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AG833762 PR953870

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
s. 170MD variation of certified agreement

Australian Salaried Medical Officers Foundation
(AG2004/8106)

ST VINCENT'S HEALTH (MELBOURNE) MEDICAL SPECIALISTS
(PATHOLOGISTS) CERTIFIED AGREEMENT 2003
(AG2004/2428)
[AG833762 PR946111]

Health and welfare services

DEPUTY PRESIDENT HAMILTON

MELBOURNE, 1 DECEMBER 2004

Variation of certified agreement - clause 19 to be replaced.

ORDER

A In accordance with S.170MD of the Act the above agreement is varied as follows:

1. By deleting clause 19 and replacing it with

19. PRIVATE PRACTICE

19.1 The Practitioner has a limited right to engage in Private Practice at St Vincent's Health expressly endorsed by the Chief Medical Officer. Where such endorsement is given a separate Private Practice Agreement will be executed between the Practitioner and St Vincent's Health.

B. This order shall come into force from Wednesday 1 December 2004 and shall remain in force for a period of three months.

BY THE COMMISSION:




DEPUTY PRESIDENT

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AGS33762PR946111

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
S.170LJ certification of agreement

Australian Salaried Medical Officers Federation
(AG2004/2428)



**ST VINCENT'S HEALTH (MELBOURNE) MEDICAL SPECIALISTS
(PATHOLOGISTS) CERTIFIED AGREEMENT 2003**

Health and welfare services

SENIOR DEPUTY PRESIDENT KAUFMAN

MELBOURNE, 28 APRIL 2004

Certification of Part VIB Division 2 agreement with organisations of employees.

#

PREAMBLE

This is an application to certify an agreement, to be known as the *St Vincent's Health (Melbourne) Medical Specialists (Pathologists) Certified Agreement 2003*, that is made pursuant to S.170LJ in Division 2 of Part VIB of the *Workplace Relations Act 1996*.

In accordance with s.111(1)(r) of the Act I extend the time for filing of the documentation until 2 April 2004.

Having heard Mr R. Felmingham for the Australian Salaried Medical Officers Federation (ASMOF) and intervening for the Australian Medical Association (AMA), and Mr S. Varney for St Vincent's Health, and having read the statutory declarations of Nicole M Feely filed on behalf of St Vincent's Health and Geoffrey O'Kearney filed on behalf of the ASMOF, I am satisfied that the agreement filed is about matters pertaining to the relationship between an employer in Victoria that is carrying on a part of a single business and employees in Victoria employed by the employer in the part of the single business and whose employment is subject to the agreement. I am also satisfied that the union has at least one member employed in the part of the single business to which the agreement relates and is entitled to represent the industrial interests of its member.

I am also satisfied that:

- the agreement passes the no disadvantage test;
- the agreement was made in accordance with S.170LJ and a valid majority of persons employed at the time whose employment would be subject to the agreement genuinely approved the agreement;
- the explanation of the terms of the agreement was appropriate having regard to the persons' particular circumstances and needs;

- the agreement includes procedures for preventing and settling disputes between the employer and the employees whose employment will be subject to the agreement;
- the agreement specifies a nominal expiry date which is not more than three years after the date on which the agreement will come into operation,

I am also satisfied that there are no reasons set out in S.170LU of the Act why I should refuse to certify the agreement.

Accordingly, the agreement will be certified to operate from 28 April 2004 in accordance with its terms which provide that it shall have effect from 1 July 2002.

Although the AMA, an association not registered under the Act, is a party to the agreement, this does not detract from the fact that the agreement is made pursuant to S.170LT between an employer and an organisation of employees. The certification only extends to the employer and the registered organisation of employees.

CERTIFICATION OF AGREEMENT

In accordance with S.170LT of the *Workplace Relations Act 1996*, the Commission hereby certifies the attached agreement between St Vincent's Health on the one part and the ASMOF on the other part.

This agreement comes into operation on the date of certification, being 28 April 2004.

BY THE COMMISSION:



SENIOR DEPUTY PRESIDENT

Appearances:

R. Felmingham on behalf of the ASMOF and the AMA.

S. Varney on behalf of St Vincent's Health.

Hearing details:

2004.

Melbourne:

April, 28.

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ST VINCENT'S HEALTH (Melbourne)
MEDICAL SPECIALISTS (Pathologists)
CERTIFIED AGREEMENT 2003

**AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION
WORKPLACE RELATIONS ACT 1996**

CERTIFIED AGREEMENT

1. TITLE

This Agreement shall be known as the St Vincent's Health (Melbourne) Medical Specialists (Pathologists) Certified Agreement 2003.

2. INCIDENCE & PARTIES BOUND

The parties to this Agreement are:

- 2.1 St. Vincent's Health (SVH) incorporating St. Vincent's Hospital (Melbourne) Limited and St. Georges Health Service Ltd and Caritas Christi Hospice Ltd (hereafter called "the Hospital:"and
- 2.2 The Australian Medical Association Victoria; and
- 2.3 The Australian Salaried Medical Officers Federation
- 2.4 The Agreement shall apply to employees employed at the Hospital in the capacity of Pathologists.

3. ARRANGEMENT

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4. DATE AND PERIOD OF OPERATION

The Agreement shall come into force from 1 July 2002 and remain in force under the terms of Part VIB of the *Workplace Relations Act 1996* until 30 June 2005.

5. NO EXTRA CLAIMS

5.1 The AMA, ASMOF, Practitioners and employers 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 the parties will not pursue any extra claims during the term of this Agreement.

5.2 Subject to an employer meeting its obligations to consult arising under the Award, this Agreement or a contract of employment binding on that employer, it is not the intent of this provision to inhibit, limit or restrict an employer's right or ability to introduce change at the workplace

6. OBJECTIVES AND PRINCIPLES

6.1 Objectives of the Agreement

6.1.1 Inspired by the caring tradition of the Sisters of Charity and the Healing Ministry of Christ, the Hospital, strives to be a leader in providing high-quality and innovative health care to the community. Our values and concern for all people permeate every aspect of life and work at the Hospital. Our leadership is achieved through the outstanding contribution of our staff in delivering a range of specialist hospital and community services underpinned by excellence in education and research.

6.1.2 This Agreement which is specifically directed to Pathologists contributes to the ongoing viability, growth and competitiveness of the

Hospital's services whilst providing quality patient care through establishment of a commitment between the Hospital and the Practitioners for continuous improvement, in all aspects of the Hospital's operation, with the view to achieving the best practice.

- 6.1.3 The Hospital recognises the crucial role of Pathologists in treating patients and providing a viable referral base.
- 6.1.4 It is agreed that the Hospital is best able to provide proper remuneration, security of employment and improved job satisfaction to the Practitioners when the Hospital is in a sound financial and competitive basis.

6.2 Principles of the Agreement

- 6.2.1 It is acknowledged that the intent of the consultative process is to introduce and facilitate a culture of change by the parties, where this is found to be warranted and agreement to facilitate this should not be withheld unreasonably.
- 6.2.2 No change will be implemented which may have a negative impact upon the employment of Practitioners without prior consultation between the parties designed to explore ways in which to eliminate or lessen such negative impact.
- 6.2.3 The employment arrangements described by this Agreement are framed in the context of a commitment by the parties to workplace reform in the following terms:
 - 6.2.3.1 Maintenance and expansion of the Quality Improvement Programme;
 - 6.2.3.2 Commitment to the provision of accurate and timely Pathology services, consultative support and advice and to participate in teaching and research.
 - 6.2.3.3 Acceptance that workplace reform may lead to less full time employees and a commitment to establish flexibility to review the mix of sessional and full time Pathologist workload.
 - 6.2.3.4 Agreement that an increase in Pathologist average caseload of more than 10% from the baseline of 30 September 2002 will trigger a joint review of Pathologist numbers by reference to the Medical and Scientific Staffing Guidelines (2003) published by the Royal College of Pathologists;
 - 6.2.3.5 Commitment to reference Medical and Scientific Staffing Guidelines (2003) in the delivery of Pathology services subject to the Hospital at all times acknowledging its commitment to teaching and research;
 - 6.2.3.6 Commitment to reference Medical and Scientific Staffing Guidelines (2003) for performance indicators for teaching, quality assurance and research activities.

