **Duty Hours** means those hours for which a Doctor is rostered or paid by the Hospital.
- (j) **Employee** has the same meaning as Doctor
- (k) **Employer** has the same meaning as Health Service
- (l) **EO Act** means the *Equal Opportunity Act 2010 (Vic)*, as amended or replaced from time to time.
- (m) **Experience** means the number of years the Doctor has been employed in a full-time, part-time or casual capacity as a Doctor or any experience as a medical practitioner in Australia or other country where the Medical Board of Australia has accepted the qualifications held for the purposes of full registration. A year of experience is 52 weeks or, if necessary to even out a roster, 53 weeks. The exceptions to this definition are as follows:
  - (i) If the Doctor has worked a total average of 24 hours per week or less in a year, another year of employment must be completed before advancement to the next level of experience;
  - (ii) If, for a period of 5 years or more, the Doctor has not actively practised medicine or has not been regularly employed as a Doctor over a 5 year period, any prior service and experience will not be taken into account; and
  - (iii) Experience as a Registrar while performing Higher Duties pursuant to clause 51 (Higher Duties) will be counted as Experience for the purpose of the above where the Higher Duties period is continuous with a subsequent appointment to a Registrar position.
  - (iv) Where a Doctor performs Higher Duties as a Registrar pursuant to clause 51 (Higher Duties) but the Higher Duties period is not continuous with a subsequent appointment to a Registrar position, the hours worked as a Registrar will contribute to the calculation of progression in accordance with subclause 3.1(m)(i) in their first year of appointment as a Registrar.
  - (v) Where a Registrar moves from one recognised Speciality stream to another, he or she will not progress to the next higher annual incremental level for a further period of 12 months (refer subclause 3.1(bb))
  - (vi) Where a Doctor is absent for a period of Parental Leave pursuant to subclause 67.3 (Long Parental Leave Unpaid) or 67.4 (Short Parental Leave Unpaid), the period of Parental Leave should not be considered in the calculation of the average hours worked per week in a year
- (n) **FWC** means the Fair Work Commission.

- (o) **Health Service** means a public hospital or health service listed in Appendix 1.
- (p) **Health Services Act** means the *Health Services Act 1988* (Vic), as amended or replaced from time to time.
- (q) **Higher Qualifications** means qualifications obtained by a Doctor after graduation and includes:
  - (i) post-graduate university degrees and diplomas for the purposes of registration as a Medical Specialist in Australia;
  - (ii) membership or fellowship of a Specialist Medical College for the purpose of registration as a Medical Specialist in Australia;
  - (iii) any other post-graduate qualification for the purposes of registration as a Medical Specialist in Australia;
  - (iv) the first part or equivalent of a higher qualification as defined in this Agreement.
- (r) **Hospital Medical Officer (“HMO”)** means a Doctor with three or less years of experience and who is not performing the duties of a Medical Officer or a Registrar.
- (s) **Hourly Rate** for Hospital Medical Officers, Medical Officers and Senior Medical Officers means 1/38th of the relevant weekly rate.
- (t) **Hourly Rate for Registrars** means 1/43rd of the relevant weekly rate as the ordinary hours of work for Registrars are made up of 38 hours of ordinary duty plus 5 reasonable additional hours of training time, equalling 43 hours per week or an average of 43 hours per week for up to 4 weeks pursuant to subclause 34.
- (u) **HSR** means a health and safety representative (including a deputy health and safety representative) elected under the OHS Act.
- (v) **Institution** means any hospital, health service (whether or not listed in Appendix 1) or benevolent home, community health centre, Society or Association registered pursuant to the Health Services Act.
- (w) **Medical Officer (“MO”)** means a Doctor with three or more completed years of experience and who is not performing the duties of a Registrar or performing medical work covered by another Award or agreement. A Medical Officer employed solely in an administrative position and who is not eligible to be covered by any other medical Award or agreement must be paid as a Medical Officer 5th year of experience.
- (x) **Medical Specialists Agreement** means the *Medical Specialists (Victorian Public Health Sector) (AMA Victoria/ASMOF) (Single Interest Employers) Enterprise Agreement 2022 – 2026*.
- (y) **NES** means the National Employment Standards.
- (z) **OHS Act** means the Occupational Health and Safety Act 2004 (Vic).
- (aa) **Parent Hospital** means a Hospital that employs a Doctor, typically on a one year contract from the first week of February, on the understanding that the Doctor may be directed to work at a Rotation Hospital in order to meet the requirements of a structured training program OR to meet service demands. Separate campuses of amalgamated health services are deemed to be the one Parent Hospital.
- (bb) **Registrar** means a Doctor who is either appointed to an accredited Specialist training position (refer subclause 42.7(c)) or who holds a position designated as such by the Health Service.



- (cc) **Regulations** means the Fair Work Regulations, as varied from time to time, and any successor to those Regulations
- (dd) **Rotation** means a period during which a Doctor is directed to work at a Hospital other than the one by which they are employed (the "Rotation Hospital"), or otherwise who is engaged by more than one Health Service in a calendar year at the direction of a Specialist Medical College, as part of a structured training program or to meet service demands. The Doctor remains an employee of the Parent Hospital for the rotation period.
- (ee) **Rotation Hospital** means a hospital that receives a Doctor on rotation.
- (ff) **Senior Medical Officer ("SMO")** means a Doctor who is employed as a Head of Department or equivalent role within the Health Service.
- (gg) **Shiftworker**, for the purposes of the NES, is any Doctor who is required to work in excess of their ordinary hours, or works ordinary hours on more than 10 weekends (defined as a Saturday or Sunday or both) during the leave accrual year.
- (hh) **Specialist Medical College** means a medical college accredited by the Australian Medical Council.
- (ii) **Statutory Body** means the Department of Health (Victoria) and, formerly the Department of Health and Human Services (Victoria) and the Department of Human Services (Victoria).
- (jj) A **Stillborn Child** is a [child](#):
  - (i) who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks; and
  - (ii) who has not breathed since delivery; and
  - (iii) whose heart has not beaten since delivery.
- (kk) **Training Time** means a rostered period of time available to Registrars for five hours per week dedicated for training which is free from service calls, with the exception of calls about genuine medical emergencies or disaster situations. Forms of Training Time are set out in subclause 34.4.
- (ll) **VHIA** means the Victorian Hospitals' Industrial Association.
- (mm) **Week** means seven consecutive days reckoned from and to midnight on Saturday night.
- (nn) **WIRC Act** means the Workplace Injury Rehabilitation and Compensation Act 2013 (Vic), or if applicable in the particular situation the Accident Compensation Act 1985 (Vic) or the Workers Compensation Act 1958 (Vic).

- 3.2** Except where the context requires otherwise, a reference in this Agreement to "Hospital", "hospital" or "health care facility", "public health sector agency" or similar term is a reference to the hospital, health care facility, public health sector agency operated by a Health Service listed in Appendix 1 to this Agreement.
- 3.3** Where an Act of Parliament or Regulation referred to in this Agreement is or has been replaced by another Act of Parliament or Regulation, the reference to such an Act or Regulation shall be taken to refer to the successor Act or Regulation.
- 3.4** Where this Agreement refers to a condition of employment provided for in the NES, the relevant definitions in the Act apply.

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## **4. Coverage**

**4.1** Subject to subclause 4.2, this Agreement covers:

- (a) the Health Services (referred to in Appendix 1) as employers;
- (b) all registered medical practitioners employed by a Health Service as a:
  - (i) Hospital Medical Officer;
  - (ii) Medical Officer;
  - (iii) Senior Medical Officer;
  - (iv) Registrar; or
  - (v) person enrolled in a General Practice Training Program; andprovided the FWC so notes in its decision to approve this Agreement:
- (c) the Australian Salaried Medical Officers' Federation.

**4.2** For the avoidance of any doubt, this Agreement does not cover any person in relation to ordinary work performed wholly on a fee for service or scheduled fee basis (including, by way of example only, the Commonwealth Medical Benefits Schedule (**CMBS**)).

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## **5. Date and Period of Operation**

**5.1** This Agreement will operate seven days after the date upon which it is approved by the FWC.

**5.2** The nominal expiry date of this Agreement is 28 February 2026.

**5.3** Negotiations for a replacement enterprise agreement should commence six months prior to the nominal expiry date, being 28 August 2025.

**5.4** The Agreement will continue in force after the nominal expiry date until replaced by a further enterprise agreement.

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## **6. Relationship to Previous Awards, Agreements and the NES**

**6.1** This is a comprehensive agreement that regulates all terms and conditions of employment and expressly excludes and displaces the operation of all prior agreements and any Award(s) that may otherwise apply.

**6.2** The Appendices to this Agreement form part of the terms of the Agreement and are to be read in conjunction with this Agreement for all purposes, including for enforcement.

**6.3** This Agreement is not intended to exclude any part of the NES or to provide any entitlement which is detrimental to a Doctor's entitlement under the NES. For the avoidance of doubt, the NES prevails to the extent that any aspect of this Agreement would otherwise be detrimental to a Doctor.

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## **7. Savings**

This Agreement does not disturb the continued application of employment entitlements received by a Doctor prior to this Agreement, which are over and above the provisions of this Agreement.

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## **8. No Extra Claims**

- 8.1** The parties covered by this Agreement acknowledge that this Agreement settles all claims in relation to the terms and conditions of employment of the Doctors to whom it applies and agree that they will not pursue any extra claims during the term of this Agreement.
- 8.2** The Health Services agree to commence discussions with the Association no later than six months prior to the nominal expiry date of this Agreement. Provided that any claim made by a person covered by this Agreement during that six-month period is not supported by industrial action, subclause 8.1 does not prevent a person covered by this Agreement from making a claim during the six-month period (or such earlier period as may be agreed) prior to the nominal expiry date of this Agreement.

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## **9. Nature of Relationship**

- 9.1** All minimum entitlements available to the Doctor arise through this Agreement and the NES. In most cases, the employment contract will only prescribe and enforce the time period for the employment relationship, whether the employment is full time or part time or casual and require the Doctor to abide by Health Service policies and procedures.
- 9.2** A Rotation Hospital must apply the Parent Hospital employment contract (refer to Definitions (subclauses 3.1(aa), 3.1(cc) and 3.1(ee)) and clause 24).
- 9.3** Doctors participating in accredited Specialist training are generally required to maintain two discrete relationships: a trainee relationship with a Specialist Medical College and an employment relationship with a Health Service.
- 9.4** Where a Doctor takes up a Specialist training position accredited by the Specialist Medical College, it is the Health Service that employs the Doctor into the allocated position.

## PART B – CONSULTATION, DISPUTE RESOLUTION, DISCIPLINE AND FLEXIBLE WORKING ARRANGEMENTS

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### 10. Consultation

Nothing in this clause limits the Health Service's obligations to consult with HSRs under the OHS Act.

#### 10.1 Consultation regarding Major Change

- (a) Where a Health Service proposes a Major Change that may have a Significant Effect on a Doctor or Doctors, the Health Service will consult with the Affected Doctor/s, the Association, and the Doctor's other chosen representative (where relevant) before any proposed change occurs.
- (b) Consultation will, where reasonably practicable, include consultation with those who are absent on leave including workers' compensation or parental leave.
- (c) The Health Service will take reasonable steps to ensure Doctors, HSRs (where relevant) and the Association can participate effectively in the Consultation process.

#### 10.2 Definitions

Under this clause 10:

- (a) **Consultation** means a genuine opportunity to influence the decision maker, but not joint decision making. It is not merely an announcement as to what is about to happen.
- (b) **Affected Doctor** means a Doctor on whom a Major Change may have a Significant Effect.
- (c) **Major Change** means a change in the Health Service's program, production, organisation, physical workplace, workplace arrangements, structure or technology that is likely to have a Significant Effect on Doctors.
- (d) **Significant Effect** includes but is not limited to:
  - (i) termination of employment;
  - (ii) changes in the size, composition or operation of the Health Service's workforce (including from outsourcing) or skills required;
  - (iii) alteration of the number of hours worked and/or reduction in remuneration;
  - (iv) changes to a Doctor's classification, position description, duties or reporting lines;
  - (v) the need for retraining or relocation/redeployment/transfer to another site or to other work;
  - (vi) removal of an existing amenity; and/or
  - (vii) the removal or reduction of job opportunities, promotion opportunities or job tenure.

- (e) **Measures to mitigate or avert** may include but are not limited to:
- (i) redeployment;
  - (ii) retraining;
  - (iii) salary maintenance;
  - (iv) job sharing; and/or
  - (v) maintenance of accruals.

### 10.3 Consultation Steps and Indicative reasonable timeframes

- (a) Consultation includes the steps set out below.
- (b) Timeframes for each step must allow a party to consultation (including a representative) to genuinely participate in an informed way having regard to all the circumstances including the complexity of the change proposed, and the need for Doctors and their representative to meet with each other and consider and discuss the Health Service's proposal. The timeframes in this clause are indicative only.
- (c) The following table makes clear the relevant steps and indicative timeframes for the consultation process.

Step	Action	Timeframe
1.	Health Service provides change impact statement and other written material required by subclause 10.4	
2.	Written response from Doctors and/or Association	14 days of step 1
3.	Consultation Meeting/s convened	7-14 days of step 2 The 'first meeting' at step 3 does not limit the number of meeting for consultation
4.	Further Health Service response (where relevant)	After the conclusion of step 3
5.	Alternative proposal from Doctors or Association	14 days of step 4
6.	Health Service to consider alternative proposal/s consistent with the obligation to consult and, if applicable, to arrange further meetings with Doctors or Association prior to advising outcome of consultation	14 days of step 5

#### **10.4 Change Impact Statement (Step 1)**

- (a) Prior to Consultation required by this clause, the Health Service will provide Affected Doctor/s and the Association with a written Change Impact Statement setting out all relevant information including:
- (i) the details of the proposed change;
  - (ii) the reasons for the proposed change;  
the possible effect of the proposed change on Doctors workload and other occupational health and safety impacts';
  - (iii) where occupational health and safety impacts are identified, a risk assessment of the potential effects of the change on the health and safety of Doctors must be undertaken in consultation with HSRs, and the proposed mitigating actions to be implemented to prevent such effects.
  - (iv) the expected benefit of the change;
  - (v) measures the Health Service is considering that may mitigate or avert the effects of the proposed change;
  - (vi) if relevant to the proposed change, the existing and proposed position descriptions, including new roles, those of the Affected Doctors or managers where reporting lines change;
  - (vii) the right of an Affected Doctor to have a representative including an Association representative at any time during the change process; and
  - (viii) other written material relevant to the reasons for the proposed change (such as consultant reports), excluding material that is commercial in confidence or exposes the Health Service to unreasonable legal risk or cannot be disclosed under the *Health Services Act 1988* or other legislation.
- (b) Any concerns by an Affected Doctor or their representative regarding whether the Change Impact Statement complies with clause 10.4 will be raised as soon as practicable and before step 2.

#### **10.5 Doctor / Association response (step 2)**

Following receipt of the change impact statement, Affected Doctors and/or the Association may respond in writing to any matter arising from the proposed change.

#### **10.6 Meetings (step 3)**

- (a) As part of Consultation, the Health Service will meet with the Doctor/s, the Association and other nominated representative/s (if any) to discuss:
- (i) the proposed change;
  - (ii) proposals to mitigate or avert the impact of the proposed change; and
  - (iii) any matter identified in the written response from the Affected Doctors and/or the Association.
- (b) To avoid doubt, the 'first meeting' at step 3 does not limit the number of meetings for Consultation.

#### **10.7 Health Service response (step 4)**

The Health Service will give prompt and genuine consideration to matters arising from Consultation and will provide a written response to the Affected Doctors, Association and (where relevant) other representative/s.

#### **10.8 Alternative proposal (step 5)**

The Affected Doctor/s, the Association and other representative (where relevant) may submit alternative proposal(s) which will take into account the intended objective and benefits of the proposal. Alternative proposals should be submitted in a timely manner so that unreasonable delay may be avoided.

#### **10.9 Outcome of consultation (step 6)**

The Health Service will give prompt and genuine consideration to matters arising from Consultation, including an alternative proposal submitted under subclause 10.8, and will advise the affected Doctors, the Association and other nominated representatives (if any) in writing of the outcome of Consultation including:

- (a) whether the Health Service intends to proceed with the change proposal;
- (b) any amendment to the change proposal arising from consultation;
- (c) details of any measures to mitigate or avert the effect of the changes on Affected Doctors; and
- (d) a summary of how matters that have been raised by Affected Doctors, the Association and their representatives, including any alternative proposal, have been taken into account.

#### **10.10 Representation**

For the purpose of Consultation under this clause, a Doctor is entitled to be represented at any stage including by the Association or other chosen representative (where relevant).

#### **10.11 Consultation disputes**

Any dispute regarding the obligations under this clause will be dealt with under the Dispute Resolution Procedure at clause 12 of this Agreement.

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### **10A. Consultation about changes to rosters or hours of work**

*This clause 10A applies where a change to regular rosters or ordinary hours of work (which may impact upon a Doctor, particularly in relation to their family and caring responsibilities) does not constitute 'Major Change in accordance with subclause 10.2(c)'.*

**10A.1.** Where a Health Service proposes to change a Doctor's regular roster or ordinary hours of work, the Health Service must consult with the Doctor or Doctors affected and their representatives, if any, about the proposed change.

**10A.2** The Health Service must:

- (a) consider health and safety impacts including fatigue;
- (b) provide to the Doctor or Doctors affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the Doctor's regular roster or ordinary hours of work and when that change is proposed to commence);
- (c) invite the Doctor or Doctors affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and

- (d) give consideration to any views about the impact of the proposed change that is given by the Doctor or Doctors concerned and/or their representatives.

**10A.3** The requirement to consult under this clause 10A does not apply to a Doctor where the change to a Doctor's regular roster or ordinary hours of work is as a consequence of that Doctor's has irregular, sporadic or unpredictable working hours, self-rostering or, where permitted, a rotating roster.

**10A.4** The provisions of this clause 10A are to be read in conjunction with the terms of the engagement between the Health Service and Doctor, and other Agreement provisions concerning the scheduling of work and notice requirements.

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## **11. Redundancy and Associated Entitlements**

### **11.1 Arrangement**

This clause is arranged as follows:

- (a) Arrangement (subclause 11.1),
- (b) Definitions (subclause 11.2),
- (c) Redeployment (subclause 11.3),
- (d) Support to Affected Doctors (subclause 11.4),
- (e) Salary maintenance (subclause 11.5),
- (f) Relocation (subclause 11.6),
- (g) Employment terminates due to redundancy (subclause 11.7), and
- (h) Exception to application of Victorian Government's policy with respect to severance pay (subclause 11.8).

### **11.2 Definitions**

- (a) **Affected Doctor** for this clause 11 means a Doctor whose role will be redundant.
- (b) **Comparable Role** means an on-going role that:
  - (i) is the same occupation as that of the Affected Doctor's redundant position or, if not, is in an occupation acceptable to the Affected Doctor; and
  - (ii) is any of the following:
    - A. in the same clinical specialty as that of the Affected Doctor's former position;
    - B. in a clinical specialty acceptable to the Affected Doctor; or
    - C. a position that with the reasonable support described at subclause 11.3(g), the Affected Doctor could undertake; and
  - (iii) is the same Classification / Pay Point as the Affected Doctor's redundant position;
  - (iv) takes into account the number of ordinary hours normally worked by the Affected Doctor;



- (v) is a Reasonable Distance from the Affected Doctor's current work location;
  - (vi) takes the Affected Doctor's personal circumstances, including family responsibilities, into account; and
  - (vii) takes account of health and safety considerations.
- (c) **Consultation** is as defined at clause 10 (Consultation) of this Agreement.
- (d) **Continuity of Service** at clause 11.8 means that the service of the Doctor is treated as unbroken and that the cap on the transfer of personal leave at subclause 61.8 does not apply. However, Continuity of Service is not broken where a Health Service pays out accrued annual leave or long service leave upon termination in accordance with this Agreement.
- (e) **Classification / Pay Point** for the purposes of this clause 11 means a weekly salary in Appendix 2 that is at least equal to or higher than the weekly salary in Appendix 2 for the Role of the Doctor held immediately prior to redundancy.
- (f) **Reasonable Distance** means a distance that has regard to the Doctor's original work location, current home address, capacity of the Doctor to travel, additional travelling time, effects on the personal circumstances of the Affected Doctor, including family commitments and responsibilities and other matters raised by the Doctor, or assistance provided by their Health Service.
- (g) **Redeployment period** means a period of 13 weeks from the time the Health Service notifies the Affected Doctor in writing that consultation under clause 10 is complete and that the redeployment period has begun.
- (h) **Redundancy** means the Health Service no longer requires the Affected Doctor's job to be performed by anyone because of changes in the operational requirements of the Health Service's enterprise.
- (i) **Relocation** means an Affected Doctor is required to move to a different campus as a result of an organisational change on either a temporary or permanent basis.
- (j) **Salary maintenance** means an amount representing the difference between what the Affected Doctor was normally paid immediately prior to the Affected Doctor's role being made redundant and the amount paid in the Affected Doctor's new role following redeployment.

### 11.3 Redeployment

- (a) An Affected Doctor whose role will be redundant will be considered for redeployment during the redeployment period.
- (b) **Doctor to be advised in writing**
- The Affected Doctor must be advised in writing of:
- (i) the date the Affected Doctor's role is to be redundant;
  - (ii) details of the redeployment process;
  - (iii) the reasonable support that will be provided in accordance with subclause 11.3(g); and
  - (iv) the Affected Doctor's rights and obligations.
- (c) **Health Service obligations**

The Health Service will:

- (i) make every effort to redeploy the Affected Doctor to a Comparable Role in terms of classification, grade and income, including appointing a case manager to provide the Affected Doctor with support and assistance; and
- (ii) take into account the personal circumstances of the Affected Doctor, including family commitments and responsibilities and
- (iii) where the Health Service is creating a new role/s substantially similar to the Affected Doctor's redundant role; give priority to the redeployment of an Affected Doctor/s to the new position/s before considering applicants that are not Affected Doctors.

**Example:** The Health Service needs fewer Doctors to do particular work and roles are being restructured to take this into account. In a 'spill and fill', the Employer will consider the Affected Doctors for the new roles before other applicants.

(d) **Doctor obligations**

The Doctor must actively participate in the redeployment process including:

- (i) identifying appropriate retraining needs;
- (ii) developing a resume / CV to assist in securing redeployment; and
- (iii) actively monitoring and exploring appropriate redeployment opportunities and working with the appointed case manager.

(e) **Rejecting a Comparable Role**

Where an Affected Doctor rejects an offer of redeployment to a Comparable Role (as defined), the Affected Doctor may be ineligible for a departure package referred to at subclause 11.7.

(f) **Temporary alternative duties**

An Affected Doctor awaiting redeployment may be transferred to temporary alternative duties within the same campus, or where part of the Doctor's existing employment conditions (or by agreement) at another campus. Such temporary duties will be in accordance with the Affected Doctor's skills, experience, clinical area and profession.

(g) **Support for redeployment**

For an available role to be considered a Comparable Role, the Health Service must provide the reasonable support necessary for the Affected Doctor to perform the role which may include:

- (i) theory training relevant to the clinical area or environment of the role into which the Affected Doctor is to be redeployed;
- (ii) a defined period of up to 12 weeks in which the Affected Doctor works in a supernumerary capacity;
- (iii) support from educational staff in the clinical environment;
- (iv) a review at 12 weeks or earlier to determine what, if any, further training is required.

(h) **Where no redeployment available**

If at any time during the redeployment period it is agreed that it is unlikely that the Affected Doctor will be successfully redeployed, the Affected Doctor may accept a redundancy package. Where this occurs, the Affected Doctor will be entitled to an additional payment of the lesser of 13 weeks or the remaining redeployment period.

(i) **Non-Comparable Role**

An Affected Doctor may agree to be redeployed to a role that is not a Comparable Role.

#### **11.4 Support to Affected Doctors**

The Health Service will provide Affected Doctors whose position has been declared redundant with support and assistance which will include, where relevant:

- (a) counselling and support services;
- (b) retraining;
- (c) preparation of job applications;
- (d) interview coaching;
- (e) time off to attend job interviews; and
- (f) funding of independent financial advice for employees eligible to receive a separation package.

Other assistance may include but is not limited to career planning.

#### **11.5 Salary Maintenance**

(a) **Entitlement to salary maintenance**

An Affected Doctor who is successfully redeployed will be entitled to salary maintenance where the Affected Doctor's pay is reduced because the new role:

- (i) is a lower Classification / Pay Point;
- (ii) involves working fewer hours; and/or
- (iii) removes eligibility for penalties, loadings and the like.

(b) **Period of salary maintenance**

Salary maintenance will be for a period of 52 weeks from the date the Affected Doctor is redeployed except where the Affected Doctor:

- (i) accepts another position within the salary maintenance period, and
- (ii) is paid in the other position an amount equal to or greater than the role that was made redundant.

(c) **Preservation of accrued leave**

An Affected Doctor entitled to salary maintenance will have:

- (i) their long service leave and annual leave accruals preserved before redeployment. Specifically, the value of the leave immediately prior to redeployment will not be reduced as a result of redeployment; and

- (ii) their personal leave preserved in hours.

## **11.6 Relocation**

### **(a) Health Service to advise in writing of relocation**

As soon as practicable but no less than seven (7) days after a decision is made by the Health Service to temporarily or permanently relocate an Affected Doctor, the Health Service will advise the Affected Doctor in writing of the decision, the proposed timing of the relocation and any other alternatives available to the Affected Doctor. In addition, the Health Service will:

- (i) ensure the relocation is a Reasonable Distance, unless otherwise agreed;
- (ii) ensure that the Affected Doctor is provided with information on the new location's amenities, layout and local operations prior to the relocation, and
- (iii) consult with the Association regarding the content of such information.

### **(b) Entitlement to relocation allowance**

An Affected Doctor is entitled to relocation allowance where permanent or temporary relocation results in additional cost to the Affected Doctor for travel and/or other expenses.

### **(c) Doctor to provide written estimate**

The Affected Doctor must make written application to the Health Service with a written estimate of the additional travelling cost and other expenses for the period of redeployment up to a maximum of 12 months.

### **(d) Payment**

- (i) The Health Service will pay the Affected Doctor a relocation allowance up to \$1900.00 based on the written estimate of the Affected Doctor referred to at (c) where the Health Service accepts that estimate represents the additional cost to the Affected Doctor. The allowance shall be paid as a lump sum.
- (ii) When considering the Affected Doctor's estimate, the Health Service may have regard to the Reasonable Distance
- (iii) In the event of a dispute about the Affected Doctor's estimate it will be resolved under clause 12 (Dispute Resolution).

### **(e) Exceptions**

An Affected Doctor is not entitled to the relocation allowance if the site or campus to which the Affected Doctor is being relocated is a location to which they can be expected to be deployed as part of their existing employment conditions.

### **(f) Fixed term employees not excluded**

An Affected Doctor on a fixed term contract who is relocated will be covered by the terms of this clause for the duration of the fixed term contract.

## **11.7 Employment terminates due to redundancy**

The Victorian Government's policy with respect to public sector redundancy and the entitlements upon termination of employment as a result of redundancy is set out in the Public

Sector Workplace Relations Policies 2015, as amended or replaced from time to time. The Victorian Government policy, as amended or replaced from time to time, applies to Doctors but does not form part of this Agreement.

#### **11.8 Exception to application of Victorian Government's policy with respect to severance pay**

- (a) Where the Affected Doctor's Health Service secures a Comparable Role (as defined) with another Health Service covered by this Agreement, which:
- (i) is within a Reasonable Distance of the work site of the redundant position; and
  - (ii) provides Continuity of Service; and
  - (iii) where the Comparable Role results in a loss of income, salary maintenance at subclause 11.5 will apply; and
  - (iv) where relevant, consistent with the financial and other support provided to an internal redeployee;

the Doctor will be considered successfully redeployed as though the employment was with the same Health Service and no severance pay will apply.

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## **12. Dispute Resolution Procedure**

*The purpose of this clause 12 is to provide for the timely, constructive resolution of disputes, where possible, within the work place or where necessary, at the Fair Work Commission.*

### **12.1 Resolution of disputes and grievances**

- (a) For the purpose of this clause 12, a dispute includes a grievance.
- (b) This dispute resolution procedure will apply to any dispute arising in relation to:
- (i) this Agreement (for the avoidance of doubt, this includes a request for flexible working arrangements or a request for an additional 12 months' parental leave);
  - (ii) the NES;
  - (iii) matters purported to be saved due to the operation of the Savings provision; or
  - (iv) the 2018 Specialists or Doctors in Training Agreement where a dispute was identified in writing to the Health Service prior to this Agreement coming into operation including where a Doctor has since left the Health Service where the dispute was notified and has commenced employment with another Health Service covered by this Agreement
- (c) A **Party** for the purposes of this clause is the Doctor/s or the Employer that are subject to the dispute.
- (d) A Party subject to the dispute may choose to be represented at any stage by a representative including an Association or employer organisation. A representative, including an Association or employer organisation on behalf of a Health Service, may initiate a dispute.

### **12.2 Obligations**

- (a) The Parties to the dispute and their representatives must genuinely attempt to resolve the dispute through the processes set out in this clause and must cooperate to ensure that these processes are carried out expeditiously.
- (b) While the dispute resolution procedure is being conducted work will continue normally according to the usual practice that existed before the dispute, until the dispute is resolved.
- (c) This requirement does not apply where a Doctor:
  - (i) has a reasonable concern about an imminent risk to their health or safety;
  - (ii) has advised the Health Service of the concern; and
  - (iii) has not unreasonably failed to comply with a direction by the Health Service to perform other available work that is safe and appropriate for the Doctor to perform.
- (d) No Party to a dispute or person covered by the Agreement will be prejudiced with respect to the resolution of the dispute by continuing work under this subclause 12.2(b).

### **12.3 Dispute settlement facilitation**

- (a) Where the chosen representative is another Doctor employed by the Health Service, that Doctor will be released by the Health Service from normal duties (without loss of pay) as is reasonably necessary to enable them to represent the Doctor/s including:
  - (i) investigating the circumstances of the dispute; and
  - (ii) participating in the processes to resolve the dispute, including conciliation and arbitration.
- (b) A Doctor who is a Party to the dispute will be released by the Health Service from normal duties (without loss of pay) as is reasonably necessary to enable them to participate in this dispute settling procedure so long as it does not unduly affect the operations of the Health Service.

### **12.4 Discussion of dispute at workplace**

- (a) The Parties will attempt to resolve the dispute at the workplace as follows:
  - (i) in the first instance by discussions between the Doctor/s and the Doctor's line manager or other relevant supervisor; and
  - (ii) if the dispute is still unresolved, by discussions between the Doctor/s and more senior managers.

Nothing in this clause 12.4 prevents the Parties from conducting their discussions in writing, subject to clause 12.4.

- (b) The discussions at subclause 12.4(a) will take place within fourteen days or such other period as mutually agreed having regard to the remaining length of the Doctor's contract of employment, and save that agreement will not be unreasonably withheld.
- (c) Where a Party believes the requirements of this clause 12.4 have not been complied with, they will notify the other of their concern in writing as soon as practicable.

- (d) If a dispute cannot be resolved at the workplace in a reasonable time period having regard to the remaining length of the Doctor's contract of employment, it may be referred by a party to the dispute or representative to the FWC for conciliation and, if the matter in dispute remains unresolved, arbitration.

## **12.5 Disputes of a collective character**

Disputes of a collective character may be dealt with more expeditiously by an early reference to the FWC. However, no dispute of a collective character may be referred to the FWC directly without a genuine attempt to resolve the dispute at the workplace level.

## **12.6 Conciliation**

- (a) Where a dispute is referred for conciliation, the FWC member will do everything the member deems right and proper to assist the parties to settle the dispute.
- (b) Conciliation before the FWC is complete when:
  - (i) the Parties to the dispute agree that it is settled; or
  - (ii) the FWC member conducting the conciliation, either on their own motion or after an application by a Party, is satisfied there is no likelihood that further conciliation will result in settlement within a reasonable period; or
  - (iii) the Parties to the dispute inform the FWC member there is no likelihood the dispute will be settled and the member does not have substantial reason to refuse to regard conciliation as complete.

## **12.7 Arbitration**

- (a) If, when conciliation is complete, the dispute is not settled, either Party may request the FWC proceed to determine the dispute by arbitration.
- (b) The FWC member that conciliated the dispute will not arbitrate the dispute if a Party objects to the member doing so.
- (c) If the dispute resolution procedure results in a finding by the FWC that a breach of the Savings provision of this Agreement has occurred, the parties agree that the order of the FWC under this subclause 12.7 will be to restore all rights and entitlements affected by the breach to the state which would have prevailed if the breach had not occurred.
- (d) Subject to subclause 12.7(e) below, a decision of the FWC is binding upon the persons covered by this Agreement.
- (e) An appeal lies to a Full Bench of the FWC, with the leave of the Full Bench, against a determination of a single member of the FWC made pursuant to this clause.

