



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

s.185—Approval of enterprise agreement

Mercy Public Hospitals Incorporated T/A Mercy Hospital for Women
(AG2010/3755)

MERCY HOSPITAL FOR WOMEN SPECIALIST NEONATOLOGISTS AGREEMENT 2009-2012

Health and welfare services

COMMISSIONER CRIBB

MELBOURNE, 5 FEBRUARY 2010

Application for approval of the Mercy Hospital for Women Specialist Neonatologists Agreement 2009-2012.

[1] An application has been made for approval of an enterprise agreement known as the *Mercy Hospital for Women Specialist Neonatologists Agreement 2009-2012* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Mercy Public Hospitals Incorporated T/A Mercy Hospital for Women. The agreement is a single-enterprise agreement.

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

[3] The Australian Salaried Medical Officers Federation (ASMOF), 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) of the Act I note that the Agreement covers the organisation.

[4] The Agreement was approved in Chambers on 5 February 2010 and, in accordance with s.54 of the Act, will operate from 12 February 2010. The nominal expiry date of the Agreement is 30 June 2012.

COMMISSIONER

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Mercy Hospital for Women Specialist Neonatologists Agreement 2009 - 2012

FAIR WORK ACT 2009

ENTERPRISE AGREEMENT

1. TITLE

This Agreement shall be known as the *Mercy Hospital for Women Specialist Neonatologists Agreement 2009-2012* ('the Agreement').

2. ARRANGEMENT

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3. BINDING FORCE OF THE AGREEMENT

- 3.1 Mercy Public Hospitals Inc (trading as Mercy Hospital for Women) ('the Hospital'), and
- 3.2 All persons whose employment is at any time when the Agreement is in operation, subject to the Agreement.

4. INCIDENCE AND APPLICATION

This Agreement applies to the employment of **registered medical practitioners** who are employed as Specialist Neonatologists by the Hospital.

5. DATE AND PERIOD OF OPERATION

- 5.1 This Agreement shall come into operation on the seventh (7th) day after the Agreement is approved by Fair Work Australia ('FWA'). The nominal expiry date of this Agreement is 30 June 2012.
- 5.2 Notwithstanding the date on which this Agreement comes into operation, the allowances and payments at clause 16.2 (ordinary pay), 16.3 (private practice bonus), 18.2 (in house overnight allowance) and 18.3 (recall allowance and recall active rate) shall be paid from the first pay period on or after 1 October 2009 and varied thereafter in accordance with this Agreement.

6. NO EXTRA CLAIMS

The parties bound 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.

7. SAVINGS CLAUSE

This Agreement does not affect entitlements received by a **registered medical practitioner** before the Agreement was made that are of a better standard than provided for in this Agreement.

8. RELATIONSHIP TO OTHER AGREEMENTS

- 8.1 In addition to the terms and conditions of employment provided for in this Agreement, the registered medical practitioners covered by this Agreement will also benefit from the outcomes of subsequent industry-wide agreements between the AMA, VHIA and / or DHS. For the avoidance of doubt, wages will increase in the manner and time agreed under the industry-wide agreements.
- 8.2 For the avoidance of doubt, the parties will seek to vary this Agreement to reflect the industry-wide agreements between the AMA, VHIA and/or DHS and this shall not constitute a breach of the No Extra Claims clause of this Agreement.

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- 8.3 The allowances and payments at 18.2 (in house overnight allowance) and 18.3.1 (recall allowance and recall active rate) shall, following the operation of this Agreement, increase by the same base percentage rate as the wages (excluding any 'uplift' applicable to a particular classification or classifications).

9. RELATIONSHIP TO AWARD AND NES

- 9.1 This Agreement shall operate to the exclusion of the Hospital Specialists and Medical Administrators Award 2002.
- 9.2 The parties acknowledge that this Agreement prescribes entitlements that are also prescribed by the Australian Fair Pay and Conditions Standards ('AFPCS') in the Workplace Relations Act 1996 and the National Employment Standards ('the NES') in the Fair Work Act 2009. These include but are not limited to annual leave, personal/carer's leave, compassionate leave, parental leave and community services leave. The parties to this Agreement acknowledge that these Agreement terms only have effect to the extent that they do not result in any detriment to an employee in terms of the AFPCS or NES.

10 GENERAL DEFINITIONS

- 10.1 **Act** means the *Fair Work Act 2009* (Cth).
- 10.2 **Association** means the Australian Medical Association (Victoria) Limited or the Australian Salaried Medical Practitioners Federation.
- 10.3 **Board** means the Mercy Health Board of Management, or the governing body of Mercy Hospital for Women however styled.
- 10.4 **Commission** or **FWA** means Fair Work Australia.
- 10.5 **Higher Qualification** means a qualification appropriate to the specialty in which a registered medical practitioner is employed conferred upon the registered medical practitioner by a University, Medical School or Learned College including:
- 10.5.1 postgraduate degrees and diplomas of Universities;
 - 10.5.2 membership or fellowship of a College or Association of Specialists;
 - 10.5.3 any other postgraduate qualification at the level of Masters or above appropriate to the specialty in which a registered medical practitioner is employed.
 - 10.5.4 where the minimum compulsory training period in that specialty required to qualify for the postgraduate qualification exceeds four years, years in excess of four will be counted as experience after obtaining higher qualification in the definition of Senior Specialist, Principal Specialist and Senior Principal Specialist.

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- 10.6 **Hospital** means Mercy Hospital for Women, and includes the Board and / or the authorised agent of the Board.
- 10.7 **Registered medical practitioner** means a Specialist Neonatologist.
- 10.8 **Specialty** means a field of work requiring the application of special experience and qualifications in a particular branch of medicine.
- 10.9 **Hourly rate** means 1/38th of the weekly wage.

11. PROCEDURE FOR DISPUTE RESOLUTION

11.1 Resolution of disputes and grievances

- 11.1.1 Unless otherwise provided for in this Agreement, a dispute or grievance about a matter arising under this Agreement or the National Employment Standards, other than termination of employment, must be dealt with in accordance with this clause.
- 11.1.2 This clause does not apply to any dispute on a matter or matters arising in the course of bargaining in relation to a proposed workplace agreement.
- 11.1.3 A party bound by this Agreement may be represented at any stage by his / her chosen representative whoever that may be.

11.2 Obligations

- 11.2.1 The parties to the dispute or grievance, and their representatives, must genuinely attempt to resolve the dispute or grievance through the processes set out in this clause and must cooperate to ensure that these processes are carried out expeditiously.
- 11.2.2 Whilst a dispute or grievance is being dealt with in accordance with this clause, work must continue in accordance with usual practice, provided that this does not apply to a registered medical practitioner who has a reasonable concern about an imminent risk to his or her health or safety, has advised the Hospital of this concern and has not unreasonably failed to comply with a direction by the Hospital to perform other available work that is safe and appropriate for the registered medical practitioner to perform.
- 11.2.3 No person bound by this Agreement will be prejudiced as to the final settlement of the dispute by the continuance of work in accordance with this clause.

11.3 Agreement and dispute settlement facilitation

- 11.3.1 For the purposes of compliance with this Agreement (including compliance with this dispute settlement procedure) where the chosen employee representative is another employee of the Hospital, he/she must be released by

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the Hospital from normal duties for such periods of time as may be reasonably necessary to enable him/her to represent registered medical practitioners concerning matters pertaining to the employment relationship including but not limited to:

- (a) Investigating the circumstances of a dispute or an alleged breach of this Agreement;
- (b) Endeavouring to resolve a dispute arising out of the operation of the Agreement; or
- (c) Participating in conciliation, arbitration or any other agreed alternative resolution process.

11.3.2 The release from normal duties referred to in this clause is subject to the proviso that it does not unduly affect the operations of the Hospital.

11.4 Discussion of grievance or dispute

11.4.1 The dispute or grievance must first be discussed by the aggrieved registered medical practitioner(s) with their immediate supervisor.

11.4.2 If the matter is not settled, the registered medical practitioner(s) can require that the matter be discussed with another representative of the Hospital appointed for the purposes of this procedure.

11.5 Internal process

11.5.1 If any party to the dispute or grievance who is bound by this Agreement refers the dispute or grievance to an established internal dispute or grievance resolution process, the matter must first be dealt with in accordance with that process.

11.5.2 If the dispute or grievance is not settled through an internal dispute or grievance resolution process, the matter can be dealt with in accordance with the process set out below.

11.5.3 If the matter is not settled, the Hospital or an association bound by the Agreement and chosen as the registered medical practitioner representative may apply to Fair Work Australia ('FWA') to have the dispute or grievance dealt with by conciliation.

11.6 Disputes of a Collective Character

11.6.1 The parties bound by the Agreement acknowledge that disputes of a collective character concerning more than one employee may be dealt with more expeditiously by an early reference to FWA.

11.6.2 No dispute of a collective character may be referred to FWA directly unless there has been a genuine attempt to resolve the dispute at the workplace level prior to it being referred to FWA.

