

# Doctors in Training Enterprise Agreement 2018-21

## Part B – Consultation, Dispute Resolution, Discipline and Flexible Working Arrangements

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### 10 Consultation

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

#### 10.1 Consultation regarding major change

- (a) Where a Health Service proposes a major workplace change that may have a significant effect on a Doctor or Doctors, the Health Service will consult with the affected Doctor/s, the Association, and the Doctor's other chosen representative (where relevant) before any proposed change occurs.
- (b) Workplace change includes (but is not limited to) technological change.
- (c) Consultation will include those who are absent on leave including parental leave.
- (d) The Health Service will take reasonable steps to ensure Doctors, HSRs (where relevant) and the Association can participate effectively in the consultation process.

#### 10.2 Definitions

Under this clause 10:

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

(vii) the removal or reduction of job opportunities, promotion opportunities or job tenure.

(e) **Measures to mitigate or avert** may include but are not limited to:

- (i) redeployment;
- (ii) retraining;
- (iii) salary maintenance;
- (iv) job sharing; and/or
- (v) maintenance of accruals.

### 10.3 Consultation Steps and Indicative reasonable timeframes (a)

Consultation includes the steps set out below.

(b) Timeframes for each step must allow a party to consultation (including a representative) to genuinely participate in an informed way having regard to all the circumstances including the complexity of the change proposed, and the need for Doctors and their representative to meet with each other and consider and discuss the Health Service's proposal.

(c) The following table makes clear the relevant steps and indicative timeframes for the consultation process.

Step	Action	Timeframe
1.	Health Service provides change impact statement and other written material required by subclause 10.4	
2.	Written response from Doctors and/or Association	14 days of step 1
3.	Consultation Meeting/s convened	7-14 days of step 2
4.	Further Health Service response (where relevant)	After the conclusion of step 3
5.	Alternative proposal from Doctors or Association	14 days of step 4
6.	Health Service to consider alternative proposal/s consistent with the obligation to consult and, if applicable, to arrange further meetings with Doctors or Association prior to advising outcome of consultation	14 days of step 5

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

Prior to consultation required by this clause, the Health Service will provide affected Doctor/s and the Association with a written Change Impact Statement setting out all relevant information including:

- (a) the details of the proposed change;
- (b) the reasons for the proposed change;
- (c) the possible effect on Doctors of the proposed change on workload and other occupational health and safety impacts;
- (d) where occupational health and safety impacts are identified, a risk assessment of the potential effects of the change on the health and safety of Doctors, undertaken in consultation with HSRs, and the proposed mitigating actions to be implemented to prevent such effects;
- (e) the expected benefit of the change;
- (f) measures the Health Service is considering that may mitigate or avert the effects of the proposed change;
- (g) the right of an affected Doctor to have a representative including an Association representative at any time during the change process; and
- (h) other written material relevant to the reasons for the proposed change (such as consultant reports), excluding material that is commercial in confidence or exposes the Health Service to unreasonable legal risk or cannot be disclosed under the *Health Services Act 1988* or other legislation.

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

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

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

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

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

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

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

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

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

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

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

## **10.10 Consultation about changes to rosters or hours of work**

- (a) Where a Health Service proposes to change a Doctor's regular roster or ordinary hours of work, the Health Service must consult with the Doctor or Doctors affected and their representatives, if any, about the proposed change.
- (b) The Health Service must:
  - (i) consider health and safety impacts including fatigue;
  - (ii) provide to the Doctor or Doctors affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the Doctor's regular roster or ordinary hours of work and when that change is proposed to commence);
  - (iii) invite the Doctor or Doctors affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
  - (iv) give consideration to any views about the impact of the proposed change that is given by the Doctor or Doctors concerned and/or their representatives.
- (c) The requirement to consult under this subclause 10.10 does not apply where a Doctor has irregular, sporadic, unpredictable working hours, self-rostering or, where permitted, a rotating roster.
- (d) These provisions are to be read in conjunction with the terms of the engagement between the Health Service and Doctor, other Agreement provisions concerning the scheduling of work and notice requirements.