7. RENEWAL OF AGREEMENT

At least three months prior to the expiration of this Agreement, the parties will commence discussions with a view to negotiating a further Agreement.

8. INTERPRETATION

In this Agreement except to the extent that the context otherwise requires:

- 8.1 Words importing the singular include the plural and vice a versa and words importing a gender include other genders;
- 8.2 A reference to an Act of Parliament or Code or Section or Schedule of that Act or Code should be read as if the words "or any Statutory modification or re-enactment thereof or substitution thereof*" are added to the reference and includes all Statutory Instruments issued under that Act or Code as at the date of this Agreement;
- 8.3 Where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- 8.4 Reference to a Clause or Schedule shall be construed as references to a Clause of or Schedule to this Agreement and references to this Agreement include its Schedules;
- 8.5 A reference to a party to this Agreement or any other Document or Agreement includes its successors and permitted assigns;
- 8.6 A reference to a party shall be construed as a reference to a party to this Agreement;
- 8.7 A reference to a Document or Agreement including this Agreement includes a reference to that Document or Agreement as amended, novated, supplemented, varied or replaced from time to time;
- 8.8 In the interpretation of this Agreement, headings shall be disregarded;
- 8.9 Reference to currency shall be construed as reference to Australian currency.

9. OTHER RIGHTS UNAFFECTED

Nothing in this Agreement shall affect any current superior term or condition of employment.

10. DEFINITIONS

In this Agreement and unless the contrary intention is clearly indicated or required:

- 10.1 "**Actual Salaries**" are those described at Schedule One
- 10.2 "**Association**" means the Australian Medical Association Victoria
- 10.3 "**Award**" means the *Hospital Specialists and Medical Administrators Award 2002*;
- 10.4 "**Board**" means the Board of Directors or the governing body of the Hospital however styled,
- 10.5 "**Chief Executive Officer**" means the person appointed by the Employer to this role within the Hospital and includes their nominee;

- 10.6 **"Confidential Information"** means any information about the Employer acquired by the Practitioner during the employment which relates to the Employer, unless that information falls into the public domain. Confidential Information includes but is not limited to intellectual property, computer software and programs, know-how, policies, financial affairs and strategic and business plans, but specifically excludes research material as defined in Clause 44;
- 10.7 **"Chief Medical Officer"** means the person appointed by the Employer to this role within the Hospital and includes their nominee;
- 10.8 **"Employer"** or "the Employer" means the hospital as defined in 10.10.
- 10.9 **"Family Leave"** means leave allowed to a Practitioner being required to provide primary care to a sick partner, parent, brother, sister, child or stepchild.
- 10.10 **"Federation"** means the Australian Salaried Medical Officers Federation
- 10.11 **"Financial Year"** means each period of twelve (12) months ending 30 June in any year.
- 10.12 **"Hospital"** means the St. Vincent's Health incorporating St. Vincent's Hospital (Melbourne) Limited and St. Georges Health Service Ltd and Caritas Christi Hospice Ltd
- 10.13 **"Hospital By-laws"** means the by-laws of the Hospital, however styled together with all amendments thereto, except to the extent that such amendments are inconsistent with this Agreement.
- 10.14 **"Hourly Rate"** means one fortieth (1/40) of the ordinary weekly wage.
- 10.15 **"Month"** means any calendar month.
- 10.16 **"Ordinary Working Hours"** means between 8.00 am and 6.00 pm, Monday to Friday inclusive, but excluding public holidays;
- 10.17 **"On-call Period"** means the time between 6pm and 8 am the following weekday when a Practitioner is rostered on call and between 6pm Friday and 8am Monday on a weekend;
- 10.18 **"Parties"** means each of the Employer, the Association and Federation and **"Party"** means either of the Employer or the Association or the Federation.
- 10.19 **"Private Practice"** means the rendering by a Practitioner of professional services at the Hospital to private patients for which fees are charged in the name of the Practitioner or the Hospital, and includes the preparation and signing of reports and certificates.
- 10.20 **"Practitioner"** means a Practitioner registered under the Medical Practice Act (1994) (Vic) and employed pursuant to this Agreement.
- 10.21 **"Probationary Period"** means a qualifying period of employment.
- 10.22 **"Public Holiday"** means a Public Holiday appointed under the Public Holidays Act 1993 (Vic).

- 10.23 **"Recall"** means that period on call when the Practitioner is required to attend the Hospital;
- 10.24 **"Regulated Superannuation Fund"** means a superannuation fund which complies with the requirements of the Superannuation Guarantee (Administration) Act 1992 (Commonwealth) and with the requirements of other laws.
- 10.25 **"Speciality"** means a field of work requirement the application of special experience and qualifications in a particular branch of medicine;
- 10.26 **"Statutory Body"** means the Department of Human Services or such entity that succeeds or takes over this Department.
- 10.27 **"Superannuation Guarantee"** means the obligations levied on an Employer to make superannuation contributions on behalf of Practitioners pursuant to the Superannuation Guarantee (Administration) Act 1992;

11. TIME

If the time for doing any act or thing under or pursuant to this Agreement falls or expires on a date being a Saturday, Sunday or appointed public holiday for the Melbourne Metropolitan area, the time by which or in which that act or thing must be done shall be extended to the next day not being a Saturday, Sunday or appointed public holiday for the Melbourne Metropolitan area.

12. RELATIONSHIP TO THE AWARD

This Agreement shall be read in conjunction with the *Hospital Specialists and Medical Administrators Award 2002*. To the extent of any inconsistency between the Award and the Agreement, the Agreement shall prevail.

13. DUTIES

- 13.1 No Practitioner will be required to perform work outside the tasks, functions and responsibilities that would normally be performed by a Practitioner in that specific classification of employment without consultation and agreement between the Hospital and the Practitioner.
- 13.2 The Practitioner may only provide those normal tasks, functions and responsibilities to a third party (other than the Employer) with the approval of the Employer and if:
- 13.2.1 the Employer is reasonably satisfied that the performance of such tasks, functions and responsibilities to the Employer will not be adversely affected; and
 - 13.2.2 the provision of such tasks, functions and responsibilities to the third party does not cause a loss of revenue to the Employer
- 13.3 In the event of a change in the tasks, functions or responsibilities of the Practitioner in accordance with 13.1, the terms and conditions of this Agreement other than those inconsistent with the new tasks, functions or responsibilities shall continue to apply.

14. REMUNERATION

- 14.1 Actual salaries shall be no less than those described at Schedule One.

- 14.2 Actual salaries are annualized and include payments in lieu of overtime penalties and loadings for private practice arrangements.
- 14.3 Actual salaries will be increased by a total of 12% over 3.5 years by way of four 3% increases. The increases will apply from the first pay period to commence on or after 1 July 2002, 1 January 2003, 1 January 2004 and 1 January 2005 respectively. On each occasion these rates will be rounded to the nearest 10 cents.
- 14.4 The Practitioner's remuneration will be paid fortnightly representing two (2) weeks) work in arrears.
- 14.5 Upon termination of this Agreement, any overpayment of remuneration pursuant to this Clause shall be deducted from any entitlement provided to the Practitioner pursuant to this Agreement.
- 14.6 An annual "bonus payment" of 3% of the actual salary will be paid. The payment will be made by the 31 July each year (beginning July 2003) based on the actual salary applicable at 30 June of that year provided;
- the Practitioner is employed by SVH at 30 June with at least 3 months service (pro-rata bonus payments will apply)
 - there is no documented adverse performance issue applying to a Practitioner (in which case SVH reserves the right to review the quantum or withhold altogether the bonus payment for that particular year, to that particular Practitioner).