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11.7 Conciliation

- 11.7.1 Where a dispute or grievance is referred for conciliation, a member of FWA shall do everything that appears to the member to be right and proper to assist the parties to agree on terms for the settlement of the dispute or grievance.
- 11.7.2 This may include arranging:
 - (a) conferences of the parties or their representatives presided over by the member; and
 - (b) for the parties or their representatives to confer among themselves at conference at which the member is not present.
- 11.7.3 Conciliation before FWA shall be regarded as completed when:
 - (a) the parties have reached agreement on the settlement of the grievance or dispute; or
 - (b) the member of FWA conducting the conciliation has, either of their own motion or after application by either party, satisfied themselves that there is no likelihood that within a reasonable period further conciliation will result in settlement; or
 - (c) the parties have informed the FWA member that there is no likelihood of agreement on the settlement of the grievance or dispute and the member does not have substantial reason to regard the conciliation proceedings as completed.

11.8 Arbitration

- 11.8.1 If the dispute or grievance has not been settled when conciliation has been completed, either party may request that FWA proceed to determine the dispute or grievance by arbitration.
- 11.8.2 Where a member of FWA has exercised conciliation powers in relation to the dispute or grievance, the member shall not exercise, or take part in the exercise of, arbitration powers in relation to the dispute or grievance if a party objects to the member doing so.
- 11.8.3 Subject to sub-clause 11.8.4 below, the determination of FWA is binding upon the person bound by this Agreement.
- 11.8.4 An appeal lies to the Full Bench of FWA, with the leave of the Full Bench, against a determination by a single member of FWA made pursuant to this clause.

11.9 General powers and procedures of FWA

Subject to any agreement between the parties 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, FWA may:

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- 11.9.1 determine matters of procedure and exercise the powers set out in Chapter 5, Part 5-1, Divisions 2 and 3 of the Act ; and
- 11.9.2 in the course of dealing with a matter by arbitration make an interim recommendation at any stage in the process prior to the final determination of the dispute by arbitration.

11.10 Publication and privacy obligations during disputes

In accordance with the provisions of s.594 of the *Act*, the parties, subject to the preservation of any duties of confidence, commercial or otherwise and to the requirements for in-camera hearings due to security or other concerns, consent to and empower FWA at its discretion to publicly disclose any recommendation or decision it has reached in order to resolve in whole or in part any dispute under this Agreement.

12. TYPES OF EMPLOYMENT

12.1 General

- 12.1.1 Registered medical practitioners under this Agreement will be employed as:

- ☐ full-time; or
- ☐ temporary

- 12.1.2 At the time of engagement, registered medical practitioners will be informed in writing of the nature of their contract of employment.

12.2 Full-time employment

A **full-time registered medical practitioner** is one who is ready, willing and available to work a full week of 38 hours at the times and during the hours prescribed in accordance with Clause 23 Hours of Duty.

12.3 Temporary employment

- 12.3.1 A temporary registered medical practitioner is one employed as such, to cover the duties normally performed by a registered medical practitioner on leave, performing other duties, or to cover a temporarily vacated position, and paid for each hour or part hour worked.
- 12.3.2 Temporary employment may be terminated by the Hospital or the registered medical practitioner at any time without the requirement of prior notice by either party.
- 12.3.3 Temporary registered medical practitioners are not entitled to the benefit of the following clauses, other than unpaid bereavement leave (which is available at the discretion of the Hospital):
 - ☐ 22 Annual leave
 - ☐ 23 Personal leave

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- ☐ 26 Long service leave
- ☐ 27 Parental leave

12.3.4 Temporary registered medical practitioners will be paid an hourly rate of pay based on years of experience, plus a loading of 25%.

12.3.5 For the purpose of the Act, the term 'temporary registered medical practitioner' shall be deemed to mean a casual employee.

12.4 Hourly Part Time Arrangements for Registered Medical Practitioners

The Hospital agrees that no hourly part time contracts of employment may be entered into covering registered medical practitioners except pursuant to "Lochtenberg" arrangements.

12.5 Contract Renewal

Non renewal of contracts will not be harsh, unjust or unreasonable. In general, contracts of employment will be operative for an initial term of three (3) years, however contracts of employment may be offered for a minimum period of one (1) year to a maximum period of five (5) years in circumstances where this has been identified as necessary and appropriate. Appropriate circumstances do not include circumstances where a short term contract extension is used as a device to avoid responsibilities under what is in effect an ongoing employment relationship.

13. TERMINATION OF EMPLOYMENT

13.1 Notice of Termination

13.1.1 Either the Hospital or a registered medical practitioner may terminate the contract of employment by giving three months written notice to the other party.

13.1.2 In addition, registered medical practitioners over 45 years of age at the time of the giving of the notice with not less than two years continuous service are entitled to an additional week's notice.

13.1.3 Payment in lieu of the notice prescribed in clauses 13.1.1 and/or 13.1.2 will be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu of the remaining period.

13.1.4 Failure by either the registered medical practitioner or the Hospital to provide sufficient notice will result in the disadvantaged party being entitled to receive from the other an amount equal to the unworked notice.

13.1.5 In calculating any payment in lieu of notice, the wages to be used will be those the registered medical practitioner would have received in respect of

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the ordinary time worked during the period of notice had the registered medical practitioner's employment not been terminated.

- 13.1.6 The period of notice in this clause shall not apply where the conduct of a registered medical practitioner justifies instant dismissal, or to registered medical practitioners engaged for a specific period of time or for a specified task or tasks.
- 13.1.7 Continuity of service will be as defined in clause 26 – Long Service Leave of this Agreement.

14. REDUNDANCY

- 14.1 If a registered medical practitioner's services are no longer required by the Hospital in consequence of structural or technological change, changes in the role or functions of the Hospital, substantial reduction in the Hospital's patient numbers or like events, the Hospital may terminate the registered medical practitioner's employment. In these circumstances the registered medical practitioner shall be entitled to the following payments:
 - 14.1.1 The period of notice referred to in sub-clause 13.1;
 - 14.1.2 A separation package in accordance with the relevant Victorian government policy. In the event the Employee is offered and accepts a separation package under this sub-clause, all conditions associated with provision of the particular separation package will apply, including any restrictions in respect to re-employment in the public sector.
- 14.2 Nothing in this Agreement shall operate to exclude any other obligation arising under the relevant Victoria government policy including but not limited to consideration of measures to mitigate or avert any proposed termination by way of redundancy.
- 14.3 Payment for any accrued annual leave and long service leave entitlements.

15. RECORD OF SERVICE

- 15.1 The Hospital will record the following particulars in respect of each registered medical practitioner:
 - ☐ date of commencement;
 - ☐ date of termination;
 - ☐ total period of service (years and months);
 - ☐ long service leave taken during the period of service, or payments made; and
 - ☐ accumulated sick leave at termination.
- 15.2 On request, a copy of the record will be furnished to a registered medical practitioner upon termination.

16. REMUNERATION

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16.1 Classification Definitions

16.1.1 "Specialist" means a registered medical practitioner who possesses a higher qualification appropriate to the specialty in which they are employed or has sufficient experience in their specialty to satisfy the Hospital that the appointment is warranted.

16.1.2 "Executive Specialist" means a registered medical practitioner appointed as such by the Hospital.

In addition to the qualifications for a Specialist role, they must have sufficient experience in the specialty to satisfy the Hospital that the appointment is warranted.

A registered medical practitioner appointed as a head of department or unit will be paid no less than a Executive Specialist Bottom of Range.

16.1.3 Where the registered medical practitioner has a first specialist qualification and is undergoing further specialist training, the time spent since acquiring their first specialist qualification shall be counted as experience within the classification at 16.1.1 and 16.1.2 and any higher classification.

16.2 Ordinary Pay

| Classification | Remuneration payable in respect of a week's ordinary duty if the registered medical practitioner receives additional private practice income including from a SPF/PPF | Remuneration payable in respect of a week's ordinary duty if the registered medical practitioner does not receive additional private practice income |
|----------------------|---|--|
| | \$ | \$ |
| Specialist Year 1 | \$2,602.90 | 3208.80 |
| Specialist Year 2 | \$2,653.30 | 3271.00 |
| Specialist Year 3 | \$2,703.70 | 3333.10 |
| Specialist Year 4 | \$2,884.70 | 3556.20 |
| Specialist Year 5 | \$2,996.70 | 3694.30 |
| Specialist Year 6 | \$3,114.00 | 3839.00 |
| Specialist Year 7 | \$3,235.20 | 3988.40 |
| Specialist Year 8 | \$3,361.30 | 4143.80 |
| Specialist Year 9 | \$3,427.50 | 4225.40 |
| Specialist Year 10 | \$3,630.20 | 4475.30 |
| Specialist Year 11 | \$3,717.50 | 4583.00 |
| Executive Specialist | | |
| Bottom of Range | \$3,717.50 | 4583.00 |
| Top of Range | \$4,275.20 | 5270.40 |

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16.3 Private Practice Bonus

16.3.1 In addition to the rates set out in 16.2, each registered medical practitioner shall be paid:

(a) A salary entitlement (bonus A) of 40% of base salary. Bonus A is guaranteed by the Hospital, will be paid with the fortnightly salary, and is not dependent on the level of private practice billings or funds within the Neonatal Intensive Care Unit Special Purpose Fund.

(b) A further bonus (bonus B) of 10% of base salary subject to sufficient funds within the Neonatal Intensive Care Unit Special Purpose Fund.

16.3.2 The parties to this Agreement and, in the case of the employees, their chosen representative, shall prepare written terms regarding the operation of the Neonatal Intensive Care Unit Special Purpose Fund to give effect to clause 16.3. Those terms shall include but not be limited to the meaning of 'sufficient funds' for the purpose of clause 16.3.1(b), when a determination of 'sufficient funds' is made and the timing for payments beyond the 40% bonus.

