

**VICTORIAN PUBLIC HEALTH SECTOR
(AMA VICTORIA) - DOCTORS IN
TRAINING - MULTI-ENTERPRISE
AGREEMENT 2008-2012**

PART 1 – APPLICATION AND OPERATION OF THE AGREEMENT

1. AGREEMENT TITLE

- 1.1. The Agreement is called the Victorian Public Health Sector (AMA Victoria) - Doctors in Training - Multi-Enterprise Agreement 2008-2012.

2. SHORT TITLE

- 2.1. The Agreement is to be referred to as the "AMA Victoria DIT Agreement 2008".

3. ARRANGEMENT

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4. COMMENCEMENT DATE AND PERIOD OF OPERATION

- 4.1. The Agreement operates for the period 1 December 2008 to 30 November 2012.

5. PARTIES COVERED

- 5.1. This Agreement covers:

- 5.1.1 the employers referred to in **Schedule D**;
- 5.1.2 all employees who are employed in the capacity of Doctors as defined in **sub-clause 10.7** by the employers in **Schedule D**;
- 5.1.3 the Australian Salaried Medical Officers Federation (ASMOF) Victorian Branch; and
- 5.1.4 the Australian Medical Association (Victoria) Limited (AMA Victoria).

6. RELATIONSHIP TO PREVIOUS AWARDS AND AGREEMENTS

- 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 Schedules 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.

7. SAVINGS

- 7.1. All entitlements currently received by a doctor prior to this Agreement which are over and above the provisions of this Agreement will continue.

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 employees to whom it applies and agree that they will not pursue any extra claims during the term of this Agreement.

9. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

- 9.1. A Doctor and the Hospital may enter into an individual flexibility arrangement pursuant to this clause in order to meet the genuine needs of the Doctor and the Hospital. An individual flexibility arrangement must be genuinely agreed to by the Doctor and the Hospital.

- 9.2. An individual flexibility arrangement may vary the effect of one or more of the following terms of this enterprise agreement:

9.2.1 arrangements for when work is performed, provided that work is not arranged in a way that causes an excessive or unsafe work pattern to exist pursuant to **sub-clause 25.4**;

9.2.2 overtime rates;

9.2.3 penalty rates;

9.2.4 allowances; and

9.2.5 loadings.

- 9.3. A Doctor may nominate a representative, which may include the Association, to assist in negotiations for an individual flexibility arrangement.

- 9.4. The Hospital 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 were agreed to.

- 9.5. The Hospital must ensure that an individual flexibility arrangement is in writing and signed by the Doctor and the Hospital.

- 9.6. The Hospital must give a copy of the individual flexibility arrangement to the Doctor within 14 days after it is agreed to.

- 9.7. The Hospital must ensure that any individual flexibility arrangement sets out:

9.7.1 the terms of this enterprise agreement that will be varied by the arrangement;

9.7.2 how the arrangement will vary the effect of the terms;

9.7.3 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

9.7.4 the day on which the arrangement commences.

- 9.8. The Hospital must ensure that any individual flexibility arrangement:

9.8.1 is about matters that would be permitted matters under section 172 of the Act if the arrangement were an enterprise agreement;

- 9.8.2 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
- 9.8.3 provides for the arrangement to be terminated:
- (a) by either the Doctor or the Hospital giving a specified period of written notice, with the specified period being not more than 28 days; and
 - (b) at any time by written agreement between the Doctor and the Hospital.
- 9.9. 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.

10. DEFINITIONS

- 10.1. **Act** means: the *Fair Work Act 2009* (Cth), as varied from time to time, and any successor to that Act.
- 10.2. **Agreement** means: the Victorian Public Health Sector (AMA Victoria) - Doctors in Training – Multi-Enterprise Agreement 2008-2012, which shall be commonly known as the "AMA Victoria DIT Agreement 2008".
- 10.3. **AMA HMO Certified Agreement 2002** means: the Australian Medical Association (Victoria) Limited, Australian Salaried Medical Officers Federation Victorian Branch, Victorian Public Hospital Sector (Hospital Medical Officers) Multi-Employer Certified Agreement 2002.
- 10.4. **Association** means: the Australian Medical Association (Victoria) Limited ("AMA") or the Australian Salaried Medical Officers Federation (Victoria Branch) ("ASMOF").
- 10.5. **Casual** means: a Doctor classified as a Hospital Medical Officer, a Medical Officer, or a Senior Medical Officer and who is engaged in relieving work or work of a casual nature.
- 10.6. **Department** means: the Department of Health.
- 10.7. **Doctor** means: a registered medical practitioner employed by a Hospital as a Hospital Medical Officer, Medical Officer, Senior Medical Officer, Registrar or a person enrolled in a General Practice Training Program.
- 10.8. **Duty Hours** means: those hours for which a Doctor is rostered or paid by the Hospital.
- 10.9. **Experience** means: the number of years the Doctor has been employed in a full-time or part-time capacity or any experience as a medical practitioner in Australia or other country where the Medical Board of Victoria 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:

- 10.9.1 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; or
- 10.9.2 if, for a period of 5 years or more, the Doctor has not actively practiced medicine or has not been regularly employed over a 5 year period, any prior service and experience will not be taken into account.
- 10.10. **FWA** means: Fair Work Australia
- 10.11. **Full-time** means: a Doctor who is ready, willing and available to work a full week of 38 hours in respect of HMOs, MOs and SMOs and in respect of Registrars, means a Doctor whose hours of work are in accordance with **sub-clause 24.1** (Hours per Week) of this Agreement.
- 10.12. **Higher Qualifications** means: qualifications obtained by the Doctor after graduation and includes:
 - 10.12.1 post-graduate university degrees and diplomas for the purposes of registration as a Medical Specialist in Australia;
 - 10.12.2 membership or fellowship of a recognised College or Association of Specialists for the purpose of registration as a Medical Specialist in Australia;
 - 10.12.3 any other post-graduate qualification for the purposes of registration as a Medical Specialist in Australia;
 - 10.12.4 the first part or equivalent of a higher qualification as defined in this Agreement.
- 10.13. **Health Service:** has the same meaning as Hospital.
- 10.14. **Hospital** means: any Health Service or employer listed at **Schedule D**.
- 10.15. **Hospital Medical Officer ("HMO")** means: a Doctor with 4 or less years of experience and who is not performing the duties of a Medical Officer or a Registrar. From 1 February 2011, 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.
- 10.16. **Hourly Rate for Hospital Medical Officers, Medical Officers and Senior Medical Officers** means: 1/38th of the relevant weekly rate.
- 10.17. **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 **sub-clause 24.1.3**.
- 10.18. **Medical Officer ("MO")** means: a Doctor with three (3) 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.