## **12.8 Conduct of matters before the FWC**

- (a) Subject to any agreement between the parties to the dispute in relation to a particular dispute or grievance and the provisions of this clause, in dealing with a dispute or grievance through conciliation or arbitration, the FWC will conduct the matter in accordance with sections 577, 578 and Subdivision B of Division 3 of Part 5-1 of the Act.
- (b) For the avoidance of doubt, nothing in this clause 12 affects the operation of section 596 of the Act.

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# **13. Managing Conduct and Performance (Discipline)**

## **13.1 Application**

- (a) Except as provided at 13.1(e), where a Health Service has concerns about:
  - (i) the conduct of a Doctor; or
  - (ii) a performance issue that may constitute Misconduct,
 the following procedure will apply.
- (b) There are two steps in a disciplinary process under this clause as follows:
  - (i) investigative procedure; and
  - (ii) disciplinary procedure.
- (c) A Doctor will be provided a reasonable opportunity to be represented at any time (including by an Association) with respect to all matters set out in this clause.
- (d) The Health Service will notify the Doctor in accordance with subclause 13.4(b) as soon as practicable following the Employer becoming aware of the alleged concerns at subclause 13.1(a).
- (e) **Exception - Doctors who have not completed a minimum period of employment with their Health Service**

Where a Doctor has not completed a period of employment with their Health Service of at least the minimum employment period defined at section 383 of the Act, and the Health Service is considering the termination of the Doctor's employment, the Health Service will:

  - (i) provide the concerns in writing to the Doctor as soon as practicable following the Health Service becoming aware of the alleged concerns;
  - (ii) advise the Doctor of their right to have a representative, including a Union representative;
  - (iii) other than in the case of Serious Misconduct, provide the Doctor an opportunity to improve their Performance or Conduct;
  - (iv) meet with the Doctor (and, where relevant, their representative); and
  - (v) consider any explanation by the Doctor including any matters raised in mitigation before making a decision to terminate the employment.
- (f) The terms of clause 13.3 to 13.5 inclusive do not apply to Doctors within the scope of the exception in this clause 13.1(e).

## 13.2 Definitions

- (a) **Conduct** means the manner in which the Doctor's behaviour impacts on their work.
- (b) **Misconduct** means a Doctor's intentional or negligent failure to abide by or adhere to the standards of conduct expected by the Health Service. A performance issue can be considered misconduct where, despite all reasonably practicable interventions by the Health Service, the Doctor is unable to fulfil all or part of their job requirements to a satisfactory level.
- (c) **Performance** means the manner in which the Doctor fulfils their job requirements. The level of performance is determined by reference to a Doctor's knowledge, skills, qualifications, abilities and the requirements of the role.
- (d) **Procedural Fairness** means that a person whose interests will be affected by a decision receives a fair and reasonable opportunity to be heard before the decision



is made. Procedural fairness is concerned with the decision-making process followed or steps taken by a decision maker rather than the actual decision itself.

- (e) **Serious Misconduct** is as defined under the Regulations and is both wilful and deliberate. Currently Regulation 1.07 defines serious misconduct to include:
- (i) wilful or deliberate behaviour by a Doctor that is inconsistent with the continuation of the contract of employment;
  - (ii) conduct that causes serious and imminent risk to:
    - A. the health or safety of a person; or
    - B. the reputation, viability or profitability of the employer's business.Conduct that is Serious Misconduct includes each of the following:
  - (iii) the Doctor, in the course of the Doctor's employment, engaging in:
    - A. theft; or
    - B. fraud; or
    - C. assault; or
    - D. sexual harassment;
  - (iv) the Doctor being intoxicated at work;
  - (v) the Doctor refusing to carry out a lawful and reasonable instruction that is consistent with the Doctor's contract of employment.

Subclauses 13.2(e)(iii)-13.2(e)(v) do not apply if the Doctor is able to show that, in the circumstances, the conduct engaged in by the Doctor was not conduct that made employment in the period of notice unreasonable.

### 13.3 Investigative procedure

- (a) The purpose of an investigative procedure is to conclude whether, on balance, concerns regarding conduct or performance are well-founded and supported by evidence. An investigation procedure must be fair including proper regard to procedural fairness.
- (b) The Health Service will:
  - (i) advise the Doctor of the concerns and allegations in writing;
  - (ii) provide the Doctor with all material which forms the basis of the concerns before seeking a response;
  - (iii) ensure the Doctor is provided a reasonable opportunity to answer any concerns including a reasonable time to respond;
  - (iv) advise the Doctor of their right to have a representative, including an Association representative;
  - (v) ensure that the reason for any interview is explained; and
  - (vi) take reasonable steps to investigate the Doctor's response.

- (c) Where the Health Service has complied with subclause 13.3(b)(i) - 13.3(b)(iv) and the Doctor does not dispute the concerns, the Doctor may opt to decline the opportunity to be interviewed.
- (d) Where the Doctor opts to decline the opportunity to be interviewed, the Doctor may still raise matters under clause 13.4(c) including matters in mitigation if a disciplinary procedure (see clause 13.4) is proposed.
- (e) Where the Doctor is being stood down by a Health Service during a process set out in this clause 13, the Doctor will receive ordinary pay for their rostered hours as if the Doctor was not stood down by the Health Service.

#### **13.4 Procedure to address poor Performance or Misconduct**

- (a) The procedure applies if, following the investigation, the Health Service reasonably considers that the Doctor's Conduct or Performance may warrant disciplinary steps being taken.
- (b) The Health Service will:
  - (i) notify the Doctor in writing of the outcome of the investigation process, including the basis of any conclusion; and
  - (ii) provide the doctor with a reasonable opportunity to respond to the outcome of the investigation process, including the basis of any conclusion, before considering whether to take disciplinary action at (c) below.
- (c) In considering whether to take disciplinary action, the Health Service will consider:
  - (i) whether there is a valid reason related to the Conduct or Performance of the Doctor arising from the investigation justifying disciplinary action;
  - (ii) whether the Doctor knew or ought to have known that the Conduct or performance was below acceptable standards; and
  - (iii) any explanation by the Doctor relating to Conduct including any matters raised in mitigation and any response to the outcome of the investigation process as described at (b) above.

#### **13.5 Possible outcomes**

- (a) Where it is determined that after following the procedures in this clause 13 that disciplinary action is warranted, the Health Service may take any of the following steps depending on the seriousness of the Conduct or Performance and, except for informal counselling, the steps shall be recorded on the Doctor's personnel file
  - (i) where the Performance or Conduct issue does not constitute Serious Misconduct:
    - A. informally counsel the doctor, which is to be confirmed in writing, with the outcome not being recorded on the Doctor's personnel file; or
    - B. counsel the Doctor, which is to be confirmed in writing; or
    - C. give the Doctor a first written warning; or
    - D. give the Doctor a second written warning in the event that the Doctor has previously been given a first written warning within the previous 12 months for that course of Conduct; or

- E. give the Doctor a final written warning in the event that the Doctor has previously been given a second written warning within the preceding 18 month period for that course of Conduct; or
  - F. terminate the Doctor's employment on notice in the case of a Doctor who repeats a course of Conduct for which a final warning was given in the preceding 18 months; or
- (ii) where the Performance or Conduct issues constitute Serious Misconduct:
- A. terminate the Doctor's employment without notice; or
  - B. alternatively, issue the Doctor with a final warning without following the steps in subclause 13.5(a)(i) above.
- (b) The Health Service's decision and a summary of its reasons will be notified to the Doctor in writing.
- (c) If after any counselling, a period of 6 months elapses without any further counselling or warning being required, all adverse reports relating to the disciplinary procedure under clause 13.4 or to the counselling must be removed from the Doctor's personnel file. Nothing in this sub clause prevents the Health Service from applying a lesser period to the removal of all adverse reports relating to the counselling.
- (d) If after any warning or counselling, a period of 12, or in the case of a final warning, 18 months, without the Doctor repeating a course of Conduct for which the preceding warning or counselling was given, the Health Service cannot rely on the preceding warning or counselling for the purpose of using a further warning. Nothing in this sub clause prevents the Health Service from applying a lesser period to the removal of all adverse reports relating to the warning.

### 13.6 Disputes

A dispute over this clause (including subclause 13.7) is to be dealt with in accordance with the Dispute Resolution Procedure of this Agreement.

### 13.7 Performance Management

*For further information on Performance Management, see clause 13A. of this Agreement.*

- (a) Nothing in this clause 13 will prevent the Health Service from undertaking performance management to support Doctors.
- (b) In this clause 13, **performance management** includes reasonable actions to address performance by identifying performance deficits, the Health Service's expected outcomes and performance measures, and strategies to meet those measures including the provision of support and education the Doctor may reasonably require. Performance management measures may be included in a performance improvement plan that seeks to address the identified deficits within a reasonable time period.
- (c) In this clause 13, performance management does not include sanctions in addition to those set out at clause 13.5 above.

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## 13A. Performance Management

### 13A.1 Purpose

- (a) Regular feedback and review that is proactive, informed and constructive is an important part of professional development for Doctors based on a shared commitment requiring good communication between the Doctor and the Supervisor / line manager.
- (b) The purpose of this clause is to ensure that where the Health Service or supervisor/line manager has concerns as to possible underperformance which need to be managed beyond any regular feedback or review process, they are addressed in manner that is structured, transparent and fair.
- (c) Whether through regular feedback and review or, in the case of possible underperformance, performance management; feedback should enable Doctors to optimise performance and communication and minimise unexpected feedback at the conclusion of a rotation through a reference
- (d) Doctors includes those that are not part of a formal training program.

### **13A.2 Application of this clause**

- (a) Where an Employer wishes to deal with performance issues of a Doctor, they will be dealt with in accordance with this clause 13A..
- (b) Where an Employer has concerns about a performance issue that may constitute misconduct, they will be dealt with in accordance with clause 13B (Discipline). Where this occurs, the performance management process in subclauses 13A.4(c), (d) and (e) will still apply where appropriate.

### **13A.3 Informal**

Where the Employer or the Employee has concerns about an Employee's performance, the Employer will, wherever appropriate, deal with these concerns through informal discussions with the Employee when these concerns first arise. The Employer will clearly outline the concerns. The Employee will be given a reasonable opportunity to address the performance concerns

### **13A.4 Formal**

- (a) Where the Employee's work performance is not at an acceptable standard following the process in subclause 13A.2 or it was not appropriate to deal with the concerns informally, the Employer may initiate a formal performance management process.
- (b) The Employer will provide to the Employee in writing:
  - (i) details of the performance concerns including, where relevant, material that supports those concerns; and
  - (ii) notice of the Employee's right to be represented by a Union or other representative.
- (c) The Employer will:
  - (i) meet with the Employee and, where relevant, the Employee's representative, to discuss the concerns;
  - (ii) ensure the Employee is provided with a reasonable opportunity to answer any concerns including a reasonable time to respond;
  - (iii) give genuine consideration to any response or matters raised by an Employee's response; and
  - (iv) if a performance management plan is proposed, consult with the Employee and the Employee's representative on the content of the plan.

- (d) Where, having considered the Employee's response, the Employer reasonably believes, based on the Employee's performance, that a performance management plan is appropriate, the Employer will:
  - (i) provide the performance management plan to the Employee in writing following the consultation referred to at subclause 13A.4(c)(iv) above, identifying which aspects of the Employee's performance are unsatisfactory and the required level of performance which must be reasonable; and
  - (ii) provide the Employee with a reasonable opportunity to address any concerns over a reasonable time.
- (e) The Employer will provide ongoing feedback on the Employee's performance during this period, including if the Employee's performance is not improving to a satisfactory standard, and will provide the Employee with all reasonable support, counselling and training.

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## 14. Prevention and Management of Workplace Bullying

### 14.1 Purpose

- (a) This clause concerns the prevention and management of Workplace bullying and requires Employers to take actions consistent with their obligations under the OHS Act. Workplace bullying is an occupational health and safety risk.
- (b) Workplace bullying can happen in any workplace. Under certain conditions, anyone could be capable of bullying-type behaviour.
- (c) Workplace bullying can have an impact on an individual's health and affect their ability to do their job. It can also contribute to loss of productivity, staff turnover, absenteeism, low morale and financial costs.
- (d) It is in the interests of all parties including Employers, employees who raise complaints, Employees about whom complaints are made and their representatives should that concerns about behaviour that may be workplace bullying are addressed quickly, fairly and sensitively and with the intention of ensuring a safe working environment for everyone.

### 14.2 Definitions

- (a) **Workplace Bullying** is repeated, unreasonable behaviour directed at an employee or group of employees that creates a risk to health and safety. Reasonable management action carried out in a reasonable manner is not bullying.

#### **Examples**

Examples of **workplace bullying** include **repeated**:

- (i) Verbal abuse. For example, being sworn at, threatened, insulted, continual inappropriate and/or invalid criticism, name calling, practical jokes, unjustified threats of punishment, belittling and humiliation, gossip and malicious rumours, inappropriate language, yelling;
- (ii) Unreasonable demands, unnecessary pressure and impossible deadlines, which are targeted at an employee or group of employees;
- (iii) Unfair allocation of tasks and/or working hours. For example, repeatedly requiring a particular person to stay back after hours or rostering them onto night duty;

- (iv) Undermining a person's work performance, recognition or position, especially with their managers or co-workers; and
- (v) Hostile behaviour toward an employee or group of employees. For example, excluding them from conversations or various activities.

Examples of **reasonable management action** carried out in a reasonable manner include:

- (vi) Genuine and reasonable instructions;
- (vii) Rostering and allocating working hours, where the requirements are reasonable; and
- (viii) Constructively delivered feedback or counselling intended to help employees to improve their work performance or the standard of their behaviour.

- (b) **OHS Act** means the Occupational and Health Safety Act 2004.

### 14.3 Prevention - General

- (a) Employers have a duty under the OHS Act to provide and maintain, so far as is reasonably practicable, a working environment that is safe and without risks to health.
- (b) Employer obligations include:
  - (i) providing and maintaining systems of work that are, so far as is reasonably practicable, safe and without risks to health; and
  - (ii) consulting with Employees who are or who are likely to be directly affected by a health and safety matter.
- (c) Prevention is the key to providing a safe working environment.

### 14.4 Prevention - Policy

- (a) Each Employer will have a workplace policy and procedure for workplace bullying.
- (b) A workplace policy should state:
  - (i) a commitment to providing employees with a healthy and safe working environment;
  - (ii) the standard of behaviour expected of all Employees, including examples of what is and what is not workplace bullying;
  - (iii) how the policy applies in connection with work and work-related events and activities;
  - (iv) that the policy covers all communication, including text messages, email and social media;
  - (v) how and where Employees can report allegations of workplace bullying;
  - (vi) that reports of workplace bullying are taken seriously and are responded to by the Employer impartially and confidentially;
  - (vii) what can happen if the policy is not followed;

- (viii) how the Employer will respond to allegations of workplace bullying that have been reported;
- (ix) how reports will be investigated; and
- (x) where to get more information.

#### **14.5 Early Intervention**

- (a) It is recognised that early intervention is critical to ensuring both a safe workplace and fairness to all parties. The objective of early intervention is to:
  - (i) establish appropriate behaviour;
  - (ii) prevent inappropriate behaviour; and
  - (iii) resolve issues without a formal report or investigation.
- (b) Early intervention may include:
  - (i) self-managing a situation; or
  - (ii) seeking assistance from someone else such as a manager, supervisor, medical workforce unit or human resources.
- (c) Training plays an important role in the early intervention of workplace bullying. Employers should ensure employees are trained to recognise bullying behaviour and to adjust their behaviour accordingly before it becomes an issue.

#### **14.6 Managing Workplace Bullying – General Principles**

Where it is necessary to conduct an investigation regarding potential workplace bullying, the following principles will apply:

- (a) The Doctor who is the subject of the concern will be provided with natural justice including but not limited to:
  - (i) Explaining the process and the specific allegations in writing;
  - (ii) Advising the that they may be represented by the Association, or other advocate, at any time;
  - (iii) The purpose of any meetings is identified in advance; and
  - (iv) The Doctor is provided with an opportunity to respond via documentation, an interview or a combination of both.
- (b) The investigator and, in turn, the decision-maker will act in good faith and without bias which:
  - (i) means the person conducting the investigation has no preconceived opinions, vested interests or prior personal involvement in the matter; and
  - (ii) does not necessarily mean excluding a person from the same organisation as the employee, from conducting an investigation or making a decision.
- (c) The Employer shall provide an unredacted report to the Doctor/s and their representative/s, including the Association where relevant, upon request.

#### **14.7 Where an external investigator is appointed**

Where the Employer decides to appoint an external investigator, the Employer shall either:

- (a) select an investigator from the DH 'preferred provider' list; or
- (b) appoint an investigator following timely consultation with the representative of the employee parties, including the Association, where relevant. The Employer may appoint an investigator without consultation where no response is received from the Union within 5 days following the Association being notified.

Consultation in this clause 14.7 has its ordinary meaning and does not refer to consultation as set out at clause 10 and shall be conducted efficiently having regard for the health and safety of the employees.

#### **14.8 More information**

Further information about workplace bullying and principles to manage and resolve bullying matters can be found at:

- [www.worksafe.vic.gov.au/bullying-workplace](http://www.worksafe.vic.gov.au/bullying-workplace); and
- Victorian Public Sector Standards Commissioner's Guide – Managing Poor Behaviour in the Workplace

**14.9** Employers will review and use for guidance the Best Practice Guide developed jointly by the Association and VHIA and make it available at the workplace.

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## **15. Flexible Working Arrangements**

**15.1** The Act entitles specified Doctors to request flexible working arrangements in specified circumstances.

**15.2** The specified Doctors are:

- (a) full time or part time Doctors with at least 12 months' continuous service (calculated in accordance with subclauses 68.3 to 68.5); and
- (b) long term casual Doctor with a reasonable expectation of continuing employment by the Health Service on a regular and systematic basis.

**15.3** The specified circumstances are if the Doctor:

- (a) is the parent, or has responsibility for the care, of a child who is of school age or younger;
- (b) is a carer within the meaning of the *Carer Recognition Act 2010* (Vic) (for example, caring for someone who has a disability, a medical condition (including a terminal or chronic illness), a mental illness or is frail or aged);
- (c) has a disability;
- (d) is aged 55 years or older;
- (e) is experiencing violence from a member of the Doctor's family; or
- (f) provides care or support to a member of the Doctor's immediate family, or a member of the Doctor's household, who requires care or support because the member is experiencing violence or abuse from the member's family.

**15.4** A request for flexible working arrangements includes (but is not limited to) a request to work part-time upon return to work after the birth or adoption of a child to assist the Doctor to care for the child.



- 15.5** Changes in working arrangements may include, but are not limited to, hours of work, patterns of work and location of work.
- 15.6** The request must be in writing, set out details of the change sought and the reasons for the change.
- 15.7** The Health Service must give the Doctor a written response to the request within 21 days, stating whether the Health Service grants or refuses the request. A request may only be refused on reasonable business grounds as described in the NES.
- 15.8** Where the Health Service refuses the request, the written response must include details of the reasons for the refusal.
- 15.9** Where a request for flexible work arrangements is made, a Doctor or Health Service is entitled to meet with the other party to discuss:
- (a) the request;
  - (b) an alternative to the request; or
  - (c) reasons for a refusal on reasonable business grounds.
- 15.10** A Doctor or Health Service may choose to be represented at a meeting under subclause 15.9 by a representative including the Association or employer organisation.
- 15.11** The dispute resolution procedure in this Agreement will apply to any dispute / grievance arising in relation to a request for flexible working arrangements.
- 15.12** Other entitlements relevant to family violence can be found at clause 71 (Family Violence Leave).

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## **16. Individual Flexibility Arrangements**

- 16.1** A Health Service and the Doctor may enter into an individual flexibility arrangement under this clause that varies the effect of certain terms of this Agreement in order to meet the genuine needs of the Doctor and the Health Service.
- 16.2** An individual flexibility arrangement must:
- (a) be genuinely agreed to by the Doctor and Health Service; and
  - (b) not contravene any law.
- 16.3** An individual flexibility arrangement must be about arrangements for when hours are worked.
- 16.4** A Doctor may nominate a representative to assist in negotiations for an individual flexibility arrangement.
- 16.5** The Health Service must ensure that any individual flexibility arrangement will result in the Doctor being better off overall than the Doctor would have been if no individual flexibility arrangement was made.
- 16.6** The Health Service must ensure that an individual flexibility arrangement is in writing and signed by the Doctor and the Health Service (and, if the Doctor is under 18 years of age, by the Doctor's parent or guardian), and that it is not required to be approved or consented to by any other person.
- 16.7** The Health Service must give a copy of the individual flexibility arrangement to the Doctor within 14 days after it is agreed.
- 16.8** The Health Service must ensure that any individual flexibility arrangement sets out:
- (a) the terms of this Agreement that will be varied by the arrangement;

- (b) how the arrangement will vary the effect of the terms;
- (c) how the Doctor will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (d) the day on which the arrangement commences.

**16.9** The Health Service must ensure that any individual flexibility arrangement:

- (a) is about matters that would be permitted matters under section 172 of the Act if the arrangement were an enterprise agreement;
- (b) does not include any term that would be an unlawful term under section 194 of the Act if the arrangement were an enterprise agreement; and
- (c) provides for the arrangement to be terminated:
  - (i) by either the Doctor or Health Service giving a specified period of written notice, with the specified period being no more than 28 days; and
  - (ii) at any time by written agreement between the Doctor and Health Service.

**16.10** An individual flexibility arrangement may be expressed to operate for a specified term or while the Doctor is performing a specified role (such as acting in a specified higher position). Such an arrangement will terminate on expiry of the specified term, or when the Doctor ceases to perform the specified role, unless terminated earlier on notice or by agreement.

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## **16A. Climate Change Mitigation and Sustainability**

### **16A.1 Acknowledgment**

The parties acknowledge that:

- (a) the climate is changing and this affects the health and wellbeing of Victorians;
- (b) Health Services use significant amounts of energy and water and generate large volumes of waste;
- (c) the *Climate Change Act 2017* has a long-term emissions reduction target for Victoria of net zero greenhouse gas emissions by the year 2050 with a series of interim targets to achieve that goal; and
- (d) Doctors and Health Services have a role to play to support the achievement of that target, which includes through discussion, information sharing and cooperation.

### **16A.2 Continuous improvement**

- (a) Doctors and Employers support continuous improvement to improve environmental sustainability including:
  - (i) At an industry level through the Best Practice Employment Commitment term at clause 77;
  - (ii) At a local workplace level through:
    - A. the WIC where it is in operation; and/or
    - B. a local body established for the purpose of consulting over environmental sustainability and climate change (however described).

- (b) Doctors and Employers support the development of local processes to:
  - (i) integrate climate and environmental considerations into the evidence-based decision-making process;
  - (ii) engage with employees including Doctors to consult over matters of environmental sustainability including possible mitigants such as:
    - A. recycling and waste reduction;
    - B. better use of technology;
    - C. healthy sustainable buildings, infrastructure and materials;  
and
    - D. the delivery of health services;
  - (iii) implement change at the workplace level to achieve environmental sustainability objectives including through local action plans as Health Services seek to move to 100% renewable energy by 2025.

### **16A.3 Education**

- (a) It is acknowledged that education concerning to climate related health topics may be directly relevant to a Doctor's role within the meaning of clause 50 (Conference Leave) and clause 47 (Continuing Medical Education).
- (b) The Health Service will encourage and support the inclusion of climate-related health topics as part of education provided to Doctors.

### **16A.4 Discussions with Association**

Upon request, a Health Service will meet the Ambassador or other representative of the Association to discuss the sustainability report of the Health Service.

## PART C – DOCTOR EMPLOYMENT

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### 17. Full-Time Employment

- (a) Full-time means:
- (i) in respect of a HMO, MO or SMO - a Doctor who is ready, willing and available to work a full week of 38 hours;
  - (ii) in respect of a Registrar - a Doctor who is ready willing and available to work a full week of 38 hours plus five reasonable additional hours of Training Time (as defined at subclause 3.1(kk)) equalling 43 hours per week or an average of 43 hours per week over a period of up to four weeks.

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### 18. Part-Time Employment

- 18.1** Part-time means a Doctor who is ready, willing and available to work on a regular basis any number of hours less than the ordinary hours of work prescribed in clause 17.
- 18.2** The number of hours worked by a part-time Doctor may vary from week to week by mutual agreement.
- 18.3** A part-time HMO, MO and SMO will be paid an hourly rate equal to 1/38th of the weekly salary for the Doctor's classification.
- 18.4** A part-time Registrar will be paid an hourly rate equal to 1/43rd of the weekly salary for the Doctor's classification. A Registrar will also receive Training Time in accordance with clause 34 (Training Time) on a pro-rata basis having regard to their part-time fraction.

Example: A part-time Registrar engaged on a 0.5 EFT contract will receive 2.5 hours Training Time per week.

- 18.5** Where expressly provided, a part-time Doctor is entitled to be paid for penalties and allowances on a pro-rata basis.
- 18.6** Where a part-time Doctor has an entitlement to leave under this Agreement, the part-time Employee will be paid according to the number of hours the Employee would have worked on the day/s on which the leave was taken.

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### 19. Casual Employment

- 19.1** A casual means a Doctor classified as a HMO, MO or SMO and who is engaged in relieving work or work of a casual nature, but does not include a Doctor who could properly be classified as a full-time or part-time Doctor under clauses 17 and 18.
- 19.2** Subject to the minimum engagement period (or payment in lieu of), a casual Doctor's engagement is terminable with one hour's notice by either party. The minimum engagement for a casual Employee is two hours.
- 19.3** A casual Doctor will be paid an hourly rate equal to 1/38th of the weekly salary for the Employee's classification plus 25%.
- 19.4** Except where expressly excluded, a casual Employee will be entitled to receive the allowances prescribed by this Agreement.
- 19.5** A casual Doctor is entitled to the following:
- (a) unpaid carer's leave for carer's responsibilities (subclause 61.10);
  - (b) unpaid family violence leave (clause 71);

- (c) unpaid compassionate leave in accordance with the NES;
- (d) unpaid pre-adoption leave (clause 66);
- (e) parental leave (clause 67) (subject to the eligibility requirements of that clause);
- (f) applicable penalty payments for work performed on a public holiday (clause 63);
- (g) payments for shift work (subclauses 37.3 and 37.5);
- (h) Saturdays and Sundays (subclause 37.2); and
- (i) overtime (clause 36).

**19.6** The following provisions do not apply to casual Doctors:

- (a) annual leave (clause 60);
- (b) paid personal/carer's leave (clause 61);
- (c) paid compassionate leave (clause 64);
- (d) paid family violence leave (clause 71);
- (e) conference/seminar leave (clause 50);
- (f) examination leave (clause 49);
- (g) rosters (clause 35);
- (h) notice period before termination (clause 29);
- (i) period of employment (clause 21);
- (j) flexible working arrangements (other than Doctors prescribed at subclause 15.2(b)) (clause 15);
- (k) payment for public holiday penalties where the Doctor doesn't perform work on that day (clause 63);
- (l) child care costs reimbursement (clause 57); and
- (m) community service leave (under the Act).

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## **20. Casual Conversion**

### **20.1 Health Service offers**

- (a) Subject to subclause 20.12 and by 27 September 2021 in accordance with the NES, an Employer must make an offer to a Doctor under this section if:
  - (i) the Doctor has worked shifts for the Health Service for a period of 12 months beginning the day the employment started; and
  - (ii) during at least the last 6 months of that period, the Doctor has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the Doctor could continue to work as a full-time Doctor or a part-time Doctor (as the case may be).
- (b) The Health Service's offer under subclause 20.1 must:

- (i) be in writing; and
- (ii) be an offer for the Doctor to convert:
  - A. for a Doctor that has worked the equivalent of full-time hours during the period referred to in subclause 20.1(a)(ii) – to full-time employment; or
  - B. for a Doctor that has worked less than the equivalent of full-time hours during the period referred to in subclause 20.1 – to part-time employment that is consistent with the regular pattern of hours worked during that period;
- (iii) be given to the Doctor within 21 days after the end of the 12-month period referred to in clause 21.1(a)(i).

**20.2 When Health Service offers not required**

- (a) A Health Service is not required to make an offer under subclause 20.1(a) to a Doctor if:
  - (i) there are reasonable grounds not to make that offer; and
  - (ii) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer;
- (b) The Health Service must give written notice to a Doctor in accordance with clause 1.1(d) if:
  - (i) the Health Service decides under clause 20.2(a) not to make an offer to the Doctor; or
  - (ii) the Doctor has been employed by the Health Service for the 12-month period referred to in subclause 20.1(a)(i) but does not meet the requirement referred to in subclause 1.1(a)(ii).
- (c) Without limiting subclause 20.2, reasonable grounds for deciding not to make an offer include the following:
  - (i) the Doctor's position will cease to exist in the period of 12 months after the time of deciding not to make the offer, such as where a Doctor works shifts replacing an employee absence;
  - (ii) the hours of work which the Doctor is required to perform will be significantly reduced in that period;
  - (iii) there will be a significant change in either or both of the following in that period:
    - A. the days on which the Doctor's hours of work are required to be performed;
    - B. the times at which the Doctor's hours of work are required to be performed;
      - which cannot be accommodated within the days or times the Doctor is available to work during that period;
  - (iv) making the offer would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

- (d) The notice must:
  - (i) advise the Doctor that the Health Service is not making an offer under subclause 20.1; and
  - (ii) include the details of the reasons for not making the offer (including any grounds on which the Health Service has decided to not make the offer); and
  - (iii) be given to the Doctor within 21 days after the end of the 12-month period referred to in subclause 1.1(a)(i).

### **20.3 Doctor response**

- (a) The Doctor must give the Health Service a written response to the offer made under 20.1(a) within 21 days after the offer is given to the Doctor, stating whether the Doctor accepts or declines the offer.
- (b) If the Doctor fails to give the Health Service a written response in accordance with subclause 1.1(a), the Doctor is taken to have declined the offer.

### **20.4 Acceptances of offers**

- (a) If the Doctor accepts the offer, the Employer must, within 21 days after the day the acceptance is given to the Employer, give written notice to the Doctor of the following:
  - (i) whether the Doctor is converting to full-time employment of part-time employment;
  - (ii) the Doctor's hours of work after the conversion takes effect;
  - (iii) the day the Doctor's conversion to full-time or part-time employment takes effect
- (b) However, the Health Service must discuss with the Doctor the matters the Health Service intends to specify for the purposes of subclause 1.1(a)(i)-(iii) before giving the notice.
- (c) The day specified for the purposes of subclause 1.1(a)(iii) must be the first day of the Doctors' first full pay period that starts after the day the notice is given, unless the Doctor and Health Service agree to another day.

### **20.5 Doctor requests**

- (a) A Doctor may make a request of a Health Service under this clause if:
  - (i) the Doctor has been employed by the Health Service for a period of at least 6 months beginning the day the employment started;
  - (ii) the Doctor has, in the period of 6 months ending the day the request is given, worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the Doctor could continue to work as a full-time Doctor or part-time Doctor (as the case may be); and
  - (iii) all of the following apply:
    - (A) the Doctor has not, at any time during the period referred to in subclause 21.1(a)(ii), refused an offer made to the Doctor under clause 20.1;

- (B) the Health Service has not, at any time during that period, given the Doctor a notice in accordance with subclause 21.1(c)(i);
  - (C) the Health Service has not, at any time during that period, given a response to the Doctor under subclause 20.6 refusing a previous request made under this clause;
  - (D) the request is not made during the period of 21 days after the period referred to in subclause 20.1(a)(i).
- (b) The request must:
- (i) be in writing;
  - (ii) be a request for the Doctor to convert:
    - (A) for a Doctor that has worked the equivalent of full-time hours or shifts on a regular and systematic basis during the period referred to in subclause 20.51.1(a)(ii) – to full-time employment; or
    - (B) for a Doctor that has worked less than the equivalent of full-time hours or shifts on a regular and systematic basis during the period referred to in subclause 20.5(a)(ii) – to part-time employment that is consistent with the regular pattern of hours or shifts worked during that period; and
  - (iii) be given to the Health Service.

## **20.6 Health Service must give a response**

The Health Service must give the Doctor a written response to the request made under subclause 20.5 within 21 days after the request is given to the Health Service, stating whether the Health Service grants or refuses the request.