16.3.4 The parties will endeavour to conclude the written terms within three months of this Agreement coming into effect. In the event that the parties cannot reach agreement on the written terms, either party may seek assistance from Fair Work Australia in accordance with the dispute settling procedure of this Agreement.

16.4 Salary Packaging

16.4.1 A registered medical practitioner shall be entitled to package any part of his / her salary in accordance with the provisions of the *Fringe Benefits Tax Act 1986*. The registered medical practitioner shall be responsible for any fringe benefit tax payable on benefits provided as part of their identified sacrificed salary above the tax free threshold.

16.4.2 Provided that where legislative or other changes have the effect of reducing or withdrawing the personal benefits identified or resulting from this Agreement, the Hospital will not be liable to make up the salary benefit lost by the registered medical practitioner as a consequence of such change. Where other changes have the effect of increasing the cost of packaging to the Hospital, these costs shall either be passed on to the registered medical practitioner participating in packaging or the Hospital can choose to cease or amend the arrangement to prevent additional FBT costs being incurred which would otherwise be passed on to the registered medical practitioner.

17. SUPERANNUATION

17.1 In addition to the remuneration of each registered medical practitioner, the Hospital shall contribute 9% of earnings (as defined below) to a complying superannuation

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fund for the benefit of the registered medical practitioner. The percentage contribution will be increased during the life of the agreement in accordance with the percentage established by the *Superannuation Guarantee (Administration) Act* (Cth). The fund shall be selected by the registered medical practitioner. In the absence of the registered medical practitioner indicating their preference regarding the appropriate superannuation fund, payments shall be made by the Hospital into Health Super.

17.2 For the purpose of this Agreement, 'earnings' shall comprise of:

- (a) 'Ordinary time earnings' as defined by legislation (as varied from time to time),
- (b) Payments made pursuant to the Private Practise Bonus, and allowances and payments made as a result of recall and in-house overnight work, other than allowances that are reimbursements for costs incurred.

18. ALLOWANCES

18.1 On call

18.1.1 All registered medical practitioners will hold themselves available to perform duty outside ordinary hours. Payment for on-call availability is included in the remuneration payable in respect of ordinary duty set out in Clause 16.

18.1.2 A registered medical practitioner required to be on call will provide appropriate means of transport unless otherwise agreed.

18.2 In-house overnight allowance

A registered medical practitioner required to remain in the Hospital overnight whilst on call will be paid in addition to other entitlements \$530.45 per night in-house overnight allowance.

This payment shall be deemed to provide compensation for the resident in-house and also includes compensation for all work necessarily undertaken by a registered medical practitioner up to a total of one hour's duration.

Any work performed during a resident in-house period by the registered medical practitioner in excess of a total of one hour's duration shall be paid for as active duty at the recall rate specified in 18.3.1.

18.3 Recall

18.3.1 A registered medical practitioner who is recalled for duty away from the place at which the registered medical practitioner is available for contact, whether or not the registered medical practitioner is rostered on-call at the time, will be paid one hour at their hourly rate in respect of each recall as payment for all time and cost associated with travelling to the Hospital, and in addition will be paid for the time spent at the place to which the registered medical practitioner is recalled at the rate of \$196.00 per hour.

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18.4 Travelling allowance

- 18.4.1 A registered medical practitioner who is required to use personal transport in the course of duties or is recalled to work outside ordinary rostered hours and who uses personal transport from home to the place of work and return, will be reimbursed at the appropriate rate per business kilometre determined from time to time by the Australian Tax Office. The onus of supporting the claim will lie with the registered medical practitioner.

19. CONTINUING MEDICAL EDUCATION SUPPORT

19.1 Funded Support entitlement:

- 19.1.1 The entitlement for Full-Time registered medical practitioner (as defined by this Agreement) is for reimbursement of approved costs up to a value of \$21,321 in the 2009/10 financial year; \$22,014 in the 2010/11 financial year; and \$22,730 in the 2011/12 financial year and thereafter inclusive of the support at (b) below and subject to (e) below.
- 19.1.2 Where support was provided to registered medical practitioners prior to 1 July 2006 (including from private practice, special purpose or similar funds), those arrangements will be unchanged by this Clause. This includes support that in the absence of this Clause would have normally been available to new employees of a health service.
- 19.1.3 The entitlement to funding support for registered medical practitioners employed on a salaried Fractional basis is pro-rata, based on the registered medical practitioner's base Fractional appointment (up to \$2,132 in the 2009/10 financial year; \$2,201 in the 2010/11 financial year; and \$2,273 in the 2011/12 financial year and thereafter for each 0.1 fraction / 3.5 hours), provided that where a registered medical practitioner holds more than one Fractional appointment with an employer listed in Schedules 1-5 of the *Health Services Act 1988*, the total benefit available to the Specialist each year will not exceed the benefit available to a single Full-Time registered medical practitioner.
- 19.1.4 Subject to sub-clauses 19.2 and 19.3 below, funds will be paid to the registered medical practitioner as a reimbursement of costs reasonably and necessarily incurred for Continuing Medical Education activities or purposes directly relevant to the registered medical practitioner's employment with the Hospital.
- 19.1.5 The funding provided for in this Clause is a "benchmark" entitlement. A Chief Medical Officer/delegate of the Hospital may approve higher levels of support dependent on the monies available in the appropriate fund.

19.2 Reimbursable Expenses:

- 19.2.1 Pursuant to sub-clause 19.4 a registered medical practitioner is entitled to seek reimbursement for the following Continuing Medical Education related costs:

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- a) costs relating to professional conferences and workshops, including registration fees, and reasonable travel, accommodation and per diem expenses;
- b) costs associated with enrolment in relevant short courses, workshops, or post-graduate courses and other activities recognised by the Specialty College for purposes of accruing CME / CPD / MOPS points; and
- c) other reasonable costs such as books, CDs, portable technological aids (not including items of a capital nature (eg, ultra-sound imaging devices) mobile telephones or iPods and like audio devices) and subscriptions where such resources are not otherwise provided by, or available from, the Hospital.

19.3 Rates of Reimbursement

19.3.1 Air travel associated with continuing medical education activities will be reimbursed at the rate of business class for journeys of 3 hours or more, and economy class for journeys of less than 3 hours duration. Claims for private car use for travel associated with continuing medical education activities will be reimbursed at the relevant rate per business kilometre published by the Australian Tax Office from time to time.

19.3.2 Accommodation, meal and incidental expenses:

- a) Reimbursement of reasonable and necessarily incurred accommodation, meal and incidental expenses will be paid subject to the following:
 - (i) Accommodation may be at the hosting hotel, or elsewhere as is reasonable for the conference/seminar attended;
 - (ii) Meal and other incidental expense amounts will be in accordance with the amounts set out in the relevant Australian Taxation Office (ATO) Tax Determination dealing with reasonable allowance amounts (currently Tax Determination **2008/18** which can be found on the ATO website at <http://www.ato.gov.au/>).

The ATO daily allowance rates vary according to salary. The rates used should be based on the full-time equivalent salary applicable to the position occupied by the registered medical practitioner. For the purpose of this clause, "salary" shall mean the registered medical practitioner's base salary. The salary used for this purpose is not reduced by any salary sacrifice arrangement.

- b) Where the Continuing Medical Education activity does not involve travel (e.g. postgraduate study, local conferences), reasonable and necessary expenses actually incurred should be paid.

19.4 Reimbursement Process:

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- 19.4.1 Reimbursement may be claimed by a registered medical practitioner using the form(s) provided by the Hospital;
- 19.4.2 Claims are to be submitted to the Chief Medical Officer/delegate for approval, through the registered medical practitioner's Unit Head, and must be accompanied by original receipts and any other necessary supporting documentation, including for FBT purposes (eg travel diary);
- 19.4.3 Claims are to be submitted within 3 months of expenditure being incurred and where practicable within the financial year to which they relate.
- 19.4.4 The Hospital will process reimbursements in an expeditious manner not later than 30 days after submission of a fully compliant claim.
- 19.5 A registered medical practitioner will not be entitled to payout of any unused entitlement under this Clause upon retirement, resignation, redundancy or dismissal.
- 19.6 The reimbursement of up to the per annum amounts described in sub-clause 1 is inclusive of any applicable Fringe Benefits Tax.
- 19.7 There will be no transfer of any unexpended entitlement to funded support between health services. However, access to some funded support from the new employer should not be unreasonably withheld, provided that the total value of support provided by the relevant health services does not exceed \$21,321 in the 2009/10 financial year; \$22,014 in the 2010/11 financial year; and \$22,730 in the 2011/12 financial year and thereafter.
- 19.8 Any dispute as to the reasonableness and/or eligibility of a claim for CME reimbursement under this clause will be handled as follows:
 - 19.8.1 The Hospital will refer the claim back to the registered medical practitioner seeking clarification of the items in question. This clarification will be in writing and the response from the registered medical practitioner will be in writing;
 - 19.8.2 If the matter remains unresolved, either party may refer the matter to an independent person or body for determination or, where the parties cannot agree as to who the independent person or body should be, to Fair Work Australia in accordance with the dispute resolution procedures at clause 11 of this Agreement;
 - 19.8.3 The determination of the independent person or body shall be final.
- 19.9 Any dispute in relation to the application of this clause may be dealt with through the Dispute Resolution Procedure.