- 10.19. **On-call** means: a period during which a Doctor is required to be ready and available to provide clinical advice over the telephone or to return to the usual place of work consistent with **clause 35** (Recall).
- 10.20. **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.
- 10.21. **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 for Hospital Medical Officers, Medical Officers and Senior Medical Officers, pursuant to **sub-clause 24.1.1**, and Registrars pursuant to **sub-clause 24.1.3**.
- 10.22. **Private Practice Rights** means: the provision of medical services, whether for reward or not, outside of the Doctor's Duty Hours, as defined in **sub-clause 10.8** above.
- 10.23. **Registrar** means: a Doctor who is either appointed to an accredited Specialist training position or who holds a position designated as such by the Hospital. In the case of the Hospital designating an accredited Specialist training position, the Doctor is entitled to the same educational opportunities, that is five (5) hours of Training Time, as available to a Doctor in an accredited position, pursuant to **sub-clause 10.27** below. In this case, the Hospital must advise the Association.
- 10.24. **Rotation** means: a period during which a Doctor is directed to work at another Hospital (the "Rotation Hospital") 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.
- 10.25. **Rotation Hospital** means: a hospital that receives a Doctor on rotation from a Parent Hospital.
- 10.26. **Senior Medical Officer ("SMO")** means a Medical Officer who is employed as a Head of Department or equivalent role within the Hospital.
- 10.27. **Training Time** means: time dedicated for training that is free from service calls, with the exception of calls about genuine medical emergencies or disaster situations, as follows:
- 10.27.1 Training time is five (5) hours per week and it is expected that blocks of training time will be at least 30 minutes duration on each occasion.
- 10.27.2 Where training time is interrupted due to a genuine medical emergency or disaster situation, then that period of interruption is not training time and must be re-allocated.

- 10.27.3 The content of training must be agreed between the Doctor and the Hospital and can be on or off site. Training time can include lectures, tutorials, other situations where formal teaching of the Hospital Registrar(s) occurs in a non-service situation, clinical meetings organised by a Specialist or university staff equivalent for the purposes of training and education, personal reading and study, and research activities where a Hospital or university staff Specialist is directly involved in supervision and the results of the research are intended for publication. Grand (teaching) ward rounds can be included if specifically designed for teaching purposes and attended and run by an eminent medical person.
- 10.28. **VHIA** means: the Victorian Hospitals' Industrial Association.
- 10.29. **Week** means: midnight Sunday to midnight Sunday.
- 10.30. The following definitions relate specifically to **clause 60** (Consultation – Major Change and when Technology Introduced):
- 10.30.1 **Material Effects** means: the termination of employment, the elimination or diminution of job opportunities, promotional opportunities, job tenure or the use of skills, the alteration of hours of work, and the need for retraining or transfer of Doctors to other work or locations.
- 10.30.2 **Scientific Instrument/Computer** means: an electronic device (including a word processing machine) which is capable of receiving specimens, facts or data, processing or performing calculations on those specimens or data, and delivering answers or information in the required format for use by a person, or to control the operations of other machines, scientific instruments or computers.
- 10.30.3 **Technological Change** means: the introduction, alteration or replacement of scientific instruments, computers (including word processing machines), or work practices ancillary to the use of such equipment, which change, if implemented by the Hospital, may have material effects on the employment of persons to which the Agreement applies.

PART 2 - DOCTOR EMPLOYMENT

11. PERIOD OF EMPLOYMENT

- 11.1. The period of employment may be up to a maximum of 156 calendar weeks and not less 52 weeks, unless otherwise specifically stated.
- 11.2. The restrictions in the above **sub-clause 11.1** do not apply to Medical Officers, Senior Medical Officers or Casual Doctors as defined in **sub-clauses 10.18, 10.26 and 10.5** of this Agreement.

12. INCIDENTAL AND PERIPHERAL DUTIES

- 12.1. The Hospital 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.

13. DOCTOR RESPONSIBILITIES

- 13.1. The Doctor provides medical services, including the keeping and maintaining of adequate medical records for Hospital patients.
- 13.2. The Doctor's duty hours must be devoted to the duties of their appointment.
- 13.3. 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:
 - 13.3.1 to the Hospital'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
 - 13.3.2 for medico legal purposes, to disclose any information to the Hospital relating to the mental or physical condition of a Hospital patient or former patient.
- 13.4. The Doctor should ensure that work performed outside of their employing Hospital does not result in an overall or unsafe work pattern for that Doctor pursuant to **sub-clause 25.3**.

14. ROTATION FROM PARENT HOSPITAL

- 14.1. The provisions of this **clause 14** are to be read in conjunction with the relevant definitions in **clause 10** (Parent Hospital, Rotation Hospital, Rotation) and the allowances in **clause 37** (Rotation Allowances).
- 14.2. 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.
- 14.3. 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.

- 14.4. 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 before the end of the year to the Parent Hospital.
- 14.5. 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.
- 14.6. 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 **sub-clause 14.2** above.
- 14.7. The Rotation Hospital and the Parent Hospital may agree either:
- 14.7.1 that the Rotation Hospital pay all wages, allowances and utilised accrued entitlements directly to the Doctor; or
- 14.7.2 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.
- 14.8. Provided that where the arrangement at **sub-clause 14.7.1** 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.

15. PRIVATE PRACTICE RIGHTS

- 15.1. A Doctor who has completed the 1st year of experience as an HMO (Intern) may undertake private practice subject to the following, unless otherwise agreed:
- 15.1.1 such practice must not be carried on during Duty Hours; and
- 15.1.2 such practice must not involve Hospital property or be conducted in any respect within the precincts of the Hospital,
- 15.2. Doctors may by agreement be on loan to other bodies or practitioners. Agreement must be reached between the Hospital, the Doctor and the other body.
- 15.3. The above **sub-clause 15.2** applies to Doctors seconded for service with the Australian Defence Force but does not apply to service under the *Defence Act 1903*.