## **20.7 Refusals of requests**

- (a) The Health Service must not refuse the request unless:
  - (i) the Health Service has consulted the Doctor;
  - (ii) there are reasonable grounds the refuse the request; and
  - (iii) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request.
- (b) Without limiting subclause 20.71.1(a), reasonable grounds for refusing a request include the following:
  - (i) it would require a significant adjustment to the Doctor's hours of work in order for the Doctor to be employed as a full-time Doctor or part-time Doctor;
  - (ii) the Doctor's position will cease to exist in the period of 12 months after giving the request;
  - (iii) the hours of work which the Doctor is required to perform will be significantly reduced in the period of 12 months after giving the request;
  - (iv) there will be a significant change in either or both of the following in the period of 12 months after giving the request:



- (A) the days on which the Doctor's hours of work are required to be performed;
- (B) the times at which the Doctor's hours of work are required to be performed;

which cannot be accommodated within the days or times the Doctor is available to work during that period;

- (v) granting the request would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory
- (c) If the Health Service refuses the request, the written response under subclause 20.6 must include details of the reasons for the refusal.

## **20.8 Grants of requests**

- (a) If the Employer grants the request, the Employer must, within 21 days after the day the request is given to the Employer, give written notice to the Employee of the following:
  - (i) whether the Doctor is converting to full-time employment of part-time employment;
  - (ii) the Doctor's pattern of hours or shifts after the conversion takes effect;
  - (iii) the day the Doctor's conversion to full-time or part-time employment takes effect
- (b) However, the Employer must discuss with the Doctor the matters the Health Service intends to specify for the purposes of subclauses 20.81.1(a)(i)-(iii) before giving the notice.
- (c) The day specified for the purposes of subclause 20.8(a)(iii)1.1(a)(iii) must be the first day of the Doctor's first full pay period that starts after the day the notice is given, unless the Doctor and Health Service agree to another day.
- (d) To avoid doubt, the notice may be included in the written response under subclause 20.6.

## **20.9 Effect of conversion**

- (a) A Doctor is taken, on and after the day specified in a notice for the purposes of subclauses 20.4(a)(iii) and 20.8(a)(iii) to be a full-time Doctor or a part-time Doctor of the Health Service.
- (b) Casual loading will cease, and, subject to subclause 20.6, any benefits relating to permanent employment will commence on the day specified in a notice for the purposes of subclauses 20.4(a)(iii) and 20.8(a)(iii).

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# **21. Period of Employment**

*This clause does not apply to casual employees.*

## **21.1 Minimum period of employment**

- (a) A Doctor's period of employment may be not less than 52 weeks, unless otherwise specifically stated.

- (b) To improve secure employment for Doctors, Health Services will implement employment contracts of two-years or longer duration to the extent possible.

## 21.2 Minimum period of employment – exception

The restrictions in the above subclause 21.1(a) do not apply to:

- (a) Medical Officers, Senior Medical Officers or Casual Doctors as defined in subclauses 3.1(w), 3.1(ff) and 19.1 of this Agreement; or
- (b) facilitate placements arranged by a Specialist Medical College or at the request of the Doctor to meet Specialist Medical College training requirements; or
- (c) to replace an absence for a specific period of less than the minimum period of employment that is known before the period of employment commences

## 21.3 Effect of Certain Absences on Period of Employment

- (a) Where a Doctor is engaged for a period under this clause and is absent for a continuous period exceeding three months from employment as a result of Parental Leave (see clause 67), Family Violence Leave (see clause 71) or Carer's Leave (see clause 61), the provisions of subclauses 21.3(b)(i) and (b)(ii) shall apply.
- (b) Extension of contract – Parental Leave, Carer's Leave and Family Violence
  - (i) Prior to the scheduled commencement of a period of Parental Leave exceeding three months, the Health Service shall offer to vary the period of the contract to accommodate the length of the Parental Leave and the length of the remaining period of the existing contract. Where a Doctor exercises the right to request additional Parental Leave either under subclause 67.12 and the Health Service agrees, or further period of Parental Leave under clause 67 (in the event of additional pregnancy), the Health Service shall offer to further vary the period of the contract to accommodate for the length of the further period of Parental Leave.

### **Example**

*A Doctor commenced in February and has a contract that ends in February the following year. The Doctor commences 12 months parental leave in September. Prior to commencing parental leave the Health Service shall offer the Doctor a variation to their contract. The variation provides for the Doctor to extend their employment for the period of 12 months parental leave and to return to work at the cessation of the parental leave and complete the remaining 5 months of their initial contract term representing the period between September and February that had not been completed prior to the absence on parental leave.*

- (ii) A Health Service shall also offer to vary the period of a Doctor's contract to accommodate an absence exceeding three months due to Carer's Leave or Family Violence Leave and the length of the remaining period of the existing contract. In the case of such an absence due to Carer's Leave or Family Violence, the obligation to offer to extend the contract will arise upon receipt of a request to be absent for a period exceeding three months.
- (iii) Nothing prevents a Doctor requesting, and a Health Service agreeing to, a period other than the remaining period of the contract.

### **Example**

*A Doctor commenced in February and has a contract that ends in February the*

*following year. The Doctor commences 12 months parental leave in April. Prior to commencing parental leave the Health Service shall offer the Doctor a variation to their contract. The Doctor indicated they intend on obtaining employment next February and sought not to have their contract extended as they intended on obtaining employment in the following February. The Health Service agreed to the Doctor's request and the contract was not extended beyond the original date the contract expires.*

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## **22. Incidental and Peripheral Duties**

- 22.1** The Health Service may direct a Doctor to carry out such duties as are within the limits of the Doctor's skill, competence and training consistent with the classification structure of the Agreement, provided that such duties are not designed to promote de-skilling.
- 22.2** The Health Service must not require a Doctor to carry out duties that are outside the limits of the Doctor's skill, competence and training (including the required level of supervision) consistent with the classification structure of the Agreement
- 22.3** Where a Doctor believes a Health Service is requiring them to carry out duties that breach subclause 22.2, the Doctor should
- (a) where the matter is urgent, escalate via the local Clinical Escalation Pathway; and
  - (b) if not resolved, escalate via the Dispute Resolution Clause.

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## **23. Doctor Responsibilities**

- 23.1** The Doctor provides medical services, including the keeping and maintaining of adequate medical records for Health Service patients.
- 23.2** The Doctor's Duty Hours must be devoted to the duties of their appointment.
- 23.3** The Doctor must not, without the consent of the patient, divulge to any person any information acquired when attending to a patient except as follows:
- (a) to the Health Service's Director of Medical Services, nursing staff or other medical staff where necessary to enable the Doctor to prescribe or act for that patient; or
  - (b) for medico legal purposes, to disclose any information to the Health Service relating to the mental or physical condition of a Health Service patient or former patient.
- 23.4** The Doctor should ensure that work performed outside of their employing Health Service does not result in an overall or unsafe work pattern for that Doctor pursuant to subclause 35.3.
- 23.5** The Doctor will ensure that to the extent that it is practicable to do so time sheets (or equivalent) reflecting time worked (including any overtime) are submitted within the timeframe required by the Health Service.

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## **24. Rotations between hospitals**

- 24.1** The provisions of this clause 24 are to be read in conjunction with clause 9 (Nature of Relationships), the relevant definitions in clause 3 (Parent Hospital, Rotation Hospital, Rotation) and the allowances in clause 52 (Rotation Allowances).
- 24.2** A Parent Hospital may rotate a Doctor to work at another Hospital (the Rotation Hospital) as part of their structured training program or to meet service demands. For the duration of any such Rotation, the Doctor remains an Employee of the Parent Hospital.

- 24.3** A Rotation must be agreed either at the time of the Rotation or at the time of initial appointment. Any single Rotation is typically for a period of 13 weeks. However, the length of any single Rotation may be varied if the position is so advertised or otherwise by agreement.
- 24.4** Where, as part of a “rotation” arrangement a Doctor is required to move residence:
- (a) The Doctor must be provided with a minimum of a whole calendar day clear from duty (including on-call and overtime) between their final shift at Hospital 1 and their first shift at Hospital 2.
- For example: Final shift ceases at Hospital 1 on Saturday at 10:00pm;  
Whole Calendar Day clear from Duty on Sunday;  
First shift commences at Hospital 2 on Monday at 8:00am.*
- (b) Notwithstanding 24.4(a) above, where the Doctor is required to perform night shift as their final shift or otherwise performs on-call period, the Doctor must be provided 48 hours break between completing their night shift/on-call period at Hospital 1 and their first shift at Hospital 2.
- (c) To jointly plan the transition of a Doctor between Hospital 1 and Hospital 2 to achieve the obligations prescribed above, engagement and cooperation must occur between the two hospitals prior to the final roster being issued and contemplate:
- (i) Appropriate rostered ordinary hours coverage in Hospital 1 and Hospital 2
- (ii) Appropriate on-call coverage
- (iii) Appropriate skill-mix for coverage
- (iv) Accommodation arrangements including contingency
- (v) Reasonable time for the Doctor to relocate, including time to rest following their final shift, vacate their accommodation and travel to their next Hospital and appropriate time to settle in and orientate to their new location.
- (d) Where, due to unforeseeable circumstances, a Doctor is required to perform work beyond the time jointly agreed, appropriate overnight accommodation will be provided to the Doctor if the original accommodation is unavailable.
- 24.5** A Rotation may include a rotation to, but not from, an interstate hospital. In this case, a Rotation must only occur as part of the formally agreed training program and the doctor must commence the year with the Parent Hospital, and return to the Parent Hospital before the end of the year.
- 24.6** The Parent Hospital must not rotate a Doctor to a Rotation Hospital that does not make available to Doctors a library and other usual study aids of a standard acceptable to the Post Graduate Medical Council of Victoria.
- 24.7** During the period of Rotation, the Rotation Hospital is responsible for the payment of wages and entitlements accruing to the Doctor under the Agreement. This is an administrative arrangement between Hospitals and does not affect the Doctor’s employment status under subclause 24.2 above.
- 24.8** The Rotation Hospital and the Parent Hospital may agree either:
- (a) that the Rotation Hospital pay all wages, allowances and utilised accrued entitlements directly to the Doctor; or
- (b) that the Rotation Hospital remits payment of all wages and entitlements in respect of the Doctor to the Parent Hospital based on timesheets and other information provided to the Parent Hospital by the Rotation Hospital.

- 24.9** Provided that where the arrangement at subclause 24.8(a) above is effected, service and the accrual of leave will continue unaffected with the Parent Hospital, subject to appropriate reductions for accrued entitlements utilised or the occasion of unpaid leave that would normally affect service.

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## **25. Private Practice Rights**

- 25.1** A Doctor who has completed the 1<sup>st</sup> year of experience as an HMO (Intern) may undertake private practice subject to the following, unless otherwise agreed:
- (a) such practice must not be carried on during Duty Hours; and
  - (b) such practice must not involve Health Service property or be conducted in any respect within the precincts of the Health Service.
- 25.2** Doctors may by agreement be on loan to other bodies or practitioners. Agreement must be reached between the Health Service, the Doctor and the other body.
- 25.3** The above subclause 25.2 applies to Doctors seconded for service with the Australian Defence Force but does not apply to service under the *Defence Act 1903*.

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## **26. Notification of Classification**

- 26.1** On the commencement of the Doctor's employment the Health Service must notify the Doctor in writing of his or her classification and terms of employment.
- 26.2** The Doctor must be notified in writing of any alteration to his or her classification within 14 days of the alteration taking effect.

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## **27. Orientation on Appointment**

- 27.1** On a Doctor's appointment to a new position or a new location (including a Rotation) and as an orientation, the Health Service must
- (a) direct the Doctor to where they can locate a copy of this Agreement; and
  - (b) inform the Doctor of those matters that are essential to the safe and efficient discharge of their responsibilities. This will include a statement from a person authorised by the Health Service that to support safe working hours, Doctors must as far as is practicable, submit time worked on a timesheet (or equivalent) within the time required by the Health Service, this includes un-rostered overtime that is not approved in advance.
- 27.2** The orientation information must include a "Unit Handbook" or similar document containing current, written information that covers the following:
- (a) job duties, responsibilities and authority;
  - (b) emergency procedures;
  - (c) relevant clinical, ward and quality procedures, including contact details;
  - (d) procedures for ordering supplies and medical tests;
  - (e) information about Training Time arrangements consistent with clause 34;
  - (f) a copy of the bullying policy and/or procedure that is consistent with the language in clause 14 which promotes the statement "Bullying will not be tolerated in the workplace";
  - (g) a copy of the Authorised Un-rostered Overtime Protocol consistent with clause 36.3;

- (h) reference to clause 59 Replacement of Doctors when on leave, and clause 41 Workload Management and Review;
- (i) a Performance Management Protocol consistent with clause 13;
- (j) specific reference to clause 56 and whether the Doctor will be:
  - (i) supplied with sufficient suitable and serviceable uniforms (e.g. scrubs) laundered at the expense of the Health Service; and
  - (ii) paid the Uniform/Laundry allowance; and
- (k) a copy of the Clinical Escalation Pathway (however titled or styled).

**27.3** During a Rotation, the orientation described in subclause 27.1 is the responsibility of the Rotation Hospital. Doctors are responsible for ensuring that they request appropriate information and clarification when required.

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## **28. Orientation – Association Notification**

**28.1** On a quarterly basis, the Health Service must provide the Association with the dates, times and venues of any orientation/induction programs involving Doctors and the Association must be permitted to attend such programs.

**28.2** Where the dates of these programs are fixed in advance, a list should be sent to the Association as soon as possible.

**28.3** Where the dates of orientation/induction programs involving Doctors are not fixed in advance, the Association should receive reasonable notification of at least 14 days to enable an Association representative to attend.

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## **29. Termination of Employment**

**29.1** The employment of a full-time or part-time Doctor may be terminated:

- (a) by at least four weeks' notice given by the Health Service or the Doctor, or four weeks' wages paid or forfeited as the case may be in lieu of such notice, except that the period of notice may be reduced by agreement (subject to compliance with the NES); or
- (b) at the end of a period of appointment under a fixed term or maximum term contract; or
- (c) with written notice by the Health Service in the event of misconduct, malpractice, neglect of duty or breach of any condition of appointment after the Health Service has made careful inquiry into any matter alleged against the Doctor and has heard whatever statement the Doctor may wish to make relative to that matter and against such termination or has given the Doctor a reasonable opportunity to make such a statement. The Doctor may be assisted in making any statement or submission by a representative of the Association.
- (d) The period of notice to be given by the Health Service pursuant to subclause 29.1(a) above shall be increased by one week if the Doctor is over 45 years of age and has completed at least two years' continuous service.

**29.2** Casual employment may be terminated with one hour's notice.

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## **29A. Certificate of Service**

**29A.1** The Health Service will record the following particulars in respect of each Doctor:

- (a) Date of commencement of employment;
- (b) Date of termination of employment;
- (c) Total period of service (years and months);
- (d) Long Service Leave taken during the period of service, or payments made in lieu thereof; and
- (e) Accumulated personal/carer's leave at termination.

**29A.2** On request, a copy of the record will be furnished to the Doctor.

**29A.3** A certificate in the form set out in Appendix 3 will be acceptable.

**29A.4** A Doctor may request a document from their Employer which provides 'Employment Information' that can be used for the sole purpose of enabling their classification to be recognised by another Employer.

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## **30. Advertisement of Positions**

Any notice, circular or advertisement for a position covered by the Agreement must specify the applicable rate of pay and classification.

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## **31. Rotation to a General Practice Training Program**

**31.1** The Program Teaching Practice must provide in writing the terms and conditions of Rotation one month prior to the Doctor commencing the term. Such terms and conditions must include details of:

- (a) rostered hours of work;
- (b) educational activities provided;
- (c) paid release time for training program educational activities; and
- (d) the name of the Doctor in the Practice who will be the designated supervisor. A supervisor must be available for consultation during all periods of duty.

**31.2** The Program Teaching Practice will provide the Parent Hospital with details of any leave taken (including personal/carer's leave and annual leave) during the general practice rotation.

**31.3** A maximum of one week's annual leave may be taken in any 13 week Program Teaching Practice rotation. The Program Teaching Practice must pay this annual leave entitlement either to the Doctor, if leave is taken, or to the Parent Hospital for subsequent payment to the Doctor when leave is taken.

**31.4** The individual Program Teaching Practice must pay the respective Doctor for time worked in the period of employment with the Program Teaching Practice.

**31.5** The individual Program Teaching Practice shall be responsible for:

- (a) payment of personal/carer's leave (to the extent of any credit advised by the Parent Hospital) taken whilst the Doctor is in a period of employment with the Program Teaching Practice; and
- (b) pro-rata annual leave payment to the Doctor, either paid for leave taken or pay an equivalent amount to the Parent Hospital;
- (c) workers compensation for the Doctor during the period of the employment with the Program Teaching Practice.

- 31.6** A Doctor rotated to a Program Teaching Practice situated more than 50 kilometres from the Parent Hospital must be provided with accommodation, including married accommodation if requested, during the period of Rotation free of charge. Married accommodation shall mean married quarters for married Doctors or Doctors in a domestic relationship accompanied by their family.
- 31.7** A Doctor rotated to a Program Teaching Practice situated more than 50 kilometres from their Parent Hospital shall be entitled to the Travelling Allowance set out in clause 55 (Travelling Allowance – Use of Private Vehicle) for travel between the Parent Hospital and the Program Teaching Practice:
- (a) at the commencement and termination of Rotation; and
  - (b) once every four weeks of the 13 week Rotation; and
  - (c) for all work-related travel required by the practice.
- 31.8** Payment must only be made pursuant to subclause 31.7 if travel is undertaken by the Doctor.
- 31.9** For the purpose of this clause 31, the Parent Hospital will be the Hospital from which the Doctor is rotated (refer clause 3 definitions). In the event that a Doctor commences the first ever term in Victoria on Rotation the Parent Hospital shall be that Hospital to which the Doctor was appointed.
- 31.10** The Parent Hospital must ensure continuity of employment conditions are met by maintaining such records as are required under this Agreement.
- 31.11** The Parent Hospital must ensure (subject to the appointment being filled) that Rotations to Program Teaching Practices occur and must not cancel Rotations, or recall Doctors during Rotation to meet its own service needs, without the agreement of the Program Teaching Practice.
- 31.12** Out of Hours Work
- (a) The Program Teaching Practice must pay the Doctor for work undertaken in the Program Teaching Practice out of hours or after the completion of 38 hours at the rate of:
    - (i) 40% of all fees generated by the Doctor; or
    - (ii) the applicable entitlement afforded to the Doctor in accordance with the *Medical Practitioners Award 2010*,whichever is the greater.
  - (b) Out of hours pursuant to subclause 31.12(a) above shall mean outside the hours of 8.00 a.m. to 6.00 p.m. Monday to Friday and 8.00 a.m. to 12.00 noon Saturday.
  - (c) The application of this subclause 31.12 shall exclude the Doctor from any entitlement to the On-call (clause 38) or Recall (clause 39) provisions of this Agreement.

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## **32. Transition to Retirement**

- 32.1** A Doctor may advise their Health Service in writing of their intention to retire within the next five years and participate in a retirement transition arrangement.
- 32.2** Transition to retirement arrangements may be proposed and, where agreed, implemented as:
- (a) a flexible working arrangement (see clause 15 (Flexible Working Arrangements)),
  - (b) in writing between the parties, or



- (c) any combination of the above.

**32.3** A transition to retirement arrangement may include but is not limited to:

- (a) a reduction in their EFT;
- (b) a job share arrangement;
- (c) working in a position at a lower classification or rate of pay.

**32.4** The Health Service will consider, and not unreasonably refuse, a request by a Doctor who wishes to transition to retirement:

- (a) to use accrued Long Service Leave (**LSL**) or Annual Leave for the purpose of reducing the number of days worked per week while retaining their previous employment status; or
- (b) to be appointed to a role that has a lower hourly rate of pay or hours (post transition role), in which case:
  - (i) the Health Service will preserve the accrual of LSL at the time of reduction in salary or hours; and
  - (ii) where LSL is taken or paid out in lieu on termination, the Doctor will be paid LSL hours at the applicable classification and grade, and at the preserved hours, prior to the post transition role until the preserved LSL hours are exhausted.

## PART D – HOURS OF WORK AND RELATED MATTERS

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### 33. Hours of work

#### 33.1 Ordinary Hours of Work per Week

(a) **Doctors other than Registrars**

The ordinary hours of full time work will be 38 hours per week or an average of 38 hours per week over a period of up to four weeks.

(b) **Registrars**

(i) The ordinary hours of full-time work will be 38 hours plus five reasonable additional hours of Training Time (as defined at subclause 3.1(kk)) equalling 43 hours per week or an average of 43 hours per week over a period of up to four weeks.

(ii) The arrangement of hours for Registrars is a long-standing industry arrangement that ensures Registrars have access to Training Time.

(c) **Work continuous except for meal break**

(i) A Doctor's ordinary hours of work and any required extra work, excluding On-Call or Recall (clauses 38 and 39), shall be continuous except for meal breaks.

(ii) A meal break must be at least 30 minutes and is counted as time worked unless the Doctor is unavailable to answer calls during such break.

(iii) A meal break should occur every 6 hours from commencement of the shift.

#### 33.2 Maximum hours and consecutive shifts

(a) A Doctor's hours of work (not inclusive of periods of On-Call) must not exceed 140 hours in two roster weeks, or work more than seven consecutive night shifts unless:

(i) the Doctor has given written consent to waive this entitlement; or

(ii) a genuine medical emergency or disaster situation exists.

(b) A Doctor who has exceeded, or is likely to exceed, the hours of work prescribed in subclause 33.2 as a result of the performance of unrostered overtime, the Doctor should, as soon as practicable, alert the Employer in accordance with subclause 41.2(b).

(c) A Health Service will not be in breach of this clause where the Doctor applies for unrostered overtime after the relevant period expires.

(d) The Health Service will endeavour to roster equitably having regard for all the circumstances including those of the Doctors and the needs of the organisation.

#### 33.3 Hours per Day

Doctors must not be rostered for duty for more than 14 consecutive hours on any given shift unless, in the case of a Registrar, exceptional circumstances exist that require a greater shift length.

#### 33.4 Minimum shift length

Full-time HMOs, MOs and SMOs must not be rostered for duty for less than four hours.

### 33.5 Averaging does not apply to overtime

Averaging of hours under this clause must not be utilised to reduce or avoid an entitlement prescribed in subclause 36.2 (Overtime Entitlement).

### 33.6 Breaks Between Ordinary Rostered Shifts

- (a) Doctors must be free from duty for at least 10 hours between rostered ordinary shifts.
- (b) To support clause 33.6(a), a Health Service should avoid rostering a Doctor for ordinary duty and standby On-Call consecutively (without a break) except where the period of standby On-Call and ordinary duty, taken together, do not exceed the maximum hours at 33.3. If it is unavoidable and does occur, the terms of 33.6(e) apply.
- (c) Doctors should be free from duty for at least forty-eight (48) hours when moving from night shifts to any other shift arrangement. If working a single night shift, Doctors must be free for at least twenty-three (23) hours.
- (d) Where a Doctor is on General On-Call or Stand-by On-Call and performs duty during an On-Call period (either by returning to their usual place of work or performing duty remotely), a Health Service must have regard to (a) above as well as the obligation to arrange work hours in a way that does not cause an excessive or unsafe work pattern to exist.
- (e) It is acknowledged that duty performed during an On-Call period may impact on occupational health and safety (including consecutive standby On-Call as described at 33.6(b)). As such, a Health Service must:
  - (i) develop a procedure that addresses how occupational health and safety considerations are addressed where they arise (which may include but not be limited to later starting times, earlier finishing times, additional breaks) and expressly encourages Doctors to contact the relevant manager where they have not received a 10-hour break and it may impact on occupational health and safety;
  - (ii) provide the procedure to all Doctors on General On-Call; and
  - (iii) provide induction and training regarding the procedure to all Doctors on General On-Call.

#### **Examples**

*A Doctor is rostered 7am to 6pm with the same roster the following day. Overnight the Doctor is 'on call' for the Health Service.*

*If after leaving the hospital the Doctor is disturbed by telephone calls and the last call is received at 11pm, the Doctor is entitled to have 10 hours off duty and is not required to present to the hospital before 9am the following day. The Doctor will work through to 6pm without loss of pay for the day.*

*If the same Doctor finishes at 6pm on day one and the last telephone call from the Health Service to the Doctor is received by 9pm on day one, the Doctor is required to start work at their normal starting time of 7am the next day.*

*If the same Doctor finishes at 6pm on day one and a call is received at 4.30am the following day, the Doctor has already received a 10 hour break and can start at their normal starting time of 7am.*

### **33.7 Days Off per Fortnight**

- (a) A Doctor must receive 3.5 days off work in each two week period (for a Doctor on night shift the word 'days' is replaced by the word 'nights') as follows:
  - (i) two days off must be consecutive;
  - (ii) the remainder must be either 1.5 consecutive days off or three half days off.
- (b) One half day is defined as a period of at least four hours.

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## **33A. 24 / 7 Rostering**

**33A.1** Where a Health Service rosters Doctors on a 24/7 basis in any part of its organisation, the rosters will include overlap between the shifts to allow for handover.

**33A.2** Examples of a 24/7 roster include but are not limited to:

- (a) Three shifts across each twenty-four hour period as follows:
  - (i) a "morning" or "AM" shift;
  - (ii) an "afternoon" or "PM" shift; or
  - (iii) a "night duty" or "ND" shift,with these shifts typically not exceeding 10 hours each.
- (b) Two shifts across each twenty-four hour period as follows:
  - (i) a "morning" or "AM" shift; or
  - (ii) an "afternoon" or "PM" shift,with these shifts typically being at least 12 hours (excluding meal break) but no greater than 14 hours each.

**33A.3** Notwithstanding the typical shift lengths described at subclause 33A.2 shifts will not exceed the limit set out at subclause 33.3.

**33A.4** Nothing in this term prevents other shift configurations (such as "saddle" shifts).

**33A.5** Nothing in this term prevents rosters with an "accrued" time model (such as "Accrued Day Off") through clause 16 (Individual Flexibility Arrangement).

### **33A.6 Existing 24/7 rosters**

Where a Health Service currently has a 24/7 roster, the current roster will be:

- (a) posted as required by clause 35 of this Agreement; and
- (b) available for discussion at the WIC.

### **33A.7 New 24/7 rosters**

It is acknowledged that a Health Service may wish to transition to a permanent 24/7 rosters in a part of its organisation for reasons including but not limited to the meeting of service needs having regard for activity levels. Where this is proposed, the Health Service shall:

- (a) consult as required by clause 10 or 10A (depending on the circumstances);

- (b) provide a copy of the proposed roster to the Association; and
- (c) provide a copy of the roster, following consultation, to the Association.

### **33A.8 Reform to Meet Service Demand - Engagement**

- (a) It is acknowledged that as a result of a range of factors including increases in service demand, more service areas may seek to establish 24/7 rostering over time. To support this, it is also acknowledged that this will require:
  - (i) Additional EFT; and
  - (ii) Consultation with Health Services, Doctors, Specialist Medical Colleges and PMCV with respect to matters including training and accreditation requirements.
- (b) The BPEC will develop a suitable consultation process.

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## **34. Training Time**

### **34.1 Arrangements for rostering and taking Training Time - Protocol**

- (a) Any arrangement for rostering and taking Training Time is subject to the overarching principles set in this clause.
- (b) Training Time must be:
  - (i) rostered within an applicable roster period in a period of five hours per week, unless otherwise agreed in accordance with subclause 34.2(a) below;
  - (ii) rostered in blocks of no less than 30 minutes duration on each occasion;
  - (iii) published in accordance with subclause 34.5;
  - (iv) arranged in a manner that assists in the provision of Training Time where the Doctor is rostered on nights or weekends.
- (c) At the commencement of a Registrar's employment or rotation the Registrar and Health Service must discuss:
  - (i) the forms of training available to the Registrar at the Health Service; and
  - (ii) the most appropriate method of arranging and rostering Training Time.
- (d) In the case of the Health Service designating an accredited Specialist training position, the Doctor is entitled to the same educational opportunities pursuant to this clause (that is, five hours of Training Time as available to a Doctor in an accredited position). In this case, the Health Service must advise the Association.

### **34.2 Other arrangements by agreement**

- (a) Where there is a demonstrable benefit to the Registrar to arrange Training Time in a manner other than that prescribed in subclause 34.1(b)(i) above, Training Time may be arranged in a manner other than 5 hours per week, as follows:
  - (i) a Registrar may agree to accumulate a portion of their weekly Training Time to be utilised in a larger block; and
  - (ii) at all times, Training Time must be arranged in an agreed manner that ensures the quantum of Training Time is not less than what the Registrar

would have received if their Training Time was arranged as prescribed in subclause 34.1(b)(i) above.

- (b) Following reaching agreement in accordance with this subclause, the Health Service must provide the Registrar with a written schedule of activities that meet the forms and schedule (including dates and times) of Training Time to be undertaken by the Registrar.

### **34.3 Written schedule, changes and disputes**

- (a) Any change to rostered Training Time shall be recorded in writing by the Health Service with that written record being available for inspection.
- (b) Any concerns about compliance with the principles set out in this clause may be referred to the Agreement Implementation Committee established in accordance with subclause 76.10 and any dispute will be dealt with in accordance with clause 12 (Dispute Resolution).

### **34.4 Forms of Training Time**

- (a) The types of activities that are undertaken by Registrars in Training Time each week must be agreed between the Registrar and the Health Service but may include:
  - (i) lectures, tutorials or other situations where formal teaching of the Hospital Registrar(s) occurs in a non-service situation;
  - (ii) clinical meetings organised by a Specialist or university staff equivalent for the purposes of training and education;
  - (iii) personal reading and study, and research activities where a Health Service or university staff Specialist is directly involved in supervision and the results of the research are intended for publication; and
  - (iv) Grand (teaching) ward rounds can be included if specifically designed for teaching purposes and attended and run by an eminent medical person.
- (b) Training Time activities can be undertaken on or off site.
- (c) Unplanned or impromptu training opportunities may be considered to be part of the Doctor's Training Time.

### **34.5 Rostering of Training Time**

- (a) Training Time must be published on the document that is relied upon by all clinical and non-clinical staff within the Health Service to identify Registrars' hours of work, such as a Roster in accordance with subclause 35.1 (Roster Hours) or in another agreed document in accordance with subclauses (b)-(d) below.
- (b) In circumstances where the current roosting technology does not allow Training Time to be adequately published in the roster, another agreed document may be utilised provided the document is relied upon by clinical and non-clinical staff within the Health Service to identify a Registrar's hours of work.
- (c) For the purposes of reaching agreement on the document prescribed in subclause (b) above, any proposed alternative document will be referred to the local Agreement Implementation Committee.
- (d) For the avoidance of doubt, the recording of Training Time in a manner visible to relevant clinical and non-clinical staff is to ensure the rostered Training Time can be dedicated to training and free from service calls, with the exception of calls about genuine medical emergencies or disaster situations. Any arrangement should

identify appropriate alternative clinical contacts and the forfeiture of the Registrar's pager for the duration of the Training Time where this does not create an identifiable clinical risk that cannot be managed in the Registrar's absence.

### 34.6 Inspection of Training Time records

Training Time records will be available for inspection by an accredited representative of the Association.

### 34.7 Reallocation of Training Time

- (a) Where a Doctor is rostered to undertake scheduled Training Time and:
- (i) is unable to be released, or
  - (ii) Training Time is interrupted due to a genuine medical emergency or disaster situation, or
  - (iii) the scheduled Training Time does not occur for any other reason,
- the Health Service must re-allocate the Training Time to be undertaken by the end of the following pay period or, at the Registrar's election, a later roster period.

### 34.8 Inability to take Training Time when allocated

- (a) In the instance where a Doctor cannot take Training Time when allocated, the Health Service must reallocate any untaken Training Time by no later than four weeks from the date the Training Time was originally scheduled.
- (b) If at the end of the four week period, Training Time has not been taken, the hospital must pay the Doctor:
- (i) at the applicable overtime rates for the times in the roster when work was performed in excess of ordinary hours; and
  - (ii) any portion of Training Time not taken in the pay period at the ordinary rate of pay.

#### **Example 1**

*A Doctor is rostered to perform 76 ordinary hours plus 10 hours Training Time in a pay period across a pay fortnight. She subsequently is not able to take the Training Time and performs work for the 10 hours that was rostered for Training Time. The Training Time is not able to be reallocated in the pay period.*

*The appropriate payment to be made is:*

- *76 hours paid at the ordinary rate of pay.*
- *10 hours paid at the appropriate overtime rates where work was performed above ordinary hours.*
- *10 hours paid at the ordinary rate of pay for Training Time that was rostered, not able to be taken and not able to be reallocated within the pay period.*

#### **Example 2**

*A Doctor is rostered to perform 76 ordinary hours plus 10 hours Training Time in a pay period across a pay fortnight. He is able to access 4 hours of scheduled Training Time in the fortnight. The remaining 6 hours of Training Time was agreed to be carried over and rostered into the next pay period and the Doctor performed work during these 6 hours.*

*The appropriate payment to be made is:*

- *76 hours paid at the ordinary rate of pay.*
- *6 hours paid at the appropriate overtime rates where work was performed above ordinary hours.*
- *4 hours paid at the ordinary rate of pay for Training Time that was rostered and taken.*
- *The remaining 6 hours of Training Time that was agreed to be carried over and rostered into the next pay period would be rostered in addition to the Doctor's Training Time entitlement for that following fortnight.*

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## **35. Rosters**

### **35.1 Roster Hours**

- (a) The ordinary hours of work for full-time and part-time Doctors must be worked in accordance with the roster or rosters.
- (b) Rosters must be prepared taking into account work that should be completed in rostered working hours including theatre preparation, preparation for ward rounds, completing discharge summaries and (for Registrars only) Training Time in accordance with subclause 34.5.