20. PROVISION OF MOBILE TELEPHONES OR REIMBURSEMENT OF COST

When the Hospital requires a registered medical practitioner to be in telephone contact for work purposes, the Hospital must provide a fully funded mobile phone for the registered

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medical practitioner's work use; OR fully reimburse the registered medical practitioner for all reasonable and actual costs incurred by the registered medical practitioner when making or receiving work related telephone calls.

21. PRIVATE PRACTICE

- 21.1 Each registered medical practitioner may, pursuant to a Private Practice Agreement, engage in Private Practice in the course of his / her employment at the Hospital.

For the avoidance of doubt, nothing in this Agreement shall require a registered medical practitioner to engage in Private Practice in a manner inconsistent with legislation relevant to his / her practice, including but not limited to the *Health Insurance Act 1973*.

- 21.2 The Hospital will continue to provide and maintain reasonable administrative support for the facilitation of billing for all privately insured patients, the processing of accounts and the dealing with client queries and complaints as well as the provision of private patient billing reports quarterly for purposes of Goods and Services Tax / Business Activity Statement reporting to the Australian Tax Office to enable the registered medical practitioners to comply with the requirements of the private practice Tax Ruling CR2005/26.

22. ACCIDENT PAY

22.1 Definitions

22.1.1 Accident pay

(a) Accident pay – total incapacity

Accident pay in respect of a registered medical practitioner deemed to be totally incapacitated under the Act means a weekly payment of an amount representing the difference between:

- ☐ the total amount of compensation paid under Part IV of the Act for the week in question; and
- ☐ the rate payable under this agreement.

(b) Accident pay - partial incapacity

Accident pay in respect of a registered medical practitioner deemed to be partially incapacitated under the Act means a weekly payment of an amount representing the difference between:

- ☐ the total amount of compensation paid under Part IV of the Act for the period in question together with the average weekly amount the registered medical practitioner is earning or is able to earn in some suitable employment or business (as determined expressly or by

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implication by the WorkCover Authority or as agreed between the parties); and

☐ the rate payable under this agreement.

(i) The rate will be the same as that applying for a total incapacity. However, where a registered medical practitioner receives a weekly payment under this clause and the payment is subsequently reduced pursuant to the Act, the reduction will not increase the liability of the Hospital to increase the amount of accident pay in respect of that injury.

(c) Where a registered medical practitioner receives accident pay and the pay is payable for incapacity for part of a week, the amount will be a direct proportion.

22.1.2 Act

(a) Act for the purpose of this clause only means the *Accident Compensation Act 1985 (Vic)*.

(b) Where an entitlement to accident pay arises under this agreement any reference to the *Accident Compensation Act 1985 (Vic)* will be deemed to include a reference to the *Workers Compensation Act 1958 (Vic)*.

22.1.3 Injury

Injury has the same meaning and application as applying under the Act. No injury will result in the application of accident pay unless an entitlement exists under the Act.

22.2 Entitlement to accident pay

22.2.1 A Hospital will pay a registered medical practitioner accident pay where the registered medical practitioner receives payment in respect of a weekly incapacity (within the meaning of the Act) in respect of which the Hospital is liable to pay compensation under the Act. The Hospital's liability to pay accident pay may be discharged by another person on the Hospital's behalf.

22.2.2 Accident pay does not apply:

(a) for the first five normal working days of incapacity;

(i) A registered medical practitioner who contracts an infectious disease in the course of duty and is entitled to receive workers compensation will receive accident pay from the first day of the incapacity.

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- (b) to any incapacity occurring during the first two weeks of employment, unless the incapacity continues beyond this time. Subject to 22.2.2(a) and 22.4 accident pay will only apply to the period of incapacity after the first two weeks of employment;
- (c) to industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration (as determined by the Act) unless the registered medical practitioner has been employed with the Hospital at the time of the incapacity for a minimum period of one month.

22.2.3 A registered medical practitioner on engagement may be required to declare all workers compensation claims made in the previous five years. In the event of false or inaccurate information being knowingly declared by the registered medical practitioner the Hospital is entitled to require the Hospital to forfeit his or her entitlement to accident pay under this clause.

22.3 Cessation of accident pay

A registered medical practitioner's entitlement to accident pay ceases:

- 22.3.1 when the incapacity ceases; or
- 22.3.2 on the death of the registered medical practitioner; or
- 22.3.3 when the registered medical practitioner has received a total of 39 weeks accident pay for any one injury; or
- 22.3.4 when there is a cessation or redemption of weekly compensation payments under the Act, in which case accident pay will cease from the date of such cessation or redemption; or
- 22.3.5 where a registered medical practitioner refuses or fails to commence work after a medical referee, in accordance with the Act, has given a certificate specifying work for which the registered medical practitioner is fit and the Hospital makes this work available to the registered medical practitioner, in which case accident pay will cease from the date of the refusal or failure to commence work.

22.4 Termination of employment

- 22.4.1 Subject to 22.3 and clauses 22.4.3 and 22.4.4, a registered medical practitioner's entitlement to accident pay will continue on termination of employment by their Hospital, if the registered medical practitioner was incapacitated and receiving accident pay at the date of termination.
- 22.4.2 A registered medical practitioner with a partial incapacity will continue to receive accident pay from their Hospital on termination of their employment if:

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- ☐ the Hospital cannot provide suitable employment for the registered medical practitioner to perform; and
- ☐ alternative employment is available with another Hospital.

22.4.3 To qualify for the continuance of accident pay on termination of employment, a registered medical practitioner will provide evidence to their Hospital of the continuing payment of weekly workers compensation payments.

22.4.4 A registered medical practitioner's entitlement to accident pay on termination of their employment will cease if the termination is due to serious and/or wilful misconduct on the part of the registered medical practitioner.

22.5 Absences on other paid leave

A registered medical practitioner is not entitled to payment for Accident pay in respect of any period of other paid leave of absence.

22.6 Notice of injury

A registered medical practitioner on receiving an injury for which the registered medical practitioner claims to be entitled to receive accident pay, will give notice in writing of the injury to their Hospital as soon as reasonably practicable after the occurrence of the injury. Notice may be given by a representative of the registered medical practitioner.

22.7 Medical examination

To receive entitlement to accident pay a registered medical practitioner will conform to the requirements of the Act as to medical examinations.

22.8 Civil damages claims

22.8.1 A registered medical practitioner receiving or who has received accident pay will advise his or her Hospital of any action the registered medical practitioner may institute or any claim the registered medical practitioner may make for damages. The registered medical practitioner, if requested, will 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.

22.8.2 Where a registered medical practitioner obtains a judgment or settlement for damages in respect of an injury for which they have received accident pay, the Hospital's liability to pay accident pay will cease from the date of judgment or settlement. However if the judgment or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the Hospital, the registered medical practitioner will pay to the Hospital any amount of

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accident pay already received in respect of that injury by which the judgment or settlement has not been reduced.

- 22.8.3 Where a registered medical practitioner obtains a judgment or settlement for damages against a person other than the Hospital in respect of an injury for which the registered medical practitioner has received accident pay, the Hospital's liability to pay accident pay will cease from the date of judgment or settlement. However if the judgment or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the Hospital, the registered medical practitioner will pay to the Hospital any amount of accident pay already received in respect of that injury by which the judgment or settlement has not been reduced.

22.9 Variation in compensation rates

Any changes in compensation rates under the Act will not increase the amount of Accident pay above the amount that would have been payable had the rates of compensation remained unchanged.

22.10 Insurance against liability

Nothing in this agreement requires the Hospital to insure against liability for accident pay.

23. HOURS OF DUTY

- 23.1. A registered medical practitioner's ordinary hours of duty will consist of an average of 38 hours per week over a 12 month period and reasonable additional hours in accordance with the agreed roster.
- 23.2. The registered medical practitioners under this Agreement work a rotating roster that provides ward coverage and professional development. It is acknowledged that a registered medical practitioner's ordinary hours will fluctuate from one roster to the next depending on whether the registered medical practitioner is rostered to provide primary ward support or rostered to perform academic, research, administration and quality tasks as well as nights in accordance with clause 18.

23.3 Reasonable additional hours

The parties acknowledge that, having regard for the kind of work performed by the registered medical practitioners, reasonable additional hours will occur. The Hospital acknowledges that as to whether additional hours are reasonable within the meaning of the Act requires that a range of factors be taken into account, including the following:

- (a) Any risk to the health and safety of the registered medical practitioner from working the additional hours,
- (b) The registered medical practitioners' personal circumstances, including family responsibilities,

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- (c) The needs of the workplace or enterprise in which the registered medical practitioner is employed,
- (d) Whether the registered medical practitioner is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours,
- (e) Any notice given by the Hospital of any request or requirement to work the additional hours,
- (f) Any notice given by the registered medical practitioner of his or her intention to refuse to work the additional hours,
- (g) The usual patterns of work in the industry or the part of an industry in which the registered medical practitioner works,
- (h) The nature of the registered medical practitioner's role and the level of responsibility,
- (i) Whether the additional hours are in accordance with averaging terms
- (j) Any other relevant matter.

23.3.1 The parties state that 'other relevant matters' include the need to ensure 24 hour coverage by registered medical practitioners and having a roster system that assists to improve training, continuity of care and ensures safe practice principles.