16. TERMINATION OF EMPLOYMENT

- 16.1. The employment of a full-time or part-time Doctor may be terminated:
- 16.1.1 by at least four (4) weeks notice given by the Hospital or the Doctor, or four (4) 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; or

- 16.1.2 at the end of a period of appointment; or
 - 16.1.3 by the Hospital in the event of misconduct, malpractice, neglect of duty or breach of any condition of appointment after the Hospital 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.
- 16.2. The period of notice to be given by the Employer pursuant to **sub-clause 16.1.1** above shall be increased by one (1) week if the Doctor is over 45 years of age and has completed at least two (2) years of continuous service.
- 16.3. Casual employment may be terminated with one (1) hour of notice.
- 17. NOTIFICATION OF CLASSIFICATION**
- 17.1. On the commencement of the Doctor's employment the Hospital must notify the Doctor in writing of his or her classification and terms of employment.
- 17.2. The Doctor must be notified in writing of any alteration to his or her classification within 14 days of the alteration taking effect.
- 18. ORIENTATION ON APPOINTMENT**
- 18.1. On a Doctor's appointment to a new position or a new location (including a rotation) and as an orientation, the Hospital must inform the Doctor of those matters that are essential to the safe and efficient discharge of their responsibilities.
- 18.2. The orientation information must include a "Unit Handbook" or similar containing written information that covers the following:
- 18.2.1 job duties, responsibilities and authority;
 - 18.2.2 emergency procedures;
 - 18.2.3 relevant clinical, ward and quality procedures, including contact details; and
 - 18.2.4 procedures for ordering supplies and medical tests.
- 18.3. During a rotation, the orientation described in **sub-clause 18.1** is the responsibility of the Rotation Hospital. Doctors are responsible for ensuring that they request appropriate information and clarification when required.
- 19. ORIENTATION – ASSOCIATION NOTIFICATION**
- 19.1. On a quarterly basis, the Hospital 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.
- 19.2. Where the dates of these programs are fixed in advance, a list should be sent to the Association as soon as possible.

- 19.3. 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.

20. ADVERTISEMENT OF POSITIONS

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

21. TELEPHONE CALLS TO DOCTORS OUTSIDE OF WORKING HOURS

- 21.1. The provisions of this **clause 21** are to be read in conjunction with **clause 34** (On-call).
- 21.2. The Hospital must have mandatory Protocols in operation that govern the use of telephone consultations with Doctors who are on-call. The Protocols must ensure:
- 21.2.1 the number of trivial or unnecessary telephone calls made to Doctors are controlled; and
- 21.2.2 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.
- 21.3. The Association may review the form and application of the Protocols to ensure their effective operation.

22. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

- 22.1. A Doctor who is a parent or has responsibility for the care of a child may ask the Hospital for a change in working arrangements for the purpose of assisting the Doctor to care for the child if:
- 22.1.1 the child is under school age; or
- 22.1.2 the child is under the age of 18 and has a disability.
- 22.2. A request made under **sub-clause 22.1** may include, but is not limited to:
- 22.2.1 changes in hours of work;
- 22.2.2 changes in patterns of work; or
- 22.2.3 changes in the location of work.
- 22.3. A Doctor is not entitled to make a request under **sub-clause 22.1** unless:
- 22.3.1 for a Doctor, other than a Casual Doctor, they have completed at least 12 months' continuous service with the Hospital immediately before making the request; or
- 22.3.2 for a Casual Doctor, they have:
- (a) been engaged by the Hospital on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months immediately before making the request; and

- (b) have a reasonable expectation of continuing engagement by the Hospital on a regular and systematic basis.
- 22.4. A request made under **sub-clause 22.1** must be in writing and set out:
 - 22.4.1 details of the change in working arrangements sought by the Doctor; and
 - 22.4.2 the reasons for the change.
- 22.5. The Hospital must respond to a request made under **sub-clause 22.1** within 21 days, stating whether or not the request is granted.
- 22.6. The Hospital may refuse a request made under **sub-clause 22.1** on reasonable business grounds.
- 22.7. If the Hospital refuses a request made by a Doctor under **sub-clause 22.1**, the written response provided under **sub-clause 22.5** must include the reasons for such refusal.

23. ROTATION TO A GENERAL PRACTICE TRAINING PROGRAM

- 23.1. The Program Teaching Practice must provide in writing the terms and conditions of **rotation one (1) month prior to** the Doctor commencing the term. Such terms and conditions must include details of:
 - 23.1.1 rostered hours of work;
 - 23.1.2 educational activities provided;
 - 23.1.3 paid release time for training program educational activities; and
 - 23.1.4 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.
- 23.2. 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.
- 23.3. A maximum of one (1) 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.
- 23.4. The individual Program Teaching Practice must pay the respective medical Doctor for time worked in the period of employment with the Program Teaching Practice.
- 23.5. The individual Program Teaching Practice shall be responsible for:
 - 23.5.1 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
 - 23.5.2 pro-rata annual leave payment to the Doctor, either paid for leave taken or pay an equivalent amount to the Parent Hospital;

- 23.5.3 WorkCover for the Doctor during the period of the employment with the Program Teaching Practice.
- 23.6. A Doctor rotated to a Program Teaching Practice situated more than 50 kilometers 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 accompanied by their family.
- 23.7. A Doctor rotated to a Program Teaching Practice situated more than 50 kilometers from their Parent Hospital shall be entitled to the Travelling Allowance set out in **clause 40** (Travelling Allowance – Use of Private Vehicle) for travel between the Parent Hospital and the Program Teaching Practice:
- 23.7.1 at the commencement and termination of rotation; and
- 23.7.2 once every four (4) weeks of the 13 week rotation; and
- 23.7.3 for all work-related travel required by the practice.
- 23.8. Payment must only be made pursuant to **sub-clause 23.6** if travel is undertaken by the Doctor.
- 23.9. For the purpose of this **clause 23**, the "Parent Hospital" will be the Hospital from which the Doctor is rotated. 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.
- 23.10. The Parent Hospital must ensure continuity of employment conditions are met by maintaining such records as are required under this Agreement.
- 23.11. 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.
- 23.12. **Out of Hours Work**
- 23.12.1 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 40% of all fees generated by the Doctor.
- 23.12.2 Out of hours pursuant to **sub-clause 23.12.1** 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.
- 23.12.3 The application of this **sub-clause 23.12** shall exclude the Doctor from any entitlement to the On-call (**clause 34**) or Recall (**clause 35**) provisions of this Agreement.