### **35.2 Roster Posting**

- (a) A roster of at least 28 days duration that states each Doctor's daily working hours and start and finishing times must be posted at least 28 days before the roster comes into operation.
- (b) The roster or rosters must be exhibited at a convenient place accessible to the Doctors to whom it applies.

### **35.3 Roster Design – Safe Hours of Work**

- (a) The provisions of this subclause 35.3 are to be read in conjunction with clause 41 (Workload Management and Review).
- (b) The Health Service must not roster or arrange work hours in a way that causes an excessive or unsafe work pattern to exist and shall apply a framework to consider safe working hours.
- (c) The obligation to work safe hours applies to both the Health Service and Doctors.
- (d) The National Code of Practice – Hours of Work, Shiftwork and Rostering for Hospital Doctors in creating rosters is the recommended framework under which to consider safe working hours issues and will be considered by Health Services in meeting their obligations under this clause.
- (e) At the request of the Ambassador or other authorised representative of the Association, the Health Service will meet to discuss Roster Design – Safe Hours of Work under this clause 35.3
- (f) It is recognised that unrostered overtime can impact safe hours of work. In addition to raising any concerns about safe hours of work as a result of unrostered overtime with the Employer, Doctors will submit timesheets (or equivalent) with any unrostered overtime within the timeframe required by the Health Service.



#### **35.4 Roster Requests**

- (a) A Doctor may make a specific request concerning an upcoming roster period. Such request must be made in writing to the Health Service at least one week prior to the date on which the roster must be posted.
- (b) On receipt of a request made pursuant to subclause 35.4(a) above, the Health Service must consult with the Doctor and other Doctors on the roster to try and accommodate all such requests.
- (c) The final roster will be determined by the Health Service in consideration of all requests received pursuant to subclause 35.4(a) above. The Health Service must advise the Doctors involved of the reasons for its determination where requests have not been satisfied.

#### **35.5 Roster Change**

- (a) Rosters will not change without at least fourteen days' notice of a change in roster other than in an emergency situation external to the Employer or disaster, subject to (b), below
- (b) If the Health Service requires a Doctor to work ordinary hours outside of the existing roster and has not given fourteen days' notice of the change and there is no emergency external to the Employer or disaster situation, the Doctor must be paid a daily allowance (Change of Roster Allowance) as follows:
  - (i) 7 days' or less notice, 5 per cent of the Doctor's ordinary weekly rate of pay for the rostered hours worked per shift; and
  - (ii) 8 to 14 days' notice, 2.5 per cent of the Doctor's ordinary weekly rate of pay for the rostered hours worked per shift.
- (c) Where the Doctor is part-time and has agreed to work shift(s) in addition to those rostered, the Doctor is not entitled to the allowance in subclause 35.5(b) above
- (d) In the circumstances described at (b) (Change of Roster), the Health Service will consult with the Doctor whose roster is being amended to consider the circumstances including the amount of notice, workload impact, the responsibilities of the Doctor (including family responsibilities).

**35.6** For the purposes of this clause 35, an unforeseen medical emergency or disaster situation is not planned leave nor providing a replacement for an unplanned absence.

**35.7** A Doctor may request in writing to alter the roster. The roster may then be altered by agreement with the Health Service.

**35.8** Where Doctors swap rostered shifts, only the penalties and allowances for the shift that the Doctor actually works are payable.

#### **35.9 Rosters and rotation**

Where a roster (including a change of roster) will include a rotation that has not been previously agreed with the Doctor, the Health Service must seek agreement in accordance with clause 24.3 of this Agreement.

#### **35.10 Notification of a Change of Roster**

Health Services will advise Doctors as to how a change of roster will be notified to affected Doctors

**36. Overtime**

*The purpose of this clause is to ensure that all time worked is paid and that timesheets (or equivalent) are submitted within the time required by the Health Service to ensure that Health Services have information relevant to the provision of safe hours.*

**36.1** The provisions of this clause 36 are to be read in conjunction with clause 33 (Hours of Work).

**36.2 Definition**

- (a) Hours worked in excess of ordinary hours per week pursuant to subclause 33.1 will be deemed overtime.
- (b) Overtime may be either rostered or unrostered.

**36.3 Overtime rates**

Where Doctor works overtime the Health Service must, subject to subclauses 36.4 (Part-time doctors) and 36.5 (Conversion of overtime to personal / carer’s leave) pay the Doctor overtime rates as follows:

For overtime worked on	Full-time and part-time overtime rate	Casual overtime rate <sup>1</sup>
	<b>% of ordinary hourly rate</b>	
Monday to Saturday—first 2 hours	150%	175%
Monday to Saturday—after 2 hours	200%	225%
Sunday—all day	200%	225%
Public holidays—all day	250%	275%

<sup>1</sup> Includes 25% casual loading provided in clause 19.3.

**36.4 Part-time doctors**

A part-time Doctor directed by a Health Service to work rostered hours in excess of their contracted hours, will be paid overtime for those hours except where:

- (a) A part time Doctor who is offered and accepts additional rostered hours will be paid their ordinary rate of pay until their total weekly hours of work exceed the full-time ordinary hours for their classification prescribed in clause 33 (Hours of Work).

**36.5 Conversion of overtime to personal / carer’s leave**

Overtime may be converted into carer’s leave in accordance with subclause 61.3(c)

**36.6 Approval and Payment of Overtime**

- (a) Overtime must, where reasonably practicable, be authorised in advance, subject to the provisions below.
- (b) Rostered overtime is authorised in advance.

- (c) Unrostered overtime should, where reasonably practicable, be authorised in advance. Where unrostered overtime is not authorised in advance, it will be deemed to be authorised where it satisfies the requirements of the Health Service's Unrostered Overtime Protocol.
- (d) Where unrostered overtime is neither approved in advance nor approved in accordance with the Health Service's Unrostered Overtime Protocol, the Doctor will be paid for the overtime hours worked where it is submitted on a timesheet (or equivalent) within the time required by the Health Service save that:
  - (i) if there is a dispute as to whether the hours were worked by the Doctor, the Health Service and Doctor will seek to resolve that dispute through the Dispute Settling Procedures of this Agreement; and
  - (ii) nothing in this term limits the ability of the Health Service to review the reason the overtime was worked and to take reasonable management steps to reduce the need for overtime to be worked so far as is practicable, including having regard for its obligations under clause 41 (Workload Management and Review) of this Agreement,

### **36.7 Unrostered Overtime - Protocols**

- (a) Each Health Service shall have an Unrostered Overtime Protocol (**Protocol**) where overtime that has not been authorised in advance but has been worked will be deemed authorised and paid if it meets appropriate, clearly defined criteria.
- (b) The Protocol will be structured on the following basis:
  - (i) the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;
  - (ii) it was not practicable for the authorisation of the overtime to have been made in advance of the Doctor performing the work;
  - (iii) the Doctor has claimed for retrospective authorisation of overtime as soon as practicable after the overtime was worked and no later than the completion of that pay fortnight;
  - (iv) the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Health Service audit and review;
  - (v) the claim for overtime must be reviewed the person authorised by the Health Service to do so within 14 days of the claim being submitted; and
  - (vi) where unrostered overtime is worked and not approved in advance or consistent with this Unrostered Overtime Protocol, it will be paid but the Health Service may review the reason for the overtime with a view to ensuring safe working hours.
- (c) Clause 27.2(h) of this Agreement provides that a copy of the Protocol shall be included in the Unit Handbook.

### **36.8 Late lodgement of overtime**

- (a) Where unrostered Overtime is worked but not submitted within the time required by the Health Service and was:
  - (i) not authorised in advance; or
  - (ii) not worked consistent with the Protocol,

the Doctor will be paid overtime subject to providing reasonable evidence of the hours worked to the Health Service.

- (b) Where a Doctor does not submit a claim for overtime within the timeframe required by the Health Service as described at (a) above, the Health Service may seek an explanation and take reasonable management steps as a result.

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## **37. Penalty payments**

**37.1** The provisions of this clause 37 are to be read in conjunction with subclauses 42.7(d) and 42.7(e) (Rate of Pay).

### **37.2 Saturday and Sunday Work**

- (a) Any ordinary hours performed between midnight Friday and midnight Sunday must be paid at 150% of the Doctor's ordinary hourly rate of pay.
- (b) For hours worked between midnight Friday and midnight Sunday that are in excess of ordinary hours pursuant to subclause 33.1, overtime rates pursuant to subclause 36.2 must be paid.

### **37.3 Shift Penalty**

- (a) An additional 2.5% of the ordinary weekly rate of pay for the 1<sup>st</sup> year of experience rate applicable to the Doctor's classification must be paid for each shift worked for a rostered shift finishing after 6 p.m.
- (b) From 1 March 2023 onwards, where a Doctor works a rostered shift on a Friday that finishes after 6:00pm, the Doctor will be paid a pro-rata allowance proportionate to rostered hours that fall prior to 6:00pm against the full shift length.

Example:

A Doctor is rostered for an eight (8) hour shift from 2:00pm to 10:00pm on a Friday.

The Doctor will receive 50% of the Shift Penalty Payment as four hours of the eight hour shift fall prior to 6:00pm.

In addition, the Doctor will receive Friday Night Evening Shift Penalty of 25% for hours worked from 6:00pm until 10:00pm.

### **37.4 Friday Evening Shifts (from 1 March 2023 onwards)**

- (a) From 1 March 2023 onwards, hours worked on Friday between 6:00pm and midnight will attract a penalty payment of 25% of the Doctor's ordinary base hourly rate of pay for each hour worked within that period.

### **37.5 Night Duty Allowance**

- (a) An additional 25% of the Doctor's ordinary base hourly rate of pay must be paid for:
  - (i) each hour worked during a rostered shift finishing the day after work began; or
  - (ii) each hour worked during a rostered shift beginning after midnight and before 6.30 a.m.

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## **38. On-call**

**38.1** On-call must be identified in the roster including whether it is General On-call at subclause 38.2(a) or Standby On-call at subclause 38.2(b). The provisions of this clause 38 are to be read in conjunction with clause 40 (Telephone Calls to Doctors Outside of Working Hours), clause 39 (Recall) and clause 54 (Telephone Allowance).

### **38.2 Types of On-call**

(a) **General On-call**

- (i) General on-call means an on-call period where the Doctor is rostered to hold themselves available to:
- A. undertake remote recall; that is, provide clinical advice without a return to the workplace (such as by telephone or computer); and/or
  - B. be recalled to their usual place of work.

(b) **Standby On-call**

- (i) Standby on-call means an on-call period where the Doctor is rostered to hold themselves available to be on-call solely for the purpose of returning to the Health Service (for which payment will be made in accordance with clause 39) in circumstances such as replacing unplanned absences or to address clinical need and does not provide any advice by telephone.
- (ii) Notwithstanding any other term in this clause, the period of standby on-call should be no longer than the specific shift it is designed to cover.

### **38.3 On-call Allowance**

A Doctor rostered on-call -must be paid the on-call Allowance pursuant to Appendix 2, Table 2.2(b) which has been calculated on the following basis:

- (a) 2.5% of the Doctor's ordinary weekly rate of pay; or
- (b) on a public holiday pursuant to clause 63 (Public Holidays), 3.5% of the Doctor's ordinary weekly rate of pay.

### **38.4 Limitations**

- (a) For the purposes of calculating payment, each period of on-call must not exceed 16 hours.
- (b) Where a Doctor is rostered to perform six times 16 hour periods of on-call within six consecutive days, that Doctor must be released from on-call duty for 24 hours paid or unpaid as according to the roster or projected roster.
- (c) The on-call payment does not apply to Doctors who receive payment on a percentage of fees generated basis for out of hours work when on a General Practice Training Program Rotation pursuant to clause 31 (Rotation to a General Practice Training Program).

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## **39. Recall – Return to Workplace**

**39.1** The provisions of this clause 39 are to be read in conjunction with clause 38 (On-Call) and clause 55 (Travelling Allowance – Use of Private Motor Vehicle)

## **39.2 Entitlement**

- (a) A Doctor who is recalled to duty outside rostered hours of duty must be paid for the actual time worked, including time reasonably spent in travelling to and return from work, as follows:
  - (i) 1.5 times the ordinary hourly rate of pay for the first two hours; and then
  - (ii) double the ordinary hourly rate of pay for all additional hours.

## **39.3 Calculation**

- (a) Each recall must stand alone, with a minimum payment of three hours per recall, except as follows:
  - (i) Where a Doctor has been recalled to duty, a further recall payment cannot occur within the initial three hour period except where the Doctor has left the vicinity of the hospital and/or returned to his/her place of residence.
- (b) Recall can only occur where the Doctor is rostered on-call and where an authorised Senior Officer of the Health Service has given authority for the recall. This subclause does not apply where there is a genuine medical emergency or disaster.
- (c) Where a Doctor is recalled for more than 10 hours the Doctor must receive 24 hours free from duty, paid or unpaid according to the roster or the projected roster.
- (d) Recall payments must not apply to Doctors who receive payment on a percentage of fees generated basis for out of hours work whilst on Rotation to a General Practice Training Program pursuant to clause 31 (Rotation to a General Practice Training Program).

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## **39A. Recall – Without Returning to Workplace**

- 39A.1** The provisions of this clause 39A are to be read in conjunction with clause 40 (Telephone Calls to Doctors Outside of Working Hours).
- 39A.2** Where recall to duty can be managed without the Doctor having to return to their workplace, such as by telephone or computer, the Employee will be paid a minimum of 1 hour at the appropriate overtime rate for each occasion, provided that multiple recalls within a discrete hour will not attract additional payment.
- 39A.3** Remote recall should only occur where the Doctor is rostered on-call and in accordance with clause 40 (Telephone calls to Doctors outside of Working Hours) below.
- 39A.4** Doctors who undertake remote recall will submit information to the health service as required within the timeframe set by the health service.

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## **40. Telephone Calls to Doctors Outside of Working Hours**

- 40.1** The provisions of this clause 40 are to be read in conjunction with clause 38 (On-call).
- 40.2** The Health Service must have mandatory Protocols in operation that govern the use of telephone consultations with Doctors who are on-call. The Protocols must ensure:
  - (a) the number of trivial or unnecessary telephone calls made to Doctors are controlled; and
  - (b) the overall numbers of telephone calls made to Doctors do not increase over time as a result of the changed on-call allowance and particularly in comparison with other health professionals.

- 40.3 The Association may review the form and application of the Protocols to ensure their effective operation.
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## 41. Workload Management and Review

- 41.1 The provisions of this clause are to be read in conjunction with subclause 35.3 (Roster Design – Safe Hours of Work).

### 41.2 Safe Workload

- (a) The Health Service is obliged by the OHS Act to provide a safe workplace. This includes ensuring that workloads are not unreasonable (including from unrostered overtime). It is recognised that managing workload is necessary to ensure a safe work environment and to ensure that the operational requirements of the Health Service are met.
- (b) Where a Doctor believes that a Health Service requires the Doctor to perform work in a manner that is unsafe (including from unrostered overtime), the Doctor may first discuss the matter with the Health Service to resolve the issues. If no resolution can be found, the Doctor may utilise the Dispute Resolution Procedure set out in clause 12 of this Agreement.
- (c) Nothing in this clause restricts the Association from assisting a Doctor during discussions with the Health Service for the purpose of this clause or utilising the Dispute Resolution Procedure set out in clause 12 of this Agreement.

### 41.3 Assignment of Work

- (a) The Health Service will ensure that the type and volume of work assigned to the Doctor is reasonable with regard to the Doctor's skills, abilities, capacity and availability to perform.
- (b) In considering the work to be assigned to the Doctor, the Health Service must identify the level and type of administrative support available to the Doctor, and must ensure that appropriate levels of administrative support are provided.

### 41.4 Consultation

- (a) The Health Service and Doctor shall consult regularly regarding the Doctor's workload.
- (b) The Health Service shall review workloads of Doctors and particular units. The Association or an Ambassador may request to discuss these at any time. Where a formal review is undertaken, that review will be in writing and kept.

### 41.5 Review

- (a) The workload review must be conducted by someone appropriately experienced and who is familiar with the unit and the duties involved.
- (b) A Doctor may request a workload review at any time (including from unrostered overtime). The purpose of the review is to identify whether the Doctor's workload is safe and reasonable. Where a review is requested, the Health Service and Doctor shall consult and set out the Doctor's current duties and responsibilities in writing including each of the following elements where relevant:
  - (i) **Direct Public Patient Care and Related Activities** – including ward rounds, outpatient clinics, pre-operative assessment, operating time, post-operative care, unit clinical meetings, inter-unit consultations, completion of operation reports, discharge summaries, case mix information and management of waiting lists.

- (ii) **Management Administrative Responsibilities** – including roster preparation, budget documents, Health Service reports.
  - (iii) **Clinical Research** as required by the Health Service.
  - (iv) **Practice in a Distant Location** – including time taken to travel to and from the distant location.
- (c) The Health Service and Doctor shall calculate the hours required to perform the tasks and responsibilities set out in writing. This includes taking into account that some aspects of the routine workload occur more frequently than others.
- (d) The Health Service and Doctor shall review the responsibilities and duties and any amendment to the responsibilities and duties to ensure a safe and reasonable workload shall be recorded in writing.

#### **41.6 Disputes**

In the event of a dispute as to whether a workload is safe, clause 12 (Dispute Resolution) shall apply. Neither party will be prejudiced by any alteration to workload to ensure a safe workload before the dispute is resolved.



## **PART E – REMUNERATION AND RELATED MATTERS**

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### **42. Remuneration and remuneration increases**

**42.1** Weekly rates of pay will be increased by the amounts set out below:

- (a) 2.75% from the first pay period commencing on or after 1 March 2022;
- (b) 2.5% from the first pay period commencing on or after 1 September 2023;
- (c) 2.5% from the first pay period commencing on or after 1 March 2025;

**42.2** The increases in rates of pay and other monetary entitlements specified in this Agreement have been agreed on the understanding that they will be the increases actually paid to the Doctors during the life of this Agreement. Where a Doctor's remuneration has been negotiated as an annualised salary, the increase will apply to this annualised rate.

**42.3** Existing work-related allowances will increase in accordance with the salary increases in subclause 42.1 above.

**42.4** The weekly rates of pay and allowances for the life of this Agreement are set out in Appendix 2.

**42.5** The increases in subclause 42.1 will not apply to private practice bonuses except where these have been included in a rolled up or annualised salary arrangement.

#### **42.6 Patience in bargaining payment**

At the commencement of this Agreement, all Doctors will receive a once off lump sum payment of 2.5% of their ordinary wages calculated between 1 January 2022 and 28 February 2022.

#### **42.7 Other matters**

- (a) Doctors must be paid the rate of pay consistent with their correct classification prescribed in Appendix 2.
- (b) Unless subclause (c) applies, the correct classification and rate of pay of a Doctor is based on that Doctor's years of experience as defined at subclause 3.1(m) (Experience).
- (c) Where a Doctor has been appointed by a Health Service as a Registrar the Doctor will progress annually through the incremental pay scale of the Registrar classification from his or her date of commencing work as a Registrar; provided that, where a Registrar moves from one recognised Specialty stream to another, he or she will not progress to the next higher annual incremental level for a further period of 12 months (refer subclause 3.1(bb)).
- (d) Where a Doctor has performed duty that entitles that Doctor to more than one penalty, only the penalty of the higher value will be payable. For the purposes of this clause, 'penalty' also means overtime payable pursuant to clause 36.
- (e) Penalties must be applied to wages but not to allowances.

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### **42A. Employee Records**

#### **42A.1 Employee Records**

- (a) The Act and Regulations set out an Employer's obligations with respect to record keeping including but not limited to:

- (i) a requirement to keep a record that sets out any leave the employee takes and the balance (if any) of the employee's entitlement to that leave from time to time;
  - (ii) the inspection and copying of an employee record by the employee or former employee to whom the record relates; and
  - (iii) the requirement to keep accurate employee records.
- (b) Where an Employer records time and attendance on a Doctor's electronic timecard in excess of the record keeping requirements of the Act and Regulations, a Doctor (or their representative) may request in writing that the Employer make copies of the electronic timecards available within 14 days.
- (c) An Employer is not in breach of this clause, the Act or the Regulations if records prescribed at (a) have not been retained and are unable to be produced.

#### **42A.2 Payslips**

- (a) The Act and Regulations set out an Employer's obligations with respect to pay slips, including but not limited to a requirement to specify:
- (i) the period to which the pay slip relates;
  - (ii) the amount of wages to which the Employee is entitled;
  - (iii) if an amount was deducted from the gross amount of the payment, the name or the name and number of the fund or account into which the deduction was paid; and
  - (iv) the net amount for each payment.
- (b) To the extent reasonably practicable, payslips will record an Employee's accrued annual leave and personal leave.
- (c) Where an adjustment is made to the Doctor's pay to reflect an error arising from another pay period (such as overpayment or an entitlement to an additional payment) the Doctor will be advised in writing.
- (d) *Note: in the event of a proposed deduction for an overpayment, please see clause 46, Recovery of Overpayments.*
- (e) Payslips are important to ensuring that Doctors can be satisfied they are being paid correctly. Where a Doctor has a query about the content of their payslip, the Doctor may:
- (i) raise that query with the Medical Workforce Unit or Payroll Department (where applicable); and
  - (ii) request that the AMA, including the Ambassador, raise any query with the Medical Workforce Unit or Payroll Department (where applicable) on their behalf.

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#### **42B. Daylight Saving**

- 42B.1** If a Doctor works on a shift during which time changes because of the introduction of, or cessation to, daylight saving, that Doctor will be paid for the actual hours worked at the ordinary time rate of pay.

*Example:*

A Doctor is rostered to work a ten hour night shift from 9pm through to 7:30am (including a 30 minute meal break). During the course of this shift, the clock is wound forward one hour due to the commencement of daylight saving.

The Doctor therefore works nine hours. The Doctor is paid nine hours at their ordinary time rate of pay (including any shift penalties or allowances ordinarily payable in respect of this shift).

*Example:*

A Doctor is rostered in a ten hour night shift from 9pm through to 7.30am (including a 30 minute meal break). During the course of this shift, the clock is wound back one hour due to the cessation of daylight saving.

The Doctor therefore works 11 hours. The Doctor is paid 11 hours at their ordinary time rate of pay (including any shift penalties or allowances ordinarily payable in respect of this shift). No overtime is paid for the additional hour worked.

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## **43. Superannuation**

*The subject of superannuation contributions is dealt with extensively by federal legislation which prescribes the obligations and entitlements regarding superannuation. This clause is ancillary to and supplements those provisions.*

### **43.1 Definitions**

In this clause

- (a) **default fund** means the Aware Super superannuation fund (or its successor) while it provides a "MySuper product" as defined by the Act; and
- (b) **preferred superannuation fund** means a fund that meets the definition of a superannuation fund in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

### **43.2 Existing Doctors**

Doctors will have the choice to nominate that the Employer contributions and their own contributions are made to the Doctor's preferred superannuation fund (as defined above).

### **43.3 New Doctors**

The Employer will offer to make superannuation contributions on behalf of a Doctor to:

- (a) the Doctor's preferred superannuation fund; or
- (b) Aware Super superannuation funds (or successor).

### **43.4 Where new Doctors do not nominate fund**

If the Doctor does not nominate a fund, the Employer will pay the Doctor's superannuation contributions to the default fund.

### **43.5 Calculation of superannuation contributions**

Superannuation contributions paid by the Employer will be calculated and paid on:

- (a) ordinary time earnings as defined in the *Superannuation Guarantee (Administration) Act 1992* (Cth) calculated on the Doctor's pre-salary packaging earnings;

- (b) any additional amounts consistent with the trust deed of the superannuation fund; and
- (c) any payment for a period of paid parental leave under subclause 67.5.

#### **43.6 Superannuation during parental leave – from 11 April 2022**

From 11 April 2022, the Employer will make superannuation contributions throughout any period of parental leave, paid or unpaid. Such contributions will be calculated as follows:

- (a) The Doctor's ordinary time earnings as defined in the Superannuation Guarantee (Administration) Act 1992 (Cth) calculated on the Doctors's pre-salary packaging earnings and any additional amounts consistent with the trust deed of the superannuation fund over 26 full pay periods immediately prior to commencing parental leave and divided by 52 (Weekly Parental Leave Super Contribution) any additional amounts consistent with the trust deed of the superannuation fund; and
- (b) The Weekly Parental Leave Super Contribution will be paid during each week of Parental Leave (both paid and unpaid) save that:
  - (i) The Doctor will receive a pro-rata payment for a period less than one (1) week; and
  - (ii) where, during the period of parental leave (either paid or unpaid), the Doctor's rate of pay increases under subclause 42.1, the Doctor's pre-salary packaging earnings as calculated above will be increased accordingly from the relevant date and superannuation paid on the increased amount

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## **44. Salary packaging**

- 44.1** By agreement with the Doctor, the rate of pay specified at Appendix 2 may be salary packaged in accordance with the Health Service's salary packaging program.
- 44.2** As far as possible, it is the intention of the Health Service that the Health Service maintains a worthwhile salary packaging program for all Doctors. However, if legislative or other changes have the effect of increasing the cost of packaging to the Health Service, the cost must be paid by the participating Doctor or the arrangement must be ceased by the Health Service.
- 44.3** The Health Service's salary packaging program will not restrict the Doctor's capacity to salary package any proportion of their salary in any one month.

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## **45. Workers compensation make-up pay**

### **45.1 Entitlement to Workers Compensation Make-up Pay**

- (a) A Doctor on receiving payment of weekly compensation under the WIRC Act is entitled to Workers Compensation Make-up Pay for up to a maximum aggregate period of 39 weeks for any one injury or illness.
- (b) No weekly payments of Workers Compensation Make-up Pay apply:
  - (i) within the first two weeks of new employment;
  - (ii) during the first five working days of incapacity;
  - (iii) once the Doctor ends employment with the Health Service;
  - (iv) once the Health Service terminates the employment of the Doctor for serious or wilful misconduct;

- (v) once there is a cessation or redemption of weekly compensation payments;
  - (vi) for industrial diseases contracted by a gradual process or injury subject to recurrence, aggravation, or acceleration, unless the Doctor has been employed at the time of the incapacity for a minimum period of one month;
  - (vii) for any period of paid annual leave, long service leave or for any paid public holiday.
- (c) In order to qualify for the continuance of Workers Compensation Make-up Pay on termination a Doctor must, if required by the Health Service, provide evidence of the continuing payment of weekly payments of compensation.
- (d) On engagement, a Doctor may be required to declare all workers compensation and/or accident claims made under the WIRC Act in the previous 5 years and in the event of defaults or inaccurate information being deliberately and knowingly declared the Health Service may require the Doctor to forfeit their entitlement to Workers Compensation Make-up Pay under this Agreement.

#### **45.2 Payment Calculation – Total Incapacity**

- (a) Where a Doctor is deemed totally incapacitated under the WIRC Act, the Doctor is entitled to a weekly payment of an amount representing the difference between:
- (i) the total amount of compensation paid under the WIRC Act during the period of incapacity for the week; and
  - (ii) the weekly ordinary rate of pay set out in Appendix 2, and any over-Agreement payment being paid to the Doctor at the date of the injury and which would have been payable for the Doctor's classification for the week in question if they had been performing their normal duties.

#### **45.3 Payment Calculation – Partial Incapacity**

- (a) Where a Doctor is deemed partially incapacitated under the WIRC Act, the Doctor is entitled to weekly payment of an amount representing the difference between:
- (i) the total amount of compensation paid under the WIRC Act during the period of incapacity for the week, together with the average weekly amount they are earning; and
  - (ii) the weekly rate as set out in Appendix 2 and any over-Agreement payment being paid to the Doctor at the date of injury and which would have been payable for the Doctor's classification for the week in question if they had been performing their normal duties.

#### **45.4 Payment for Part of a Week**

Where the Doctor is incapacitated for part of a week the Doctor must receive pro-rata Workers Compensation Make-up Pay.

#### **45.5 Notice of Injury**

A Doctor must ensure that notice in writing of their injury is given to their Health Service as soon as reasonably practicable after the injury or illness.

#### **45.6 Variations in Compensation Rates**

Any changes in compensation rates under the WIRC Act must not increase the amount of Workers Compensation Make-up Pay above the amount that would have been payable had the rates of compensation remained unchanged.

## **45.7 Civil Damages**

- (a) A Doctor receiving, or who has received, Workers Compensation Make-up Pay must advise their Health Service of any action they may institute or any claim they make for damages. The Doctor must, if requested, provide an authority to the Health Service entitling the Health Service to a charge upon any money payable pursuant to any judgment or settlement on that injury.
- (b) Where a Doctor obtains a judgment or settlement for damages in respect of an injury for which they have received Workers Compensation Make-up Pay the liability to pay Workers Compensation Make-up Pay must cease from the date of the judgment or settlement. If the judgment or settlement for damages is not reduced by the amount of Workers Compensation Make-up Pay made by the Health Service, the Doctor will pay to the Health Service any amount of Workers Compensation Make-up Pay already received in respect of that injury.

## **45.8 Medical Examination**

Where, in accordance with the WIRC Act, a medical referee gives a certificate as to the condition of the Doctor and their fitness for work or specifies work for which the Doctor is fit and such work is made available by the Health Service and is refused by the Doctor or the Doctor fails to commence the work, Workers Compensation Make-up Pay must cease from the date of such refusal or failure to commence the work.

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## **46. Recovery of Overpayments**

### **46.1 Details of overpayment**

Where a Health Service determines that an overpayment has occurred, the Health Service shall provide, in writing, to the relevant Doctor:

- (a) the total amount of overpayment,
- (b) the reason, if any, for the overpayment (i.e. incorrect application of an allowance),
- (c) when the overpayments have occurred,
- (d) the scope to enter into a repayment arrangement within the limits set by the *Financial Management Act 1994* (currently one tenth of the salary or wages, before any deductions),
- (e) propose a time to meet to discuss the overpayment,
- (f) advice that the Doctor is welcome to bring a representative, including a representative of the Association, to any meeting.

### **46.2 Discussion regarding overpayment**

The Health Service and Doctor will meet as soon as practicable to discuss and consider:

- (a) whether it is agreed that the amount identified by the Health Service is an overpayment,
- (b) the amount of any deduction within the limits set by the *Financial Management Act 1994* (currently one tenth of the salary or wages, before any deductions), and
- (c) any proposal put forward by the Doctor with respect to the repayment of the overpayment including any circumstances of hardship which will be dealt with in accordance with the *Financial Management Act 1994*.

**46.3 Decision regarding overpayment**

Following the meeting and after any proposal by the Doctor with respect to the repayment of the overpayment has been considered, the Health Service shall advise the Doctor in writing of its decision regarding repayment.

**46.4 Dispute**

Either the Health Service or Doctor may refer a dispute about an overpayment, including but not limited to the quantum of the overpayment and/or how it is to be repaid, to the Dispute Resolution clause of this Agreement.

**46.5 Other rights**

Nothing in this clause affects the rights or obligations of either party under the *Financial Management Act 1994* including but not limited to:

- (a) The Doctor's right to apply to the relevant Minister for the weekly amount of the deductions to be reduced, and
- (b) The Doctor's right to apply in writing to the relevant Minister to be relieved from all or any of the liability with respect to the repayment of the overpayment.

## PART F – EDUCATION AND PROFESSIONAL DEVELOPMENT

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### 47. Continuing medical education allowance

- 47.1 Doctors are entitled to Continuing Medical Education (**CME**), paid weekly as an allowance described at Appendix 2, Table 2.1.
- 47.2 The CME allowance is payable on a pro-rata basis for part-time Doctors.
- 47.3 The CME allowance is payable on a pro-rata basis for casual Doctors who are replacing a person for a specific term for a period of a fortnight or more.
- 

### 48. Internal Training

- 48.1 Where a Health Service requires compulsory training to be undertaken by a Doctor, the Health Service must provide reasonable time within paid working hours to complete the compulsory training. Such Health Service required compulsory training may include but is not limited to fire, code of conduct, safety, workplace bullying and sexual harassment.
- 48.2 The Health Service will meet the course costs, where applicable.
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### 49. Examination leave

#### 49.1 Entitlement

A Doctor is entitled to a total amount of paid Examination Leave not exceeding eight rostered working days in any one year as described at clause 49.2 below. Use for a purpose not described at clause 49.2 below is not permitted by this clause.