23.3.2 No additional payment applies to reasonable additional hours unless expressly provided in this Agreement.

23.3.3 In the event that either party wishes to amend or replace the current rostering system, the parties (and their chosen representatives) shall consult with a view to reaching an agreed outcome. Where agreement cannot be reached, the parties shall seek the assistance of Fair Work Australia by way of conciliation.

23.4 Clinical and Non-Clinical Activities

23.4.1 The parties agree that appropriate proportions of a registered medical practitioner's normal (base) weekly hours should be devoted to clinical and non-clinical activities. An agreement as to the proportion of such time allocation will be determined at the commencement of employment and/or as part of annual work plan/performance review processes. Such agreements shall have regard to College guidelines where applicable.

23.4.2 The parties agree that registered medical practitioners, on average, should devote 20% of their normal weekly hours to non-clinical professional duties. 'Non-clinical professional duties' include administration, attendance at departmental or hospital meetings, continuing medical education/ maintenance of professional standards, quality assurance, research other than clinical research, audit and post-graduate and undergraduate teaching activities.

24. ANNUAL LEAVE

24.1 A registered medical practitioner shall be entitled to four weeks annual leave without deduction of pay on completion of each year of service in the Hospital. A registered

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medical practitioner who is required to be on call shall be entitled to 5 weeks annual leave without deduction of pay on completion of each year of service in the Hospital.

24.2 Taking of annual leave

The annual leave allowed by this clause must be allowed and must be taken as leave. Except as provided by 24.1 and 24.5, payment will not be made or accepted in lieu of annual leave.

24.3 Public holidays during annual leave

If a public holiday, as prescribed in this agreement, falls within a period of annual leave, then extra time equivalent to the public holiday is added to the registered medical practitioner's annual leave.

24.4 Proportionate leave on termination

A registered medical practitioner whose employment is terminated with less than twelve month's service in any qualifying twelve monthly period will be granted pro rata leave or payment in lieu.

24.5 Annual leave loading

24.5.1 Subject to sub-clauses 24.5.2 and 24.5.3, the time of taking leave a registered medical practitioner will be paid a loading of 17.5% of the weekly wage based on five weeks paid annual leave.

24.5.2 Annual leave loading shall be on a maximum of 190 hours in respect of any year of employment.

24.5.3 A registered medical practitioner whose weekly salary is in excess of the rate for a Specialist Year 1 (which, at the commencement of this agreement is \$2602.90) will receive in lieu of the 17.5% loading an amount equal to 17.5% of the Specialist year 1 rate to a maximum of 190 hours or a proportionate amount in respect of a lesser period or periods. At the commencement of this Agreement, the amount in lieu of loading is \$2,277.54 in respect of a period of 190 hours.

24.6 Sick leave whilst on annual leave

Where a registered medical practitioner becomes sick for a period of not less than five days whilst on annual leave and upon return from leave provides the Hospital with a certificate from a legally qualified medical registered medical practitioner other than the registered medical practitioner concerned, then the number of days not less than the five specified in the certificate will be deducted from any sick leave credit and the annual leave entitlement will be re-credited accordingly.

24.7 Cashing out of annual leave

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A registered medical practitioner may request that an amount of accrued annual leave be 'cashed out' subject to the Agreement of the Employer and the following conditions:

- (a) The cashing out must not result in the remaining accrued entitlement to paid annual leave being less than 4 weeks; and
- (b) Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the Hospital and the registered medical practitioner; and
- (c) The registered medical practitioner must be paid at least the full amount that would have been payable had the registered medical practitioner taken the leave that has been forgone.

While cashing out of annual leave is at the initiative of the employee and requires the consent of both parties, nothing in this clause shall prevent the employer from advising the employee of his/her entitlement to request the cashing out of annual leave.

25. PERSONAL LEAVE

25.1 Amount of paid personal leave

25.1.1 Paid personal leave will be available to a registered medical practitioner when they are absent due to:

- ☐ personal illness or injury (sick leave); or
- ☐ for the purposes of caring for an immediate family or household member that is sick and requires the registered medical practitioner's care and support (carer's leave); or

25.1.2 A registered medical practitioner is entitled to 28 working days paid personal leave for each year of service, such leave as is not taken being cumulative year to year.

25.2 Immediate family or household

25.2.1 The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is taken being either:

- (a) a member of the registered medical practitioner's immediate family; or
- (b) a member of the registered medical practitioner's household.

25.2.2 **The term immediate family includes:**

- (a) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the registered medical practitioner. A de facto spouse,

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in relation to a person, means a person of either sex to the first mentioned person who lives with the first mentioned person as the husband, wife or partner of that person on a bona fide domestic basis although not legally married to that person; 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 registered medical practitioner or spouse of the registered medical practitioner.

25.3 Carer's leave

25.3.1 A registered medical practitioner is entitled to use up to ten days personal leave each year as carer's leave. Where the registered medical practitioner does not use ten days personal leave each year as carer's leave, the unused amount accumulates from year to year.

25.3.2 This entitlement is subject to the following:

- (a) the registered medical practitioner must be responsible for the care of the person concerned;
- (b) the person concerned must be a person who permanently resides with the registered medical practitioner or who is a member of the registered medical practitioner's immediate family;
- (c) the registered medical practitioner must notify the Hospital before the start of the first shift from which the registered medical practitioner will be absent. The registered medical practitioner must notify the Hospital of:
 - ☐ the name of the person requiring care;
 - ☐ the relationship of the person requiring care to the registered medical practitioner;
 - ☐ the reasons for the registered medical practitioner taking such leave; and
 - ☐ the estimated length of absence.
- (d) Where it is not practicable for the registered medical practitioner to give prior notice of absence, the registered medical practitioner must notify the Hospital by telephone at the first available opportunity on the day of absence.
- (e) If the Hospital so requires, the registered medical practitioner must establish by production of a medical certificate the illness of the person so concerned.

25.3.3 A registered medical practitioner may take unpaid carer's leave by agreement with the Hospital.

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25.4 Sick leave

- 25.4.1 A registered medical practitioner who becomes unfit for duty due to personal ill health or injury is entitled to sick leave on full pay for a period not exceeding in the aggregate 28 working days for each year of service, such leave as is not taken being cumulative from year to year.
- 25.4.2 Where a registered medical practitioner transfers from a Hospital which, but for any Agreement made pursuant to the Fair Work Act 2009 or predecessor would fall within the scope of the Hospital Specialists and Medical Administrators Award 2002, to the Hospital, accumulated sick leave (if any) to the registered medical practitioner's credit up to a maximum of two hundred and eighty working days shall be credited to the registered medical practitioner in his/her new employment. The onus of proving accumulated sick leave credit shall rest with the registered medical practitioner, but a statement signed by an authorised officer of the registered medical practitioner's former Hospital certifying the amount of accumulated sick leave credit shall constitute acceptable proof.'

25.5 Bereavement leave

- 25.5.1 A registered medical practitioner is entitled to up to four days bereavement leave if a member of the registered medical practitioner's immediate family or household in Australia dies or is seriously ill.
- 25.5.2 Where a registered medical practitioner has exhausted their annual bereavement leave entitlement, including accumulated entitlements, they will be entitled to four days unpaid bereavement leave.
- 25.5.3 Proof of such death or illness shall be furnished by the registered medical practitioner to the satisfaction of the Hospital, if requested.

26. LONG SERVICE LEAVE

26.1 Entitlement

- 26.1.1 A registered medical practitioner shall be entitled to long service leave with pay, in respect of continuous service with Institutions or Statutory Bodies in accordance with the provisions of this clause. Such entitlement will be taken in accordance with the Hospital's policy on the administration of long service leave.
- 26.1.2 The amount of such entitlement will be:
- (a) on the completion by the registered medical practitioner of fifteen years' continuous service, six months' long service leave and thereafter an additional two months' long service leave on the completion of each additional five years' service;

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- (b) in addition, in the case of a registered medical practitioner who has completed more than fifteen years' service and whose employment is terminated otherwise than by the death of the registered medical practitioner, an amount of long service leave equal to one-thirtieth of the period of her/his service since the last accrual of entitlement to long service leave under 26.1.2(a);
- (c) in the case of a registered medical practitioner who has completed at least ten years' service but less than fifteen years' service and whose employment is terminated for any cause other than serious and wilful misconduct, such amount of long service leave as equals 1/30th of the period of service.