PART 3 - HOURS AND LIMITATIONS ON WORK

24. HOURS OF WORK

24.1. Hours per Week

- 24.1.1 For HMOs, MOs and SMOs, the ordinary hours of work must be 38 hours per week (refer also to the definitions in **sub-clauses 10.15, 10.18 and 10.26**) or an average of 38 hours per week for up to four (4) weeks. HMOs, MOs and SMOs must not work more than 38 hours per week unless averaged under this sub-clause.
- 24.1.2 For HMOs, MOs and SMOs, the ordinary hours of work and any required extra work, not including on-call or recall (refer also to **sub-clause 10.19 and clauses 34 and 35**), must be worked in continuous rostered periods. The continuity of a rostered period is not broken where a required meal break is taken. 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.
- 24.1.3 For Registrars, the ordinary hours of work must be 38 hours plus five (5) reasonable additional hours of training time, equalling 43 hours per week or an average of 43 hours per week for up to four (4) weeks (refer also to the definitions in **sub-clauses 10.23 and 10.27**). The arrangement of hours for Registrars is a long-standing industry arrangement that ensures Registrars have access to training time. The five hours of dedicated training time for Registrars must be free from service calls, other than in genuine medical emergencies or disaster situations. The types of activities that are undertaken by Registrars in training time each week must be agreed between the Registrar and the Hospital.
- 24.1.4 A Doctor must not exceed:
 - (a) 75 hours work in any seven (7) consecutive days; or
 - (b) 140 hours in any 14 consecutive days; or
 - (c) 280 hours in any 28 consecutive days;
 - (d) unless the Doctor has given written consent to waive this entitlement, or where a genuine medical emergency or disaster situation exists.

24.2. Days Off per Fortnight

- 24.3. A Doctor must receive three and one half (3½) days off work in each two (2) week period (for a Doctor on night shift the word 'days' is replaced by the word 'nights') as follows:
 - (a) two (2) days off must be consecutive;
 - (b) the remainder must be either one and one half (1½) consecutive days off or three (3) one half (½) days off.
- 24.3.2 One half (½) day is defined as a period of at least four (4) hours.

24.4. **Breaks Between Ordinary Rostered Shifts**

24.4.1 Doctors must be free from duty for at least 10 hours between rostered ordinary shifts.

24.5. **Hours per Day**

24.5.1 HMOs, MOs and SMOs must not be rostered for duty for more than 16 consecutive hours.

24.5.2 Full-time HMOs, MOs and SMOs must not be rostered for duty for less than four (4) hours.

24.5.3 Registrars must not be rostered for duty for more than 30 consecutive hours unless agreement has been reached between the Doctor, the Association and the Hospital.

24.5.4 Nothing in this Agreement prevents a Doctor working reasonable and authorised overtime and other penalty hours.

25. ROSTERS

25.1. **Roster Hours**

25.1.1 The ordinary hours of work for full-time and part-time Doctors must be worked in accordance with the roster or rosters.

25.1.2 Rosters must include all working hours including theatre preparation, ward rounds and completing discharge summaries.

25.2. **Roster Posting**

25.2.1 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 14 days before the roster comes into operation.

25.2.2 The roster or rosters must be exhibited at a convenient place accessible to the Doctors to whom it applies.

25.3. **Roster Design – Safe Hours of Work**

25.3.1 The provisions of this **sub-clause 25.3** are to be read in conjunction with **clause 27** (Work Practice Review).

25.3.2 The Hospital must not roster or arrange work hours in a way that causes an excessive or unsafe work pattern to exist.

25.3.3 The obligation to work safely applies to both the employer and employees.

25.3.4 The *National Code of Practice – Hours of Work, Shiftwork and Rostering for Hospital Doctors* is a suitable framework under which to consider safe working hours issues.

25.4. Doctors should ensure that work performed outside of their employing Hospital does not result in an overall or unsafe work pattern for that Doctor pursuant to **sub-clause 25.3**.

25.5. Roster Requests

- 25.5.1 A Doctor may make a specific request concerning an upcoming roster period. Such request must be made in writing to the Hospital at least one (1) week prior to the date on which the roster must be posted.
- 25.5.2 On receipt of a request made pursuant to **sub-clause 25.5.1** above, the Hospital must consult with the Doctor and other Doctors on the roster to try and accommodate all such requests.
- 25.5.3 The final roster will be determined by the Hospital in consideration of all requests received pursuant to **sub-clause 25.5.1** above. The Hospital must advise the Doctors involved of the reasons for its determination where requests have not been satisfied.

25.6. Roster Change

- 25.6.1 Seven (7) days notice must be given of a change to a roster unless a medical emergency or disaster situation exists.
- 25.6.2 If the Hospital requires a Doctor to work ordinary hours outside of the existing roster and has not given seven (7) days notice of the change and there is no genuine medical emergency or disaster situation:
 - (a) the Doctor must be paid a daily allowance of 2.5% of the Doctor's ordinary weekly rate of pay for the rostered hours worked per shift; unless
 - (b) the Doctor is part-time and has agreed to work shifts(s) in addition to those rostered. In this case, the Doctor is not entitled to the allowance in **sub-clause 25.6.2(a)** above.
- 25.6.3 A Doctor may request in writing to alter the roster. The roster may then be altered by agreement with the Hospital.
- 25.6.4 Where Doctors swap rostered shifts, only the penalties and allowances for the shift that the Doctor actually works are payable.

26. CHILD CARE COSTS REIMBURSEMENT – OUT OF HOURS WORK

- 26.1. Where Doctors are required by the Hospital 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 Hospital, the Doctor must be reimbursed for reasonable childcare expenses incurred.
- 26.2. The above **sub-clause 26.1** does not apply when a doctor is rostered on-call and recalled to duty.