## **10.11 Representation**

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

## **10.12 Consultation disputes**

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

# **11 Redundancy**

## **11.1 Arrangement**

This clause is arranged as follows:

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

## 11.2 Definitions

- (a) **Affected Doctor** for this clause 11 means a Doctor whose role will be redundant.
- (b) **Comparable Role** means an on-going role that:
  - (i) is the same occupation as that of the Affected Doctor's redundant position or, if not, is in an occupation acceptable to the Affected Doctor; and (ii) is any of the following:
    - (A) in the same clinical specialty as that of the Affected Doctor's former position;
    - (B) in a clinical specialty acceptable to the Affected Doctor; or
    - (C) a position that with the reasonable support described at subclause 11.3(g), the Affected Doctor could undertake; and
  - (iii) is the same grade as the Affected Doctor's redundant position;
  - (iv) takes into account the number of ordinary hours normally worked by the Affected Doctor;
  - (v) is a Reasonable Distance from the Affected Doctor's current work location;
  - (vi) takes the Affected Doctor's personal circumstances, including family responsibilities, into account; and
  - (vii) takes account of health and safety considerations.
- (c) **Consultation** is as defined at clause 10 (Consultation) of this Agreement.
- (d) **Continuity of Service** means that the service of the Doctor is treated as unbroken and that the cap on the transfer of personal leave at subclause 61.8 does not apply. However, Continuity of Service is not broken where a Health Service pays out accrued annual leave or long service leave upon termination in accordance with this Agreement.
- (e) **Reasonable Distance** means a distance that has regard to the Doctor's original work location, current home address, capacity of the Doctor to travel, additional travelling time, effects on the personal circumstances of the Affected Doctor, including family commitments and responsibilities and other matters raised by the Doctor, or assistance provided by their Health Service.

(f) **Redeployment period** means a period of 13 weeks from the time the Health Service notifies the Affected Doctor in writing that consultation under clause 10 is complete and that the redeployment period has begun.

(g) **Redundancy** means the Health Service no longer requires the Affected Doctor's job to be performed by anyone because of changes in the operational requirements of the Health Service's enterprise.

(h) **Relocation** means an Affected Doctor is required to move to a different campus as a result of an organisational change on either a temporary or permanent basis.

(i) **Salary maintenance** means an amount representing the difference between what the Affected Doctor was normally paid immediately prior to the Affected Doctor's role being made redundant and the amount paid in the Affected Doctor's new role following redeployment.

### 11.3 **Redeployment**

(a) An Affected Doctor whose role will be redundant will be considered for redeployment during the redeployment period.

(b) **Doctor to be advised in writing**

The Affected Doctor must be advised in writing of:

- (i) the date the Affected Doctor's role is to be redundant,
- (ii) details of the redeployment process,
- (iii) the reasonable support that will be provided in accordance with subclause 11.3(g), and

(iv) the Affected Doctor's rights and obligations.

(c) **Health Service obligations** The

Health Service will:

- (i) make every effort to redeploy the Affected Doctor to a Comparable Role in terms of classification, grade and income, including appointing a case manager to provide the Affected Doctor with support and assistance; and
- (ii) take into account the personal circumstances of the Affected Doctor, including family commitments and responsibilities.

(d) **Doctor obligations**

The Doctor must actively participate in the redeployment process including:

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

(e) **Rejecting a Comparable Role**

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

(f) **Temporary alternative duties**

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

(g) **Support for redeployment**

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

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

(h) **Where no redeployment available**

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

(i) **Non-Comparable Role**

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

**11.4 Support to Affected Doctors**

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

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

**11.5 Salary Maintenance**

(a) Entitlement to salary maintenance

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

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

(b) Period of salary maintenance

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

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

(c) Preservation of accrued leave

An Affected Doctor entitled to salary maintenance will have:

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

**11.6 Relocation**

(a) Health Service to advise in writing of relocation

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

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



### **Entitlement to relocation allowance**

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

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

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

(i) The maximum relocation allowance payable by the Health Service will be \$1,900.00, paid as a lump sum.