15. SALARY PACKAGING

Practitioners are permitted to salary package in accordance with the Salary Packaging policy of St. Vincent's Health - Melbourne. This policy may be amended without notice to reflect the impact of legislative change. If changes to legislation result in the cost of this arrangement to the employer increasing, then any continuation of a salary packaging arrangement will be dependant on the participating Practitioner meeting any additional costs, including taxation, associated with such changes.

16. TAXATION

- 16.1 If circumstances arise in the future whereby Taxation Legislation is altered to render the Practitioner's Remuneration Package Contract or their Remuneration Package illegal, void or taxable to the Parties to this Agreement, the Hospital shall comply with new legislative provisions.
- 16.2 If as a result of any legislative amendment the Hospital incurs a potential taxation liability in respect of any remuneration component provided by this Agreement:
- 16.2.1 the terms of the Practitioner's Remuneration Package shall be revised forthwith to ensure that the Hospital does not incur an additional net tax liability that liability being at the risk of the Practitioner

17. PROFESSIONAL INDEMNITY INSURANCE/PUBLIC LIABILITY

- 17.1 The Hospital confirms that it is insured under the Victorian Public Hospital Master Policy of Insurance and related Extensions, taken out by the Department of Human Services for all hospitals providing public hospital services including public liability and professional indemnity claims for damages brought by third Parties and

Directors and Officers cover where relevant, and further confirms that such policies of insurance indemnify the Practitioners with respect to any such claims that might arise out of their employment.

- 17.2 The Employer shall reimburse the membership fee and the cost of insurance with a medical indemnity fund(s) for each Practitioner as and when such payments are due. The level of reimbursement will be restricted to the cost of membership and insurance quoted by MDAV/PIICA for a Pathologist with NIL Gross Billings.

18. OTHER PRACTITIONER ENTITLEMENTS

- 18.1 The Hospital undertakes to make sufficient funds available to each Department / Unit for its administration by the Department / Unit Head. Without limiting the generality thereof such funds shall include:

18.1.1 Funds to enable Practitioners employed under this Agreement to attend conferences as approved by the Chief Medical Officer including reimbursement for reasonable airfares, food, accommodation and conference expenses (including conferences attended whilst on sabbatical leave) approved by the Chief Medical Officer.

18.1.2 Funds to procure appropriate journals, text and subscriptions for the Department / Unit.

18.1.3 The Hospital acknowledges the importance of Clauses 18.1.1 and 18.1.2 in achieving standards of World Best Practice in delivery of patient care.

- 18.2 The funds provided pursuant to this Clause are detailed in Schedule Two of the Agreement.

- 18.3 St. Vincent's Health shall endeavour to provide Practitioners with access to the highest quality of service in regard to the provision of human resources, equipment, office support and access to information technology in the delivery of best practice quality patient care.

19. PRIVATE PRACTICE INCOME

- 19.1 All income derived from private practice at the Hospital shall be paid to a nominated Hospital account and the Practitioner shall sign a pay group linkage authority allowing the Hospital to claim Medicare benefits or payments from other payers on their behalf.

20. CONDITIONS OF EMPLOYMENT

- 20.1 The employment offered to the Practitioner is full time employment

- 20.2 The Practitioner is expected to attend the offices of the Hospital between the hours of 8.00am and 6.00pm Monday to Friday and as is reasonably required on Saturday or Sunday, such that the minimum hours of work are forty (40) hours. Where demands of work require it, the Practitioner shall work the necessary hours to complete specified tasks as reasonably directed by the Department Head or Chief Medical Officer

- 20.3 It is acknowledged that in accordance with the philosophy of the Hospital, research and teaching and other non-patient contact including professional obligations and administrative responsibilities shall be rostered by the Department Head
- 20.4 Except to the extent provided in this Agreement the Practitioner shall be entitled to the minimum terms and conditions provided by the Employer to other Practitioners of the Employer pursuant to an Enterprise Agreement, to which the Practitioner would ordinarily be a party

21. BUSINESS RELATED EXPENSES

The Employer will reimburse a Practitioner for all business related expenses approved by the Employer upon receipt of appropriate documentation to verify the expenditure and with satisfaction that such expenses were reasonable and not extravagant. The list of items approved for expenditure are detailed in Schedule Two of the Agreement.

22. ANNUAL LEAVE

- 22.1 A Practitioner shall be entitled to four (4) week's annual leave prorated on completion of each year of service in the Hospital without deduction of pay. Where the Practitioner is available for and provides service during the oncall period, the Practitioner shall be entitled to a further one (1) week's annual leave.
- 22.2 An additional day shall be added to the annual leave entitlement for any and every public holiday specified in the Public Holiday Clause (Clause 43) which falls within a period of annual leave.
- 22.3 Annual leave shall be granted and taken within a period of six (6) months of its becoming due, at a time suitable to the Hospital and the Practitioner. Such period of time may be extended by written Agreement.
- 22.4 If a Practitioner's employment is terminated with less than twelve (12) months service in any qualifying twelve (12) monthly period, the Practitioner shall be granted pro rata annual leave or payment in lieu.
- 22.5 If a Practitioner becomes sick for a period of not less than five (5) days whilst on annual leave and upon return from leave provides the Hospital with a medical certificate from another registered medical Practitioner, then the number of days being not less than five (5) specified in the certificate shall be deducted from any sick leave entitlement standing to the Practitioner's credit, and shall be re-credited to the annual leave entitlement.

23. SICK LEAVE

- 23.1 In addition to the Income Protection provision at Clause 30 the Employer will provide each Practitioner with cumulative sick leave for twelve (12) days prorated per year. All sick leave in excess of two (2) days shall be supported by a medical certificate. In the event that medical certificate is not available, leave will be deducted from the Practitioner's annual leave entitlements.
- 23.2 A Practitioner may utilise up to five (5) days prorated of the leave provided pursuant to Clause 23.1 in each year of continuous service for Family Leave and such leave shall not accumulate from year to year.

24. LONG SERVICE LEAVE

24.1 Entitlement

- 24.1.1 A 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
- 24.1.2 The amount of such entitlement will be -
- 24.1.2(a) upon the completion of ten (10) years continuous service - four (4) months prorated long service leave and thereafter an additional two (2) months prorated long service leave on the completion of each additional five (5) years service prorated.
 - 24.1.2(b) In addition, in the case of a Practitioner who has completed more than fifteen years' service and whose employment is terminated otherwise than by the death of the 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 clause 24.1.2(a).
 - 24.1.2(c) In the case of a 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 one-thirtieth of the period of service.

24.2 Service entitling to leave

- 24.2.1 The service of a 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 clause 24.1.
- 24.2.2 Service also includes all periods during which a Practitioner was serving in Her Majesty's Forces or was made available by the employer for National Duty.
- 24.2.3 Where a business is transmitted from one employer (the transmittor) to another employer (the transferee) a Practitioner who worked with the transmittor and who continued in the service of the transferee shall be entitled to count her/his service with the transmittor as service with the transferee for the purposes of this clause.
- 24.2.4 For the purposes of this clause service shall be deemed to be continuous notwithstanding -
- 24.2.4(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 24.2.4(b) and 24.2.4(d);
 - 24.2.4(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 23 - Sick Leave/Family Leave.
 - 24.2.4(c) any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of

avoiding obligations in respect of long service leave or annual leave;

24.2.4(d) any leave of absence on account of injury arising out of or in the course of the employment of the Practitioner for a period during which payment is made under clause 23 - Sick Leave/Family Leave;

24.2.4(e) any leave of absence of the Practitioner where the absence is authorised in advance in writing by the employer to be counted as service;

24.2.4(f) any interruption arising directly or indirectly from an industrial dispute;

24.2.4(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 Practitioner's allowable period of absence from employment. A 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 Practitioner actually receives on termination or for which the Practitioner is paid in lieu;

24.2.4(h) the dismissal of a Practitioner if the Practitioner is re-employed within a period not exceeding two months from the date of such dismissal;

24.2.4(i) any absence from work of a female Practitioner for a period not exceeding twelve months in respect of any pregnancy;

24.2.4(j) any other absence of a Practitioner by leave of the employer, or on account of injury arising out of or in the course of his employment not covered by clause 24.2.4(d).