27. WORK PRACTICE REVIEW

- 27.1. The provisions of this **clause 27** are to be read in conjunction with **sub-clause 25.3** (Roster Design – Safe Hours of Work).

27.2. Where the Association believes that a Hospital requires a Doctor to perform work in a manner that is inappropriate, it may first discuss the matter with the Hospital to resolve the issues. If no resolution can be found, the Association may refer the matter to a Board of Reference.

27.3. **Board of Reference**

27.3.1 The Board of Reference will consist of one person to be appointed from time to time by the Association and one person to be appointed from time to time by VHIA, with the Industrial Registrar of Fair Work Australia or his/her nominee as Chairperson, three of whom must form a quorum.

27.3.2 If a matter relating to job size is referred to a Board of Reference pursuant to **sub-clause 27.2** above, instead of the Association and VHIA appointments made under **sub-clause 27.3.1** above, the Association must agree on one nominee from the Department and one nominee who is an appropriate clinical expert.

27.3.3 The Decision of the Board of Reference is final.

PART 4 - REMUNERATION

28. RATE OF PAY

- 28.1. Doctors must be paid the rate of pay consistent with their correct classification prescribed in **Schedule A.1** (Rates of Pay, Allowances and Deductions).
- 28.2. The correct classification and rate of pay of a Doctor is based on that Doctor's years of experience as defined at **sub-clause 10.9** (Experience).
- 28.3. Part-time Doctors must be paid for each hour worked an amount equal to the Doctor's hourly rate of pay. Any other part-time entitlement that arises under this Agreement must apply on a pro-rata basis.
- 28.4. Casual Doctors must be paid 1/38th of their weekly rate of pay plus a casual loading of 25%.
- 28.5. 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 31**.
- 28.6. Penalties must be applied to wages but not to allowances.
- 28.7. **2008 Agreement Commencement Payment**
 - 28.7.1 A Doctor employed in a Hospital on 1 December 2008 must receive a one-off payment of \$1,500 (pro rata for part-time Doctors).

29. SUPERANNUATION

- 29.1. The Hospital must pay at least monthly to the trustees of the health superannuation fund (or any other agreed superannuation fund) on behalf of each Doctor who is a member of the approved superannuation fund a contribution at the rate as defined in **Schedule A.2**.
- 29.2. Such contribution must be calculated on the ordinary pay received by the Doctor during the preceding month, provided however, the Hospital must not be required to contribute in respect to any contractor's Doctors.
- 29.3. Ordinary pay means remuneration for a Doctor's weekly number of hours of work calculated at the ordinary rate of pay and in addition must include:
 - 29.3.1 the cash value of any deduction for Board and Lodging;
 - 29.3.2 Shift Work premiums;
 - 29.3.3 Saturday and Sunday premiums, where they are a part of regular work;
 - 29.3.4 Service Grant.
- 29.4. Superannuation contributions are to be made whilst a Doctor is receiving Accident or Workers' Compensation payments, provided that the Doctor is receiving payments under **clause 42** (WorkCover Make-up Pay).

30. SALARY PACKAGING

- 30.1. By agreement with the Doctor, the rate of pay specified at **Schedule A.1** may be salary packaged in accordance with the Hospital's Salary Packaging program.
- 30.2. As far as possible, it is the intention of the Hospital that the Hospital 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 Hospital, the cost must be paid by the participating Doctor or the arrangement must be ceased by the Hospital.
- 30.3. The Hospital's salary packaging program will not restrict the Doctor's capacity to salary package any proportion of their salary in any one month.

31. OVERTIME

- 31.1. The provisions of this **clause 31** are to be read in conjunction with **clause 24** (Hours of Work).
- 31.2. **Entitlement**
 - 31.2.1 Overtime is payable for working:
 - (a) rostered hours in excess of ordinary hours, pursuant to **sub-clause 24.1**; or
 - (b) authorised hours in excess of rostered hours.
 - 31.2.2 The payment of overtime is one and one half (1½) times the Doctor's ordinary hourly rate of pay for the first two (2) hours overtime in a week and then double the Doctor's ordinary hourly rate of pay for all additional overtime hours in that week.
 - 31.2.3 Overtime may be converted into carer's leave in accordance with **sub-clause 46.3.3**.
- 31.3. **Protocols – Authorised Un-rostered Overtime**
 - 31.3.1 A Protocol must exist in the Hospital whereby overtime that cannot be authorised in advance but has been worked will be paid if it meets appropriate, clearly defined criteria.
 - 31.3.2 The protocols described in **sub-clause 31.3.1** will be structured on the following basis:
 - (a) the Doctor has performed the overtime due to a demonstrable clinical need and that need could not have been met by some other means;
 - (b) authorisation of the overtime could not reasonably have been made in advance of the Doctor performing the work;
 - (c) the Doctor has claimed for retrospective authorisation of overtime on the first occasion possible after the overtime was worked and on no occasion later than the completion of that pay fortnight;

- (d) the Doctor has recorded the reason for working the overtime and the duties performed in a form capable of Hospital audit and review; and
- (e) the claim for overtime must be reviewed by a Senior Doctor authorised by the Hospital to do so within 14 days of the claim being submitted.

32. PENALTY PAYMENTS

32.1. The provisions of this **clause 32** are to be read in conjunction with **sub-clauses 28.5** and **28.6** (Rate of Pay).

32.2. Saturday and Sunday Work

32.2.1 Any ordinary hours performed between midnight Friday and midnight Sunday must be paid at one and one half (1½) times the Doctor's ordinary hourly rate of pay.

32.2.2 For hours worked between midnight Friday and midnight Sunday that are in excess of ordinary hours pursuant to **sub-clause 24.1**, overtime rates pursuant to **sub-clause 31.2** must be paid.

32.3. Shift Penalty

32.3.1 An additional 2.5% of the ordinary weekly rate of pay for the 1st 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.

32.4. Night Duty Allowance

32.4.1 An additional 25% of the Doctor's ordinary base hourly rate of pay must be paid for:

- (a) each hour worked during a rostered shift finishing the day after work began; or
- (b) each hour worked during a rostered shift beginning after midnight and before 6.30 a.m.