(ii) When considering the Affected Doctor's estimate, the Health Service may have regard to the Reasonable Distance

(iii) In the event of a dispute about the Affected Doctor's estimate it will be resolved under clause 12 (Dispute Resolution).

#### **(e) Exceptions**

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

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

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

**11.7 Employment terminates due to redundancy** The Victorian Government's policy with respect to public sector redundancy and the entitlements upon termination of employment as a result of redundancy is set out in the Public Sector Workplace Relations Policies 2015, as amended or replaced from time to time. The Victorian Government policy, as amended or replaced from time to time, applies to Doctors but does not form part of this Agreement.

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

(a) Where the Affected Doctor's Health Service secures a Comparable Role (as defined) with another Health Service covered by this Agreement, which:

(i) is within a Reasonable Distance of the work site of the redundant position; and

(ii) provides Continuity of Service; and

(iii) where the Comparable Role results in a loss of income, salary maintenance at subclause 11.5 will apply; and

(iv) where relevant, consistent with the financial and other support provided to an internal redeployee;

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

## **12 Dispute Resolution**

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

- (a) For the purpose of this clause 12, a dispute includes a grievance.

This dispute resolution procedure will apply to any dispute arising in relation to:

- (i) this Agreement;
  - (ii) the NES;
  - (iii) a request for flexible working arrangements;
  - (iv) a request for an additional 12 months parental leave; or
  - (v) matters purported to be saved due to the operation of the Savings provision.
- (c) A party to the dispute may choose to be represented at any stage by a representative including an Association or employer organisation. A representative, including an Association or employer organisation on behalf of a Health Service, may initiate a dispute.

### **12.2 Obligations**

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

### **12.3 Dispute settlement facilitation**

- (a) Where the chosen representative is another Doctor employed by the Health Service, that Doctor will be released by the Health Service from normal duties as is reasonably necessary to enable them to represent the Doctor/s including:
- (i) investigating the circumstances of the dispute; and
  - (ii) participating in the processes to resolve the dispute, including conciliation and arbitration.
- (b) A Doctor who is part of the dispute will be released by the Health Service from normal duties as is reasonably necessary to enable them to participate in

this dispute settling procedure so long as it does not unduly affect the operations of the Health Service.

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

- (a) The parties will attempt to resolve the dispute at the workplace as follows:
- (i) in the first instance by discussions between the Doctor/s and the relevant supervisor; and
  - (ii) if the dispute is still unresolved, by discussions between the Doctor/s and more senior levels of local management.

The discussions at subclause 12.4(a) will take place within fourteen days or such other period as mutually agreed having regard to the remaining length of the Doctor's contract of employment, and save that agreement will not be unreasonably withheld.

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

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

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

#### **12.6 Conciliation**

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

#### **12.7 Arbitration**

- (a) If, when conciliation is complete, the dispute is not settled, either party may request the FWC proceed to determine the dispute by arbitration.
- (b) The FWC member that conciliated the dispute will not arbitrate the dispute if a party objects to the member doing so.
- (c) If the dispute resolution procedure results in a finding by the FWC that a breach of the Savings provision of this Agreement has occurred, the parties agree that the order of the FWC under this subclause 12.7 will be to restore all rights

and entitlements affected by the breach to the state which would have prevailed if the breach had not occurred.

(d) Subject to subclause 12.7(e) below, a decision of the FWC is binding upon the persons covered by this Agreement.

(e) An appeal lies to a Full Bench of the FWC, with the leave of the Full Bench, against a determination of a single member of the FWC made pursuant to this clause.

## 12.8 Conduct of matters before the FWC

Subject to any agreement between the parties to the dispute in relation to a particular dispute or grievance and the provisions of this clause, in dealing with a dispute or grievance through conciliation or arbitration, the FWC will conduct the matter in accordance with sections 577, 578 and Subdivision B of Division 3 of Part 5-1 of the Act.

# 13 Discipline

## 13.1 Application

(a) Where a Health Service has concerns about:

- (i) the conduct of a Doctor; or
- (ii) a performance issue that may constitute misconduct, the following procedure will apply.

(b) There are two steps in a disciplinary process under this clause as follows:

(i) investigative procedure; and (ii) disciplinary procedure.