26.2 Service entitling to leave

- 26.2.1 The service of a registered medical practitioner shall include service for which long service leave or payment in lieu has not been received in one or more Institutions including Statutory Bodies directly associated with such Institutions or Institution for the period required by 26.1.
- 26.2.2 Service includes all periods during which a registered medical practitioner has worked as a registered medical practitioner in a College auspiced training program otherwise outside of the scope of this clause.
- 26.2.3 Service also includes all periods during which a registered medical practitioner was serving in Her Majesty's Forces or was made available by the Hospital for National Duty.
- 26.2.4 When calculating the aggregate of service entitling to leave any period of employment with any one of the said Institutions or Statutory Bodies of less than six months' duration shall be disregarded.
- 26.2.5 Where a business is transmitted from one employer (the transmittor) to another employer (the transmittee) a registered medical practitioner who worked with the transmittor and who continued in the service of the transmittee shall be entitled to count her/his service with the transmittor as service with the transmittee for the purposes of this clause.
- 26.2.6 For the purposes of this clause service shall be deemed to be continuous notwithstanding:
 - (a) the taking of any annual leave or Long Service Leave or other paid leave approved in writing by the Hospital and not covered by clauses 26.2.5(b) and 26.2.5(d);
 - (b) any absence from work of not more than fourteen days in any year on account of illness or injury or if applicable such longer period as provided in clause 25 - Personal leave;

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- (c) any interruption or ending of the employment by the Hospital if such interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
- (d) any leave of absence on account of injury arising out of or in the course of the employment of the registered medical practitioner for a period during which payment is made under clause 25 - Personal leave;
- (e) any leave of absence of the registered medical practitioner where the absence is authorised in advance in writing by the Hospital to be counted as service;
- (f) any interruption arising directly or indirectly from an industrial dispute;
- (g) any period of absence from employment between the engagement with one of the said Institutions or Statutory Bodies and another provided it is less than the registered medical practitioner's allowable period of absence from employment. A registered medical practitioner's allowable period of absence from employment shall be five weeks in addition to the total period of paid annual leave and/or sick leave which the registered medical practitioner actually receives on termination or for which the registered medical practitioner is paid in lieu;
- (h) the dismissal of a registered medical practitioner if the registered medical practitioner is re-employed within a period not exceeding two months from the date of such dismissal;
- (i) any absence from work of a female registered medical practitioner for a period not exceeding twelve months in respect of any pregnancy;
- (j) any other absence of a registered medical practitioner by leave of the Hospital, or on account of injury arising out of or in the course of his employment not covered by 26.2.5(d).

26.2.7 In calculating the period of continuous service of any registered medical practitioner, any interruption or absence of a kind mentioned in clauses 26.2.6(a) to 26.2.6(d) will be counted as part of the period of his service, but any interruption or absence of a kind mentioned in clauses 26.2.6(e) to 26.2.6(i) will not be counted as part of the period of service unless it is so authorised in writing by the Hospital.

26.2.8 The onus of proving a sufficient aggregate of service to support a claim for any long service leave entitlement shall at all times rest upon the registered medical practitioner concerned.

26.3 Payment in lieu of long service leave on the death of a registered medical practitioner

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Where a registered medical practitioner who has completed at least ten years' service dies while still in the employ of the Hospital, the Hospital shall pay to such registered medical practitioner's personal representative, a sum equal to the pay of such registered medical practitioner for one-thirtieth of the period of the registered medical practitioner's continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the registered medical practitioner.

26.4 Payment for period of leave

26.4.1 Payment to a registered medical practitioner in respect of long service leave will be made in one of the following ways:

- (a) in full in advance when the registered medical practitioner commences leave; or
- (b) at the same time as payment would have been made if the registered medical practitioner had remained on duty; or
- (c) in any other way agreed between the Hospital and the registered medical practitioner.

26.4.2 Where the employment of the registered medical practitioner is for any reason terminated before taking long service leave to which the registered medical practitioner is entitled or where any long service leave accrues to a registered medical practitioner pursuant to 26.1.2(b), the registered medical practitioner will, subject to the provisions of 26.4.3, be entitled to pay in respect of such leave as at the date of termination of employment.

- (a) Where any long service leave accrues to a registered medical practitioner pursuant to 26.1.2(a), the registered medical practitioner will be entitled to pay in respect of such leave as at the date of termination of employment.
- (b) Provided in the case of a registered medical practitioner who accrues entitlement pursuant 26.1.2(a), and who intends to be re-employed by another Institution or Statutory Body:
 - (i) such a registered medical practitioner may in writing request payment in respect of such leave to be deferred until after the expiry of the registered medical practitioner's allowable period of absence from employment provided in 26.2.6(g).
 - (ii) except where the registered medical practitioner gives notice in writing that the registered medical practitioner has been employed by another Institution or Statutory Body, payment will be made in respect of such leave at the expiry of the

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registered medical practitioner's allowable period of absence from employment;

- (iii) where a registered medical practitioner gives notice in writing that the registered medical practitioner has been employed by another Institution or Statutory Body, the Hospital is no longer required to make payment to the registered medical practitioner in respect of such leave.

- 26.4.3 Where an increase occurs in the ordinary time rate of pay during any period of long service leave taken by the registered medical practitioner, the registered medical practitioner will be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

26.5 Taking of leave

- 26.5.1 When a registered medical practitioner becomes entitled to long service leave, such leave will be granted by the hospital within six months from the date of the entitlement but the taking of such leave may be postponed to such date as is mutually agreed.

- 26.5.2 Any long service leave will be inclusive of any public holiday occurring during the period when the leave is taken.

- 26.5.3 If the Hospital and a registered medical practitioner so agree:

- (a) the first six months long service leave to which a registered medical practitioner becomes entitled may be taken in two or three separate periods; and
- (b) any subsequent period of long service leave to which the registered medical practitioner becomes entitled may be taken in two separate periods;

- 26.5.4 A hospital may by agreement with a registered medical practitioner grant long service leave to the registered medical practitioner before entitlement to that leave has accrued; provided that such leave will not be granted before the registered medical practitioner has completed ten years' service.

- (a) Where the employment of a registered medical practitioner who has taken long service leave in advance is subsequently terminated for serious and wilful misconduct before entitlement to long service leave has accrued, the Hospital may, from whatever remuneration is payable to the registered medical practitioner upon termination, deduct and withhold an amount in respect of the leave in advance.

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26.6 Definitions

For the purposes of this clause the following definitions apply:

26.6.1 **Pay** means remuneration for a registered medical practitioner's normal weekly hours of work calculated at the registered medical practitioner's ordinary time rate of pay provided in clause 16 –Remuneration, at the time leave is taken or (if the registered medical practitioner dies before the completion of leave so taken) as at the time of death; and shall include the amount of any increase to the registered medical practitioner's ordinary time rate of pay which occurred during the period of leave as from the date such increase operates provided that where accommodation is made available to a registered medical practitioner during his period of leave and where a deduction is made for the rental pursuant to the **Board and Lodging clause**, such amount shall be deducted from the pay for the period of leave.

26.6.2 **Month** means a calendar month. For example:

- (a) a month commencing on 15 April will end at the close of business on 14 May; and
- (b) a month commencing on 31 October will end at the close of business on 30 November.

26.6.3 Institution shall mean any hospital or benevolent home, community health centre, Society or Association registered pursuant to the *Health Services Act 1988*.

26.6.4 Statutory body means the Department of Human Services Victoria.

26.6.5 **Transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **transmitted** has a corresponding interpretation.

27. PARENTAL LEAVE

27.1 Definitions

27.1.1 For the purpose of this clause **child** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the registered medical practitioner for the purposes of adoption, other than a child or step-child of the registered medical practitioner or of the spouse of the registered medical practitioner or a child who has previously lived continuously with the registered medical practitioner for a period of six months or more.

27.1.2 Subject to 27.1.3, in this clause, **spouse** includes a de facto or former spouse.

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- 27.1.3 In relation to 27.10, spouse includes a de facto spouse but does not include a former spouse.

27.2 Basic entitlement

- 27.2.1 After twelve months continuous employment, registered medical practitioners are entitled to a combined total of 52 weeks parental leave on a shared basis for the birth or adoption of their child.

For the pregnant registered medical practitioner, maternity leave may be taken and for registered medical practitioner whose spouse is pregnant, paternity leave may be taken. Adoption leave may be taken in the case of adoption. The leave is unpaid except that nine weeks for the primary care giver and one week for the non-primary care giver shall be without loss of pay.

From 1 October 2009, paid parental leave shall increase to ten (10) weeks for the primary care giver.

Casual employees may be entitled to unpaid parental leave but shall be excluded from any paid parental leave entitlement.

When the Commonwealth Government introduces a scheme of paid parental leave (however titled or styled) the amount of paid leave provided by the Hospital in this Agreement shall not be reduced in terms of its monetary value. For the avoidance of doubt, the value of the paid parental leave provided under this Agreement will be in addition to the value of the leave provided by the Commonwealth scheme provided that the registered medical practitioner and the Hospital may reach agreement as to how such leave is paid. For example, such leave may be paid in smaller amounts over a longer period, consecutively or concurrently with any Commonwealth Government scheme. Such agreement shall be in writing and signed by the parties prior to the taking of the paid parental leave. In the absence of agreement, such leave shall be paid during the ordinary pay periods corresponding with the period of leave.

- 27.2.2 Subject to 27.5.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
- (a) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - (b) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

27.3 Variation of period of parental leave

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Where a registered medical practitioner takes leave under clause 27.2.1 or 27.4.1(b), unless otherwise agreed between the Hospital and registered medical practitioner, a registered medical practitioner may apply to the Hospital to change the period of parental leave on one occasion. Any such change to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this clause detracts from the basic entitlement in clause 27.2.1 or 27.4.1(b).

27.4 Right to request

27.4.1 A registered medical practitioner entitled to parental leave pursuant to the provisions of clause 27.2 may request the Hospital to allow the registered medical practitioner:

- (a) to extend the period of simultaneous unpaid parental leave provided for in clauses 27.2.2(a) and 27.2.2(b) up to a maximum of eight weeks;
- (b) to extend the period of unpaid parental leave provided for in clause 27.2.1 by a further continuous period of leave not exceeding 12 months;
- (c) to return from a period of parental leave on a part-time basis until the child reaches school age;

To assist the registered medical practitioner in reconciling work and parental responsibilities.