33. CONTINUING MEDICAL EDUCATION ALLOWANCE

33.1. Doctors are entitled to the Continuing Medical Education (CME) allowance described at **Schedule A.1**.

33.2. The CME allowance is payable on a pro-rata basis for part-time Doctors.

33.3. Claims for CME reimbursement made pursuant to clause 2.2 of the 2006 Heads of Agreement (up to \$1,000) will be honoured where such claim was submitted to the Hospital before 9 April 2009.

34. ON-CALL

34.1. The provisions of this **clause 34** are to be read in conjunction with **sub-clause 10.19** (Definitions – On-call), **clause 21** (Telephone Calls to Doctors Outside of Working Hours) and **clause 39** (Telephone Allowance).

34.2. Entitlement

- 34.2.1 For each on-call period where the Doctor provides advice by telephone, the Doctor must be paid the Telephone On-call Allowance pursuant to **Schedule A.1**. In such circumstances, the entitlement at **sub-clause 34.2.2** below does not apply.
- 34.2.2 For each on-call period where the Doctor does not provide any advice by telephone (eg. a Doctor who is on-call for the purpose of replacing Doctors who are absent due to illness), the General On-call Allowance pursuant to **Schedule A.1** must be paid as follows:
- (a) 2.5 % of the Doctor's ordinary weekly rate of pay; or
 - (b) on a public holiday pursuant to **clause 47** (Public Holidays), 3.5% of the Doctors ordinary weekly rate of pay.

34.3. Limitations

- 34.3.1 For the purposes of calculating payment, each period of on-call must not exceed 16 hours.
- 34.3.2 Where a Doctor is rostered to perform six (6) times 16 hour periods of on-call within six (6) 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.
- 34.3.3 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 23** (Rotation to a General Practice Training Program).

35. RECALL

- 35.1. The provisions of this **clause 35** are to be read in conjunction with **clause 40** (Travelling Allowance – Use of Private Motor Vehicle).

35.2. Entitlement

- 35.2.1 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:
- (a) one and one half (1½) times the ordinary hourly rate of pay for the first two (2) hours; and then
 - (b) double the ordinary hourly rate of pay for all additional hours.

35.3. Calculation

- 35.3.1 Each recall must stand alone, with a minimum payment of three (3) hours per recall, except as follows:
- (a) Where a Doctor has been recalled to duty, a further recall payment cannot occur within the initial three (3) hour period except where the Doctor has left the vicinity of the hospital and/or returned to his/her place of residence.

- 35.3.2 Recall can only occur where the Doctor is rostered on-call and where an authorised Senior Officer of the Hospital has given authority for the recall. This sub-clause does not apply where there is a genuine medical emergency or disaster.
- 35.3.3 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.
- 35.3.4 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 23** (Rotation to a General Practice Training Program).

36. HIGHER DUTIES

- 36.1. Where a Doctor is required to perform the full duties of a classification higher than his or her substantive classification the higher classification's 1st year of experience wage rate pursuant to **Schedule A.1** must be paid:
 - 36.1.1 for only the time worked up to and including two (2) hours; or
 - 36.1.2 for a full day or shift where time worked exceeds two (2) hours.

37. ROTATION ALLOWANCES

37.1. Location Allowance – When on Rotation

- 37.1.1 A Doctor must be paid a Location Allowance as detailed in **Schedule A.1** for each completed week on rotation, unless the Doctor's Rotation Hospital is located less than 50km from the Melbourne GPO.
- 37.1.2 The Location Allowance is designed to defray expenses incurred because the Doctor is required to be on rotation.

37.2. Travelling Allowances – When on Rotation within Victoria

- 37.2.1 A Doctor rotated to a position at a Rotation Hospital within Victoria must be paid a Travelling Allowance as follows:
 - (a) on commencement of the rotation; and then
 - (b) once every three (3) weeks over the 13 week period of rotation for other than Mildura (refer **sub-clause 37.3.1** below for entitlements when on rotation to Mildura).
- 37.2.2 the amount of the Travelling Allowance must be equivalent to a return first class rail fare between the Parent Hospital and the Rotation Hospital, whether the travel is accomplished by rail or by some other means.

37.3. Mildura

- 37.3.1 In the case of the Doctor being rotated to Mildura, instead of the entitlement described in **sub-clause 37.2** above, the Doctor must receive a return economy class airfare every four (4) weeks of a 13 week rotation.

37.3.2 To be eligible for the Travelling Allowance under **sub-clause 37.3.1** above, the Doctor must undertake the travel to and from the city of the Parent Hospital at the relevant times.

37.4. **Tasmania**

37.4.1 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 (3) month rotation as follows:

- (a) at the beginning and end of the rotation; and
- (b) after the first six (6) weeks of the rotation.

37.5. **Other Australian States**

37.5.1 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.

37.6. **Overseas**

37.6.1 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.

37.7. **Removal Reimbursement – When on Rotation**

37.7.1 A Doctor rotated to a position at a Rotation Hospital located more than 50km from the Parent Hospital for at least six (6) 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.

38. MEAL ALLOWANCE

38.1. 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 **Schedule A.1** must be paid in lieu; or

38.1.1 where a Doctor works in excess of 16 hours in any 24 hour period – two (2) adequate meals must be provided or the Meal Allowance described in **sub-clause 38.1** above and a further Meal Allowance (in excess of 16 hours) as detailed in **Schedule A.1** must be paid; and

38.1.2 for each six (6) hour period the Doctor works in excess of 16 hours until the shift ends, a further meal must be provided or a further Allowance as detailed in **Schedule A.1** must be paid.

39. TELEPHONE ALLOWANCE

- 39.1. When the Hospital requires a Doctor to be in telephone contact for work purposes, the Hospital 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.

40. TRAVELLING ALLOWANCE – USE OF PRIVATE VEHICLE

- 40.1. The provisions of this **clause 40** are to be read in conjunction with **clause 35** (Recall).
- 40.2. Where a Doctor is required to use personal transport in the performance of his or her duties (including recall travel pursuant to **clause 35**) they must receive a Travelling Allowance per kilometer in accordance with **Schedule A.1**.
- 40.3. The Doctor is responsible for maintaining records sufficient to support any claim made pursuant to this **clause 40**.
- 40.4. A Doctor who is recalled and who has not used personal transport must be provided with suitable return transport at the Hospital's expense.