24.2.5 In calculating the period of continuous service of any Practitioner, any interruption or absence of a kind mentioned in clauses 24.2.5(a) to 24.2.5(d) will be counted as part of the period of his service, but any interruption or absence of a kind mentioned in clauses 24.2.5(e) to 24.2.5(i) will not be counted as part of the period of service unless it is so authorised in writing by the employer.

24.2.6 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 Practitioner concerned.

24.3 Payment in lieu of long service leave on the death of a Practitioner

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

24.4 Payment for period of leave

24.4.1 Payment to a Practitioner in respect of long service leave will be made in one of the following ways:

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

24.4.2 Where the employment of the Practitioner is for any reason terminated before taking long service leave to which the Practitioner is entitled or where any long service leave accrues to a Practitioner pursuant to clause 24.1.2 (b), the Practitioner will, subject to the provisions of clause 24.4.3, be entitled to pay in respect of such leave as at the date of termination of employment.

24.4.3(a) Where any long service leave accrues to a Practitioner pursuant to clause 24.1.2(a), the Practitioner will be entitled to pay in respect of such leave as at the date of termination of employment.

24.4.3(b) Provided in the case of a Practitioner who accrues entitlement pursuant clause 24.1.2(a), and who intends to be re-employed by another Institution or Statutory Body:

24.4.3(b)(i) such a Practitioner may in writing request payment in respect of such leave to be deferred until after the expiry of the Practitioner's allowable period of absence from employment provided in clause 24.1.5(g).

24.4.3(b)(ii) except where the Practitioner gives notice in writing that the Practitioner has been employed by another Institution or Statutory Body, payment will be made in respect of such leave at the expiry of the Practitioner's allowable period of absence from employment.

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

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

24.5 Taking of leave

24.5.1 When a 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.

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

24.5.3 If the hospital and a Practitioner so agree -

24.5.3(a) the Practitioner who is entitled to long service leave may take the whole or part of that leave at:

24.5.3(a)(i) half the Rate of Remuneration for a period equal to twice the period to which the Practitioner would otherwise be entitled subject to appropriate rostering within the Practitioner's department; or

24.5.3(a)(ii) twice the Rate of Remuneration for a period equal to half the period to which the Practitioner would otherwise be entitled; and

24.5.3(b) Long service leave and prorated long service leave may be taken by mutual agreement or upon 12 weeks notice in writing, in instalments of not less than one week prorated.

24.5.4 Where the employment of a 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 employer may, from whatever remuneration is payable to the Practitioner upon termination, deduct and withhold an amount in respect of the leave in advance.

24.6 Definitions

For the purposes of this clause the following definitions apply:

24.6.1 **Pay** means remuneration for a Practitioner's normal weekly hours of work calculated at the Practitioner's ordinary time rate of pay at the time leave is taken or (if the 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 Practitioner's ordinary time rate of pay which occurred during the period of leave as from the date such increase operates.

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

24.6.2(a) a month commencing on 15 April will end at the close of business on 14 May; and

24.6.2(b) a month commencing on 31 October will end at the close of business on 30 November.

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

24.6.4 **Statutory Body** means the Department of Human Services Victoria.

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

25. COMPASSIONATE LEAVE

- 25.1 A Practitioner shall upon notification to the Hospital be entitled to be paid leave not exceeding two (2) working days without deduction of pay up to and including the day of the funeral of the relative:
- 25.1.1 on the death or serious illness within Australia of a wife, husband, father, mother, brother, sister, child, step-child, mother-in-law, father-in-law, grandparent or grandchild
- 25.1.2 on the death outside of Australia of a wife, husband, mother, father, sister, brother or child
- 25.2 Proof of such death or illness or relationship as is appropriate shall be furnished by the Practitioner to the satisfaction of the Hospital.
- 25.3 This Clause shall have no operation however while the period of entitlement coincides with any other period of leave.
- 25.4 For the purposes of this Clause, the words "wife" or "husband" shall include any person who lives with the Practitioner as a defacto partner and shall apply equally to their respective kin as set out in sub-paragraphs 25.1,1 and 25.1.2 above.
- 25.5 The ordinary rate of pay shall be paid to the Practitioner if granted compassionate leave.

26. CONFERENCE OR STUDY LEAVE

- 26.1 A Practitioner shall be entitled to leave of absence on full pay for up to two (2) weeks prorated in any one year to attend a conference or conferences with the prior approval of the Hospital.
- 26.2 Practitioners are required to provide a report to the Director of their Department and, if specifically requested, to the Chief Executive Officer in respect of all conferences attended by the Practitioner.
- 26.3 Paid Study Leave may be granted by the Chief Executive Officer to a Practitioner for purposes associated directly with the Practitioner's duties of employment.
- 26.4 If Conference or Study Leave is not used by a Practitioner in any one year it may accumulate to a maximum of four (4) weeks prorated in each successive two (2) year period and if not taken within that two (2) year period, shall be forfeited with no entitlement to payment in lieu of forfeiture.

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 employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee 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.

- 27.1.3 In relation to 27.5, spouse includes a de facto spouse but does not include a former spouse.

27.2 Basic entitlement

- 27.2.1 After twelve months continuous service, parents are entitled to a combined total of 52 weeks parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Parental leave is unpaid leave, except that six weeks of maternity leave will be on full pay, and one week of paternity leave will be on full pay. Adoption leave may be taken in the case of adoption.

- 27.2.2 Subject to 27.3.6, 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:

27.2.2(a) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;

27.2.2(b) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

27.3 Maternity leave

- 27.3.1 An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

27.3.1(a) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least ten weeks;

27.3.1(b) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.

- 27.3.2 "When the employee gives notice under 27.3.1(a) the employee 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.

- 27.3.3 An employee 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.

- 27.3.4 Subject to 27.2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

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

27.3.6 Special maternity leave

27.3.6(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

27.3.6(b) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.

27.3.6(c) Where an employee 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.

27.3.7 Where leave is granted under 27.3.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

27.4 **Paternity leave**

27.4.1 An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:

27.4.1 (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

27.4.1(b) written notification of the dates on which he proposes to start and finish the period of paternity leave; and

27.4.1(c) a statutory declaration stating;

27.4.1(c)(i) he will take that period of paternity leave to become the primary care-giver of a child;

27.4.1(c)(ii) particulars of any period of maternity leave sought or taken by his spouse; and

27.4.1(c)(iii) that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

27.4.2 The employee will not be in breach of 27.4.1 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.

27.5 **Adoption leave**

27.5.1 The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior

to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

27.5.2 Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

27.5.2(a) the employee is seeking adoption leave to become the primary care-giver of the child;

27.5.2(b) particulars of any period of adoption leave sought or taken by the employee's spouse; and

27.5.2(c) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

27.5.3 An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

27.5.4 Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

27.5.5 An employee 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.

27.5.6 An employee 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 employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee the employer may require the employee to take such leave instead.

27.6 Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least four weeks prior to the commencement of the changed arrangements.

27.7 Parental leave and other entitlements

An employee 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.

27.8 Transfer to a safe job

27.8.1 Where an employee 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 employee make it inadvisable for the employee to continue at her present work, the

employee will, if the employer 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.

- 27.8.2 If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

27.9 Returning to work after a period of parental leave

- 27.9.1 An employee 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.

- 27.9.2 An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 27.8, the employee will be entitled to return to the position they held immediately before such transfer.