27.4.2 The Hospital shall consider the request having regard to the registered medical practitioner's circumstances and, provided the request is genuinely based on the registered medical practitioner's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Hospital's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

27.4.3 Registered medical practitioner's request and the Hospital's decision to be in writing

The registered medical practitioner's request and the Hospital's decision made under clauses 27.4.1(b) and 27.4.1(c) must be recorded in writing.

27.4.4 Request to return to work part-time

Where a registered medical practitioner wishes to make a request under clause 27.4.1(c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the registered medical practitioner is due to return to work from parental leave.

27.5 Maternity leave

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27.5.1 A registered medical practitioner must provide notice to the Hospital in advance of the expected date of commencement of parental leave. The notice requirements are:

- (a) at least ten weeks notice of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the registered medical practitioner is pregnant)
- (b) at least four weeks notice of the date on which the registered medical practitioner proposes to commence maternity leave and the period of leave to be taken

27.5.2 When the registered medical practitioner gives notice under 27.5.1(a) the registered medical practitioner must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

27.5.3 A registered medical practitioner will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.

27.5.4 Subject to 27.2.1 and unless agreed otherwise between the Hospital and registered medical practitioner, a registered medical practitioner may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

27.5.5 Where a registered medical practitioner continues to work within the six week period immediately prior to the expected date of birth, or where the registered medical practitioner elects to return to work within six weeks after the birth of the child, the Hospital may require the registered medical practitioner to provide a medical certificate stating that she is fit to work on her normal duties.

27.5.6 Special maternity leave

- (a) Where the pregnancy of a registered medical practitioner not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the registered medical practitioner may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
- (b) Where a registered medical practitioner is suffering from an illness not related to the direct consequences of the confinement, a registered medical practitioner may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.

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- (c) Where a registered medical practitioner not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.

27.5.7 Where leave is granted under 27.5.4, during the period of leave a registered medical practitioner may return to work at any time, as agreed between the Hospital and the registered medical practitioner provided that time does not exceed four weeks from the recommencement date desired by the registered medical practitioner.

27.6 Transfer to a safe job

- 27.6.1 Where a registered medical practitioner is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the registered medical practitioner make it inadvisable for the registered medical practitioner to continue at her present work, the registered medical practitioner will, if the Hospital deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- 27.6.2 If the transfer to a safe job is not practicable, the registered medical practitioner may elect, or the Hospital may require the registered medical practitioner to commence parental leave for such period as is certified necessary by a registered medical practitioner.

27.7 Paternity leave

- 27.7.1 A registered medical practitioner will provide to the Hospital at least ten weeks prior to each proposed period of paternity leave, with:
 - (a) a certificate from a registered medical practitioner which names the spouse, states that she is pregnant and the expected date of child birth or states the date on which the birth took place;
 - (b) written notification of the proposed start and finish dates for each leave period; and
 - (c) except in relation to leave taken simultaneously with the child's mother under clauses 27.2.2(a), 27.2.2(b) or 27.4.1(a), a statutory declaration stating:
 - the registered medical practitioner is seeking paternity leave to become the primary care-giver of a child;

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- particulars of any period of maternity leave sought or taken by the spouse; and
- for the period of paternity leave the registered medical practitioner will not engage in any conduct inconsistent with their contract of employment.

27.7.2 The registered medical practitioner will not be in breach of 27.7.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

27.8 Adoption leave

27.8.1 The registered medical practitioner will notify the Hospital at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. A registered medical practitioner may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the registered medical practitioner, the adoption of a child takes place earlier.

27.8.2 Before commencing adoption leave, a registered medical practitioner will provide the Hospital with a statutory declaration stating:

- (a) the registered medical practitioner is seeking adoption leave to become the primary care-giver of the child;
- (b) particulars of any period of adoption leave sought or taken by the registered medical practitioner's spouse; and
- (c) that for the period of adoption leave the registered medical practitioner will not engage in any conduct inconsistent with their contract of employment.

27.8.3 The Hospital may require a registered medical practitioner to provide confirmation from the appropriate government authority of the placement.

27.8.4 Where the placement of child for adoption with a registered medical practitioner does not proceed or continue, the registered medical practitioner will notify the Hospital immediately and the Hospital will nominate a time not exceeding four weeks from receipt of notification for the registered medical practitioner's return to work.

27.8.5 A registered medical practitioner will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

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- 27.8.6 A registered medical practitioner seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The registered medical practitioner and the Hospital should agree on the length of the unpaid leave. Where agreement cannot be reached, the registered medical practitioner is entitled to take up to two days unpaid leave. Where paid leave is available to the registered medical practitioner, the Hospital may require the registered medical practitioner to take such leave instead.

27.9 Parental leave and other entitlements

A registered medical practitioner may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks.

27.10 Returning to work after a period of parental leave

- 27.10.1 A registered medical practitioner will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.
- 27.10.2 A registered medical practitioner will be entitled to the position which they held immediately before proceeding on parental leave. In the case of a registered medical practitioner transferred to a safe job pursuant to 27.6, the registered medical practitioner will be entitled to return to the position they held immediately before such transfer.
- 27.10.3 Where such position no longer exists but there are other positions available which the registered medical practitioner is qualified for and is capable of performing, the registered medical practitioner will be entitled to a position as nearly comparable in status and pay to that of their former position

27.11 Communication during parental leave

- 27.11.1 Where a registered medical practitioner is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Hospital shall take reasonable steps to:
- (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the registered medical practitioner held before commencing parental leave; and
 - (b) provide an opportunity for the registered medical practitioner to discuss any significant effect the change will have on the status or responsibility level of the position the registered medical practitioner held before commencing parental leave.

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- 27.11.2 The registered medical practitioner shall take reasonable steps to inform the Hospital about any significant matter that will affect the registered medical practitioner's decision regarding the duration of parental leave to be taken, whether the registered medical practitioner intends to return to work and whether the registered medical practitioner intends to request to return to work on a part-time basis.
- 27.11.3 The registered medical practitioner shall also notify the Hospital of changes of address or other contact details which might affect the Hospital's capacity to comply with 27.11.1.

27.12 Replacement employees

- 27.12.1 A replacement registered medical practitioner is a registered medical practitioner specifically engaged or temporarily promoted or transferred, as a result of a registered medical practitioner proceeding on parental leave.
- 27.12.2 Before the Hospital engages a replacement registered medical practitioner the Hospital must inform that person of the temporary nature of the employment and of the rights of the registered medical practitioner who is being replaced.

28. CONFERENCE LEAVE

28.1 Eligibility:

- 28.1.1 Continuing Medical Education Leave and Support is available to registered medical practitioners directly employed by the Hospital. For the purpose of this clause, Specialist means registered medical practitioner as defined in this Agreement.

28.2 Leave entitlement:

- 28.2.1 Specialists are entitled to 2 weeks leave for relevant Continuing Medical Education Leave each year on full pay unless the Chief Medical Officer/delegate approves a greater entitlement in writing. Such entitlement shall accumulate to a maximum of two years of entitlement (4 weeks) unless otherwise approved in writing by the Chief Medical Officer/delegate.
- 28.2.2 For the purposes of this Clause, a "week" is defined as the normal hours/days worked by the Specialist consistent with their Agreement or Contract or Letter of Service.
- 28.2.3 This entitlement to Continuing Medical Education Leave wholly replaces any previous entitlement to Conference Leave or any other paid study or Continuing Medical Education leave (other than Sabbatical Leave) provided (subject to the "Savings" provision of this Agreement).
- 28.2.4 Entitlements to Conference / Study Leave accrued prior to the commencement of this Clause will be transferred in full to the entitlements accrued pursuant to this Clause, subject to the maximum accumulation prescribed above.

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28.2.5 The payment entitlement for Continuing Medical Education Leave for Specialists employed on a Fractional basis will be in proportion to their Fractional allocation.

28.3 Applying for and Granting of Leave:

28.3.1 Subject to agreement otherwise applications for leave will be made at least four weeks in advance in writing to the Chief Medical Officer or Delegate.

28.3.2 Approval will not be unreasonably withheld.

28.3.3 The Specialist may be required to report to the Hospital's executive and/or to the medical cohort on the knowledge or skills acquired by undertaking the approved Continuing Medical Education activity.

29. SABBATICAL LEAVE

29.1 For the purposes of this clause only, the following definitions shall apply -

29.1.1 **Registered medical practitioner** means:

A Specialist or Executive Specialist who has been engaged in medical undergraduate or postgraduate teaching or research with a Hospital for the period specified as entitling him/her to sabbatical leave; and

29.1.2 **Higher Clinical Qualification** means, in the case of a Director of Medical Services, a **Higher Qualification** defined in clause 10.5 - General definitions except those higher qualifications relating to medical and hospital administration and public health.

29.1.3 **Salary** or **Wage** shall mean the registered medical practitioner's salary or wage (including allowances) at the time leave is taken.

29.1.4 **Service** shall mean, subject to clause 29.3.3, service from the date of first entering employment with the Hospital or Statutory Body (whether or not such Hospital or Statutory Body has been transmitted from one employer to another during the period of such employment), and shall include all periods of paid leave including all periods during which the registered medical practitioner was serving in Her Majesty's Forces or was made available by the Hospital or Statutory Body for National Duty.

Where, for the sole purpose of undertaking a course of study or research related to his work, a registered medical practitioner is with the written approval of the Hospital or Statutory Body absent without pay for up to but not exceeding 52 weeks, the absence shall not be deemed to have broken continuity of service but shall not be counted in aggregating service for the purpose of establishing an entitlement to sabbatical leave.