41. UNIFORM/LAUNDRY ALLOWANCE

- 41.1. A Doctor must either:
- 41.1.1 be supplied with sufficient suitable and serviceable uniforms that must be laundered at the expense of the Hospital; or
 - 41.1.2 be paid a Uniforms and Laundry Allowance pursuant to **Schedule A.1**. The Hospital must either launder or pay for the laundry of such uniform.
- 41.2. The Hospital may deem white coats to constitute a uniform for the purposes of this **clause 41**.
- 41.3. Uniforms supplied pursuant to **sub-clause 41.1.1** above remain the property of the Hospital concerned and must be returned at the completion of the Doctor's period of service at that Hospital.
- 41.4. The Uniforms and Laundry Allowance described in **sub-clause 41.1.2** above must be paid during all absences on leave, except absence on long service leave and absence on personal leave beyond 21 days.

42. WORKCOVER MAKE-UP PAY

42.1. Entitlement to WorkCover Make-up Pay

- 42.1.1 A Doctor on receiving payment of weekly compensation under the *Accident Compensation Act 1985* (ACA) is entitled to WorkCover Make-up Pay for up to a maximum aggregate period of 39 weeks for any one injury or illness.
- 42.1.2 No weekly payments of WorkCover Make-up Pay apply:
- (a) within the first two (2) weeks of new employment;

- (b) during the first five (5) working days of incapacity;
- (c) once the Doctor ends employment with the Hospital;
- (d) once the Hospital terminates the employment of the Doctor for serious or willful misconduct;
- (e) once there is a cessation or redemption of weekly compensation payments;
- (f) 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 (1) month;
- (g) for any period of paid annual leave, long service leave or for any paid public holiday.

42.1.3 In order to qualify for the continuance of WorkCover Make-up Pay on termination a Doctor must, if required by the Hospital, provide evidence of the continuing payment of weekly payments of compensation.

42.1.4 On engagement, a Doctor may be required to declare all workers compensation and/or accident claims made under the ACA in the previous 5 years and in the event of defaults or inaccurate information being deliberately and knowingly declared the Hospital may require the Doctor to forfeit their entitlement to WorkCover Make-up Pay under this Agreement.

42.2. **Payment Calculation – Total Incapacity**

42.2.1 Where a Doctor is deemed totally incapacitated under the ACA, the Doctor is entitled to a weekly payment of an amount representing the difference between:

- (a) the total amount of compensation paid under the ACA during the period of incapacity for the week; and
- (b) the weekly ordinary rate of pay set out in **Schedule A.1**, 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.

42.3. **Payment Calculation – Partial Incapacity**

42.3.1 Where a Doctor is deemed partially incapacitated under the ACA, the Doctor is entitled to weekly payment of an amount representing the difference between:

- (a) the total amount of compensation paid under the ACA during the period of incapacity for the week, together with the average weekly amount they are earning; and

- (b) the weekly rate as set out in **Schedule A.1** 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.

42.4. Payment for Part of a Week

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

42.5. Notice of Injury

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

42.6. Variations in Compensation Rates

- 42.6.1 Any changes in compensation rates under the ACA must not increase the amount of WorkCover Make-up Pay above the amount that would have been payable had the rates of compensation remained unchanged.

42.7. Civil Damages

- 42.7.1 A Doctor receiving, or who has received, WorkCover Make-up Pay must advise their Hospital of any action they may institute or any claim they make for damages. The Doctor must, if requested, provide an authority to the Hospital entitling the Hospital to a charge upon any money payable pursuant to any judgment or settlement on that injury.
- 42.7.2 Where a Doctor obtains a judgment or settlement for damages in respect of an injury for which they have received WorkCover Make-up Pay the liability to pay WorkCover 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 WorkCover Make-up Pay made by the Hospital, the Doctor will pay to the Hospital any amount of WorkCover Make-up Pay already received in respect of that injury.

42.8. Medical Examination

- 42.8.1 Where, in accordance with the ACA, 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 Hospital, and is refused by the Doctor or the Doctor fails to commence the work, WorkCover Make-up Pay must cease from the date of such refusal or failure to commence the work.

PART 5 – PUBLIC HOLIDAYS AND LEAVE ARRANGEMENTS

43. LEAVE NOT APPLYING TO CASUALS

- 43.1. Casual Doctors are not eligible for the entitlements in this **Part 5** (Public Holidays and Leave Arrangements) except where a casual entitlement is expressly provided for as a term of this Agreement.

44. REPLACEMENT OF DOCTORS WHEN ON LEAVE

- 44.1. Where a Doctor is on leave and should be replaced, the Hospital is primarily responsible for finding the replacement.
- 44.2. When finding a replacement for a Doctor on leave, the Hospital must consult with Doctors affected by the absence.

45. ANNUAL LEAVE

45.1. Entitlement

- 45.1.1 A full-time or part-time Doctor is entitled to paid annual leave as follows:

- (a) 5 weeks if the Doctor 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; or
- (b) 4 weeks if **sub-clause 45.1.1(a)** does not apply.

- 45.1.2 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.

45.2. Time of Taking Annual Leave

- 45.2.1 Annual leave shall be taken at a time determined by agreement between the Hospital and the Doctor.
- 45.2.2 The Hospital will not unreasonably refuse a Doctor's request to take paid annual leave.
- 45.2.3 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.
- 45.2.4 A Doctor with more than one (1) year of experience may take annual leave during or after the year in which their entitlement accrues.
- 45.2.5 A period of annual leave may be converted into personal/carer's leave pursuant to **sub-clause 46.3.2**.

45.3. Payment for Annual Leave

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

45.4. Payment Calculation

45.4.1 For the purposes of this **clause 45**, 'wages' means the ordinary weekly rate of pay and allowances consistent with the Doctor's classification as averaged over the leave accrual year and calculated consistent with the following methodology:

- (a) if the Doctor worked 60 hours or more: wages must be paid at 38 hours calculated at single time (1.0) and 22 hours at time and one half (1.5) for each week of leave;
- (b) if the Doctor worked less than 60 hours but at least 48 hours: wages must be paid at 48 hours calculated at single time (1.0) for each week of leave;
- (c) in all other circumstances the Doctor's wages must be paid on 38 hours at single time (1.0) for each week of leave.