#### 49.2 Use of Examination Leave

- (a) Doctors are entitled to utilise their paid Examination Leave of eight days in the following ways:
- (i) to attend any examination (within Australia or New Zealand):
    - A. necessary to obtain Australian Medical Council (**AMC**) Registration; or
    - B. necessary to obtain a Higher Qualification as defined at subclause 3.1(q) (Definitions – Higher Qualifications) of this Agreement; or
    - C. to enable post graduate studies in the United States; or
    - D. necessary to obtain a relevant qualification as defined at subclause 49.5.
  - (ii) to provide for at least three clear calendar days' off immediately prior to each examination, with Examination Leave to be paid for days that would have been worked according to a projected roster; or
  - (iii) to attend a conference or seminar, which is a requirement for sitting an examination that leads to AMC Registration or a Higher Qualification as defined at subclause 3.1(q) of this Agreement.
- (b) The period of leave must include travel time to and from the centre at which the examination is held.



### 49.3 Notice of Taking Examination Leave

The Doctor must give the Health Service's Director of Medical Services at least four weeks' written notice of their intention to access Examination Leave.

### 49.4 Payment Calculation

Payment of Examination Leave under this clause 49 must be made consistent with the roster or projected roster, excluding overtime and penalties.

### 49.5 Relevant Qualification

- (a) The main criteria for considering relevance for the purpose of subclause 49.2(a)(i)D are:
  - (i) the nature of the education; and
  - (ii) that the education is aligned to a recognised area of medical practice having regard to:
    - A. the clinical or other area of work of the Doctor; and
    - B. the classification and position description of the Doctor.

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## 50. Conference/seminar leave

### 50.1 Entitlement

- (a) A Doctor's entitlement to paid Conference/Seminar leave is up to a total three weeks per year of service as follows:
  - (i) a minimum of one week (**minimum entitlement**); and
  - (ii) up to a further two weeks at the discretion of the Health Service (**additional entitlement**).
- (b) The minimum entitlement of one week each year as described at subclause 50.1(a)(i) may be accrued over two years to suit particular study requirements.
- (c) Paid Conference/Seminar leave, including the minimum entitlement, may be taken in periods of less than a week.

### 50.2 Definitions

In this clause, Conference/Seminar means a conference, workshop or seminar that is directly relevant to the Doctor's role and/or education.

### 50.3 Application for Conference/Seminar leave

- (a) A Doctor must apply for Conference/Seminar leave by
  - (i) 31 March of the year in which the leave will be taken; or
  - (ii) such offer date published by the Health Service; or
  - (iii) otherwise with not less than three months' notice.
- (b) An application for Conference/Seminar leave shall include the nominated dates for taking paid Conference/Seminar leave.
- (c) A Health Service must respond to an application for Conference/Seminar leave:

- (i) within 14 days of the date specified at either clause 50.3(a)(i) or (ii); or
- (ii) for all other applications, within 14 days or other date advised to the Doctor within 14 days, to ensure all applications can be considered rather than a 'first in, best dressed' approach.

#### **50.4 Granting of Conference Leave – Minimum Entitlement**

- (a) A Health Service may only refuse the entitlement where:
  - (i) the refusal is based on circumstances outside the control of the Health Service; and
  - (ii) the reasons for the refusal are provided to the Doctor in writing within 14 days of the application for leave being received by the Health Service.
- (b) A Doctor who has had their application for the minimum one week's paid Conference/Seminar leave refused may utilise the Dispute Resolution Procedure set out in clause 12 of this Agreement.

#### **50.5 Granting of Conference Leave – Additional Entitlement**

- (a) The timing of the conference leave granted under this clause 50 is subject to Health Service operational requirements. Practical restrictions on the ability to release a Doctor at any particular time will exist on some occasions.
- (b) Where for operational reasons, the Health Service cannot accommodate the nominated dates of Conference/Seminar leave nominated by the Doctor, the Health Service must advise the Doctor, in writing, the reasons for not accommodating the nominated dates.
- (c) Where a Doctor who has had their application for their nominated dates refused, the Doctor may utilise the Dispute Resolution Procedure set out in clause 12 of this Agreement.

#### **50.6 Payment Calculation**

- (a) Payment for Conference/Seminar leave pursuant to this clause 50 must be made consistent with the roster or projected roster, excluding overtime and penalties.
- (b) In this clause 50, **projected roster** means the roster the Employee would have worked had they not taken the leave. This can be determined by:
  - (i) the Doctor's pattern of work over the preceding three (3) months or the Doctor's period of employment where the Doctor has been employed for less than 3 months; or
  - (ii) in the absence of a pattern of work, whether the Doctor worked at least 50% of the relevant day over the preceding three (3) months of the Doctor's period of employment where the Doctors has been employed for less than 3 months.

## **PART G – ALLOWANCES AND REIMBURSEMENTS**

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### **51. Higher duties**

- 51.1** A Doctor is deemed to perform Higher Duties where a Doctor is required to perform the full duties in a designated Registrar role for a minimum period equivalent to the lesser of:
- (a) a period of more than five (5) consecutive working days; or
  - (b) a week as prescribed in the Doctor's roster.
- 51.2** Where a Doctor performs Higher Duties, the Doctor will:
- (a) not be paid less than the minimum rate applicable to that higher classification for all time worked in excess of the period prescribed in 51.1(a) or (b), whichever is the lesser;
  - (b) where the Doctor is performing Higher Duties as a Registrar, be entitled to all conditions and benefits of a Registrar for all time worked in excess of the period prescribed in 51.1(a) or (b), whichever is the lesser; and
  - (c) not experience a financial detriment as a result of performing Higher Duties
- 51.3** When calculating the period of consecutive working days prescribed in subclause 51.1(a), rostered days off do not contribute to the calculation, and do not break the period of consecutive shifts.
- 51.4** Subject to subclause 51.2(c), where a HMO/MO works in a designated Registrar role for a period less than outlined in clause 51.1, they will be entitled to be paid at the minimum rate of a first year Registrar, but will not be entitled to any further benefits or allowances of a Registrar.

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### **52. Rotation allowances**

#### **52.1 Location Allowance – When on Rotation**

- (a) A Doctor must be paid a Location Allowance as detailed in Appendix 2, Table 2.3 for each completed week on Rotation, where the Doctor was required to move residence.
- (b) A Doctor may be required to produce evidence that satisfies a reasonable person (eg a statutory declaration) to substantiate that the Doctor moved residence.
- (c) The Location Allowance is designed to defray expenses incurred because the Doctor is required to be on Rotation.

#### **52.2 Travelling Allowances – When on Rotation within Victoria**

- (a) A Doctor rotated to a position at a Rotation Hospital within Victoria must be paid a flat rate Travelling Allowance of \$100 as follows:
  - (i) on commencement of the Rotation; and then
  - (ii) once every three weeks over the 13 week period of Rotation for other than Mildura (refer subclause 52.3(a) below for entitlements when on Rotation to Mildura)

#### **52.3 Mildura**

- (a) In the case of the Doctor being rotated to Mildura, instead of the entitlement described in subclause 52.2 above, the Doctor must receive a return economy class airfare every four weeks of a 13 week Rotation.
- (b) To be eligible for the Travelling Allowance under subclause 52.3(b) above, the Doctor must undertake the travel to and from the city of the Parent Hospital at the relevant times.

#### **52.4 Tasmania**

- (a) A Doctor, rotated to a position at a Rotation Hospital in Tasmania as a part of a College Training Program must be reimbursed for the cost of a return economy class airfare undertaken during each three month rotation as follows:
  - (i) at the beginning and end of the Rotation; and
  - (ii) after the first six weeks of the Rotation.

#### **52.5 Other Australian States**

A Doctor rotated to a position at a Rotation Hospital outside of Victoria but within Australia must be paid a Travelling Allowance equivalent to an economy class return airfare.

#### **52.6 Overseas**

A Doctor rotated to a position at a Rotation Hospital outside of Australia is entitled to an economy class return airfare for themselves and their spouse and children who, on or about the commencement of the Rotation, also travel to the Doctor's Rotation locality.

#### **52.7 Removal Reimbursement – When on Rotation**

A Doctor rotated to a position at a Rotation Hospital located more than 50km from the Parent Hospital for at least six weeks must be reimbursed for the reasonable and actual expenses incurred by the Doctor in the removal of personal belongings to and from the Rotation locality.

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### **53. Meal allowance**

- 53.1** Where a Doctor works in excess of 11 hours in any 24-hour period, an adequate meal must be provided or a Meal Allowance (in excess of 11 hours) as detailed in Appendix 2, Table 2.3 must be paid in lieu; or
  - (a) where a Doctor works in excess of 16 hours in any 24 hour period – two adequate meals must be provided or the Meal Allowance described in subclause 53.1 above and a further Meal Allowance (in excess of 16 hours) as detailed in Appendix 2, Table 2.3 must be paid; and
  - (b) for each six hour period the Doctor works in excess of 16 hours until the shift ends, a further meal must be provided or a further Meal Allowance as detailed in Appendix 2, Table 2.3 must be paid.

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### **54. Telephone allowance**

When the Health Service requires a Doctor to be in telephone contact for work purposes, the Health Service must provide a fully funded mobile phone for the Doctor's work use; or fully reimburse the Doctor for all reasonable and actual costs (that is maintenance and rental) incurred by the Doctor when making or receiving work-related telephone calls.

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### **55. Travelling allowance – use of private vehicle**

- 55.1** The provisions of this clause 55 are to be read in conjunction with clause 39 (Recall).

- 55.2** Where a Doctor is required to use personal transport in the performance of his or her duties (including recall travel pursuant to clause 39) they must receive a Travelling Allowance per kilometre in accordance with Appendix 2, Table 2.3.
- 55.3** The Doctor is responsible for maintaining records sufficient to support any claim made pursuant to this clause 55.
- 55.4** A Doctor who is recalled and who has not used personal transport must be provided with suitable return transport at the Health Service's expense.

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## **56. Uniform/laundry allowance**

- 56.1** A Doctor must either:
- (a) be supplied with sufficient suitable and serviceable uniforms that must be laundered at the expense of the Health Service; or
  - (b) be paid a Uniforms and Laundry Allowance pursuant to Appendix 2, Table 2.3. The Health Service must either launder or pay for the laundering of such uniform.
- 56.2** The Health Service may deem scrubs or similar to constitute a uniform for the purposes of this clause 56.
- 56.3** Uniforms supplied pursuant to subclause 56.1(a) above remain the property of the Health Service concerned and must be returned at the completion of the Doctor's period of service at that Health Service.
- 56.4** The Uniforms and Laundry Allowance described in subclause 56.1(b) above must be paid during all absences on leave, except absence on long service leave and absence on personal leave beyond 21 days.

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## **57. Child care costs reimbursement – out of hours work**

- 57.1** Where Doctors are required by the Health Service to work outside their ordinary rostered hours of work and where less than 24 hours' notice of the requirement to perform such overtime work has been given by the Health Service, the Doctor must be reimbursed for reasonable childcare expenses incurred.
- 57.2** The above subclause 57.1 does not apply when a Doctor is rostered on-call and recalled to duty.

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## **57A. Designated Location Bonus**

### **57A.1 Application**

- (a) The purpose of the Designated Location Bonus is to support the recruitment and retention of Doctors employed in Designated Locations in rural and regional Victoria.
- (b) A Designated Location Bonus is payable to a Doctor employed at a Designated Location, subject to the conditions and eligibility terms set out in this clause after the completion of each **Eligible Year of Employment**.
- (c) In this clause 57A:
  - (i) **Designated Location** means the Employers listed in 57A.4 of this clause
  - (ii) **'employed at a Designated Location'** means employed at that Designated Location listed at xx.4 by the Employer who is either named as the Designated Location or who operates the Designated Location.

- (iii) **Eligible Year of Employment** means the twelve month period between anniversary dates of commencement at the Designated Location.

**57A.2 Eligibility**

- (a) Subject to the conditions and eligibility terms set out in this clause, a Doctor employed at a Designated Location will receive the Designated Location Bonus after the completion of an **Eligible Year of Employment**, pro-rata (1/38<sup>th</sup>) for part-time, not payable to casuals.
- (b) The Designated Location Bonus:
  - (i) is not payable where the Doctor is already in receipt of an increased or accelerated base rate of pay, and/or is in receipt of a 'top-up' payment, specifically set to attract/retain the Doctor to/at their location;
  - (ii) will be subject to offset/absorption, either in full or part, where the Doctor is in receipt of remuneration in excess of the minimum prescribed under this Agreement; and
  - (iii) is not payable where a Doctor's engagement at a Designated Location is because of a Rotation (regardless of how the rotation is structured in terms of the employing entity) or other short-term arrangement.

**Example:**

A Doctor is rotated to a Designated Location from 1 March 2023 until 1 March 2024.

As the Doctor's engagement at a Designated Location was because of a Rotation (regardless of how the rotation is structured in terms of the employing entity) they are not eligible for any payment.

**57A.3 Quantum of Bonus**

The Designated Location Bonus is as follows:

<b>Date</b>	<b>Designated Location Bonus</b>
1 July 2023 – 30 June 2024	\$5,000
1 July 2024 - 30 June 2025	\$6,000
1 July 2025 – 30 June 2026	\$7,000

**Example:**

A Doctor is employed at a Designated Location from 1 March 2023 and is still employed at the Designated Location on 1 March 2024, that period is the Eligible Year of Employment. The Doctor is paid per the wage schedule in the Agreement.

As the end of their Eligible Year of Employment is within the 1 July 2023 – 30 June 2024 period, they are entitled to a \$5,000 Designated Location Bonus.

#### **57A.4 Designated Locations**

The Designated Locations are as follows:

- (a) Albury Wodonga Health (Wodonga Hospital only)
- (b) Bairnsdale Regional Health Service;
- (c) Central Gippsland Health Service;
- (d) Echuca Regional Health;
- (e) Gippsland Southern Health Service;
- (f) Goulburn Valley Health
- (g) Horsham Hospital;
- (h) Mildura Base Public Hospital;
- (i) Portland Base Public Hospital;
- (j) South West Healthcare;
- (k) Swan Hill District Health;
- (l) Western District Health Service;
- (m) Bacchus Marsh Hospital;
- (n) Bass Coast Health;
- (o) North East Health Wangaratta; and
- (p) West Gippsland Healthcare Group

## **PART H – PUBLIC HOLIDAYS, LEAVE AND RELATED MATTERS**

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### **58. Leave not applying to casuals**

Casual Doctors are not eligible for the entitlements in this Part H (Public Holidays, Leave and Related Matters) except where a casual entitlement is expressly provided for as a term of this Agreement.

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### **59. Replacement of Doctors when on leave**

- 59.1** Where a Doctor is absent on planned or unplanned leave, the Health Service will replace the Doctor if not replacing will result or will likely result in an unreasonable workload.
- 59.2** Except where the Health Service has already decided to replace the Doctor on leave, the Health Service must, as soon as practicable in the circumstances and with no less than two weeks' notice where there is already notice of the leave, consult with Doctors affected by the absence regarding the workload impact when considering a replacement for a Doctor on leave. The Health Service will record the outcome of this consultation in writing (for example, as an email to the affected Doctors).
- 59.3** Where a Doctor on leave is replaced, the Health Service is responsible for finding the replacement.
- 59.4** A Doctor will not be On-Call for the duration of their leave.
- 59.5** For the purpose of this clause, 'unreasonable workload' means being unable to perform all aspects of their position and/or role during their ordinary hours of work, informed by consultation in writing with the affected Doctor/s.
- 59.6** If replacement of a Doctor is not possible, the Health Service must take reasonable steps to manage the workload of the remaining team. This could include re-prioritisation or amendments to services.
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### **60. Annual leave**

#### **60.1 Entitlement**

- (a) A full-time or part-time Doctor is entitled to paid annual leave as follows:
- (i) 5 weeks if the Doctor is a Shiftworker (as defined in clause 3, as a Doctor required to work in excess of their ordinary hours, or works ordinary hours on more than 10 weekends (defined as a Saturday or Sunday or both) during the leave accrual year); or
  - (ii) 4 weeks if subclause 60.1(a)(i) does not apply.
- (b) If the period during which a Doctor takes paid annual leave includes a day or part-day that is a public holiday in the place where the Doctor is based for work purposes, the Doctor is taken not to be on paid annual leave on that public holiday.

#### **60.2 Time of Taking Annual Leave**

- (a) Paid annual leave may be taken for a period agreed between a Doctor and his or her Health Service.
- (b) The Doctor will submit a written request for annual leave at least 6 weeks prior to the first day of the proposed leave period/s unless it is not reasonable to do so in the circumstances.



- (c) Within 14 days of the leave request, the Health Service will notify the Doctor in writing that their annual leave request is approved or, if not approved, the reasons for the leave not being approved.
- (d) Where it is likely the leave request will be rejected, the Health Service and Doctor will consult on alternative leave days within the 10 day period.
- (e) The Health Service must not unreasonably refuse to agree to a request by the Doctor to take paid annual leave.
- (f) Once annual leave is approved, it must not be unilaterally changed by the Health Service. Where extraordinary circumstances arise, such that the Health Service wishes the Doctor to change the timing of their approved leave, any change may only occur through consultation and agreement.
- (g) Notwithstanding the above and subject to subclause 60.2(h), the Health Service may propose its preferred timing for the taking of Annual Leave by a Doctor (by way of posting within the roster or otherwise in writing to Doctor) to suit operational requirements and to ensure all Doctors are given adequate opportunity to utilise their Annual Leave within the year in which it is accrued.
- (h) A Doctor may request annual leave at a time other than as proposed by the Health Service in accordance with subclauses 60.2(a) to (f) above.
- (i) An HMO year 1 (Intern) may take up to 4 weeks of annual leave after 3 months of employment. All or part of the leave may be taken sooner if agreed.
- (j) A Doctor with more than one year of experience may take annual leave during or after the year in which their entitlement accrues.
- (k) If during a period of paid annual leave a Doctor is absent due to Personal Leave (subclause 61.1(a)) or Compassionate Leave (subclause 64.1(a)), the Doctor is entitled to be taken not to be on paid annual leave for that period and is entitled to instead access any paid entitlement the Doctor may have under clauses 61 or 64 (as applicable).

### **60.3 Payment for Annual Leave**

Prior to going on annual leave, the Doctor must be paid for the period of leave, unless otherwise agreed.

### **60.4 Annual leave in advance**

- (a) A Health Service and Doctor may agree in writing to the Doctor taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must state the amount of leave to be taken in advance and the date on which leave is to commence

NOTE: An example of the type of agreement required by clause 60.4 is set out at Appendix 4– Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Appendix 4 Agreement to Take Annual Leave in Advance.

- (c) The Health Service must keep a copy of any agreement under clause 60.4 as a record.
- (d) If, on the termination of the Doctor's employment, the Doctor has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 60.4, the Health Service may deduct from any money due to the Doctor on termination an amount equal to the amount that was paid to

the Doctor in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

#### **60.5 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 60.5.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 60.5.
- (c) A Health Service and a Doctor may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 60.5 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the Doctor for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 60.5 must be signed by the Health Service.
- (f) The payment must not be less than the amount that would have been payable had the Doctor taken the leave at the time the payment is made.
- (g) An agreement must not result in the Doctor's remaining accrued entitlement to paid annual leave being less than 10 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The Health Service must keep a copy of any agreement under clause 60.5 as an employee record.

NOTE 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 60.5.

NOTE 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 60.5.

NOTE 3: An example of the type of agreement required by clause 60.5 is set out at Appendix 5—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Appendix 5—Agreement to Cash Out Annual Leave.

#### **60.6 Excessive annual leave accruals: general provision**

- (a) A doctor has an **excessive leave accrual** if:
  - (i) **prior to 1 January 2023**, the Doctor has accrued more than 15 weeks' paid annual leave having regard to their current fraction; or
  - (ii) **on or after 1 January 2023**, the Doctor has accrued more than 10 weeks' paid annual leave having regard to their current fraction.
- (b) If a Doctor has an excessive leave accrual, the Health Service or the Doctor may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 60.7 sets out how a Health Service may direct a Doctor who has an excessive annual leave accrual to take paid annual leave.

- (d) Clause 60.8 sets out how a Doctor who has an excessive leave accrual may require a Health Service to grant paid annual leave requested by the Doctor.

**60.7 Excessive annual leave accruals: Managing excess leave**

- (a) If a Health Service has genuinely tried to reach agreement with a Doctor under clause 60.6(b) but agreement is not reached (including because the Doctor refuses to confer), the Health Service may require the Doctor by a notice in writing to take one or more periods of paid annual leave. Any discussions should take into account the Doctor's workload and the availability of suitable relief staff.
- (b) However, the requirement by the Health Service under clause 60.7(a):
  - (i) is of no effect if the doctor has made a request for leave in accordance with subclause 60.7 and such request has been declined in the previous 12 months; and
  - (ii) is of no effect if it would result at any time in the Doctor's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under 60.6, 60.7, or 60.8 or otherwise agreed by the Health Service and Doctor) are taken into account; and
  - (iii) must not require the Doctor to take any period of paid annual leave of less than one week; and
  - (iv) must not require the Doctor to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (v) must not be inconsistent with any leave arrangement agreed by the Health Service and Doctor.
- (c) The Doctor must take paid annual leave in accordance with a notice under clause 60.6(a) that is in effect.
- (d) A Doctor to whom a notice has been given under clause 60.7(a) may request to take a period of paid annual leave as if the notice had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in clause 60.7(d) may result in the direction ceasing to have effect. See clause 60.7(b)(i).

NOTE 2: Under section 88(2) of the Act, the Health Service must not unreasonably refuse to agree to a request by the Doctor to take paid annual leave.

**60.8 Excessive annual leave accruals: request by Doctor for leave**

- (a) If a Doctor has genuinely tried to reach agreement with a Health Service under clause 60.6(b) but agreement is not reached (including because the Health Service refuses to confer), the Doctor may give a written notice to the Health Service requesting to take one or more periods of paid annual leave.
- (b) However, a Doctor may only give a notice to the Health Service under clause 60.8(a) if:
  - (i) the Doctor has had an excessive leave accrual for more than 3 months at the time of giving the notice; and
  - (ii) the Doctor has not been given a direction under clause 60.7(a) that, when any other paid annual leave arrangements (whether made under clause 60.6, 60.7 or 60.8 or otherwise agreed by the Health Service and

Doctor) are taken into account, would eliminate the Doctor's excessive leave accrual.

- (c) A notice given by a Doctor under clause 60.7(a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 60.6, 60.7 or 60.8 or otherwise agreed by the Health Service and Doctor) are taken into account; or
  - (ii) provide for the Doctor to take any period of paid annual leave of less than one week; or
  - (iii) provide for the Doctor to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the Health Service and Doctor.
- (d) A Doctor is not entitled to request by a notice under clause 60.8(a) more than 5 weeks' paid annual leave in any period of 12 months.
- (e) The Health Service must grant paid annual leave requested by a notice under clause 60.8(a).

#### **60.9 Effect of Other Leave**

If the period during which a Doctor takes paid annual leave includes a period of any other approved leave (including personal/carer's leave), other than unpaid parental leave or community service leave, the Doctor is taken not to be on paid annual leave for the period of that other leave.

#### **60.10 Effect of Termination**

Where the Doctor's employment with a Health Service is terminated, the Doctor must be paid in lieu of any untaken accrued annual leave. Pro-rata payment shall be made if the Doctor has been employed for less than 12 months.

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## **61. Personal (sick)/carer's leave**

### **61.1 Entitlement**

- (a) Paid personal/carer's leave will be available to a Doctor when they are absent because of:
  - (i) personal illness or injury;
  - (ii) personal illness or injury of an immediate family or household member who requires the Doctor's care or support;
  - (iii) an unexpected emergency affecting an immediate family or household member who requires the Doctor's care or support; or
  - (iv) the requirement to provide ongoing care and attention to another person who is wholly or substantially dependent on the Doctor, provided that the care and attention is not wholly or substantially on a commercial basis.
- (b) A Doctor is entitled to 28 days paid personal/carer's leave for each year of service. Unused personal/carer's leave accumulates from year to year.

- (c) When a Doctor takes personal/carer's leave during a period of rostered duty, the leave must be paid at the ordinary weekly rate of pay on the basis of the projected roster for a maximum of 14 consecutive days. For all personal/carer's leave beyond 14 consecutive days the Doctor must be paid at the rate of 7.6 hours per day for HMOs, MOs and SMOs and 8.6 hours per day for Registrars, save that a Doctor will not be paid less than the Doctor's base rate of pay for the Doctor's ordinary hours of work in the period of paid personal/carer's leave.

## **61.2 Immediate Family or Household**

- (a) The term immediate family includes:
  - (i) spouse (including a former spouse, a de facto partner and a former de facto partner) of the Doctor. A de facto partner means a person who, although not legally married to the Doctor, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the Doctor and the person are of the same sex or different sexes); and
  - (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the Doctor or spouse of the Doctor.

## **61.3 Use of Accumulated Personal/Carer's Leave**

- (a) A Doctor is entitled to use accumulated personal/carer's leave for the purposes of this clause where the current year's personal/carer's leave entitlement has been exhausted.
- (b) The Doctor may request the Health Service's consent to take up to five days' annual leave in any one year as carer's leave.
- (c) The Doctor may request the Health Service's consent to take time off in lieu of payment for overtime for carer's leave purposes. One hour of overtime worked is equal to one hour of time off for carer's leave.
- (d) The Doctor, on his or her request, must be paid for the overtime worked if the time off in lieu has not been taken as carer's leave within four weeks of the overtime being accrued.
- (e) The Doctor may request the Health Service's consent to work make-up time for carer's leave purposes. In this case, the Doctor works the same number of ordinary hours taken as carer's leave during the ordinary spread of hours, but at a later time.

## **61.4 Notice and Evidence Requirements – Personal Leave**

- (a) For three single day absences per year, the Doctor will not be required to provide any supporting evidence to substantiate their claim for personal leave. However, to be eligible for payment, the Doctor will be required to notify the Health Service two hours before the start of the shift, or as soon as practicable (which may be the time after the leave has started).
- (b) For other days absent due to personal illness or injury, the Health Service may require a Doctor to provide evidence of illness as follows:
  - (i) a Medical Certificate from another Doctor, but only in circumstances when the certificate may be properly provided; or
  - (ii) such other reasonable evidence as would satisfy the National Employment Standards (refer s.107 of the Act).

- (c) Personal/carer's leave can be used in addition to worker's compensation payments and Workers Compensation Make-up Pay (refer clause 45) to make up payments to 100% of the Doctor's ordinary weekly rate of pay pursuant to Appendix 2, Table 1.1.

#### **61.5 Notice and Evidence Requirements – Carer's Leave**

- (a) The Doctor, on the Health Service's request, must demonstrate the illness or injury of the person concerned by either Medical Certificate or Statutory Declaration.
- (b) When practical, the Doctor must give the Health Service prior notice of their intended absence due to carer's leave. If not practical to provide prior notice, the Doctor should, where possible give notice by telephone at the first opportunity on the day of the absence beginning. Notice should otherwise be given in accordance with section 107(2)(a) of the Act.
- (c) Notice for the purposes of this subclause 61.5 means estimated date of absence, estimated length of absence, the name of the person to be cared for and their relationship to the Doctor.

#### **61.6 Unpaid Carer's Leave**

Where a Doctor has exhausted all paid personal/carer's leave entitlements, he/she is entitled to take unpaid carer's leave to provide care and support in the circumstances outlined in subclauses 61.1(a)(ii), 61.1(a)(iii) or 61.1(a)(iv). The Health Service and the Doctor will agree on the period. In the absence of agreement the Doctor is entitled to take up to two days' unpaid carer's leave per occasion.

#### **61.7 Absence on Public Holidays**

If the period during which a Doctor takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the Doctor is based for work purposes, the Doctor is taken not to be on paid personal/carer's leave on that public holiday.

#### **61.8 Transfer of Accrued Personal/Carer's Leave**

- (a) Other than those Doctors described at subclause 61.9 below, a Doctor appointed to a Health Service:
  - (i) up to five weeks after his or her termination of appointment at another Hospital or community health centre, not including any period of paid leave, or
  - (ii) up to twenty-four months after his or her termination of employment at another Health Service or community health centre where the Doctor was absent from employment due to the birth or adoption of a child for the period consistent with Long Parental Leave (subclause 67.2(g)) (and provided the Doctor provides evidence that would satisfy a reasonable person as to the reason for the break in employment was consistent with this subclause),

must be credited up to 168 days of the Doctor's accumulated personal/carer's leave.

- (b) The accumulated personal/carer's leave must be credited at the time of appointment.
- (c) A Certificate of Service will be acceptable evidence for the purpose of recognising accrued personal/carer's leave. A certificate in the form set out in Appendix 3 will be acceptable.

#### **61.9 Accrual Protection for Accredited Trainees**

- (a) When a Doctor is employed as part of an accredited Specialist training program but not employed by a Health Service listed in Appendix 1, any personal/carer's leave accrued by the Doctor under this Agreement will be recognised when returning to the employ of a Appendix 1 Health Service, provided that:
  - (i) the break between periods of employment is not more than 2 months duration; and
  - (ii) the personal/carer's leave or service accrued with an employer other than a Health Service listed in Appendix 1 is not recognised.
- (b) The Health Service may require a Doctor to produce a written statement from the previous Health Service that specifies the amount of accumulated personal/carer's leave credited to the Doctor at the time of his or her termination of appointment.

#### **61.10 Casual Doctors – Caring responsibilities**

- (a) Casual Doctors are entitled to be unavailable to attend work or to leave work:
  - (i) if they need to care for members of their immediate family or household who are sick or affected by personal injury and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
  - (ii) upon the death in Australia of an immediate family or household member.
- (b) The Health Service and the Doctor will agree on the period for which the Doctor will be entitled to be unavailable to attend work. In the absence of agreement, the Doctor is entitled to be unavailable to attend work for up to two days per occasion. The Casual Doctor is not entitled to any payment for the period of non-attendance.
- (c) The Health Service will require the Casual Doctor to provide satisfactory evidence to support the taking of leave pursuant to this subclause 61.10.

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## **62. Fitness for Work**

### **62.1 Fit for Work**

- (a) The Health Service is responsible for providing a workplace that is safe and without risk to health for Doctors, so far as is reasonably practicable.
- (b) Each Doctor is responsible for ensuring that they are fit to perform their duties without risk to the safety, health and well-being of themselves and others within the workplace. This responsibility includes compliance with reasonable measures put in place by the Health Service and any related occupational health and safety requirements.
- (c) In the event the Doctor's Employer forms a reasonable belief as defined at subclause (d) below that a Doctor may be unfit to perform their duties, the Health Service will discuss their concerns with the Doctor in a timely manner to promote physical, mental and emotional health so that employees can safely undertake and sustain work.
- (d) In this clause reasonable belief means a belief based on sufficient evidence that supports a conclusion on the balance of probabilities.
- (e) In this clause treating medical practitioner may, where relevant, also include programs such as the Victorian Doctor's Health Program, or a psychologist.
- (f) The Health Service will:

- (i) take all reasonable steps to give the Doctor an opportunity to answer any concerns;
  - (ii) recognise the Doctor's right to have a representative, including an Association representative, at any time when meeting with the Employer;
  - (iii) genuinely consider the Doctor's response with a view to promoting physical, mental and emotional health so that employees can safely undertake and sustain work; and
  - (iv) take these responses into account in considering whether reasonable adjustments can be made in order that the Doctor can safely undertake and sustain work.
- (g) Where, after discussion with the Doctor, the Health Service continues to have a reasonable belief that the Doctor is unfit to perform the duties, the Health Service may request the Doctor's consent to obtain a report from the Doctor's treating medical practitioner regarding the Doctor's fitness for work. The Doctor will advise the Health Service of the Doctor's treating medical practitioner, and the Health Service will provide to the Doctor, in writing, the concerns that form the basis of the reasonable belief to assist and a copy of any correspondence to the Doctor's treating medical practitioner.
- (h) The Doctor will provide a copy of the report to the Health Service.
- (i) The Health Service and Doctor will meet to discuss any report.
- (j) If, on receipt of the report, the Health Service continues to have a reasonable belief that the Doctor is unfit for duty, or the Doctor does not provide a report from the treating medical practitioner, the Health Service may require the Doctor to attend an independent medical practitioner.
- (k) Where the Doctor attends a medical practitioner under either subclauses 62.1(g) or (j) above, the Health Service will:
- (i) provide to the Doctor a copy of any correspondence to the medical practitioner and any resulting report;
  - (ii) pay for the cost of the appointment and report where the Doctor provides an invoice from the medical practitioner and evidence of payment.
  - (iii) provide the Doctor with a copy of any medical report it receives on the Doctor's capacity or fitness for work;
  - (iv) provide the Doctor with paid leave to attend the medical practitioner without deduction from paid leave accruals or entitlements where the appointment occurs at a time the Doctor would ordinarily be rostered to work; and
  - (v) reimburse the Doctor for return travel costs (see clause 55 Travelling Allowance) incurred for the distance between the Doctors ordinary place of residence and the appointment.
- (l) Where the Doctor is:
- (i) directed to attend an appointment at a time the Doctor would not ordinarily be rostered to work; or
  - (ii) the Doctor has no alternative but to attend an appointment at a time the Doctor would not ordinarily be rostered to work;



the Doctor will be paid the ordinary rate of pay for reasonable time taken to travel to and from the appointment and the time taken for the appointment.