(c) A Doctor will be provided a reasonable opportunity to be represented at any time (including by an Association) with respect to all matters set out in this clause.

## 13.2 Definitions

(a) **Performance** means the manner in which the Doctor fulfils his or her job requirements. The level of performance is determined by a Doctor's knowledge, skills, qualifications, abilities and the requirements of the role.

(b) **Conduct** means the manner in which the Doctor's behaviour impacts on their work.

(c) **Misconduct** means a Doctor's intentional or negligent failure to abide by or adhere to the standards of conduct expected by the Health Service. A performance issue can be considered misconduct where, despite all reasonably practicable interventions by the Health Service, the Doctor is unable to fulfil all or part of their job requirements to a satisfactory level.

(d) **Serious misconduct** is as defined under the Act and is both wilful and deliberate. Currently the Act defines serious misconduct, in part, as:

- (i) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
- (ii) conduct that causes serious and imminent risk to:

- (A) the health or safety of a person; or
- (B) the reputation, viability or profitability of the employer's business.

Conduct that is serious misconduct includes each of the following:

- (iii) the Doctor, in the course of the Doctor's employment, engaging in:
  - (A) theft; or
  - (B) fraud; or
  - (C) assault;
- (iv) the Doctor being intoxicated at work;
- (v) the Doctor refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.

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

### **13.3 Investigative procedure**

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

### **13.4 Disciplinary procedure**

- (a) The disciplinary procedure applies if, following the investigation, the Health Service reasonably considers that the Doctor's conduct or performance may warrant disciplinary steps being taken.
- (b) The Health Service will:
  - (i) notify the Doctor in writing of the outcome of the investigation process, including the basis of any conclusion; and (ii) meet with the Doctor.
- (c) In considering whether to take disciplinary action, the Health Service will consider:

- (i) whether there is a valid reason related to the conduct or performance of the Doctor arising from the investigation justifying disciplinary action;
- (ii) whether the Doctor knew or ought to have known that the conduct or performance was below acceptable standards; and
- (iii) any explanation by the employee relating to conduct including any matters raised in mitigation.

### **13.5 Possible outcomes**

- (a) Where it is determined that after following the procedures in this clause that disciplinary action is warranted, the Health Service may take any of the following steps depending on the seriousness of the conduct or performance:
  - (i) counsel the Doctor, with the counselling recorded on the Doctor's personnel file;
  - (ii) give the Doctor a first warning, which will be verbal and a record of the warning recorded on the Doctor's personnel file;
  - (iii) give the Doctor a second written warning in the event that the Doctor has previously been given a first warning within the previous 12 months for that course of conduct;
  - (iv) give the Doctor a final written warning in the event that the Doctor has previously been given a second written warning within the preceding 18 month period for that course of conduct;
  - (v) terminate the Doctor's employment on notice in the case of an employee who repeats a course of conduct for which a final warning was given in the preceding 18 months;
  - (vi) terminate the Doctor's employment without notice where the conduct is serious misconduct within the meaning of the Act that is wilful and deliberate; or
  - (vii) as an alternative to subclause 13.5(a)(vi) above and in those circumstances, the Health Service may issue the Doctor with a final warning without following the steps in subclauses 13.5(a)(i) to 13.5(a)(iii) above.
- (b) The Health Service's decision and a summary of its reasons will be notified to the Doctor in writing.
- (c) If after any warning, a period of 12 or 18 months elapses (as relevant) without any further warning being required, all adverse reports relating to the warning must be removed from the Doctor's personnel file.
- (d) A dispute over this clause is to be dealt with in accordance with the Dispute Resolution Procedure of this Agreement.

## **14 Anti-bullying**

- 14.1** Bullying, as defined at subclause 14.2 below, will not be tolerated in the workplace. Health Services will promote this message through their employment policies and procedures (refer subclause 27.2(f)).
- 14.2** Bullying is defined as repeated, unreasonable behaviour directed towards a worker, or group of workers, that creates a risk to health and safety (or other such definition that may be included in the Act).
- 14.3** The definition of bullying does not include:
- (a) reasonable performance management by a Health Service;
  - (b) reasonable disciplinary management by a Health Service; or
  - (c) management direction or action when conducted in a reasonable manner.