- 27.9.3 Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

27.10 Replacement employees

- 27.10.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

- 27.10.2 Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

28. SABBATICAL LEAVE

28.1 For the purposes of this Clause only, the following definitions shall apply -

- 28.1.1 "Practitioner" means a Practitioner with a minimum of three (3) years practical experience in the speciality who has been engaged in medical undergraduate or postgraduate teaching or research with the Hospital for the period specified as entitling him/her to sabbatical leave; and

- 28.1.2 "Salary" or "Wage" shall mean the Practitioner's total remuneration as determined at the time leave is taken.

- 28.1.3 "Service" shall mean service from the date of first entering employment with other Health Care Facilities providing public hospital services (whether or not the Practitioner transferred 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 Practitioner was serving in the Australian Defence Forces or was made available by the Hospital or statutory body for National Duty.

- 28.1.4 Where, for the sole purpose of undertaking a course of study or research related to their work, the Practitioner is with the written

approval of the hospital or statutory body absent without pay for up to but not exceeding forty eight (48) 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.

- 28.2 Subject to the provisions set out in sub-clause 28.3, the Practitioner after the completion of a period of six (6) years continuous service shall be entitled to leave of absence to be known as sabbatical leave.

28.3

- 28.3.1(a) If the Practitioner who has been in the service of the Hospital for the period specified in sub-clause 28.2 the Practitioner shall be entitled to a maximum of twenty six (26) weeks leave of absence prorated on full remuneration which may be taken in four (4) week periods subject to the proposed program being acceptable under Clause 28.4.1 and may be taken with the consent of the Chief Medical Officer in conjunction with conference leave or long service leave.

- 28.3.1(b) If the Practitioner is and has been in the service of one or more Health Care facilities providing public hospital services (including any statutory body directly associated with such hospital or hospitals) for an aggregate of the period specified in sub-clause 28.2, the Practitioner shall be entitled to a maximum of twenty six (26) weeks leave of absence prorated on full salary or wages. In calculating such aggregate of service any period of employment in any health care facility providing public hospital service of less than six (6) continuous month duration shall be disregarded. Further, in respect of any period of absence from employment between an engagement with one Health care Facility providing public hospital services and another of five (5) 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 the Practitioner as part of their qualification of any sabbatical leave entitlement to service such additional period as equals the total period of all absences.

- 28.3.1(c) The onus of proving a sufficient aggregate of service to support a claim for sabbatical leave shall rest with the Practitioner.

- 28.3.2 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.

28.4

- 28.4.1 The Practitioner's application for sabbatical leave shall be in writing and shall contain adequate details of the proposed programme of study or research (as determined by the Chief Medical Officer).

- 28.5 Where the Practitioner has served as a Specialist, and such service is continuous with their service as the Practitioner, a maximum of three (3) years service as a Specialist shall be counted in aggregating their eligibility for sabbatical leave under this Clause.

28.5.1 If sabbatical leave is taken in an amount of less than twenty six (26) weeks prorated, further sabbatical leave entitlements may be accumulated on a pro rata basis with a maximum accrued entitlement of twenty six (26) weeks prorated, subject to the Practitioner serving a further period of employment as defined in Clause 28.2.

28.6 Sabbatical leave may be taken in two periods of up to 13 weeks duration which are taken within 2 years of each other.

29. LEAVE WITHOUT PAY

Leave without pay will not be granted where a Practitioner has accumulated any paid leave time.

30. INCOME PROTECTION

As a benefit under this Agreement, a Practitioner shall be entitled to income protection in the event of illness or injury. The income protection policy shall provide for payment of seventy five percent (75%) of pre-injury or illness earnings for a period of up to two years after a waiting period of thirty (30) days. The payments to the Practitioner shall be made on a fortnightly basis through the Hospital's payroll system.

31. REHABILITATION

31.1 The provisions of this part of the Agreement shall be read and interpreted wholly in conjunction with the Victorian Accident Compensation Act 1985.

31.2 In the event of any inconsistency between the Victorian Accident Compensation Act 1985 and/or the occupational health and safety and rehabilitation policies of St. Vincent's Hospital, and the provisions of this part of this Agreement, the Agreement shall so far as it is lawful prevail to the extent of the inconsistency.

31.3 The Parties to this Agreement are committed to achieving a healthy and safe work environment for all Practitioners and will actively seek to ensure the prevention of workplace injury and illness as far as is practicable.

31.4 The Parties to this Agreement are committed to an early intervention strategy which identifies work practices that may place Practitioners at risk and ensures the early reporting of hazards, symptoms and signs of injury and disease.

31.5 It is realistic to assume, despite the preventative measures undertaken, that in any work environment injuries will occur from time to time. Consequently there is a need for a rehabilitation process aimed at minimising the suffering and cost incurred and maximising the speed with which injured Practitioners are returned to their pre-injury or other suitable employment.

31.6 The Parties to this Agreement are therefore committed to the early and effective occupational rehabilitation of injured Practitioners.

31.7 Occupational rehabilitation is a planned strategy to achieve the restoration of injured/ill Practitioners to their fullest physical, psychological, social, vocational and economic capabilities. It includes the provision of any reasonable and appropriate services required to achieve this, consistent with medical advice. The provision of effective rehabilitation is an integral part of a workplace occupational health, safety and welfare programme.

- 31.8 Early intervention leads to a maximum gains from rehabilitation. In the even of the Practitioner suffering injury, rehabilitation should begin as soon as the injury is reported and in a manner consistent with the advice of the Practitioner's treating medical Practitioner. The aim should always be to keep the Practitioner at work if at all possible.
- 31.9 The Practitioner's employment shall not be terminated solely for the reason that the Practitioner has lodged a claim for compensation, is on Workcover, or is incapacitated for work.
- 31.10 The Hospital will ensure that consultation occurs with each of the Parties needed to secure the Practitioner's earliest return to work after illness or injury.
- 31.11 Where the Practitioner's treating medical Practitioner and/or a medical Practitioner provided and paid for by the Workcover Authority, the Hospital or the Insurer are providing conflicting medical opinion, the Practitioner shall be entitled to resolve such conflict by obtaining another medical opinion, at the Hospital's expense, from a mutually agreed, suitably qualified, independent medical Practitioner. At the request of either party, the Australian Medical Association (Victorian Branch) will consult and develop an agreed list of registered medical Practitioners to meet the requirements of this provision.
- 31.12. The following principles will apply to the return to work by the Practitioner after injury:
- 31.12.1 Consistent with the advice of the Practitioner's treating medical Practitioner and/or rehabilitation provider, the return to work aspect of the rehabilitation should initially aim to return the injured Practitioner to their original duties, position and work location.
 - 31.12.2 In the event that the Practitioner's treating medical Practitioner deems that the Practitioner is capable of returning to their pre-injury duties, that position will be made available.
 - 31.12.3 When return to pre-injury position and duties is not possible because of the Practitioner's injury or incapacity, the injured Practitioner's position/duties should be modified by Agreement to accommodate the Practitioner's return to work in line with their rehabilitation provider's recommendations and must be approved by the Practitioner's treating medical Practitioner. Return to such modified duties shall be without loss of remuneration to the Practitioner.
 - 31.12.4 The Hospital must provide suitable employment if the Practitioner is partially incapacitated Practitioner within six (6) weeks of the medical Practitioner treating the Practitioner or rehabilitation provider determining that the injured Practitioner is no longer totally incapacitated for work
 - 31.12.5 The Practitioner will be offered the opportunity of returning to work in positions for which the Practitioner is appropriately qualified by reason of qualifications and experience unless this is not possible because of the Practitioner's qualifications injury or incapacity. In the latter case, the Practitioner shall be entitled to transfer to a position for which he or she is appropriately qualified as soon as such a position becomes available.