- (m) Nothing in this clause 62 prevents a Health Service from taking any reasonable step to ensure a safe work environment in accordance with applicable legislation and this Agreement.
- (n) The Health Service will respect a Doctor's privacy and ensure that any personal information provided by the Doctor or a medical practitioner under this clause 62 is kept confidential.

## 62.2 Reasonable Adjustments

- (a) Where Doctors have a disability (whether permanent or temporary) the Health Service is required to make reasonable adjustments to enable the Doctor to continue to perform their duties, subject to subclause 62.2(b) below.
- (b) A Health Service is not required to make reasonable adjustments if the Doctor could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made.

### (c) Definitions

- (i) **Disability** has the same meaning as section 4 of the EO Act and includes:
  - A. total or partial loss of a bodily function; or
  - B. presence in the body of organisms that may cause disease;
  - C. total or partial loss of a part of the body; or
  - D. malfunction of a part of the body including a mental or psychological disease or disorder or condition or disorder that results in a person learning more slowly than those without the condition or disorder.
- (ii) **Reasonable adjustments** has the same meaning as section 20 of the EO Act and requires consideration of all relevant facts and circumstances including:
  - A. the Doctor's circumstances, including the nature of the disability;
  - B. the nature of the Doctor's role;
  - C. the nature of the adjustment required to accommodate the Doctor's disability;
  - D. the financial circumstances of the Health Service;
  - E. the size and nature of the workplace and the Health Service's business;
  - F. the effect on the workplace and the Health Service's business of making the adjustment including the financial impact, the number of persons who would benefit or be disadvantaged and the impact on efficiency and productivity;
  - G. the consequences for the Health Service in making the adjustment;

- H. the consequences for the Doctor in not making the adjustment.

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## **63. Public holidays**

### **63.1 Entitlement to be absent on a public holiday**

A Doctor shall be entitled to paid time off (or penalty payments for time worked) in respect of public holidays in accordance with this clause.

### **63.2 Public holidays**

- (a) Subject to subclause 63.4 and 63.5, the public holidays to which this clause applies are the days determined under Victorian law as public holidays in respect of the following occasions:
- (i) New Year's Day, Australia Day, Christmas Day and Boxing Day; and
  - (ii) Good Friday, the Saturday immediately before Easter Sunday (Easter Saturday), Easter Monday, Anzac Day, Queen's Birthday and Labour Day; and
  - (iii) Melbourne Cup Day, or in lieu of Melbourne Cup Day, some other day as determined under Victorian law for a particular locality; and
  - (iv) any additional public holiday declared or prescribed in Victoria or a locality in respect of occasions other than those set out in subclause 63.1(a)(i) above.
  - (v) if a day or days are not determined in respect of any of the occasions those set out in subclauses 63.2(a)(i), (ii) or (iii) above under Victorian law in any year, the public holiday for that occasion will be the day or date upon which the public holiday was observed in the previous year.

### **63.3 Applicability of penalty payments for some public holidays falling on a weekend**

- (a) When Christmas Day, Australia Day, Boxing Day, or New Year's Day (**Actual Day**) is a Saturday or a Sunday, and a substitute or additional holiday is determined under Victorian law on another day in respect of any of those occasions (**Other Day**):
- (i) Weekend Workers and casual Doctors shall receive penalty payments pursuant to subclause 63.7 for time worked on the Actual Day or on the Other Day if the Doctor does not work ordinary hours on the Actual Day; and
  - (ii) All other Doctors will receive penalty payments pursuant to subclause 63.7 for time worked on the Other Day.
- (b) For the purpose of this clause only, a Weekend Worker is a Doctor who works ordinary hours on a Saturday or Sunday.

### **63.4 Substitution of one public holiday for another**

- (a) A Health Service, with the agreement of the Association, may substitute another day for any prescribed in this clause other than Christmas Day, Boxing Day, New Year's Day and Australia Day as follows:
- (i) A Health Service and its Doctors may agree to substitute another day for any prescribed in this clause (other than Christmas Day, Boxing Day, New Year's Day and Australia Day).

- (ii) An agreement pursuant to subclause 63.4(a)(i) shall be recorded in writing and be available to every affected Doctor.
- (iii) The Association shall be informed of an agreement pursuant to subclause 63.4(a)(i) and may within seven days refuse to accept it. The Association will not unreasonably refuse to accept the agreement.
- (iv) If an Association refuses to accept an agreement, the Health Service, the Doctors and the Association will seek to resolve their differences to their mutual satisfaction.

**63.5 Substitution of one public holiday for another**

- (a) Subject to the ongoing operational needs of the Health Service, a Doctor may, with the prior agreement of the Health Service, substitute a public holiday as defined in this clause with a nominated religious holiday that is not a defined public holiday.
- (b) Where a religious holiday is nominated to be a substitute and the Doctor works on the defined public holiday they will be paid at ordinary time and will be allowed time off on the nominated religious day without loss of pay. Applications are to be made at least one month in advance of the date on which the nominated religious holiday occurs, and the public holiday being substituted.

**63.6 Entitlement to be absent on a public holiday and reasonable request to work**

- (a) A Doctor is entitled to be absent from his or her employment on a day or part-day that is a public holiday in the place where the Doctor is based for work purposes. However, a Health Service may request a Doctor to work on a public holiday provided the request is reasonable.
- (b) If a Health Service requests a Doctor to work on a public holiday, the Doctor may refuse the request if:
  - (i) the request is not reasonable; or
  - (ii) the refusal is reasonable.
- (c) In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:
  - (i) the nature of the Health Service's workplace or enterprise (including its operational requirements), and the nature of the work performed by the Doctor;
  - (ii) the Doctor's personal circumstances, including family responsibilities;
  - (iii) whether the Doctor could reasonably expect that the Health Service might request work on the public holiday;
  - (iv) whether the Doctor is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;
  - (v) the type of employment of the Doctor (for example, whether full-time, part-time, casual or shift-work);
  - (vi) the amount of notice in advance of the public holiday given by the Health Service when making the request;
  - (vii) in relation to the refusal of a request – the amount of notice in advance of the public holiday given by the Doctor when refusing the request; and

- (viii) any other relevant matter.
- (d) If a Doctor is absent from his or her employment on a day or part-day that is a public holiday where the Doctor has ordinary hours of work on that day, the Health Service must pay the Doctor at the Doctor's base rate of pay for the Doctor's ordinary hours of work on the day or part-day.

### **63.7 Penalty Payments in Respect of Public Holidays**

- (a) A Doctor who is requested to and does work on a day or part-day that is a Public holiday (or where Christmas Day, Boxing Day, New Year's Day or Australia Day fall on a weekend, the day to which penalty rates apply pursuant to subclause 63.3) is entitled to be paid for the time worked:
  - (i) at the rate of 250%; or
  - (ii) by mutual agreement, at single time and have 1.5 days added to their annual leave.

### **63.8 Public Holidays occurring on rostered days off or day off**

- (a) Subject to subclause 63.8(b), a full-time Doctor will receive a sum equal to one day's ordinary pay for public holidays that occur on their rostered day off or other day off.
- (b) Where on each occasion an Other Day (as defined) applies as a public holiday in respect of that occasion, and:
  - (i) the Doctor is rostered off for both the Actual Day and the Other Day (as defined), then only one day's payment will be made under subclause 63.8(a); or
  - (ii) the Doctor works only on one of either the Actual Day or the Other Day (as defined), and receives penalty rates for the day worked, the Doctor will not receive a payment under subclause 63.8(a) in respect of the day not worked.

### **63.9 Public holidays and part-time Doctors**

- (a) Subject to clause 63.9(b), a regular part-time Doctor who is not ordinarily required to work on the day on which a public holiday is observed will not be entitled to payment for such public holiday unless they are required to work on that day.
- (b) In determining whether a part-time Doctor who works a rotating roster is entitled to receive the 'rostered off' Agreement benefits for a particular public holiday not worked, the Employer will review the roster pattern of the Doctor over the preceding six months. If the rosters show that the Doctor has worked 50% or more of the days on which a particular public holiday falls, the Doctor will be entitled to receive an amount equal to the Doctor's ordinary rate of pay for the hours the Doctor would normally have worked on that day.

### **63.10 Recall on a public holiday**

A benefit arising from subclauses 63.8 or 63.9 will not be diminished where a Doctor is required to, and does, perform recall work on that day.

### **63.11 Annual leave on a public holiday**

See clause 60 (Annual Leave).

### **63.12 Personal leave on a public holiday**

See clause 61 (Personal/Carer's Leave).

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## **64. Compassionate leave**

### **64.1 Amount of Compassionate Leave**

- (a) Doctors are entitled to two days' compassionate leave on each occasion (a **permissible occasion**) when;
- (i) a member of the Doctor's immediate family or a member of the Doctor's household:
    - A. contracts or develops a personal illness that poses a serious threat to his or her life;
    - B. sustains a personal injury that poses a serious threat to his/her life; or
    - C. dies; or
  - (ii) a Stillborn Child is born, where the Stillborn Child would have been a member of the Doctor's immediate family, or a member of the Doctor's household, if the Stillborn Child had been born alive; or
  - (iii) a Doctor, or a Doctor's spouse or de facto partner, has a miscarriage. This sub-clause 64.1(a)(ii) does not apply if the miscarriage results in a Stillborn Child.
- (b) If the [permissible occasion](#) is the contraction or development of a personal illness, or the sustaining of a personal injury, the [Doctor](#) may take the [compassionate leave](#) for that occasion at any time while the illness or injury persists.

### **64.2 Payment Calculation**

The compassionate leave must be paid for a particular permissible occasion according to the roster or projected roster, not including overtime or penalty rates.

### **64.3 Taking of Leave**

- (a) The Doctor must provide proof of death or illness to the satisfaction of the Health Service.
- (b) Any unused portion of compassionate leave will not accrue from year to year and will not be paid out on termination.
- (c) Such leave does not have to be taken consecutively.
- (d) A Doctor may take unpaid compassionate leave by agreement with the Health Service.
- (e) The Health Service will require the Doctor to provide satisfactory evidence to support the taking of compassionate leave.

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## **65. Prenatal leave**

**65.1** A Doctor required to attend pre-natal appointments or parenting classes that are only available or can only be attended during the Doctor's ordinary rostered shift may, subject to provision of satisfactory evidence of attendance, access his or her personal leave credit.

**65.2** The Doctor must give the Health Service prior notice of the Doctor's intention to take such leave.

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## **66. Pre-adoption leave**

- 66.1** A Doctor seeking to adopt a child is, on the production of satisfactory evidence if required, entitled to unpaid leave for the purpose of attending any interviews or examinations necessary to the adoption procedure.
- 66.2** The Doctor and the Health Service may agree on the length of the unpaid leave.
- 66.3** Where agreement cannot be reached, the Doctor is entitled to take up to two days unpaid leave.
- 66.4** Where paid leave is available to the Doctor, the Health Service may require the Doctor to take such leave instead.

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## **67. Parental Leave**

This clause deals with parental leave, including paid parental leave. The issue of superannuation and parental leave (both paid and unpaid) is addressed at clause 43.5.

### **67.1 Structure of clause**

This clause is structured as follows:

- (a) Definitions: subclause 67.2
- (b) Long parental leave – unpaid: subclause 67.3
- (c) Short parental leave – unpaid: subclause 67.4
- (d) Paid parental leave: subclause 67.5
- (e) Paid parental leave pooling in some circumstances: subclause 67.5A
- (f) Notice and evidence requirements: subclause 67.6
- (g) Parental leave associated with the birth of a Child – additional provisions: subclause 67.7
- (h) Unpaid pre-adoption leave: subclause 67.8
- (i) Where placement does not proceed or continue: subclause 67.9
- (j) Special maternity leave: subclause 67.10
- (k) Variation of period of unpaid parental leave up to 12 months: subclause 67.11
- (l) Right to request extension of period of unpaid parental leave beyond 12 months: subclause 67.12
- (m) Parental leave and other entitlements: subclause 67.13
- (n) Transfer to a safe job: subclause 67.14
- (o) Extension of contract – Parental Leave: subclause 67.15
- (p) Returning to work after a period of parental leave: subclause 67.16
- (q) Replacement Employees: subclause 67.17
- (r) Communication during parental leave – organisational change: subclause 67.18

- (s) Keeping in touch days: subclause 67.19

Other provisions associated with parental leave are also included in this Agreement. Specifically, **prenatal leave** at clause 65, **flexible working arrangements** which includes the right to request to return from parental leave on a part-time basis at clause 15, leave to attend interviews and examinations relevant to adoption leave (**preadoption leave**) at clause 66, and **breastfeeding** at clause 74.

## 67.2 Definitions

For the purposes of this clause:

- (a) **Child** means:
- (i) in relation to birth-related leave, a child (or children from a multiple birth) of the Eligible Employee or the Eligible Employee's Spouse; or
  - (ii) in relation to adoption-related leave, a child (or children) under 16 (as at the day of placement or expected day of placement) who is placed or who is to be placed with the Eligible Employee for the purposes of adoption, other than a child or step-child of the Eligible Employee or of the Spouse of the Eligible Employee or a child who has previously lived continuously with the Eligible Employee for a period of six months or more (**Adopted Child**);
  - (iii) as the case requires, includes a Stillborn Child.
- (b) **Continuous Service** includes continuous service with one and the same Employer or continuous service with more than one Employer including Institutions or Statutory Bodies as defined at subclause 68.X), and includes:
- (i) any period of employment that would count as service under the Act; and
  - (ii) Service as part of a specialist training program accredited by a Specialist Medical College with an employer not covered by this Agreement where the break between the period of employment is not more than two months' duration or such longer period as provided in subclause 1.1(a)(i)(Allowable period of absence for Parental Leave).
- (c) **Eligible Casual Employee** means a casual Employee that has been employed by the Employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months and who has, but for the birth or expected birth of a Child or the decision to adopt a Child, a reasonable expectation of continuing engagement by the Employer on a regular and systematic basis.
- (d) **Eligible Employee** for the purposes of this clause 67 means an Employee who has at least six months' Continuous Service or an Eligible Casual Employee as defined above.
- (e) **Employee Couple** has the same meaning as under the Act.
- (f) **Flexible Long Parental Leave** means the 30 days' unpaid parental leave an Eligible Employee may take under subclause 67.3(g) as part of their 52 weeks' entitlement of Long Parental Leave.
- (g) **Long Parental Leave** means the 52 weeks' parental leave an Eligible Employee may take under subclause 67.3. A person taking Long Parental Leave under subclause 67.3(a)-(e) is the Primary Carer for this period for the purpose of this clause.

- (h) **Notional Flexible Period** is the period during which the Eligible Employee would be on Flexible Long Parental Leave if the Eligible Employee took leave for all of the Eligible Employee's notified flexible days in a single continuous period.
- (i) **Primary Carer** means the person who has responsibility for the care of the Child. Only one person can be the Child's Primary Carer on a particular day.
- (j) **Short Parental Leave** means the up to eight weeks' concurrent parental leave an Eligible Employee who will not be the Primary Carer of a Child may take under subclause 67.4 (Short Parental Leave – Unpaid).
- (k) **Spouse** includes a person to whom the Eligible Employee is married and a de facto partner, former spouse or former de facto spouse of the Employee. A de facto Spouse means a person who lives with the Employee as husband, wife or same-sex partner on a bona fide domestic basis.
- (l) **Stillbirth** means the delivery of a Stillborn Child.
- (m) **Stillborn Child** means::
  - (i) a child who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks; and
  - (ii) who has not breathed since delivery; and
  - (iii) whose heart has not beaten since delivery.

### 67.3 Long Parental Leave – Unpaid

- (a) An Eligible Employee is entitled to 12 months' unpaid Long Parental Leave if:
  - (i) the leave is associated with:
    - (A) the birth of a Child (including a Stillbirth) of the Eligible Employee or the Eligible Employee's Spouse or de-facto partner; or
    - (B) the placement of a Child with the Eligible Employee for adoption; and
  - (ii) the Eligible Employee is the Primary Carer, or in the case of a Stillbirth, the Eligible Employee would have been the Primary Carer if the Child had been born alive.
- (b) Except as provided at subclause 67.3(g) (Flexible Long Parental Leave) and subclause 67.19 (Keeping in Touch Days), the Eligible Employee must take the leave in a single continuous period.
- (c) Where an Eligible Employee is a member of an Employee Couple, except as provided at subclause 67.3(g) (Flexible Long Parental Leave) and 67.4 (Short Parental Leave – Unpaid), parental leave must be taken by only one parent of an Employee Couple at a time in a single continuous period.
- (d) Each member of an Employee Couple may take a separate period of up to 12 months of Long Parental Leave. The period of Long Parental Leave will be reduced by any period of Short Parental Leave taken by the Eligible Employee.
- (e) Subject to subclause 67.3(f), an Eligible Employee may be able to extend a period of unpaid parental leave in accordance with subclause 67.11 (Variation of period of unpaid parental leave (up to 12 months)).



- (f) An Eligible Employee's entitlement to Long Parental Leave (other than Flexible Long Parental Leave) will end on the first day that the Eligible Employee takes Flexible Long Parental Leave. This means that if an Eligible Employee intends on taking a period of continuous unpaid parental leave, they must do so before they take any Flexible Long Parental Leave.

(g) **Flexible Long Parental Leave**

- (i) An Eligible Employee may take up to 30 days of their Long Parental Leave entitlement (**Flexible Long Parental Leave**) during the 24-month period starting on the date of birth (including a Stillbirth) or day of placement of the Child if the requirements of this subclause are satisfied in relation to the leave.
- (ii) The number of days of Flexible Long Parental Leave that the Eligible Employee takes must not be more than the number of flexible days notified to the Employer under subclause 67.6(e)(iii) (subject to any agreement under subclause 67.6(e)(iv)).
- (iii) An Eligible Employee must take the Flexible Long Parental Leave as:
- A. a single continuous period of one or more days; or
  - B. separate periods of one or more days each.
- (iv) An Eligible Employee may take the Flexible Long Parental Leave whether or not they have taken unpaid Long Parental Leave under subclause 67.3(b).
- (v) An Eligible Employee may take Flexible Long Parental Leave after taking one or more periods of unpaid Long Parental Leave under subclause 67.3(b) only if the total of those periods (disregarding any extension under subclause 67.11 or 67.12) is no longer than 12 months, less the employee's Notional Flexible Period, provided that the calculation is based on the assumption that:
- A. the Eligible Employee ordinarily works each day that is not a Saturday or Sunday; and
  - B. there are no public holidays during the period.
- (vi) A member of an Employee Couple (*the first employee*) may take Flexible Long Parental Leave on the same day as the other member of the Employee Couple (*the other employee*) is taking unpaid Long Parental Leave only if the total of all periods of unpaid parental leave the first employee takes at the same time as the other employee is no longer than 8 weeks.

(h) **Hospitalised children – agreement to not take unpaid Long Parental Leave**

- (i) If:
- A. a Child is required to remain in hospital after the Child's birth, or is hospitalised immediately after the Child's birth, including because:
    - 1) the Child was born prematurely; or
    - 2) the Child developed a complication or contracted an illness during the child's period of gestation or at birth; or

- 3) the Child developed a complication or contracted an illness following the Child's birth; and
  - B. an Employee, whether before or after the birth of the Child, gives notice in accordance with subclause 67.6 of the taking of a period of unpaid parental leave (**the original leave period**) in relation to the Child,
- then the Employee may agree with their Employer that the Employee will not take unpaid parental leave for a period (**the permitted work period**) while the Child remains in hospital.
- (ii) If the Employee and Employer so agree, then the following rules have effect:
    - A. the Employee is taken to not be taking unpaid parental leave during the permitted work period;
    - B. the permitted work period does not break the continuity of the original leave period; and
    - C. the Employee is taken to have advised the Employer, for the purposes of subclause 67.6(b), of an end date for the original leave period that is the date on which that period would end if it were extended by a period equal to the permitted work period.
  - (iii) The permitted work period must start after the birth of the Child.
  - (iv) The permitted work period ends at the earliest of the following:
    - A. the time agreed by the Employer and Employee;
    - B. the end of the day of the Child's first discharge from hospital after birth; or
    - C. if the Child dies before being discharged, the end of the day the Child dies.
  - (v) Only one permitted work period may be agreed to under subclause 67.3(h)(i) for which the Employee will not take unpaid parental leave in relation to the Child.
  - (vi) The Employee must, if required by the Employer, give the Employer evidence (including without limitation, a medical certificate) that would satisfy a reasonable person of either or both of the following:
    - A. that subclause 67.3(h)(i)A applies in relation to the child;
    - B. that the Employee is fit for work.

#### **67.4 Short Parental Leave – Unpaid**

- (a) This clause applies to an Eligible Employee who is a member of an Employee Couple.
- (b) An Eligible Employee who will not be the Primary Carer of a Child may take up to eight weeks' leave concurrently with any parental leave taken by the parent who will be the Primary Carer. Short Parental Leave may be taken in separate periods but, unless the Employer agrees, each period must not be shorter than two weeks.

- (c) The period of Short Parental Leave will be deducted from the period of Long Parental Leave to which the Eligible Employee is entitled under subclause 67.3 (if applicable).

## **67.5 Paid Parental Leave**

- (a) An Eligible Employee commencing parental leave is entitled to paid parental leave on the following basis:
  - (i) until 11 April 2022:
    - A. a Primary Carer taking Long Parental Leave will be entitled to 10 weeks' paid parental leave, provided that the Long Parental Leave is taken contemporaneously with the birth or placement of the Child (subject to clause 67.3(h), in which case the Employee taking Long Parental Leave may agree with the Employer that the Employee will not take Long Parental Leave during the permitted work period while the Child remains hospitalised); and
    - B. a non-Primary Carer taking Short Parental Leave will be entitled to one week's paid parental leave;
  - (ii) from 11 April 2022 onwards:
    - A. a Primary Carer taking Long Parental Leave will be entitled to 14 weeks' paid parental leave, provided that the Long Parental Leave is taken contemporaneously with the birth or placement of the Child (subject to clause 67.3(h), in which case the Employee taking Long Parental Leave may agree with the Employer that the Employee will not take Long Parental Leave during the permitted work period while the Child remains hospitalised); and
    - B. a non-Primary Carer taking Short Parental Leave will be entitled to two weeks' paid parental leave,  
  
save that an Eligible Employee is not entitled to both paid Long Parental Leave and paid Short Parental Leave in respect of the same birth or adoption event.
- (b) Paid parental leave is in addition to any relevant Commonwealth Government paid parental leave scheme (subject to the requirements of any applicable legislation).
- (c) The Employer and Eligible Employee may reach agreement as to how the paid parental leave under this Agreement is paid. For example, such leave may be paid in smaller amounts over a longer period, consecutively or concurrently with any relevant Commonwealth Government parental leave scheme (subject to the requirements of any applicable legislation) and may include a voluntary contribution to superannuation.
- (d) Such agreement must be in writing and signed by the parties. The Eligible Employee must nominate a preferred payment arrangement at least four weeks prior to the expected date of birth or date of placement of the Child. In the absence of agreement, such leave will be paid during the ordinary pay periods corresponding with the period of the leave.
- (e) Subject to clause 1.1(b)(in the case of long service leave), a variation to the payment of paid parental leave resulting in, for example, the paid leave being spread over more than 14 weeks does not affect the period of continuous service recognised. For example, an Employee taking 28 weeks at half pay will, for the purpose of calculating continuous service, have fourteen weeks of continuous

service recognised. An Employee taking seven (7) weeks at double pay will have 14 weeks of continuous service recognised.

- (f) The paid parental leave prescribed by this clause will be concurrent with any relevant unpaid entitlement prescribed by the NES / this Agreement.

#### **67.5A Paid Parental leave pooling**

- (a) A Doctor who has an entitlement to paid parental leave under this clause 67 and whose spouse will have an entitlement to paid parental leave under this clause or clause 54 of the Medical Specialists Agreement with respect to the same child may pool the paid leave provided for at clause 67.5 (totalling 16 weeks) subject to:
  - (i) The Doctor and their spouse taking two (2) weeks paid parental leave concurrently;
  - (ii) The paid leave being taken in one continuous period, even though the primary carer may change during that period;
  - (iii) Where a Doctor wishes to pool the available paid leave, the Doctor shall advise the Health Service of the name of their spouse, the health service at which their spouse is employed, the pooling arrangement in the written notice required at clause 67.6 (which requires at least 10 weeks' written notice of the intention to take parental leave); and
  - (iv) The paid leave pooling arrangement can only be amended by consent of the Employer. Such consent will not be unreasonably withheld.
- (b) In the event that the Employer:
  - (i) is not satisfied that the proposed paid parental leave pooling arrangement complies with this clause; and/or
  - (ii) has not been able to confirm the details of the application made by the Doctor's spouse with the other health service (where applicable),the Health Service will advise the Doctor in writing. The Doctor is entitled to request a meeting, the purpose of which is to seek to resolve any concerns.
- (c) In the event that the meeting does not resolve the concerns of either the Health Service or the Doctor, either party may notify a dispute in accordance with the Dispute Settlement Procedures of this Agreement.

#### **67.6 Notice and evidence requirements**

- (a) Subject to clause 67.6(e) (Notice – Flexible Long Parental Leave), an Employee must give at least 10 weeks' written notice of the intention to take parental leave, including the proposed start and end dates. At this time, the Employee must also provide a statutory declaration stating:
  - (i) that the Employee will become either the Primary Carer or non-Primary Carer of the Child, as appropriate;
  - (ii) the particulars of any parental leave taken or proposed to be taken or applied for by the Employee's Spouse; and
  - (iii) that for the period of parental leave the Employee will not engage in any conduct inconsistent with their contract of employment.
- (b) Subject to clause 67.6(e) (Notice – Flexible Long Parental Leave), at least four weeks before the intended commencement of parental leave, the Employee must confirm in writing the intended start and end dates of the parental leave, or advise

the Employer of any changes to the notice provided in subclause 67.6(a), unless it is not practicable to do so.

- (c) The Employer may require the Employee to provide evidence which would satisfy a reasonable person of:
  - (i) in the case of birth-related leave:
    - A. the date of birth, or expected date of birth, of the Child (including without limitation, a medical certificate or certificate from a registered midwife, stating the date of birth or expected date of birth); and
    - B. if relevant, that their Child was stillborn (including without limitation, a certification by a medical practitioner or registered midwife of the child as having been delivered); or
  - (ii) in the case of adoption-related leave, the commencement of the placement (or expected day of placement) of the Child and that the Child will be under 16 years of age as at the day of placement or expected day of placement.
- (d) An Employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by the birth of the Child or placement occurring earlier than the expected date or in other compelling circumstances. In these circumstances the notice and evidence requirements of this clause should be provided as soon as reasonably practicable.
- (e) **Notice requirements – Flexible Long Parental Leave**
  - (i) If an Employee wishes to take Flexible Long Parental Leave, the Employee must give notice to the Employer as follows:
    - A. where the Employee also takes unpaid Long Parental Leave or Short Parental Leave under subclauses 67.3 or 67.4 (*the original leave*);
      - 1) at the same time as the Employee gives notice in accordance with subclause 67.6(a) in relation to the original leave, unless subclause 2) below applies; or
      - 2) if the Employee takes more than one period of unpaid Short Parental Leave, at the same time as the Employee gives notice in accordance with subclause 67.6(a) in relation to the first of those periods of leave; or
    - B. otherwise - at least 10 weeks before starting the Flexible Long Parental Leave.
  - (ii) If the Employer agrees, the notice may be given at a later time than that specified in subclause 67.6(e)(i).
  - (iii) The notice under subclause 67.6(e)(i) must specify the total number of days (**Flexible Days**) of Flexible Long Parental Leave that the Employee intends to take in relation to the Child.
  - (iv) If the Employer agrees, the Employee may:
    - A. reduce the number of flexible days, including by reducing the number of flexible days to zero; or

- B. increase the number of flexible days, but not so as to increase the number of flexible days above 30.
- (v) The Employee must give the Employer written notice of a flexible day on which the Employee will take Flexible Long Parental Leave:
  - A. at least 4 weeks before that day; or
  - B. if that is not practicable, as soon as practicable (which may be a time after the leave has started).
- (vi) If the Employer agrees, the Employee may change a day on which the Employee takes Flexible Long Parental Leave from a day specified in a notice under subsection 67.6(e)(vi).

**67.7 Parental leave associated with the birth of a Child – additional provisions**

- (a) Subject to the limits on duration of parental leave set out in this Agreement and unless agreed otherwise between the Employer and Eligible Employee, an Eligible Employee who is pregnant may commence Long Parental Leave at any time up to six weeks immediately prior to the expected date of birth.
- (b) **Six weeks before the birth**
  - (i) Where a pregnant Eligible Employee continues to work during the six week period immediately prior to the expected date of birth, the Employer may require the Eligible Employee to provide a medical certificate stating that she is fit for work and, if so, whether it is inadvisable for her to continue in her present position because of illness or risks arising out of the Eligible Employee's pregnancy or hazards connected with the position.
  - (ii) Where a request is made under subclause 67.7(b)(i) and an Eligible Employee:
    - A. does not provide the Employer with the requested certificate within seven days of the request; or
    - B. within seven days after the request, the Eligible Employee gives the Employer a medical certificate stating that the Eligible Employee is not fit for work,

the Employer may require the Eligible Employee to commence their parental leave as soon as practicable.
  - (iii) Where a request is made under subclause 67.7(b)(i) and an Eligible Employee provides a medical certificate that states that the Eligible Employee is fit for work but it is inadvisable for the Eligible Employee to continue in her present position during a stated period, subclause 67.14 (Transfer to a safe job) will apply.

**67.8 Unpaid pre-adoption leave**

Employees' entitlement to pre-adoption leave is set out at clause 66 (Pre-adoption leave).

**67.9 Where placement does not proceed or continue**

- (a) Where the placement of the Child for adoption with an Eligible Employee does not proceed or continue, the Eligible Employee must notify the Employer immediately.
- (b) Where the Eligible Employee had, at the time, started a period of adoption-related leave in relation to the placement, the Eligible Employee's entitlement to adoption-

related leave is not affected, except where the Employer gives written notice under subclause 67.9(c).

- (c) The Employer may give the Eligible Employee written notice that, from a stated day no earlier than four weeks after the day the notice is given, any untaken long adoption-related leave is cancelled with effect from that day.
- (d) Where the Eligible Employee wishes to return to work due to a placement not proceeding or continuing, the Employer must nominate a time not exceeding four weeks from receipt of notification for the Eligible Employee's return to work.

#### **67.10 Special maternity leave**

##### **(a) Entitlement to unpaid special birth-related leave**

- (i) A female Eligible Employee is entitled to a period of unpaid special leave if she is not fit for work during that period because:
  - A. she has a pregnancy-related illness; or
  - B. all of the following apply:
    - 1) she has been pregnant; and
    - 2) the pregnancy ends after a period of gestation of at least 12 weeks otherwise than by the birth of a living Child or a Stillbirth.
- (ii) A female Eligible Employee who has an entitlement to personal leave may, in part or whole, take personal leave instead of unpaid special leave under this clause.
- (iii) Where the pregnancy ends more than 28 weeks from the expected date of birth of the Child, the Eligible Employee is entitled to access any paid and/or unpaid personal leave entitlements in accordance with the relevant personal leave provisions.

##### **(b) Entitlement to paid special birth-related leave**

- (i) A female Eligible Employee is entitled to a period of paid special leave if the pregnancy terminates at or after the completion of 20 weeks' gestation or the Eligible Employee gives birth but the baby subsequently dies.
- (ii) Paid special leave is paid leave not exceeding the amount of paid leave available to Primary Carers under subclause 67.5(a)(i)A or 67.5(a)(ii)A (plus superannuation).
- (iii) Paid special leave is in addition to any unpaid special leave taken under subclause 67.10(a)(i).
- (iv) Paid leave available to non-Primary Carers under subclause 67.5(a)(i)B or 67.5(a)(ii)B will also apply in these circumstances.

##### **(c) Evidence**

If an Eligible Employee takes leave under this clause the Employer may require the Eligible Employee to provide evidence that would satisfy a reasonable person of the matters referred to in subclauses 67.10(a)(i) or 67.10(b)(i) or to provide a certificate from a registered medical practitioner. The Eligible Employee must give notice to the Employer as soon as practicable, advising the Employer of the period or the expected period of the leave under this provision.