## **15 Flexible Working Arrangements**

- 15.1** The Act entitles specified Doctors to request flexible working arrangements in specified circumstances.
- 15.2** The specified Doctors are:
- (a) full time or part time Doctors with at least 12 months' continuous service (calculated in accordance with subclauses 68.6 to 68.8); and
  - (b) long term casual Doctor with a reasonable expectation of continuing employment by the Health Service on a regular and systematic basis.
- 15.3** The specified circumstances are if the Doctor:
- (a) is the parent, or has responsibility for the care, of a child who is of school age or younger;
  - (b) is a carer within the meaning of the *Carer Recognition Act 2010* (Vic) (for example, caring for someone who has a disability, a medical condition (including a terminal or chronic illness), a mental illness or is frail or aged);
  - (c) has a disability;
  - (d) is aged 55 years or older;
  - (e) is experiencing violence from a member of the Doctor's family; or
  - (f) provides care or support to a member of the Doctor's immediate family, or a member of the Doctor's household, who requires care or support because the member is experiencing violence or abuse from the member's family.
- 15.4** A request for flexible working arrangements includes (but is not limited to) a request to work part-time upon return to work after the birth or adoption of a child to assist the Doctor to care for the child.
- 15.5** Changes in working arrangements may include, but are not limited to, hours of work, patterns of work and location of work.
- 15.6** The request must be in writing, set out details of the change sought and the reasons for the change.

**15.7** The Health Service must give the Doctor a written response to the request within 21 days, stating whether the Health Service grants or refuses the request. A request may only be refused on reasonable business grounds as described in the NES.

**15.8** Where the Health Service refuses the request, the written response must include details of the reasons for the refusal.

**15.9** Where a request for flexible work arrangements is made, a Doctor or Health Service is entitled to meet with the other party to discuss:

- (a) the request;
- (b) an alternative to the request; or
- (c) reasons for a refusal on reasonable business grounds.

**15.10** A Doctor or Health Service may choose to be represented at a meeting under subclause 15.9 by a representative including the Association or employer organisation.

**15.11** The dispute resolution procedure in this Agreement will apply to any dispute / grievance arising in relation to a request for flexible working arrangements.

**15.12** Other entitlements relevant to family violence can be found at clause 71 (Family Violence Leave).

## **16 Individual Flexibility Arrangements**

**16.1** A Health Service and the Doctor may enter into an individual flexibility arrangement under this clause that varies the effect of certain terms of this Agreement in order to meet the genuine needs of the Doctor and the Health Service.

**16.2** An individual flexibility arrangement must:

- (a) be genuinely agreed to by the Doctor and Health Service;
- and (b) not contravene any law.

**16.3** An individual flexibility arrangement must be about arrangements for when hours are worked.

**16.4** A Doctor may nominate a representative to assist in negotiations for an individual flexibility arrangement.

**16.5** The Health Service must ensure that any individual flexibility arrangement will result in the Doctor being better off overall than the Doctor would have been if no individual flexibility arrangement was made.

**16.6** The Health Service must ensure that an individual flexibility arrangement is in writing and signed by the Doctor and the Health Service (and, if the Doctor is under 18 years of age, by the Doctor's parent or guardian), and that it is not required to be approved or consented to by any other person.

**16.7** The Health Service must give a copy of the individual flexibility arrangement to the Doctor within 14 days after it is agreed.

**16.8** The Health Service must ensure that any individual flexibility arrangement sets out:

- (a) the terms of this Agreement that will be varied by the arrangement;
- (b) how the arrangement will vary the effect of the terms;



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

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

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

- (b) does not include any term that would be an unlawful term under section 194 of the

Act if the arrangement were an enterprise agreement;

and (c) provides for the arrangement to be terminated:

- (i) by either the Doctor or Health Service giving a specified period of written notice, with the specified period being no more than 28 days; and

- (ii) at any time by written agreement between the Doctor and Health Service.

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