- 31.12.6 Where the injured Practitioner is unable to return to a position for which he or she is appropriately qualified, the Hospital shall consult with the Australian Medical Association (Victorian Branch) over suitable alternative employment.
- 31.12.7 If the injured Practitioner has the right to choose the Practitioner's own medical Practitioners providing that they select medical Practitioners selected must be qualified in the fields which are relevant to the Practitioners condition.
- 31.12.8 The Hospital and the Australian Medical Association (Victorian Branch) will consult and develop an agreed list of medical Practitioners and accredited rehabilitation providers to the Practitioners can be referred for work-related injuries.
- 31.12.9 If the Practitioner who has returned to work on a rehabilitation program, and who believes that the work is aggravating the injury/illness the Practitioner will be permitted to cease work to seek advice from the rehabilitation coordinator, a medical Practitioner, rehabilitation provider of the Australian Medical Association.
- 31.12.10 If the Practitioner returning to work on reduced hours then the Practitioner will be entitled to rest and meal breaks as is the custom within the workplace. Any rest periods or therapeutic breaks advised by the Practitioner's treating medical Practitioner will be in addition to these rest and meal breaks.
- 31.12.11 Rest and therapeutic breaks may be taken away from the work area where specified by the Practitioner's training medical Practitioner.
- 31.12.12 All reasonable workplace and/or work process modifications necessary to enable the Practitioner to return to (or remain at) work will be undertaken before the Practitioner resumes (or continues) work.
- 31.12.13 Changes to the rehabilitation programme will only be made after consultation with the injured Practitioner, the rehabilitation provider and/or treating Practitioner and, where requested by the Practitioner.
- 31.12.14 All offers of employment made by the Hospital will be made in writing and will comply with the Accident Compensation Regulations. All offers of employment must include a detailed description of the job offered, the working hours and the remuneration applicable and be approved by the Practitioner's treating medical Practitioner.
- 31.12.15 Any grievances or disputes arising out of the operation of this Clause may be dealt with in accordance with the dispute resolution procedures provided for in Clause 38 of this Agreement.

32. TERMINATION OF EMPLOYMENT

- 32.1 In the event that the Employer wishes to terminate the employment of a Practitioner other than pursuant to Clause 32.3 and Clause 32.4, it is required to provide the Practitioner with 11 month's notice. Alternatively, the Employer may pay the Practitioner in lieu of notice for the period. This amount shall be inclusive of any

amount the employer is requested to pay the Employee as a result of any Industrial Award or Agreement binding upon it.

- 32.1.1 The Employer will grant a Practitioner during this period of notice a maximum of one (1) day to attend other job interviews. This leave will be fully paid.
- 32.2 In the event that a Practitioner wishes to terminate their employment, the Practitioner is required to provide three (3) month's notice.
- 32.3 The Employer reserves the right to terminate a Practitioner's employment without notice in the event that the Practitioner:
 - 32.3.1 Commits any serious or persistent breach of any of the provisions of this Agreement.
 - 32.3.2 Disobeys or neglects or refuses to perform or comply with any lawful direction given by the Employer.
 - 32.3.3 Becomes of unsound mind, such that the Practitioner is unable to satisfactorily carry out their duties as determined in this Agreement.
 - 32.3.4 Maliciously causes damage to any property belonging to the Employer.
 - 32.3.5 Is convicted of a criminal offence other than an offence which in the reasonable opinion of the Employer does not affect their position as a Practitioner of the Employer.
 - 32.3.6 Becomes permanently incapacitated by reason of accident or illness from performing duties as specified under this Agreement. For the purpose of this Clause incapacity is defined in Clause 33.
 - 32.3.7 Clause 32.3.6 shall only have effect after all leave entitlements of the Practitioner pursuant to this Agreement have been extinguished.
- 32.4 Where the Employer deems the performance of the Practitioner to be unsatisfactory having regard to their agreed Performance Indicators the Employer shall:
 - 32.4.1 In the first instance advise the Practitioner in writing where their performance is not satisfactory before termination is considered. The initial warning will be verbal and a note recorded on the Practitioner's personnel file. The Practitioner will be invited to sign this note as an indication of their acknowledgment of the warning. If the Practitioner declines to do so, this will be noted on the file. This verbal warning will also provide a specified time (not less than two (2) weeks) in which the Practitioner will be given to improve the Practitioner's performance.
 - 32.4.2 If the problem continues, a further warning in writing will be given to the Practitioner. The Practitioner will be invited to sign the copy of this warning and if the Practitioner so declines this will be noted on the file. A further period of time (not less than two (2) weeks) will be provided in which to improve the Practitioner's performance.

32.4.3 If the Practitioner's performance continues to be lacking after the abovementioned warning procedure, the Practitioner's employment may be terminated without notice.

32.5 Pursuant to Clause 32.3 and Clause 32.4 the Employer shall not be liable to make any payments to the Practitioner in the event of termination except to the extent that payments under this Agreement are in arrears at the time of termination.

33. INCAPACITY

- 33.1 If a Practitioner at any time becomes permanently incapacitated or is prevented by illness, injury, accident or any other circumstances beyond their control ("the incapacity"), from discharging in full the duties required of the Practitioner for a period longer than three (3) months after the expiry of all other leave entitlements under to this Agreement, then the Hospital shall have the right, subject to the provision of the Health Services Act 1988, to terminate this Agreement in accordance with Clause 33.1 by giving notice in writing to the Practitioner. Clause 30 shall continue to apply.
- 33.2 The Hospital may at any time, and from time to time for as long as the incapacity shall continue, require a Practitioner to provide satisfactory evidence to the Hospital of such incapacity and the cause thereof.
- 33.3 Except as provided by this Agreement, a Practitioner shall not be entitled to any salary or other emolument or benefit in respect of any period during which the Practitioner shall fail or be unable from any cause to be unable to perform the duties hereunder in full.

34. MAJOR CHANGE

- 34.1 Where the Hospital has made a definite decision to implement changes in programme, organisation, structure or technology that are likely to have significant effects on Practitioners, the Hospital shall consult the Practitioners concerned.
- 34.2 "Significant Effects" include: redundancy, termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunity or job tenure, the alteration of ordinary hours of work, the need for retraining or transfer of Practitioners to other work or locations and the restructuring of jobs. Provided that where the contract of employment already makes provision for alteration of any of the matters referred to herein, such alteration shall be deemed not to have a significant effect.
- 34.3 In satisfying the obligation to consult on the changes referred to in Clause 34.1, the Hospital will discuss with the Practitioners affected; the introduction of the changes, the effects the changes are likely to have on Practitioners, the reasons for any proposed redundancies and measures to avert or mitigate the adverse effects of such changes on Practitioners and shall give prompt consideration to matters raised by the Practitioners and/or their Association representatives in relation to the changes.
- 34.4 The discussions shall commence as early as practicable after the notification in accordance with Clause 34.1 has been made.
- 34.5 For the purposes of such discussion, the Hospital shall provide in writing to the Practitioners concerned all relevant information about the changes, including the nature of the changes proposed, reasons for any proposed redundancies and the

number of Practitioners and categories likely to be affected, the period over which the terminations are likely to take place, expected effects of the changes on Practitioners and other matters that may impact on the Practitioners. Provided that the Hospital shall not be required to disclose confidential information the disclosure of which would be inimical to the Hospital's interests.

- 34.6 The Parties to this Agreement are committed to consultation as a key element in the planning, development and implementation of the Patient Care Model within the Hospital.
- 34.7 Whilst consultation is acknowledged as sound management practice the Parties recognise that no single mechanism or structure will be appropriate for all occasions. Consultative mechanisms or structures will work most effectively if they are developed as a means to address specific issues of mutual concern rather than as an end in themselves. Consequently, the emphasis in this Agreement is upon ensuring that the consultation process involves those directly affected by the proposed change and the needs and circumstances of the particular change proposal.
- 34.8 The Parties acknowledge that when organisational change is being considered, at the request of management, a Working Party comprising equal representation of management and the Full Time Pathologists shall be established in the Hospital to monitor the procedures, and facilitate consultative and internal redeployment processes contained in this Agreement, provided that a Working Part need not be established if other mutually acceptable alternative mechanisms are preferred.