## **67.11 Variation of period of unpaid parental leave (up to 12 months)**

- (a) Where an Eligible Employee has:
- (i) given notice of the taking of a period of Long Parental Leave under subclause 67.3; and
  - (ii) the length of this period of Long Parental Leave as notified to the Employer is less than the Eligible Employee's available entitlement to Long Parental Leave; and
  - (iii) commenced the period of Long Parental Leave; and
  - (iv) not taken a period of Flexible Long Parental Leave,
- the Eligible Employee may extend the period of unpaid parental leave (up to the Eligible Employee's available entitlement to Long Parental Leave) by giving their Employer notice in writing of the extension and specifying the new end date for the leave. This one-off extension is to be notified as soon as possible but no less than four weeks before the end date of the original leave period. Nothing in this clause detracts from the basic entitlement in subclause 67.3 (Long Parental Leave – Unpaid) or subclause 67.12 (Right to request an extension of period of unpaid parental leave beyond 12 months).
- (b) If the Employer and Eligible Employee agree, the Eligible Employee may further extend or reduce the period of parental leave.

## **67.12 Right to request an extension of period of unpaid parental leave beyond 12 months**

An Eligible Employee entitled to Long Parental Leave pursuant to the provisions of subclause 67.3 may request the Employer to allow the Eligible Employee to extend the period of Long Parental Leave by a further continuous period of up to 12 months immediately following the end of the available parental leave.

- (a) **Request to be in writing**
- The request must be in writing and must be given to the Employer at least four weeks before the end of the available parental leave period.
- (b) **Response to be in writing**
- The Employer must give the Eligible Employee a written response to the request stating whether the Employer grants or refuses the request. The response must be given as soon as practicable, and not later than 21 days, after the request is made.
- (c) **Refusal only on reasonable business grounds**
- The Employer may only refuse the request on reasonable business grounds.
- (d) **Reasons for refusal to be specified**
- If the Employer refuses the request, the written response must include details of the reasons for the refusal.
- (e) **Reasonable opportunity to discuss**
- The Employer must not refuse the request unless the Employer has given the Eligible Employee a reasonable opportunity to discuss the request.
- (f) **Employee Couples**



Where a member of an Employee Couple is requesting an extension to a period of Long Parental Leave in relation to a Child:

- (i) the request must specify any amount of Long Parental Leave that the other member of the Employee Couple has taken, or will have taken in relation to the Child before the extension starts;
- (ii) if the other member of the Employee Couple has given notice of an intention to take Flexible Long Parental Leave (in accordance with subclause 67.6(e)), the request must specify the number of flexible days that will not have been taken when the period of extended leave commences;
- (iii) the period of extension cannot exceed 12 months, less any period of Long Parental Leave (other than Flexible Long Parental Leave) that the other member of the Employee Couple has taken, or will have taken, in relation to the Child before the extension starts, as well as a period equal to the other member's Notional Flexible Period (if subclause 67.12(f)(ii) applies above); and;
- (iv) the amount of Long Parental Leave to which the other member of the Employee Couple is entitled under subclause 67.3 in relation to the Child is reduced by the period of the extension.

(g) **No extension beyond 24 months**

An Eligible Employee is not entitled to extend the period of Long Parental Leave beyond 24 months after the date of birth or day of placement of the Child.

**67.13 Parental leave and other entitlements**

An Eligible Employee may use any accrued annual leave or long service leave entitlements concurrently with Long Parental Leave, save that taking that leave does not have the effect of extending the period of Long Parental Leave.

**67.14 Transfer to a safe job**

- (a) Where an Employee is pregnant and provides evidence that would satisfy a reasonable person that she is fit for work but it is inadvisable for the Employee to continue in her present position for a stated period (the **risk period**) because of:

- (i) illness or risks arising out of the pregnancy, or
- (ii) hazards connected with the position,

the Employee must be transferred to an appropriate safe job if one is available for the risk period, with no other change to the Employee's terms and conditions of employment.

(b) **Paid no safe job leave**

If:

- (i) subclause 67.14(a) applies to a pregnant Eligible Employee but there is no appropriate safe job available; and
- (ii) the Eligible Employee is entitled to Long Parental Leave; and
- (iii) the Eligible Employee has complied with the notice of intended start and end dates of leave and evidence requirements under subclause 67.6 for taking Long Parental Leave;

then the Eligible Employee is entitled to paid no safe job leave for the risk period.

- (c) If the Eligible Employee takes paid no safe job leave for the risk period, the Employer must pay the Eligible Employee at the Eligible Employee's rate of pay set out in Part 1 of Appendix 2 for the Eligible Employee's ordinary hours of work in the risk period.
- (d) This entitlement to paid no safe job leave is in addition to any other leave entitlement the Eligible Employee may have.
- (e) If an Eligible Employee, during the six week period before the expected date of birth, is on paid no safe job leave, the Employer may request that the Eligible Employee provide a medical certificate within seven days (7) stating whether the Eligible Employee is fit for work.
- (f) If, the Eligible Employee has either:
  - (i) not complied with the request from the Employer under (e) above; or
  - (ii) provided a medical certificate stating that she is not fit for work,

then the Eligible Employee is not entitled to no safe job leave and the Employer may require the Eligible Employee to take parental leave as soon as practicable.

(g) **Unpaid no safe job leave**

If:

- (i) subclause 67.14(a) applies to a pregnant Employee but there is no appropriate safe job available; and
- (ii) the Employee will not be entitled to Long Parental Leave as at the expected date of birth; and
- (iii) the Employee has given the Employer evidence that would satisfy a reasonable person of the pregnancy if required by the Employer (which may include a requirement to provide a medical certificate),

the Employee is entitled to unpaid no safe job leave for the risk period.

**67.15 Extension of contract – Parental Leave**

A Doctor is entitled to be offered a variation to the period of their existing contract of employment in accordance with subclause 21.3(b).

**67.16 Returning to work after a period of parental leave**

- (a) An Eligible Employee must confirm to the Employer that the Eligible Employee will return to work as scheduled after a period of Long Parental Leave at least four weeks prior to the end of the leave, or where that is not practicable, as soon as practicable.
- (b) An Eligible Employee will be entitled to return:
  - (i) unless subclause 67.16(b)(ii) or subclause 67.16(b)(iii) applies, to the position which they held immediately before proceeding on parental leave;
  - (ii) if the Eligible Employee was promoted or voluntarily transferred to a new position (other than to a safe job pursuant to subclause 67.14), to the new position;

- (iii) if subclause 67.16(b)(ii) does not apply, and the Eligible Employee began working part-time because of the pregnancy of the Eligible Employee, or their Spouse, to the position held immediately before starting to work part-time.
- (c) Subclause 67.16(b) is not to result in the Eligible Employee being returned to the safe job to which the Eligible Employee was transferred under subclause 67.14. In such circumstances, the Eligible Employee will be entitled to return to the position held immediately before the transfer.
- (d) Where the relevant former position (per subclauses 67.16(b) and 67.16(c) above) no longer exists, an Eligible Employee is entitled to return to an available position for which the Eligible Employee is qualified and suited nearest in status and pay to that of their pre-parental leave position.
- (e) The Employer must not fail to re-engage an Eligible Employee because:
  - (i) the Eligible Employee or Eligible Employee's Spouse is pregnant; or
  - (ii) the Eligible Employee or is or has been immediately absent on parental leave.
- (f) The rights of the Employer in relation to engagement and re-engagement of casual Employees are not affected, other than in accordance with this clause.
- (g) **Stillbirth or death of child – cancelling leave or returning to work**
  - (i) In the event of a Stillbirth, or if a Child dies during the 24-month period starting on the child's date of birth, then an Eligible Employee who is entitled to a period of unpaid parental leave in relation to the Child may:
    - A. before the period of leave starts, give their Employer written notice cancelling the leave; or
    - B. if the period of leave has started, give their Employer written notice that the Employee wishes to return to work on a specified day (which must be at least 4 weeks after the date on which the Employer receives the notice).
  - (ii) Where notice under subclause 67.16(g)(i) is given, the Employee's entitlement to Long Parental Leave in relation to the Child ends:
    - A. if the action is taken under subclause 67.16(g)(i)A, immediately after the cancellation of the leave; or
    - B. if the action is taken under subclause 67.16(g)(i)B, immediately before the specified day.
  - (iii) This subclause 67.16(g) does not limit subclause 67.11(b) (dealing with the Employee reducing the period of unpaid parental leave with the agreement of the Employer).
- (h) **Employee who ceases to have responsibility for care of Child**
  - (i) This subclause applies to an Employee who has taken unpaid Long Parental Leave in relation to a Child if the Employee ceases to have any responsibility for the care of the Child for a reason other than because:
    - A. of a Stillbirth; or
    - B. the Child dies during the 24-month period starting on the child's date of birth.

- (ii) The Employer may give the Employee written notice requiring the Employee to return to work on a specified day.
- (iii) The specified day:
  - A. must be at least 4 weeks after the notice is given to the Employee; and
  - B. if the leave is birth-related leave taken by a female Employee who has given birth, must not be earlier than 6 weeks after the date of birth of the Child.
- (iv) The Employee's entitlement to Long Parental Leave in relation to the Child ends immediately before the specified day.

**67.17 Replacement Employees**

- (a) A replacement Employee is an Employee specifically engaged or temporarily promoted or transferred, as a result of an Eligible Employee proceeding on parental leave.
- (b) Before the Employer engages a replacement Employee, the Employer must inform that person of the temporary nature of the employment and of the rights of the Eligible Employee who is being replaced to return to their pre-parental leave position.

**67.18 Communication during parental leave – organisational change**

- (a) Where an Eligible Employee is on parental leave and the Employer proposes a change that will have a significant effect within the meaning of clause 10 (Consultation) of this Agreement on the Eligible Employee's pre-parental leave position, the Employer will comply with the requirements of clause 10 (Consultation) which include but are not limited to providing:
  - (i) information in accordance with subclause 10.4; and
  - (ii) an opportunity for discussions with the Eligible Employee and, where applicable, the Eligible Employee's representative in accordance with subclause 10.6.
- (b) The Eligible Employee will take reasonable steps to inform the Employer about any significant matter that arises whilst the Eligible Employee is taking parental leave that will affect the Eligible Employee's decision regarding the duration of parental leave to be taken, whether the Eligible Employee intends to return to work and whether the Eligible Employee intends to request to return to work on a part-time basis.
- (c) The Eligible Employee will also notify the Employer of changes of address or other contact details which might affect the Employer's capacity to comply with subclause 67.18.

**67.19 Keeping in touch days**

- (a) This clause does not prevent an Eligible Employee from performing work for the Employer on a keeping in touch day while the Eligible Employee is taking Long Parental Leave. If the Eligible Employee does so, the performance of that work does not break the continuity of the period of Long Parental Leave.
- (b) Any day or part of a day on which the Eligible Employee performs work for the Employer during the period of leave is a keeping in touch day if:

- (i) the purpose of performing the work is to enable the Eligible Employee to keep in touch with their employment in order to facilitate a return to that employment after the end of the period of leave;
  - (ii) both the Eligible Employee and Employer consent to the Eligible Employee performing work for the Employer on that day; and
  - (iii) the day is not within:
    - A. if the Eligible Employee suggested or requested that they perform work for the Employer on that day – 14 days after the date of birth, or day of placement, of the Child to which the period of leave relates; or
    - B. otherwise – 42 days after the date of birth, or day of placement, of the Child; and
  - (iv) the Eligible Employee has not already performed work for the Employer or another entity on ten days during the period of leave that were keeping in touch days, subject to 67.19(d)(ii) below.
- (c) The Employer must not exert undue influence or undue pressure on an Eligible Employee to consent to a keeping in touch day.
  - (d) For the purposes of subclause 67.19(b)(iv) the following will be treated as two separate periods of unpaid parental leave (meaning that an Eligible Employee can work up to ten keeping in touch days during each period of leave):
    - (i) a period of Long Parental Leave taken during the Eligible Employee's available parental leave period under subclause 67.3 (Long Parental Leave – Unpaid) and 67.11 (Variation of period of unpaid parental leave (up to 12 months)); and
    - (ii) an extension of the period of Long Parental Leave under subclause 67.12 (Right to request an extension of period of unpaid parental leave beyond 12 months).
  - (e) Subclause 67.19(a) does not apply in relation to the Eligible Employee on and after the first day on which the Employee takes flexible unpaid parental leave in relation to the Child.

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## 68. Long service leave

### 68.1 Definitions

The following meanings shall apply to the terms referred to below for the purposes of this clause unless a contrary intention is apparent:

- (a) **Casual Doctor** means a Doctor classified or employed as such at the time they apply for or commence long service leave;
- (b) **Full-time Doctor** means a Doctor classified or employed as such at the time they apply for or commence long service leave;
- (c) **Part-time Doctor** means a Doctor classified or employed as such at the time they apply for or commence long service leave;
- (d) **LSL Act** means the Long Service Leave Act 2018 (Vic).
- (e) **Month** means a calendar month.
- (f) **Pay** means:

- (i) for a Full-time Doctor or Part-time Doctor, remuneration for a Doctor's normal weekly hours of work calculated at their ordinary time rate of pay at the time the leave is taken or (if they die before the completion of leave so taken) as at the time of their death; and
- (ii) for a Casual Doctor, means the remuneration for the Doctor's normal weekly hours of work at their ordinary pay calculated in accordance with sections 15 and 16 of the LSL Act,

save that, in all cases:

- (iii) the amount paid will include the amount of any increase to the Doctor's ordinary time rate of pay which occurred during the period of leave; and
  - (iv) if appropriate, the Health Service may deduct rental charges from the amount to be paid, consistent with clause 75 (Deductions for Board and Lodging).
- (g) **Transfer of business** occurs in the circumstances described at section 311 of the Act.

## 68.2 Entitlement

- (a) Doctors are entitled to:
- (i) six months' long service leave with Pay on completion of fifteen years of Continuous Service (as defined at clause 68.3(a)(ii)); and
  - (ii) thereafter an additional two months' long service leave with Pay on completion of each additional five years of Continuous Service (as defined at clause 68.3(a)(ii)).
- (b) Subject to clause 68.4(d), the entitlement under clause 68.2(a) may be taken in advance on a pro rata basis if the Doctor has accrued Continuous Service of at least:
- (i) 10 years; or
  - (ii) from 1 July 2021/2022, 9 years; or
  - (iii) from 1 July 2022/2023, 8 years; or
  - (iv) from 1 July 2023/2024, 7 years.

## 68.3 Calculating Continuous Service

- (a) **Definitions:**
- (i) **Allowable Period of Absence** means the greater of:
    - A. five weeks in addition to the total period of paid annual leave and/or personal leave that the Doctor actually receives on termination, or for which they are paid in lieu; or
    - B. such longer period of absence equivalent to and for the purpose of parental leave under the NES.
  - (ii) **Continuous Service** means continuous service with the same Health Service plus any prior continuous service of six months or more with one or more Institutions or Statutory Bodies directly associated with such Institutions.

- (iii) **Continuous Casual Employment** means, for the purpose of clause 68.3(b), a period or periods of employment as a Casual Doctor (or another form of casual employment) with the same Health Service that are taken to be continuous, because one of the following applies:
- A. the period starting at the end of a particular instance of employment and ending at the start of another particular instance of employment did not exceed the greater of the Allowable Period of Absence (where applicable), or 12 weeks;
  - B. the Doctor had been employed by a Health Service on a regular and systematic basis and the Doctor had a reasonable expectation of being re-engaged by the same Health Service;
  - C. the gap between engagements was due to the terms of engagement of the casual Doctor;
  - D. the gap between engagements was caused by seasonal factors; or
  - E. the Doctor and Health Service agreed, before the start of an absence, to treat the employment as continuous despite the absence.

(b) **Periods that count towards Continuous Service**

Service or prior service during the following periods will be deemed to be continuous and will count as Continuous Service for the purpose of subclause 63.2(a):

- (i) an absence from work on any form of paid leave (e.g. annual leave, personal leave, long service leave and paid parental leave);
- (ii) any interruption or ending of employment by the Health Service if made with the intention of avoiding obligations in respect of long service leave or annual leave;
- (iii) any absence on account of illness or injury arising out of or in the course of the employment for a period during which a Doctor is receiving accident make-up pay under clause 45;
- (iv) any absence from employment on defence service in accordance with section 8 of the *Defence Reserve Service (Protection) Act 2001* (Cth);
- (v) a period of absence on community service leave under the Act;
- (vi) service as part of a specialist training program accredited by a Specialist Medical College with an employer not covered by this Agreement where:
  - A. the break between the periods of employment is not more than two months' duration or the Allowable Period of Absence (whichever is longer); and
  - B. the Doctor has not received payment for their long service leave benefit for that service;
- (vii) on application, in the case of Doctors who commenced employment with a Victorian public Health Service after 30 November 2008, their prior service with an interstate government health service, provided that the break between ceasing employment with the interstate government

health service, and commencing employment with the Victorian public Health Service, is no more than two calendar months ;

- (viii) in the case of unpaid absences not otherwise referenced in this subclause, subject to clause 68.6:
- A. any unpaid leave that is authorised in advance in writing by the Health Service to count as service; or
  - B. up to the commencement date of this Agreement, any unpaid absence from work on account of illness or injury of not more than 48 weeks; or
  - C. on and from the commencement date of this Agreement:
    - 1) any period of unpaid leave taken on account of illness or injury;
    - 2) a period of Parental Leave, including Parental Leave that is extended under clause 67.12; and
    - 3) the first 52 weeks of any other type of unpaid leave not specifically referenced in this subclause; and
- (ix) in the case of casual employment:
- A. periods of Continuous Casual Employment with the current Health Service (whether or not in a role covered by this Agreement); and
  - B. prior Continuous Casual Employment of six months or more that was with one or more Institutions (or Statutory Bodies directly associated with such Institutions), subject to clauses 68.5(c) and 68.9(a),

save that if long service leave was already taken or paid in lieu in respect of any period referred to above, no further benefit to long service leave will arise in respect of that period.

(c) **Not counted as Continuous Service but Not Breaking Continuity of Continuous Service**

Unless otherwise agreed in writing in advance between the Health Service and Doctor, the following periods do not break Continuous Service but do not count towards a Doctor's Continuous Service for the purpose of calculating the employee's long service leave entitlement:

- (i) any authorised period of unpaid leave not referred to in subclause 68.3(b) (including any Parental Leave not covered by subclause 68.3(b)(i) or (viii))
- (ii) subject to the requirements of the Act, any interruption arising directly or indirectly from an industrial dispute;
- (iii) in the case of Full-time Doctors and Part-time Doctors, any period between the engagement with one Institution or Statutory Body and another provided it is less than the Allowable Period of Absence;
- (iv) the dismissal of an employee if the employee is re-employed by the same Health Service within a period not exceeding two months from the date of such dismissal;



- (v) any absence on account of injury arising out of or in the course of their employment not covered by a period in which the Doctor is receiving accident make up pay or other paid leave;
- (vi) any absence that is greater than the Allowable Period of Absence that arises due to delays in obtaining the Doctor's specialist registration through AHPRA; and
- (vii) any periods of up to 24 months' unpaid leave that are taken for parental leave purposes, but that do not constitute Parental Leave (and which are not covered by subclause 68.3(b)(i) or (viii)).

(d) **Transfer of business**

Where a Transfer of Business occurs, a Doctor who worked with the old Health Service and who continues in the service of the new Health Service will be entitled to count their service with the old Health Service as service with the new Health Service for the purposes of this clause.

(e) **Proof of sufficient aggregate of service**

The onus of proving a sufficient aggregate of service to support a claim for any long service leave entitlement will at all times rest upon the Doctor concerned. A Certificate of Service in accordance with Appendix 3 will constitute acceptable proof, but not the only possible proof.

**68.4 Taking of leave**

(a) **When leave is to be taken**

A Doctor who is eligible to take long service leave under clause 68.2(a) must be granted long service leave within six months of the date eligibility arose. By agreement, the taking of the leave may be postponed to such a date mutually agreed.

(b) **How leave is to be taken**

- (i) Doctors may request to take long service leave as a single entitlement or in multiple separate periods, with each period being not less than:
  - A. in the case of Full-time Doctors, 1 week; or
  - B. in the case of a Fractional Doctor or casual/Internal Locum Doctors, 1 day.
- (ii) By agreement, Doctors may also utilise their long service leave entitlements as part of a Transition to Retirement in accordance with clause 22.

(c) **Payment for period of leave**

- (i) Payment will be made in one of the following ways:
  - A. in full advance when the Doctor commences their leave;
  - B. at the same time as payment would have been made if the Doctor had remained on duty; or
  - C. in any other way agreed between the Doctor and the Health Service.

- (ii) Where a Doctor has been paid in advance, and an increase to the Doctor's the ordinary time rate of pay occurs during the period of long service leave taken, the Doctor will be entitled to receive payment of the amount of any increase in pay at the completion of such leave.
- (d) **Long service leave in advance**
- (i) If a Doctor requests to take long service leave on a pro rata basis under clause 68.2(b), the Health Service must grant the Doctor's request to take long service leave as soon as practicable after receiving the request unless the Health Service has reasonable business grounds for refusing the request.
  - (ii) Where a Doctor who has been granted long service leave in advance is terminated for serious and wilful misconduct, the Doctor may have an amount equal to the amount paid in respect of the advance leave deducted and withheld from any payments owed by the institution on termination.
- (e) **Flexible taking of leave: double leave at half pay or half leave at double pay**
- (i) A Health Service may approve an application by a Doctor to take double the period of long service leave at half pay or half the period of long service leave at double the pay.
  - (ii) Doctors should seek independent advice regarding the taxation and superannuation implications of seeking payment under this subclause 68.4(e). The Health Service will not be held responsible in any way for the cost or outcome of any such advice.
  - (iii) The Health Service, if requested by the Doctor, will provide information as to the amount of tax the Health Service intends to deduct where payment of long service leave is sought under clause 68.4(e)(i).
  - (iv) If granting the request under this subclause would result in an additional cost to the Health Service, the Health Service may refuse the Doctor's request.
  - (v) Flexible taking of long service leave does not affect a Doctor's period of Continuous Service recognised. For example, an employee taking 12 months of long service leave at half pay will, for the purpose of calculating continuous service, have six months of continuous service recognised. A Doctor taking three months at double pay will have 6 months of Continuous Service recognised. In either case service will not be broken.

## **68.5 Payment on termination of employment**

### **(a) Basic entitlement at termination of employment**

A Doctor with an entitlement to long service leave under clause 68.2 is entitled to payment in lieu of untaken long service leave upon termination of employment, calculated one thirtieth of the period of Continuous Service, except where:

- (i) an election is made under clause 68.5(b) below; or
- (ii) the Doctor's employment ended by reason of serious and wilful misconduct pursuant to clause 29 (Termination of Employment).

### **(b) Election for payment of entitlement or transfer of entitlement at termination**

- (i) A Doctor who has an entitlement to take long service leave on a pro rata basis under clause 68.2(b) (who therefore has less than 15 years' continuous service) and who intends to be re-employed by another Institution or Statutory Body may:
  - A. request in writing that payment for accrued long service leave be deferred until after the Doctor's Allowable Period of Absence (as defined above) has expired; and
  - B. where the Doctor notifies the initial Health Service in writing within the Allowable Period of Absence that the Doctor has been employed as a Doctor by another Institution or Statutory Body, the initial Health Service is no longer required to make payment to the Doctor in respect of such service.
- (ii) Where the notice referred to at 68.5(b)(i)B is not provided prior to or within the Allowable Period of Absence, the Health Service will, upon the expiration of the allowable period of absence, make payment in lieu of long service leave as per subclause 68.5(a).
- (iii) For the removal of doubt, a Doctor who has an entitlement to take long service leave under clause 68.2(a) may not make an election under this clause in respect of that entitlement.

(c) **Payment in lieu of long service leave on the death of a Doctor**

Where a Doctor who has an entitlement to long service leave (or pro rata long service leave) under clause 68.2 dies while still in the employ of the Health Service, payment in lieu of long service leave will be made to the Doctor's personal representative equal to that in clause 68.5(a) above.

**68.6 Public holidays**

Long service leave is inclusive of (not additional to) Public Holidays that occur during the relevant period of leave.

**68.7 Transitional Arrangements for Parental Leave taken after 1 November 2018 and before the commencement date of this Agreement**

*Note 1: Unpaid Parental Leave taken prior to 1 November 2018 does not count as Continuous Service unless otherwise agreed*

*Note 2: Unpaid Parental Leave taken after the commencement date of this Agreement will constitute Continuous Service.*

- (a) As an exception to clause 68.3(b), a Doctor who took a period of unpaid Parental Leave that included any part of the period between 1 November 2018 and the commencement date of this Agreement (inclusive) may make an application to the Health Service to have that service recognised for Long Service Leave purposes. The Health Service will approve the application and provide to the Doctor an updated Certificate of Service reflecting the adjusted service arrangements.
- (b) A Doctor electing to make an application under 68.5(a) 68.6(a) must make the application to the Health Service no later than 6 months of the following (whichever occurs last):
  - (i) the date on which this Agreement commences; or
  - (ii) the date on which the Doctor returns to work after the qualifying period of unpaid Parental Leave

- (c) This clause 68.7 shall also apply to a Doctor in respect of a former Health Service if the Doctor took a qualifying unpaid period of Parental Leave under this clause while employed by that former Health Service.

## **68.8 Records**

The Health Service must keep a long service leave record for each Doctor, containing particulars of service, leave taken and payments made.

## **68.9 Protection of pre-existing entitlement**

- (a) No Doctor shall suffer any detriment as a result of the operation of this clause to their entitlement to long service leave existing immediately prior to the coming into force of this clause.

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## **69. Jury service leave**

**69.1** A Doctor required to attend for Jury Service during ordinary working hours must be paid the difference between the amount paid for the Jury Service and the amount the Doctor could have reasonably expected to receive had the Doctor attended for work.

**69.2** A Doctor must notify the Health Service as soon as possible of the date(s) when he or she is required to attend for Jury Service. Further, the Doctor must give his or her Health Service proof of attendance, the duration of the attendance and the amount paid for the Jury Service.

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## **70. Leave to engage in Voluntary Emergency Management Activities**

**70.1** A Doctor who engages in a voluntary emergency management activity with a recognised emergency management body that requires the attendance of the Doctor at a time when the Doctor would otherwise be required to be at work is entitled to leave for:

- (a) time when the Doctor engages in the activity;
- (b) reasonable travelling time associated with the activity; and
- (c) reasonable rest time immediately following the activity.

**70.2** The Doctor must advise the Employer as soon as reasonably practicable if the Doctor is requested to attend a voluntary emergency management activity and must advise the Employer of the expected or likely duration of the Doctor's attendance. The Doctor must provide a certificate of attendance or other evidence of attendance as reasonably requested by the Employer.

**70.3** Recognised emergency management bodies include but are not limited to, the Country Fire Authority, Red Cross, State Emergency Service and St John Ambulance.

**70.4** A Doctor who is required to attain qualifications or to requalify to perform activities in an emergency management body must be granted leave with pay for the period of time required to fulfil the requirements of the training course pertaining to those qualifications, provided that such training can be undertaken without unduly affecting the operations of the Employer.

**70.5** The leave under this clause will be paid up to two weeks, save that approval of paid leave is subject to the operational requirements of the Employer resulting from any emergency.

**70.6** Nothing in this clause limits the ability of a Doctor to be absent from employment for engaging in eligible community service activity in accordance with Division 8 of the Act.

*Note: Under the Act, an employee who engages in an eligible community service activity is entitled to be absent from employment without pay (or in some circumstances, with pay). The relevant period consists of time engaged in the community service activity, reasonable travel*

time and reasonable rest time. Eligible community service activity means jury service, a voluntary emergency service management activity (such as voluntary work relating to an emergency or natural disaster when performed for a recognised emergency management body - as defined), or an activity prescribed from time to time. There are particular notice requirements so that the employer is advised of the forthcoming absence and how long it is expected to last. For jury service, there are special rules about pay rates, there is a limit of 10 days' paid leave and jury service does not apply to casual employees. Note also that any more generous State or Territory community service leave entitlements may nevertheless apply.

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## **70A. Absences on Defence Leave**

**70A.1** A Full-Time or Part-Time Doctor absent on defence service will be reimbursed by the Employer an amount equal to the difference between:

- (a) the amount paid in respect of a period during which the Doctor was absent on defence service; and
- (b) the amount the Doctor could reasonably expect to have received from the Employer as earnings for that period had the Doctor not been absent on defence service.

**70A.2** A Doctor will notify the Employer as soon as possible of the date they require absence on defence service. The Doctor will give the Employer proof that the absence relates to defence service, the duration of such absence and the amount received for the relevant defence service period.

**70A.3** In this clause '**absence on defence service**' has the meaning contained in section 24A of the *Defence Reserve Service (Protection) Act 2001* (Cth).

*Example: The Doctor is on Defence Service leave for the duration of a particular pay period. Were the Doctor not on Defence Service leave in that pay period they would have worked on the Sunday and Monday evening shift of each week of the pay period. The Doctor is entitled to payment as though at work for each of the Sunday and Monday evening shifts, less the amount of payment (not including reimbursements) from the Defence Service for the equivalent time of the Sunday and Monday evening shifts.*

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## **70B. Special Disaster Leave**

**70B.1** **Special disaster leave of up to 3 days per calendar year is payable where:**

- (a) the Doctor is a full time or part time Doctor;
- (b) Personal Leave is not available either because the Doctor has exhausted the accrual or the circumstance does not qualify for Personal Leave; and
- (c) the Doctor is unable to attend work due to a disaster (such as fire or flood) where:
  - (i) the Doctor's residence is damaged or under imminent threat of major damage;
  - (ii) the lives or safety of their immediate family or household members are threatened; or
  - (iii) there is a formal closure, flooding or other unusual danger of the use of a road(s) which is the Doctor's normal travel route to work and no alternative practicable travel route is available.

**70B.2.** Special disaster leave is non-cumulative.

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## 71. Family Violence Leave

NOTE: Family member is defined in section 8 of the *Family Violence Protection Act 2008* (Vic) and is broader than the definition of immediate family in subclause 61.2.

### 71.1 General Principle

- (a) Each Health Service recognises that Doctors sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, each Health Service is committed to providing support to staff that experience family violence.
- (b) Leave for family violence purposes is available to employees who are experiencing family violence and also to allow them to be absent from the workplace to attend counselling appointments, medical appointments, legal proceedings or appointments with a legal practitioner and other activities related to, and as a consequence of, family violence.

### 71.2 Definition of Family Violence

For the purposes of this clause, family violence is as defined by the *Family Violence Protection Act 2008* (Vic) which defines family violence at section 5, in part, as follows:

- (a) behaviour by a person towards a family member of that person if that behaviour:
  - (i) is physically or sexually abusive; or
  - (ii) is emotionally or psychologically abusive; or
  - (iii) is economically abusive; or
  - (iv) is threatening; or
  - (v) is coercive; or
  - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in subclause 71.2(a) above.

### 71.3 Eligibility

- (a) Paid leave for family violence purposes is available to all Doctors with the exception of casual Doctors.
- (b) Casual Doctors are entitled to access leave without pay for family violence purposes.

### 71.4 General Measures

- (a) Evidence of family violence may be required and can be in the form an agreed document issued by the Police Service, a Court, a registered health practitioner, a Family Violence Support Service, district nurse, maternal and child health nurse or Lawyer. A signed statutory declaration can also be offered as evidence.
- (b) All personal information concerning family violence will be kept confidential in line with the Health Service's policies and relevant legislation. No information will be kept on a Doctor's personnel file without their express written permission.

- (c) No adverse action will be taken against a Doctor if their attendance or performance at work suffers as a result of experiencing family violence.
- (d) The Health Service will identify contact/s within the workplace who will be trained in family violence and associated privacy issues. The Health Service will advertise the name of any Family Violence contacts within the workplace.
- (e) A Doctor experiencing family violence may raise the issue with their immediate supervisor, Family Violence contacts, Ambassador or nominated Human Resources contact. The immediate supervisor may seek advice from Human Resources if the Doctor chooses not to see the Human Resources or Family Violence contact.
- (f) Where requested by a Doctor, the Human Resources contact will liaise with the Doctor's manager on the Doctor's behalf, and will make a recommendation on the most appropriate form of support to provide in accordance with subclause 71.5 and subclause 71.6.
- (g) The Health Service will develop guidelines to supplement this clause and which details the appropriate action to be taken in the event that a Doctor reports family violence.

## **71.5 Leave**

- (a) A Doctor experiencing family violence will have access to 20 days per year of paid special leave (pro-rata for part time Doctors) following an event of family violence and for related purposes such as counselling appointments, medical appointments, legal proceedings or appointments with a legal practitioner and other activities related to, and as a consequence of, family violence (this leave is not cumulative but if the leave is exhausted consideration will be given to providing additional leave). This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval.
- (b) A Doctor who supports a person experiencing family violence may utilise their personal/carer's leave entitlement to accompany them to court, to hospital, or to care for children. The Health Service may require evidence consistent with subclause 71.4(a) from a Doctor seeking to utilise their personal/carer's leave entitlement.