45.4.2 For Registrars, all references to 38 hours in **sub-clause 45.4.1 (a)** through **(c)** above become 43 hours and all references to 22 hours become 17 hours.

45.5. Sickness During Leave

45.5.1 Where the Doctor becomes sick for at least five (5) days and would have worked on those days if not for taking annual leave, the annual leave must be re-credited and the days instead deducted from the Doctor's accrued personal/carer's leave.

45.5.2 To be eligible for the entitlement in **sub-clause 45.5.1** above, the Doctor must provide a Medical Certificate from another registered medical practitioner to the Hospital within seven (7) days of the illness.

45.6. Effect of Termination

45.6.1 Where the Doctor's employment is terminated and the Doctor is not re-employed by the same Hospital, 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.

46. PERSONAL (SICK)/CARER'S LEAVE

46.1. Entitlement

46.1.1 Paid personal/carer's leave will be available to a Doctor when they are absent because of:

- (a) personal illness or injury; or
- (b) personal illness or injury of an immediate family or household member who requires the Doctor's care and support; or
- (c) an unexpected emergency affecting an immediate family or household member; or

- (d) 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.

46.1.2 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.

46.1.3 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.

46.2. Immediate Family or Household

46.2.1 The term immediate family includes:

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

46.3. Use of Accumulated Personal/Carer's Leave

46.3.1 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.

46.3.2 The Doctor may request the Hospital's consent to take up to five (5) days of annual leave in any one year as carer's leave.

46.3.3 The Doctor may request the Hospital's consent to take time off in lieu of payment for overtime for carer's leave purposes. One (1) hour of overtime worked is equal to one (1) hour of time off for carer's leave.

46.3.4 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 (4) weeks of the overtime being accrued.

46.3.5 The Doctor may request the Hospital'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.

46.4. Notice and Evidence Requirements – Personal Leave

- 46.4.1 For three (3) 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 Hospital two (2) hours before the start of the shift.
- 46.4.2 For other days absent due to personal illness or injury, the Hospital may require a Doctor to provide evidence of illness as follows:
- (a) a Medical Certificate from another Doctor, but only in circumstances when the certificate may be properly provided; or
 - (b) a Statutory Declaration, but only for periods of up to three (3) consecutive days and only up to three (3) occasions in any one year.
- 46.4.3 Personal/carer's leave can be used in addition to worker's compensation payments and WorkCover Makeup Pay (refer **clause 42**) to make up payments to 100% of the Doctor's ordinary weekly rate of pay pursuant to **Schedule A.1**.

46.5. Notice and Evidence Requirements – Carer's Leave

- 46.5.1 The Doctor, on the Hospital's request, must demonstrate the illness or injury of the person concerned by either Medical Certificate or Statutory Declaration.
- 46.5.2 When practical, the Doctor must give the Hospital prior notice of their intended absence due to carer's leave. If not practical to provide prior notice, the Doctor must give notice by telephone at the first opportunity on the day of the absence beginning.
- 46.5.3 Notice for the purposes of this **sub-clause 46.5** means: estimated date of absence, estimated length of absence, the name of the person to be cared for and their relationship to the Doctor.

46.6. Unpaid Personal Leave

- 46.6.1 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 **sub-clauses 46.1.1(b), (c), or (d)**. The Hospital and the Doctor will agree on the period. In the absence of agreement the Doctor is entitled to take up to two (2) days' unpaid carer's leave per occasion.

46.7. Absence on Public Holidays

- 46.7.1 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.

46.8. Transfer of Accrued Personal/Carer's Leave

- 46.8.1 A Doctor appointed to a Hospital up to five (5) weeks after his or her termination of appointment at another Hospital or community health centre, not including any period of paid leave, must be credited up to 168 days of the Doctor's accumulated personal/carers leave. The accumulated personal/carers leave must be credited at the time of appointment.
- 46.8.2 The Hospital may require a Doctor to produce a written statement from the previous Hospital that specifies the amount of accumulated personal/carers leave credited to the Doctor at the time of his or her termination of appointment.

46.9. Casual Doctors – Caring responsibilities

- 46.9.1 Casual Doctors are entitled to be unavailable to attend work or to leave work:
- (a) if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
 - (b) upon the death in Australia of an immediate family or household member.
- 46.9.2 The Hospital 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 (2) days per occasion. The Casual Doctor is not entitled to any payment for the period of non-attendance.
- 46.9.3 The Hospital will require the Casual Doctor to provide satisfactory evidence to support the taking of leave pursuant to this **sub-clause 46.9.**

47. PUBLIC HOLIDAYS

47.1. Entitlement to be Absent on a Public Holiday

- 47.1.1 A Doctor is entitled to be absent on the following public holidays without deduction of pay:
- (a) 1 January (New Year's Day);
 - (b) 26 January (Australia Day);
 - (c) the second Monday in March (Labour Day);
 - (d) Good Friday;
 - (e) Easter Saturday;
 - (f) Easter Monday;
 - (g) 25 April (ANZAC Day);
 - (h) the second Monday in June (Queen's Birthday);

- (i) the first Tuesday in November (Melbourne Cup Day);
- (j) 25 December (Christmas Day); and
- (k) 26 December (Boxing Day).

47.1.2 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 Hospital may request a Doctor to work on a public holiday provided the request is reasonable.

47.1.3 If a Hospital requests a Doctor to work on a public holiday, the Doctor may refuse the request if:

- (a) the request is not reasonable; or
- (b) the refusal is reasonable.

47.1.4 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:

- (a) the nature of the employer's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;
- (b) the Doctor's personal circumstances, including family responsibilities;
- (c) whether the Doctor could reasonably expect that the Hospital might request work on the public holiday;
- (d) 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;
- (e) the type of employment of the Doctor (for example, whether full-time, part-time, casual or shift-work);
- (f) the amount of notice in advance of the public holiday given by the Hospital when making the request;
- (g) 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
- (h) any other relevant matter.

47.2. Additional/Substitute Days

47.2.1 In addition to the days specified in **sub-clause 47.1.1** above:

- (a) Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in **sub-clause 47.1.1, 47.2.2** and **47.2.3**, those days must constitute additional holidays for the purpose of the Agreement.