Specifically, the Working Party shall:

34.8.1 examine and consider alternatives to any changes proposed as a result of the investigation and make recommendations which might eliminate or lessen negative aspects of change on Practitioners to the management of the Hospital;

34.8.2 upon a decision by management to proceed with the proposed changes, recommend the process and timetable for implementation

34.8.3 ensure that Practitioners whose positions are to be made ~~redundant are~~ promptly counselled. The Practitioner may ask additional counselling from a department head as to the redeployment process to be adopted and placement services available;

34.8.4 endeavour to resolve grievances relating to change including issues relating to redeployment, training and redundancy of affected Practitioners;

34.8.5 ensure Working Party representatives are permitted to take necessary time off work to carry out functions associated with the change project including consultation with Practitioners pursuant to this Agreement without loss of income

35. SUSPENSION/STANDING DOWN

In the event of a general stoppage of work (a strike), the Hospital will after taking into account the Practitioner's duty of care of their patients have the right to stand down Practitioners without remuneration who are prevented from or unable to perform their rostered duties. The stand down does not break the continuity of employment of the Practitioner for the purpose of any entitlements.

36. SUPERANNUATION

The Employer warrants that it shall contribute to a Regulated Superannuation Fund in respect to the Superannuation Guarantee obligation.

The Hospital shall where so requested by the Practitioner make provision to pay the Practitioner's superannuation entitlements to a regulated Superannuation fund of the Practitioner's choice.

37. PERFORMANCE REVIEW

All Practitioners will be required to participate in an annual Performance Review.

The Review will involve a meeting between the Practitioner and the Chief Medical Officer (or nominee) culminating in a written report on the Practitioner's performance, which is to be signed off by both the Employer Representative and the Practitioner.

38. DISPUTE RESOLUTION

38.1 Framework for Resolution

38.1.1 The parties intend that most issues will be resolved informally between a Practitioner and the Practitioner's immediate supervisor. The parties agree that they will promptly resolve any industrial dispute by informal conciliation without resort to industrial action of any kind by Practitioners or stand downs by the Hospital.

38.1.2 Every effort will be made to ensure that any dispute will be resolved under this clause within 7 days or as close to 7 days as practical circumstances will allow. This time frame includes disputes relating to the work required, overtime, and unrostered hours and the appropriate rate of payment as specified in the Agreement

38.1.3 Until the dispute is resolved, work shall continue normally while discussions take place. Health and safety matters may be exempted where appropriate.

38.1.4 No party is prejudiced as to final settlement of the dispute by continuing to work during the dispute.

38.2 Process for Resolving Disputes

38.2.1 The Practitioner shall attempt to resolve the dispute directly with their Unit Head. The Practitioner and/or the Unit Head may request the presence of another member of staff or representative to represent their interests.

38.2.2 If the matter is still unresolved it shall be referred to the Chief Medical Officer (or equivalent), who will meet with the Practitioner and, if the Practitioner chooses, an Association representative or any other person.

38.2.3 If the matter is still unresolved it may be referred to a Board of Reference in accordance with the Workplace Relations Act 1996.

38.2.4 If the Parties are still unable to reach a resolution, the matter shall be referred to the Australian Industrial Relations Commission for resolution by conciliation and, if necessary, arbitration, pursuant to S.170LW of the Workplace Relations Act 1996.

38.3 Establishment of a Board of Reference

The Board of Reference will consist of one person to be from time to time appointed by the Association and one person from time to time appointed by the Victorian Hospitals Industrial Association, with the Industrial Registrar of the Australian Industrial Relations Commission or his/her nominee as Chairperson, three of whom shall form a quorum.

39. DISCLOSURE OF INFORMATION

39.1 A Practitioner may be required for medico-legal purposes to disclose to the Hospital information relating to the mental or physical condition of another person who is or was a patient of the Hospital and not being the Practitioner's private patient and such Practitioner shall make such disclosure in accordance with the requirement.

39.2 Nothing in the foregoing sub-clause shall prevent a Practitioner from supplying information to the Association in relation to a probable, threatened or actual grievance or dispute. Has been moved to the bottom of Confidentiality Clause

40. CONFIDENTIAL INFORMATION

40.1 No Disclosure

Both during the employment of the Practitioner and after his employment has ceased, the Practitioner shall:

- (a) keep the Confidential Information in the strictest confidence;
- (b) if the Hospital authorises the Practitioner to disclose any Confidential Information to any person the Practitioner shall before making any disclosure, have the person concerned execute an acknowledgment, to the effect that the Confidential Information is imparted to that person in confidence; and
- (c) not disclose, divulge, communicate to or otherwise place at the disposal of any person other than the Hospital or any person it may nominate in writing, the Confidential Information in any form or by any means.

40.2 Use

The Practitioner shall not memorise, use or modify the Confidential Information for his or her own benefit or the benefit of any other person other than in accordance with this Agreement.

40.3 Safe Custody

To ensure the continued proprietary and confidential nature of the Confidential Information the Practitioner shall:

- (a) initiate and maintain a system for the proper and secure custody of any Confidential Information within his custody or control; and
- (b) maintain complete and accurate records of the location of the Confidential Information within his custody or control (including all copies).

40.4 **Re-Delivery**

- (a) If the Hospital so requests at any time either during or after the employment, the Practitioner shall:

- (i) immediately disclose and deliver to, or do all things necessary to procure the disclosure and delivery to, the Hospital or as it may direct, all Confidential Information which is in a physical form, including all copies whether those copies are in the same form as the original or capable of being recreated into that or other form by any method, device or process; and
- (ii) certify in writing to the Hospital that he or she has returned all forms of Confidential Information and that he or she no longer has any part of the Confidential Information in his possession, custody or control.

- (b) The Practitioner:

- (i) authorises the Hospital its servants and agents to enter and remain on the premises in which Confidential Information may be, or supposed to be, kept from time to time for the purpose of removing the Confidential Information including any storage media on which it may be recorded; and
- (ii) indemnifies and holds harmless, and shall keep indemnified and hold harmless, the Hospital, its servants and agents, from, and against all Proceedings of any nature whatsoever whether known or unknown, by any person arising from, incidental to, or by virtue of any actions so taken or attempted to be so taken by or on behalf of the Hospital.

- (c) If anyttttt of the Confidential Information is stored by any means or in any manner by which there is no original or copy made at that time but which may be recreated, the Practitioner must first create and deliver a copy to the Hospital and then destroy the method or process so as to prevent the future recreation of the Confidential Information if required by the Hospital.

40.5 **Exceptions**

The obligations under clause 40.1 do not apply to:

- (a) any Confidential Information which the Practitioner can demonstrate:
 - (i) enters the public domain or becomes public knowledge other than through the default of the Practitioner or those for whom he or she is responsible;

- (ii) was known to him or her prior to negotiations relating to this Agreement except where that knowledge arises directly or indirectly from a breach of confidence of another person in relation to the Confidential Information;
- (iii) obtained by him or her from another person having the legal right to disclose it to the Practitioner;
- (iv) is disclosed by order of any court, tribunal or other Government Body acting within the scope of its powers; or
- (v) general information not designated or numbered as confidential by the Hospital acquired by the Practitioner in the performance of his or her obligations under this Agreement so as to prevent the Practitioner from using his or her own skill after the termination of his or her employment by the Hospital.