## **71.6 Individual Support**

- (a) In order to provide support to a Doctor experiencing family violence and to provide a safe work environment to all Doctors, the Health Service will approve any reasonable request from a Doctor experiencing family violence for:
  - (i) temporary or ongoing changes to their span of hours or pattern or hours and/or shift patterns;
  - (ii) temporary or ongoing job redesign or changes to duties;
  - (iii) temporary or ongoing relocation to suitable employment;
  - (iv) a change to their telephone number or email address to avoid harassing contact;
  - (v) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.
- (b) Any changes to a Doctor's role should be reviewed at agreed periods. When a Doctor is no longer experiencing family violence, the terms and conditions of employment may revert back to the terms and conditions applicable to the Doctor's substantive position.

- (c) A Doctor experiencing family violence will be offered access to the Doctor Assistance Program (**EAP**) and/or other available local employee support resources. The EAP will include professionals trained specifically in family violence.
- (d) A Doctor that discloses that they are experiencing family violence will be given information regarding current support services.



## **PART I – ACCOMMODATION AND FACILITIES**

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### **72. Amenities and facilities**

#### **72.1 Amenities**

The Health Service must provide Doctors access to the following amenities:

- (a) a changing room with securable storage;
- (b) a common room; and
- (c) a shower and bathroom.

#### **72.2 Facilities**

Health Services should provide Doctors access to the following facilities:

- (a) access to workstations, telecommunication and information technology capable of ensuring administrative and similar work can be accomplished efficiently;
- (b) access to internet and e-mail facilities for work purposes;
- (c) 24-hour access to a library and all of its resources;
- (d) access to a security escort at night;
- (e) reserved car parking paid for by the Health Service and available for a Doctor when rostered on-call and when recalled to duty. The parking spaces must be well lit and in a secure place within 200 meters from the main entrance of the Health Service; and
- (f) an office available for private discussion with patients' relatives.

**72.3** In the case where a Health Service does not meet the standards described in subclause 72.2 above, the Health Service, the Department and the Association will consult to determine a time-frame within which the facilities will be provided within available capital funding budgets.

#### **72.4 Additional Amenities and Facilities for Doctors working overnight**

Where a Doctor is rostered for a period of 12 hours or more commencing after 6.00 p.m., the Health Service must make available to the Doctor for the period of duty:

- (a) a separate reasonably furnished bedroom with adequate heating and cooling facilities, including a study desk, chair and study light;
- (b) reasonable provision for the preparation of light refreshments by the Doctor;
- (c) reasonable provision for laundering, drying and ironing of personal clothing by the Doctor; and
- (d) rooms fully cleaned and beds made.

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### **73. Facilities when on rotation**

#### **73.1 Provision of facilities**

- (a) Where a Doctor is permitted or required to live in the residential accommodation provided by the Rotation Hospital, the Rotation Hospital must ensure a safe living environment that includes the following facilities:

- (i) a separate reasonably furnished bedroom with adequate heating and cooling facilities, including a study desk, chair and study light;
  - (ii) adequate accommodation for study and recreation, which must be available for the Doctor's exclusive use;
  - (iii) reasonable provision for the preparation of light refreshments by the Doctor;
  - (iv) reasonable provision for the laundering, drying and ironing of personal clothing by the Doctor;
  - (v) adequate well-lit car parking facilities, where possible; and
  - (vi) reliable internet access.
- (b) Where a Rotation Hospital seeks to acquire or develop new residential accommodation, consideration must be given to the reasonable provision of facilities that allow for the preparation of meals by the Doctor.

### **73.2 Safe environment**

- (a) The Rotation Hospital shall assess the residential accommodation following the departure of the previous occupant to ensure that the accommodation is safe.
- (b) A safety assessment will consider matters including but not limited to:
- (i) any equipment, appliances and furniture;
  - (ii) hygiene and cleanliness;
  - (iii) security including any security risk arising from isolation and/or shared accommodation; and
  - (iv) ensuring protection from extreme temperatures from external elements.

### **73.3 Reporting and Addressing Repairs**

- (a) The Rotation Hospital will provide Doctors who are residing in residential accommodation in writing a document which:
- (i) facilitates the reporting of repairs, including the reporting of repairs that make the environment unsafe; and
  - (ii) indicates that reported repairs which make the environment unsafe will be assessed expeditiously, with all other repairs assessed within a reasonable timeframe;
- (b) following its assessment, the property owner will provide to the Doctor a timeframe within which to expect the repairs to be addressed if necessary.

### **73.4 Wi-fi**

- (a) The Rotation Hospital will advise the Doctor in writing how to access the wi-fi and the contact details for any necessary technical support; or In the absence of wi-fi, the Rotation Hospital will advise the Doctor prior to their arrival in writing what alternative arrangements for internet access are available.

### **73.5 Privacy**

The Rotation Hospital must respect the privacy of a Doctor's room and, provided there are no exceptional circumstances, representatives of the Rotation Hospital must have entry only with the Doctor's permission.

#### **73.6 Routine inspection and maintenance**

The provisions of subclause 73.5 do not apply to the routine maintenance of Doctors' rooms or routine inspections of which notice has been given.

#### **73.7 Accommodation for Spouse**

A Doctor with a Spouse (as defined in subclause 67.2(g)) and/or a child or children to whom the Doctor is their Primary Carer may request spousal or family quarters if required to be on Rotation to a Rotation Hospital for in excess of six weeks. This entitlement is subject to the availability of spousal or family quarters.

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### **74. Breastfeeding**

#### **74.1 Paid break**

Each Health Service will provide reasonable paid break time for a Doctor to express breast milk for her nursing child each time such Doctor has need to express the milk, or breastfeed the child within the workplace, for ones year after the child's birth.

#### **74.2 Place to express or feed**

Health Services will also provide a comfortable place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by a Doctor to express breast milk or breastfeed a child in privacy.

#### **74.3 Storage**

Appropriate refrigeration will be available in proximity to the area for breast milk storage. Responsibility for labelling, storage and use is with the Doctor.

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### **75. Deductions for board and lodging**

**75.1** The provisions of this clause 75 are to be read in conjunction with clause 52 (Rotation Allowances).

**75.2** Where the Rotation Hospital provides board and lodging, the Doctor's wage rate will be reduced by the amounts set out in the table in Appendix 2, Part 3 (Deductions for board and lodging).

**75.3** A Health Service, with the consent of the Doctor, may charge additional amounts for services related to the board and lodging (e.g. cleaning). A Doctor may also make their own arrangements with the consent of a Health Service to ensure that services related to the board are fulfilled.

**75.4** Health Services will not charge additional amounts for services provided that would be expected to be provided as part of the Doctor's board.

**75.5** A Doctor may request in writing accommodation of a higher standard than provided in subclause 73.1 above, in which case the rental and other charges must be fixed by the Rotation Hospital but must not exceed prevailing market rates.

## **PART J – UNION MATTERS AND BEST PRACTICE EMPLOYMENT COMMITMENT**

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### **76. Union Matters**

#### **76.1 Access to Doctors – General**

The Association will have access to Doctors for any process arising under this Agreement.

#### **76.2 Access to Doctors – Electronic communication**

A Health Service will ensure that:

- (a) emails from the Association domain name are not blocked or restricted by or on behalf of the Health Service, except in respect of any individual Doctor who has made a written request to the Health Service to block such emails;
- (b) emails from Doctors to the Association are not blocked or restricted by or on behalf of the Health Service;
- (c) access from Health Service computers and like devices to Association websites and online information is not blocked, or limited; and
- (d) where a genuine security concern arises regarding the above, the Health Service will immediately notify the Association to enable the security concern to be addressed.

#### **76.3 Access to Doctors – Orientation**

- (a) The Association may attend and address new Doctors as part of orientation / induction programs for new Doctors, provided that any attendance for the purposes of discussions with the Doctors meets the right of entry requirements under Part 3-4 of the Act (**Entry Requirements**). The details of such attendance will be arranged by the Health Service in consultation with the Association.
- (b) A Health Service will advise the Association of the date, time and location of orientation / induction programs not less than 14 days prior to the orientation / induction program.
- (c) Those covered by this Agreement acknowledge the increasing role that technology plays in orientation / induction. A Health Service and Association may agree to an alternative means by which the Association can access new Doctors including where orientation / induction programs are conducted on-line or the Association cannot reasonably attend, provided that such access is consistent with the Entry Requirements.

#### **76.4 AMA / ASMOF Ambassador (Ambassador) and Health & Safety Representatives**

*NOTE: Additional rights of HSRs are contained in the OHS Act.*

- (a) In this subclause 76.4, Representative means an Ambassador or HSR.
- (b) A Representative is entitled to reasonable time release from duty to:
  - (i) attend to matters relating to industrial, occupational health and safety or other relevant matters such as assisting with grievance procedures and attending committee meetings;
  - (ii) access reasonable preparation time before meetings with management or disciplinary or grievance meetings with a member of the Association;
  - (iii) appear as a witness or participate in conciliation or arbitration, before the FWC;

- (iv) present information on the Association at orientation sessions for new Doctors.
- (c) A Representative required to attend management or consultative meetings outside of paid time will be paid to attend.
- (d) A Representative will be provided with access to facilities such as telephones, computers, email, noticeboards and meeting rooms in a manner that does not adversely affect service delivery and work requirements of the Health Service. In the case of an HSR, facilities will include other facilities as necessary to enable them to perform their functions as prescribed under the OHS Act.

**76.5 Noticeboard**

- (a) A noticeboard for the Association's use will be readily accessible in each ward/unit/work area or nearest staff room where persons eligible to be members of the Association are employed.
- (b) The Association and members covered by this Agreement will, during the life of this Agreement, consult over the development of an electronic noticeboard managed by the Association.

**76.6 Meeting Space**

In the absence of agreement on a location for the holding of Association meetings, the room where one or more of the Doctors who may participate in the meeting ordinarily take meal or other breaks will be the meeting room for the purpose of Association meetings. Nothing in this clause is intended to override the operation of the Act.

**76.7 Secondment to the Association**

A Health Service will, on application, grant leave without pay to a Doctor for the purpose of secondment or other arrangement to work for the Association subject to the Health Service's reasonable operational requirements.

**76.8 Doctors holding official positions with the Association**

A Health Service will, on application by the Association, grant leave without loss of pay to a Doctor for the purpose of fulfilling their duties as an official of the Council or Executive body of the Association. For a member of the AMA/ASMOF Council, this currently involves 4 meetings per year (plus travel time). For AMA/ASMOF Executive Council members this involves an additional 12 meetings (plus travel time).

**76.9 Association Training**

*NOTE: A HSR may be entitled to any training in accordance with the OHS Act rather than, or in addition to, this clause.*

- (a) Subject to the conditions in this subclause 76.9, Doctors selected by the Association to attend training courses on industrial relations and/or health and safety will be entitled to a maximum of five days' paid leave per calendar year per Doctor.
- (b) Leave in excess of five days and up to ten days may be granted in a calendar year subject to the total leave being granted in that year and in the subsequent year not exceeding ten days.
- (c) The granting of leave will be subject to the Health Service's operational requirements. The granting of leave will not be unreasonably withheld.
- (d) Leave under this subclause is granted on the following conditions:

- (i) applications are accompanied by a statement from the Association advising that it has nominated the Doctor or supports the application;
  - (ii) the training is conducted by the Association, an association of unions or accredited training provider; and
  - (iii) the application is made as early as practicable and not less than two weeks before the training.
- (e) The Doctor will be paid their ordinary pay for normal rostered hours , but excluding shift work, overtime and other allowances.
  - (f) Leave in accordance with this clause may include necessary travelling time in normal hours immediately before or after the course.
  - (g) Leave granted under this clause will count as service for all purposes of this Agreement.
  - (h) Expenses associated with attendance at training courses, including fares, accommodation and meal costs are not the responsibility of the Health Service.

#### **76.10 Agreement Implementation Committees**

- (a) A local agreement implementation committee (**AIC**) will continue or, if there is not currently an AIC in operation, be established at each Health Service. Having regard for the size and location, an AIC may be appropriate at each facility/campus. The AIC will, where practicable, comprise equal numbers of representatives of the Employer and the AMA/ASMOF for the purposes of:
  - (i) agreement implementation;
  - (ii) on-going monitoring and assessment of the implementation of this Agreement; and
  - (iii) dealing with any local disputes that may arise, without limiting the Dispute Resolution Procedure in this Agreement.
- (b) Priority items for consideration by the AIC will be developed by the parties.

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## **77. Best Practice Employment Commitment Committee**

**77.1** The parties agree to establish a committee to discuss Best Practice Employment Commitments (**BPEC**) during the life of the Agreement on matters including:

- (a) measures to identify and respond to workload including:
  - (i) Discussion regarding reports and activities relevant to workforce planning; and
  - (ii) Invite additional attendees to discuss workforce matters;
- (b) climate change initiatives to reduce carbon and other harmful emissions within the public health system including:
  - (i) discussion regarding the environmental performance of Employers published in accordance with the Department's environmental guidelines;
  - (ii) discussion regarding any reports or activities of other bodies such as Global Green and Healthy Hospitals that are relevant to the reduction of carbon emissions;

- (iii) promotion of initiatives taken by an Employer and / or Employees to reduce carbon and other harmful emissions; and
- (iv) invite external interest groups, unions or other organisations to discuss the impacts the public health system as a whole has on producing harmful emissions and any initiatives to reduce these;
- (c) the development of an agreed 'best practice guide' with respect to workplace bullying based on WorkSafe's 'Guide for Employers' dated March 2020;
- (d) template change impact statements;
- (e) collaboration between the parties to reduce duplication of training and promote recognition of training across Health Services;
- (f) collaboration between the parties to monitor onboarding and credentialing practices to identify opportunities for common application requirements and the implementation of electronic onboarding and credentialing;

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## **78. Health Service obligations**

**78.1** A Health Service must not dismiss, threaten to dismiss, injure or threaten to injure a Doctor in respect of his or her employment nor alter the Doctor's position, or threaten to alter the position to the Doctor's detriment for the following reasons:

- (a) the Doctor has been, is, or proposes to become an Officer, delegate or member of the Association; or
- (b) the Doctor is entitled to the benefits of the Agreement, or has asked to receive the benefit; or
- (c) the Doctor has appeared, or proposes to appear, as a witness, or has given or proposes to give evidence in a proceeding under the Act; or
- (d) the Doctor, being a member of the Association which is seeking better industrial conditions, is dissatisfied with employment conditions; or
- (e) the Doctor was absent from rostered duty because:
  - (i) the absence was for the purpose of carrying out duties or exercising rights as an Officer or delegate of the Association; or
  - (ii) the Doctor applied for leave before the absence referred to in subclause 78.1(e)(i) above and the Health Service unreasonably refused or withheld consent for the leave.
- (f) The Officer, delegate or member of the Association has done or proposes to do an act or thing which is lawful for the purpose of furthering or protecting the industrial interests of the Association or its members. The act or thing must be done within the limits of authority expressly conferred on the Doctor by the Association in accordance with the rules of the Association.
- (g) The absences referred to above must not exceed a period of five consecutive working days or a total of five working days in any four week period without a written request from the officer of the Association. Authorisation of any such absence must not be unreasonably withheld by the Health Service. Provided sufficient and appropriate notice is given, the onus is placed on the Health Service to explain the circumstances of any refusal to release the Doctor from duty as expeditiously as possible.
- (h) The absences referred to above must be without pay unless otherwise agreed to by the Health Service.


## 79. Signatories

SIGNED for and on behalf of the Employers referred to in Appendix 1 by the authorised representatives of the **Victorian Hospitals' Industrial Association, 88 Maribyrnong Street, Footscray, VIC, 3011** in the presence of

  
\_\_\_\_\_  
Signature  
Stuart McCullough, Chief Executive Officer  
Stuart McCullough, Chief Executive Officer


  
\_\_\_\_\_  
Witness  
Daniel Pullin, Senior Workplace Relations Consultant  
Daniel Pullin, Senior Workplace Relations Consultant


SIGNED for and on behalf of the **Australian Salaried Medical Officers' Federation (Vic Branch), 293 Royal Parade, Parkville, VIC, 3052** by its authorised officer in the presence of

  
\_\_\_\_\_  
Signature  
Grant Forsyth, Chief Executive Officer  
Grant Forsyth, Chief Executive Officer

  
\_\_\_\_\_  
Witness  
Stuart Miller, Senior Workplace Relations Adviser  
Stuart Miller, Senior Workplace Relations Adviser

SIGNED for and on behalf of the **Australian Medical Association (Victoria), 293 Royal Parade, Parkville, VIC, 3052** by its authorised officer in the presence of

  
\_\_\_\_\_  
Signature  
Steven Burrell, Chief Executive Officer  
Steven Burrell, Chief Executive Officer

  
\_\_\_\_\_  
Witness  
Grant Forsyth, Director, Workplace Relations  
Grant Forsyth, Director, Workplace Relations



## **APPENDIX 1 – LIST OF EMPLOYERS / HEALTH SERVICES**

1. Albury Wodonga Health (Wodonga Hospital only)
2. Alfred Health
3. Austin Health
4. Bairnsdale Regional Health Service
5. Barwon Health
6. Bass Coast Health
7. Bendigo Health Care Group
8. Calvary Health Care Bethlehem Limited
9. Central Gippsland Health Service
10. East Grampians Health Service
11. Eastern Health
12. Echuca Regional Health
13. Gippsland Southern Health Service
14. Goulburn Valley Health
15. Grampians Health
16. Latrobe Regional Hospital
17. Melbourne Health
18. Mercy Hospitals Victoria Limited
19. Mildura Base Public Hospital
20. Monash Health
21. NCN Health
22. Northeast Health Wangaratta
23. Northern Health
24. Peninsula Health
25. Peter MacCallum Cancer Institute
26. Portland District Health
27. South West Healthcare
28. St Vincent's Hospital (Melbourne) Limited
29. Swan Hill District Health
30. The Royal Children's Hospital

31. The Royal Victorian Eye and Ear Hospital
32. The Royal Women's Hospital
33. The Victorian Institute of Forensic Mental Health (trading as Forensicare)
34. West Gippsland Healthcare Group
35. Western District Health Service
36. Western Health

## APPENDIX 2 – DOCTORS IN TRAINING REMUNERATION, ALLOWANCES AND DEDUCTIONS

### PART 1: Remuneration

TABLE 1.1 – Doctors in Training Weekly Pay Rates

Classification/Pay Point	Paycode	FFPPOA 1 Mar 2022	FFPPOA 1 Sep 2023	FFPPOA 1 March 2025
Hospital Medical Officer Year 1 (Intern)	<b>HM11</b>	\$1,559.54	\$1,598.53	\$1,638.49
Hospital Medical Officer Year 2	<b>HM12</b>	\$1,658.49	\$1,699.95	\$1,742.45
Hospital Medical Officer Year 3	<b>HM13</b>	\$1,797.92	\$1,842.87	\$1,888.94

Medical Officer Year 1	<b>HM14</b>	\$2,194.23	\$2,249.08	\$2,305.31
Medical Officer Year 2	<b>HM15</b>	\$2,332.01	\$2,390.31	\$2,450.07
Medical Officer Year 3	<b>HM16</b>	\$2,468.88	\$2,530.60	\$2,593.86
Medical Officer Year 4	<b>HM17</b>	\$2,606.25	\$2,671.41	\$2,738.20
Medical Officer Year 5	<b>HM18</b>	\$2,743.53	\$2,812.12	\$2,882.42
Solely Administrative	<b>HM19</b>	\$2,743.53	\$2,812.12	\$2,882.42
Medical Officer Year 6 and thereafter	<b>HM20</b>	\$2,908.13	\$2,980.84	\$3,055.36

Senior Medical Officer Year 1	<b>HM21</b>	\$3,083.53	\$3,160.62	\$3,239.63
Senior Medical Officer Year 2	<b>HM22</b>	\$3,237.76	\$3,318.70	\$3,401.67

<b>Classification/Pay Point</b>	<b>Paycode</b>	<b>FFPPOA 1 Mar 2022</b>	<b>FFPPOA 1 Sep 2023</b>	<b>FFPPOA 1 March 2025</b>
Senior Medical Officer Year 3 and thereafter	<b>HM23</b>	\$3,399.48	\$3,484.47	\$3,571.58

Registrar Year 1	<b>HM25</b>	\$2,362.12	\$2,421.17	\$2,481.70
Registrar Year 2	<b>HM26</b>	\$2,496.93	\$2,559.35	\$2,623.33
Registrar Year 3	<b>HM27</b>	\$2,592.07	\$2,656.88	\$2,723.30
Registrar Year 4	<b>HM28</b>	\$2,721.95	\$2,790.00	\$2,859.75
Registrar Year 5	<b>HM29</b>	\$3,096.27	\$3,173.68	\$3,253.02
Registrar Year 6 and thereafter	<b>HM30</b>	\$3,251.22	\$3,332.50	\$3,415.81

## PART 2: Allowances

**TABLE 2.1 – Continuing Medical Education (CME) Allowance (Weekly Amounts\*)**

\* amounts are paid on a pro-rata basis to part-time and casual Doctors and are fixed for the life of this Agreement

	FFPPOA 1 Mar 2022	FFPPOA 1 Sep 2023	FFPPOA 1 March 2025
Hospital Medical Officer Year 1 (Intern)	\$74.60	\$74.60	\$74.60
Hospital Medical Officer Years 2 & 3	\$90.90	\$90.90	\$90.90
Medical Officers and Senior Medical Officers	\$90.90	\$90.90	\$90.90
Registrars	\$118.90	\$118.90	\$118.90

**TABLE 2.2(a) – On-call Allowances – General On-call (per On-call period)**

	Paycode	FFPPOA 1 Mar 2022	FFPPOA 1 Sep 2023	FFPPOA 1 March 2025
<b><u>General On-call (not including public holidays)</u></b>				
Hospital Medical Officer Year 1 (Intern)	<b>HM11</b>	\$66.48	\$68.14	\$69.84
Hospital Medical Officer Year 2	<b>HM12</b>	\$70.49	\$72.25	\$74.05
Hospital Medical Officer Year 3	<b>HM13</b>	\$76.45	\$78.36	\$80.32
Medical Officer Year 1	<b>HM14</b>	\$93.40	\$95.73	\$98.13
Medical Officer Year 2	<b>HM15</b>	\$99.46	\$101.95	\$104.50
Medical Officer Year 3	<b>HM16</b>	\$104.91	\$107.53	\$110.22
Medical Officer Year 4	<b>HM17</b>	\$111.18	\$113.95	\$116.80

	<b>Paycode</b>	<b>FFPPOA 1 Mar 2022</b>	<b>FFPPOA 1 Sep 2023</b>	<b>FFPPOA 1 March 2025</b>
Medical Officer Year 5	<b>HM18</b>	\$116.62	\$119.54	\$122.53
Solely Administrative	<b>HM19</b>	\$116.62	\$119.54	\$122.53
Medical Officer Year 6 and thereafter	<b>HM20</b>	\$123.71	\$126.80	\$129.97
Senior Medical Officer Year 1	<b>HM21</b>	\$131.11	\$134.39	\$137.75
Senior Medical Officer Year 2	<b>HM22</b>	\$137.99	\$141.44	\$144.98
Senior Medical Officer Year 3 and thereafter	<b>HM23</b>	\$145.08	\$148.71	\$152.43
Registrar Year 1	<b>HM25</b>	\$98.54	\$101.00	\$103.53
Registrar Year 2	<b>HM26</b>	\$103.98	\$106.58	\$109.25
Registrar Year 3	<b>HM27</b>	\$107.99	\$110.69	\$113.46
Registrar Year 4	<b>HM28</b>	\$113.23	\$116.06	\$118.96
Registrar Year 5	<b>HM29</b>	\$128.85	\$132.07	\$135.37
Registrar Year 6 and thereafter	<b>HM30</b>	\$135.01	\$138.39	\$141.85
<b><u>General On-call - public holidays</u></b>				
Hospital Medical Officer Year 1 (Intern)	<b>HM11</b>	\$93.09	\$95.42	\$97.80
Hospital Medical Officer Year 2	<b>HM12</b>	\$98.95	\$101.42	\$103.96
Hospital Medical Officer Year 3	<b>HM13</b>	\$107.37	\$110.06	\$112.81
Medical Officer Year 1	<b>HM14</b>	\$130.70	\$133.97	\$137.31
Medical Officer Year 2	<b>HM15</b>	\$138.82	\$142.29	\$145.84

	<b>Paycode</b>	<b>FFPPOA 1 Mar 2022</b>	<b>FFPPOA 1 Sep 2023</b>	<b>FFPPOA 1 March 2025</b>
Medical Officer Year 3	<b>HM16</b>	\$147.24	\$150.92	\$154.69
Medical Officer Year 4	<b>HM17</b>	\$155.46	\$159.35	\$163.33
Medical Officer Year 5	<b>HM18</b>	\$163.58	\$167.67	\$171.86
Solely Administrative	<b>HM19</b>	\$163.58	\$167.67	\$171.86
Medical Officer Year 6 and thereafter	<b>HM20</b>	\$173.44	\$177.78	\$182.22
Senior Medical Officer Year 1	<b>HM21</b>	\$184.03	\$188.63	\$193.34
Senior Medical Officer Year 2	<b>HM22</b>	\$193.27	\$198.10	\$203.06
Senior Medical Officer Year 3 and thereafter	<b>HM23</b>	\$203.03	\$208.11	\$213.31
Registrar Year 1	<b>HM25</b>	\$137.79	\$141.23	\$144.76
Registrar Year 2	<b>HM26</b>	\$145.60	\$149.24	\$152.97
Registrar Year 3	<b>HM27</b>	\$150.94	\$154.71	\$158.58
Registrar Year 4	<b>HM28</b>	\$158.54	\$162.51	\$166.57
Registrar Year 5	<b>HM29</b>	\$180.22	\$184.73	\$189.35
Registrar Year 6 and thereafter	<b>HM30</b>	\$189.27	\$194.00	\$198.85

**TABLE 2.3 – General Allowances**

	<b>FFPPOA 1 Mar 2022</b>	<b>FFPPOA 1 Sep 2023</b>	<b>FFPPOA 1 March 2025</b>
Meal Allowance - work in excess of 11 hrs in 24 hrs (per incidence)	\$10.59	\$10.86	\$11.13
Meal allowance - work in excess of 16 hrs in 24 hrs (per incidence)	\$8.51	\$8.72	\$8.94
Meal Allowance - each subsequent six hour period worked (per incidence)	\$8.51	\$8.72	\$8.94
Location Allowance (per week)	\$48.38	\$49.59	\$50.83
Travelling Allowance - engine less than 3800cc (per km)	\$0.90	\$0.93	\$0.95
Travelling Allowance - engine 3800cc and over (per km)	\$1.10	\$1.13	\$1.16
Uniforms and Laundry Allowance (per week)	\$9.39	\$9.63	\$9.87



### Part 3: Deductions for Board and Lodging

TABLE 3.1 – Deductions for Board and Lodging (Weekly Amounts)

Deductions for Board and Lodging	FFPPOA 1 Mar 2022	FFPPOA 1 Sep 2023	FFPPOA 1 March 2025
<b><u>Doctor living in while on Rotation - meals purchased by the Doctor</u></b>			
Self-contained, furnished accommodation	\$7.04	\$7.21	\$7.39
Other	\$7.04	\$7.21	\$7.39
Spousal quarters	\$7.04	\$7.21	\$7.39
<b><u>Doctor living in while on Rotation - meals provided by the Hospital</u></b>			
Self-contained, furnished accommodation	\$34.91	\$35.79	\$36.68
Other	\$34.91	\$35.79	\$36.68
Spousal quarters	\$34.91	\$35.79	\$36.68
<b><u>Doctor living in at the Hospital - meals purchased by the Doctor</u></b>			
Self-contained, furnished accommodation	\$85.27	\$87.40	\$89.59
Other	\$50.36	\$51.62	\$52.91
Spousal quarters	\$100.57	\$103.09	\$105.66
<b><u>Doctor living in at the Hospital - meals provided by the Hospital</u></b>			
Self-contained, furnished accommodation	\$106.26	\$108.92	\$111.64
Other	\$75.53	\$77.42	\$79.36
Spousal quarters	\$125.74	\$128.88	\$132.10

## Part 4: Shift Penalty Payments

**TABLE 4.1 – Shift Penalty (per shift)**

	<b>FFPPOA 1 Mar 2022</b>	<b>FFPPOA 1 Sep 2023</b>	<b>FFPPOA 1 March 2025</b>
Hospital Medical Officer	\$38.99	\$39.96	\$40.96
Medical Officer	\$54.86	\$56.23	\$57.63
Senior Medical Officer	\$77.09	\$79.02	\$80.99
Registrar	\$59.05	\$60.53	\$62.04

**TABLE 4.2 – Night Shift & from 1 March 2023, Friday, between 6:00pm and midnight**

	<b>Hourly Penalty Rates for work performed within the applicable timeframe</b>			
	<b>Paycode</b>	<b>FFPPOA 1 Mar 2022</b>	<b>FFPPOA 1 Sep 2023</b>	<b>FFPPOA 1 March 2025</b>
Hospital Medical Officer Year 1 (Intern)	<b>HM11</b>	\$10.26	\$10.52	\$10.78
Hospital Medical Officer Year 2	<b>HM12</b>	\$10.91	\$11.18	\$11.46
Hospital Medical Officer Year 3	<b>HM13</b>	\$11.83	\$12.12	\$12.43
Medical Officer Year 1	<b>HM14</b>	\$14.44	\$14.80	\$15.17
Medical Officer Year 2	<b>HM15</b>	\$15.34	\$15.73	\$16.12
Medical Officer Year 3	<b>HM16</b>	\$16.24	\$16.65	\$17.06
Medical Officer Year 4	<b>HM17</b>	\$17.15	\$17.58	\$18.01
Medical Officer Year 5	<b>HM18</b>	\$18.05	\$18.50	\$18.96

<b>Hourly Penalty Rates for work performed within the applicable timeframe</b>				
	<b>Paycode</b>	<b>FFPPOA 1 Mar 2022</b>	<b>FFPPOA 1 Sep 2023</b>	<b>FFPPOA 1 March 2025</b>
Solely Administrative	<b>HM19</b>	\$18.05	\$18.50	\$18.96
Medical Officer Year 6 and thereafter	<b>HM20</b>	\$19.13	\$19.61	\$20.10
Senior Medical Officer Year 1	<b>HM21</b>	\$20.29	\$20.79	\$21.31
Senior Medical Officer Year 2	<b>HM22</b>	\$21.30	\$21.83	\$22.38
Senior Medical Officer Year 3 and thereafter	<b>HM23</b>	\$22.37	\$22.92	\$23.50
Registrar Year 1	<b>HM25</b>	\$15.54	\$15.93	\$16.33
Registrar Year 2	<b>HM26</b>	\$16.43	\$16.84	\$17.26
Registrar Year 3	<b>HM27</b>	\$17.05	\$17.48	\$17.92
Registrar Year 4	<b>HM28</b>	\$17.91	\$18.36	\$18.81
Registrar Year 5	<b>HM29</b>	\$20.37	\$20.88	\$21.40
Registrar Year 6 and thereafter	<b>HM30</b>	\$21.39	\$21.92	\$22.47

**APPENDIX 3 – TEMPLATE CERTIFICATE OF SERVICE**

**Certificate of Service**

(Name of Institution) \_\_\_\_\_ (Date) \_\_\_\_\_

This is to certify that \_\_\_\_\_ (Name of Doctor)  
was employed by this Institution/Society/Board (the Health Service) for the period:

From \_\_\_\_\_ To \_\_\_\_\_

During the above period, the Doctor had unpaid leave or absences that impact on the accrual  
of Long Service Leave totalling \_\_\_\_\_ (years and days)

During the above period, the Doctor utilised accrued Long Service Leave totalling  
\_\_\_\_\_ months

The Health Service has recognised net additional service for Long Service Leave purposes with  
another Health Service or Health Services for the Doctor totalling \_\_\_\_\_  
(years and days) which was paid out/not paid out (strike out whichever is not applicable) by the  
former Health Service(s).

The Doctor had accrued personal leave totalling \_\_\_\_\_ hours as at the date of  
cessation of employment with the Health Service

Position held: \_\_\_\_\_ Classification Held: \_\_\_\_\_

Signed: \_\_\_\_\_ (Stamp of Institution): \_\_\_\_\_

## APPENDIX 4 – AGREEMENT TO TAKE ANNUAL LEAVE IN ADVANCE

### Agreement to Take Annual Leave in Advance

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:**

The amount of leave to be taken in advance is: \_\_\_\_ hours/days

The leave in advance will commence on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*[If the employee is under 18 years of age – include:]*

**I agree that:**

**if, on termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.**

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## APPENDIX 5 – AGREEMENT TO CASH OUT ANNUAL LEAVE

### Agreement to Cash Out Annual Leave

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:**

The amount of leave to be cashed out is: \_\_\_\_ hours/days

The payment to be made to the employee for the leave is: \$\_\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_