29.2 Subject to the provisions set out in clause 29.3, a registered medical practitioner after the completion of a period of six years' continuous service shall be entitled to leave of absence.

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29.3 Entitlement

- 29.3.1 A registered medical practitioner who has been in the service of the same Hospital for the period specified in clause 29.2 shall be entitled to a maximum of 26 weeks' leave of absence on full salary or wages.
- 29.3.2 A registered medical practitioner who is and has been in the service of one or more Hospitals (including any Statutory Body directly associated with such Hospital or Hospitals) for an aggregate of the period specified in clause 29.2, shall be entitled to a maximum of 26 weeks' leave of absence on full salary or wages. In calculating such aggregate of service any period of employment in any one Hospital of less than six continuous months' duration shall be disregarded. Further, in respect of any period of absence from employment between an engagement with one Hospital and another of five weeks' or less (excluding all periods of paid annual long service or sick leave) service shall be deemed to be unbroken, but it shall be necessary for a registered medical practitioner as part of his/her qualification for any sabbatical leave entitlement to serve such additional period as equals the total period of all such absences.
- 29.3.3 The onus of proving a sufficient aggregate of service to support a claim for sabbatical leave shall rest with the registered medical practitioner.
- 29.3.4 The sabbatical leave shall be given as soon as practicable having regard to the needs of the Hospital, but the taking of such leave may be postponed to a mutually agreed date.
- 29.3.5 The registered medical practitioner's application for sabbatical leave shall be in writing and shall contain adequate details of the proposed programme of study or research.
- 29.3.6 Where the Hospital does not approve the registered medical practitioner's programme of study or research within three months of the written application and details, the Hospital shall refer the matter to the Medical Appeals Committee. The Hospital and the registered medical practitioner shall comply with the written advice of the Medical Appeals Committee except that it may be varied by mutual agreement between the Hospital and the registered medical practitioner.
- 29.3.7 Where a registered medical practitioner has served as a Specialist, and such service is continuous with his service as a registered medical practitioner, a maximum of three years' service as a Specialist shall be counted in aggregating his eligibility for sabbatical leave under this clause.
- 29.3.8 Where a registered medical practitioner proceeds on sabbatical leave of less than 26 weeks' duration, the registered medical practitioner shall be deemed to have received his/her full entitlement under this clause and he/she shall not be entitled to claim an entitlement representing (in part or in whole) the

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balance of the 26 weeks (if any). The absence of a registered medical practitioner on sabbatical leave shall be prima facie evidence that he/she has received his/her full entitlement under this clause. Provided that sabbatical leave may be taken in two periods of up to 13 weeks duration which are taken within 2 years of each other.

29.3.9 Where a registered medical practitioner has proceeded on sabbatical leave, a subsequent qualifying period as specified in clause 29.2 shall not commence to run until the date of the registered medical practitioner's return to duty following sabbatical leave; provided that where by mutual agreement a registered medical practitioner has delayed the taking of sabbatical leave, that period of service between the end of the qualifying period and the taking of such leave shall be included as part of a subsequent qualifying period.

29.3.10 Sabbatical funding arrangements will continue with monies drawn from the SPF. In the event that insufficient funds are present, the Hospital cannot refuse sabbatical leave and will provide sufficient funding for this purpose.

30. PUBLIC HOLIDAYS

30.1 Entitlement to public holidays

30.1.1 A registered medical practitioner will be entitled to the following holidays without loss of pay:

- (a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day, Boxing Day and Melbourne Cup Day; and
- (b) the following days, as prescribed in the relevant States, Territories and localities: Australia Day, Anzac Day, Queen's Birthday and Eight Hours' Day or Labour Day, on the day and in the locality for which it is gazetted.

30.2 Public holidays falling on a weekend

30.2.1 When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof will be observed on 27 December.

30.2.2 When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof will be observed on 28 December.

30.2.3 When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof will be observed on the following Monday.

30.3 Prescription of additional days

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Where in the relevant States, Territories or localities, public holidays are declared or prescribed on days other than those set out in clauses 30.1 and 30.2 above, those days shall constitute additional holidays for the purpose of this agreement.

30.4 Substitution of other days

30.4.1 The Hospital, with the agreement of the majority of the registered medical practitioners, may substitute another day for any prescribed in this clause.

30.4.2 An agreement pursuant to 30.4.1 will be recorded in writing and be available to every affected registered medical practitioner.

30.5 Easter Saturday

A registered medical practitioner who ordinarily works Monday to Friday and who does not work on Easter Saturday (Easter Eve) is entitled to one days pay, or by mutual consent may take one day off in lieu within four weeks following that day or have one day added to annual leave.

30.6 Additional payment

A registered medical practitioner who is required to work on a day specified in clauses 30.1 and 30.2, in addition to payment for the time so worked at ordinary time rates is entitled to one and one half days off which shall be added to the registered medical practitioner's annual leave, or by mutual agreement one and one half days without loss of pay may be taken at some other time.

31. MAJOR CHANGE PROCESSES

31.1 The Hospital agrees that if it is decided to introduce Major Organisational Change or New Technology and the Hospital considers that change or technology is likely to significantly affect the registered medical practitioner, then the Hospital must consult the registered medical practitioner and;

31.1.1 provide a proposed timetable for and all relevant documentation about the proposed changes;

31.1.2 advise the registered medical practitioner of the reasons for the change and likely effect of such change;

31.1.3 discuss measures to mitigate any adverse affects on the registered medical practitioner;

31.1.4 give prompt consideration to any matters raised by the registered medical practitioner with respect to the proposed change.

31.2 Nothing in this clause requires the Hospital to disclose Confidential Information to the registered medical practitioner but the Hospital shall endeavour to meet the reasonable requests of the registered medical practitioner where the Confidential Information will

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assist the consultation process. Such information as may be provided will remain privileged as between the parties and not be disclosed otherwise by the registered medical practitioner.

32. PHYSICAL WORKING CONDITIONS

- 32.1 Sleeping quarters for the registered medical practitioner in-house overnight shall continue to be made available by the Hospital to the registered medical practitioners and will be maintained in accordance with the Hospital's current environmental services standards.

33. FLEXIBILITY CLAUSE

- 33.1 The Hospital and registered medical practitioner covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- (a) The agreement deals with one or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
- (b) The arrangement meets the genuine needs of the Hospital and registered medical practitioner in relation to 1 or more of the matters mentioned in paragraph (a); and
- (c) The arrangement is genuinely agreed to by the Hospital and registered medical practitioner.

- 33.2 The Hospital must ensure that the terms of the individual flexibility arrangement:

- (a) Are about permitted matters under section 172 of the *Fair Work Act 2009*; and
- (b) Are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
- (c) Result in the registered medical practitioner being better off overall than the registered medical practitioner would be if no arrangement was made.

- 33.3 The Hospital must ensure that the individual flexibility arrangement:

- (a) Is in writing; and
- (b) Includes the name of the Hospital and registered medical practitioner; and
- (c) Is signed by the Hospital and registered medical practitioner; and

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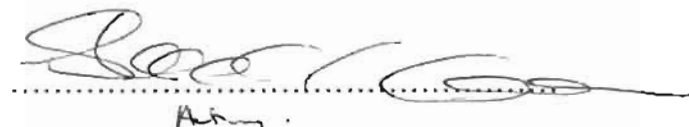
- (d) Includes details of:
 - (i) The terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) How the arrangement will vary the effect of the terms; and
 - (iii) How the registered medical practitioner will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) States the day on which the arrangement commences.
- 33.4 The Hospital must give the registered medical practitioner a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 33.5 The Hospital or registered medical practitioner may terminate the individual flexibility arrangement:
- (a) By giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) If the Hospital and registered medical practitioner agree in writing — at any time.

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SIGNING CLAUSE

DATED this day of 2009

For and on behalf of Mercy Health



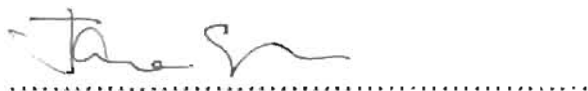
[Signature: Chief Executive Officer]

.....S Cornelissen.....

Print Name

.....678 VICTORIA STREET RICHMOND VICTORIA 3121.....
[Address]

For and on behalf of the Australian Medical Association (Victoria) Limited



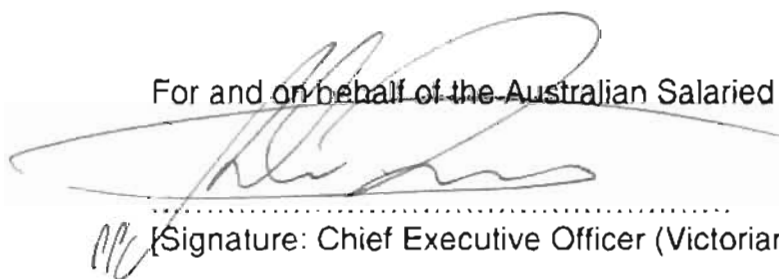
[Signature: Executive Director]

.....JANE STEPHENS.....

Print Name

.....293 Royal Parade Parkville 3052.....
[Address]

For and on behalf of the Australian Salaried Medical Officers Federation



[Signature: Chief Executive Officer (Victorian Branch)]

.....ANDREW LEWIS.....

Print Name

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