40.6 Court Orders

If the Practitioner or any of his representatives or any of their respective associates or any of their respective representatives is legally compelled by the order of a court or other competent authority to disclose any Confidential Information:

- (a) the Practitioner must give such written notice thereof as is reasonable in all the circumstances to allow the Hospital to make application for a protective order or other appropriate relief in relation to the Confidential Information;
- (b) if a protective order or other relief is not applied for or obtained, the Practitioner will and will procure that each of his or her representatives and each of their respective associates and each of their respective representatives affected by the order of the court or other competent authority will
- (c) only disclose to the court or other competent authority that part of the Confidential Information which, on the written advice of senior counsel, is strictly necessary to comply with the order of the court or other competent authority; and
- (d) use all reasonable endeavours to obtain assurance from the court or other competent authority that confidential treatment will be accorded to an Confidential Information disclosed to it.

40.7 Severability

- (a) If any provision of clause 40 and/or including the definition of Confidential Information is held by a court of competent jurisdiction to be invalid or unenforceable it shall be severed and the remaining provisions shall not in any way be affected or impaired.
- (b) The Practitioner acknowledges and agrees that the Practitioner is aware of the provisions of *Section 141* of the *Act* which relates to the unlawful disclosure of patient information.

41. PHYSICAL WORKING CONDITIONS

41.1 It is agreed that the following infrastructure standards should be met:

- (a) Access for Practitioners to workstations, telecommunication and information technology capable of ensuring administrative and similar work can be accomplished efficiently;
 - (b) 24 hour access to the library and all of its resources;
 - (c) Reserved car parking paid for by the hospital and available for a Practitioner on call and recalled. The parking spaces must be well lit and in a secure place within 200 metres from the front door of the Hospital main entrance;
 - (d) Access for Practitioners to Internet and e-mail facilities for work purposes;
 - (e) Availability of an office for Practitioners for private discussion with patient's relatives;
 - (f) Access for Practitioners to a security escort at night.
- 41.2 Where this is currently not the case the Hospital, DHS and the AMA/ASMOF will consult to discuss how quickly the situation can be remedied within available capital funding budgets.

42. DRESS

The Practitioner shall, at all times, dress in a neat and tidy manner and shall abide by any direct regulations set out by the Employer.

43. PUBLIC HOLIDAYS

43.1 A Practitioner will be entitled to the following holidays without loss of pay:

- 43.1.1 New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
- 43.1.2 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; and
- 43.1.3 one other day being specified according to States, Territories or localities or on some other basis.

43.2 Public holidays falling on a weekend

- 43.2.1 When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof will be observed on 27 December.
- 43.2.2 When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof will be observed on 28 December.
- 43.2.3 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.

43.3 Prescription of additional days

Where in the relevant States, Territories or localities, public holidays are declared or prescribed on days other than those set out in clauses 43.1.1 and 43.1.2 above, those days shall constitute additional holidays for the purpose of this award.

43.4 Substitution of other days

44.4.1 An employer, with the agreement of the majority of the Practitioners, may substitute another day for any prescribed in this clause.

44.4.2 An agreement pursuant to 43.4.1 will be recorded in writing and be available to every affected Practitioner.

43.5 Easter Saturday

A 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.

43.6 Additional payment

A Practitioner who is required to work on a day specified in clauses 43.1.1 and 43.1.2, in addition to payment for the time so worked at ordinary time rates is entitled to one day off which shall be added to the Practitioner's annual leave, or by mutual agreement one day without loss of pay may be taken at some other time.

44. RESEARCH MATERIAL

Rights to ownership of research material and to publish results of such research with such rights shall continue to be determined pursuant to Common Law or, where appropriate, relevant Statutes or as mutually agreed.

45. RELATIONSHIP BETWEEN AGREEMENT AND BYLAWS ETC.

If there is any inconsistency between the terms of this Agreement and the Hospital By-Laws, Resolutions, Codes of Conduct and / or policies; the Agreement shall prevail.

SCHEDULE ONE

Salaries

- (A) Practitioners employed pursuant to this Agreement will be paid the following minimum annualised salaries (inclusive of payments in lieu of overtime penalties and loadings for private practice arrangements) from the first pay period to commence on or after the dates indicated:

Specialist	1 July 2002	1 January 2003	1 January 2004	1 January 2005
1 st Year as Specialist	\$130,000	\$133,900	\$137,917	\$142,055
2 nd Year as Specialist	\$141,000	\$145,230	\$149,587	\$154,075
3rd Year as Specialist	\$148,000	\$152,440	\$157,013	\$161,724
Senior Specialist				
4 th Year as Specialist	\$155,000	\$159,650	\$164,440	\$169,373
5 th Year as Specialist	\$162,000	\$166,860	\$171,866	\$177,022
6 th Year as Specialist	\$169,000	\$174,070	\$179,292	\$184,671
7 th Year as Specialist	\$176,000	\$181,280	\$186,718	\$192,320
8 th Year as Specialist	\$183,000	\$188,490	\$194,145	\$199,969
9 th Year as Specialist and thereafter	\$190,000	\$195,700	\$201,571	\$207,618
Principal Specialist	\$210,000	\$216,300	\$222,789	\$229,473

- (B) The rates set out above are minimum rates. Actual salaries will be increased by way of four 3% increases over the life of this Agreement, The increases will apply from the first pay period to commence on or after 1 July 2002, 1 January 2003, 1 January 2004 and January 2005 respectively. On each occasion these rates will be rounded to the nearest 10 cents.
- (C) Salary increases pursuant to this Agreement apply to the current salary of each Practitioner. Where the Practitioner's remuneration is an annualised salary, the increase will apply to this annualised amount.

SCHEDULE TWO

*(To be pro-rata for any employee employed for <0.8EFT)

Details	Agreed Amount
Subscriptions	
Medical Registration ¹	
Medical Defence ¹	
AMA ¹	
APP Registration ¹	
SVH Senior Medical Staff ¹	
College of Pathologists ¹	
Specialities Societies ¹	
Total Subscriptions	\$4,792.00 per full time Pathologist per annum

Conferences/Corporate Expenses²	
International, National and Regional	
Conferences (including airfares up to amount of Business class fares, registration, accommodation)	
Corporate Expenses (including, but not limited to, slides, CDs, book, Journals, Texts)	
Total Conferences/Corporate Expenses	\$29,595.00 per Pathologist per annum

Sabbatical Leave²	
Including airfares, accommodation, sustenance, consumables	
Total Sabbatical Leave	1.33 pathologists per annum @ \$195,700.00

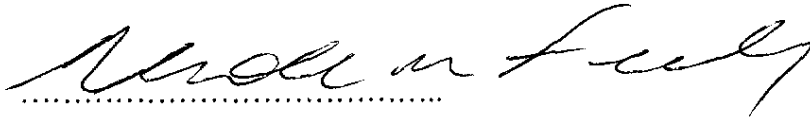
¹To be paid in full for all Pathologists


² To be pro-rata for any employee employed for <0.8EFT

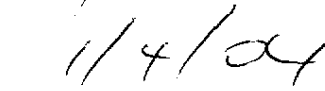
SIGNATORIES

For and on behalf of

ST. VINCENT'S HEALTH

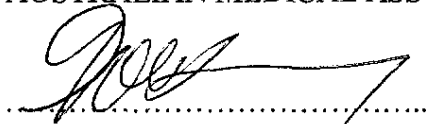

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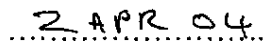

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For and on behalf of the

AUSTRALIAN MEDICAL ASSOCIATION (Victoria) LIMITED

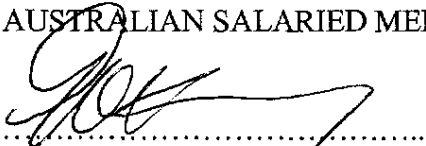

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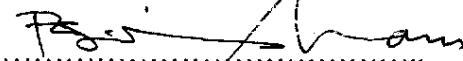

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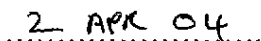

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(Date)

For and on behalf of the

AUSTRALIAN SALARIED MEDICAL OFFICERS FEDERATION


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(Witness)


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(Date)