

Doctors in Training Enterprise Agreement 2018-21

Part H – Public Holidays, Leave and Related Matters

58 Leave not applying to casuals

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

59 Replacement of Doctors when on leave

- 59.1** Where a Doctor is absent on planned or unplanned leave, the Health Service will replace the Doctor if not replacing will result or will likely result in an unreasonable workload.
- 59.2** The Health Service must consult with Doctors affected by the absence regarding the workload impact when considering a replacement for a Doctor on leave.
- 59.3** Where a Doctor on leave is replaced, the Health Service is primarily responsible for finding the replacement.
- 59.4** A Doctor will not be On-Call for the duration of their leave.
- 59.5** For the purpose of this clause, 'unreasonable workload' means being unable to perform all aspects of their position and/or role during their ordinary hours of work.

60 Annual leave

60.1 Entitlement

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

60.2 Time of Taking Annual Leave

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

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

60.3 Payment for Annual Leave

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

60.4 Payment Calculation

- (a) For the purposes of this clause 60, 'wages' means the ordinary weekly rate of pay and allowances consistent with the Doctor's classification as averaged over the leave accrual year and calculated consistent with the following methodology:
 - (i) if the Doctor worked 60 hours or more: wages must be paid at 38 hours calculated at single time (1.0) and 22 hours at time and one half (1.5) for each week of leave;
 - (ii) if the Doctor worked less than 60 hours but at least 48 hours: wages must be paid at 48 hours calculated at single time (1.0) for each week of leave;
 - (iii) in all other circumstances the Doctor's wages must be paid on 38 hours at single time (1.0) for each week of leave.

(b) For Registrars, all references to 38 hours in subclause 60.4(a)(i) through (a)(iii) above become 43 hours and all references to 22 hours become 17 hours.

(c) When calculating the annual leave payable to a Doctor in accordance with this subclause, the Doctor must not be paid less than their base rate of pay for the Doctor's ordinary hours of work in the period of paid annual leave.

60.5 Effect of Other Leave

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

60.6 Effect of Termination

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

61 Personal (sick)/carer's leave

61.1 Entitlement

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

(i) personal illness or injury;

(ii) personal illness or injury of an immediate family or household member who requires the Doctor's care or support;

(iii) an unexpected emergency affecting an immediate family or household member who requires the Doctor's care or support; or

(iv) the requirement to provide ongoing care and attention to another person who is wholly or substantially dependent on the Doctor, provided that the care and attention is not wholly or substantially on a commercial basis.

(b) A Doctor is entitled to 28 days paid personal/carer's leave for each year of service. Unused personal/carer's leave accumulates from year to year.

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

61.2 Immediate Family or Household

(a) The term immediate family includes:

(i) spouse (including a former spouse, a de facto partner and a former de facto partner) of the Doctor. A de facto partner means a person who, although not legally married to the Doctor, lives with the employee in

a relationship as a couple on a genuine domestic basis (whether the Doctor and the person are of the same sex or different sexes); and

(ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the Doctor or spouse of the Doctor.

61.3 Use of Accumulated Personal/Carer's Leave (a) A Doctor is entitled to use accumulated personal/carer's leave for the purposes of this clause where the current year's personal/carer's leave entitlement has been exhausted.

(b) The Doctor may request the Health Service's consent to take up to five days' annual leave in any one year as carer's leave.

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

(d) The Doctor, on his or her request, must be paid for the overtime worked if the time off in lieu has not been taken as carer's leave within four weeks of the overtime being accrued.

(e) The Doctor may request the Health Service's consent to work make-up time for carer's leave purposes. In this case, the Doctor works the same number of ordinary hours taken as carer's leave during the ordinary spread of hours, but at a later time.

61.4 Notice and Evidence Requirements – Personal Leave

(a) For three single day absences per year, the Doctor will not be required to provide any supporting evidence to substantiate their claim for personal leave. However, to be eligible for payment, the Doctor will be required to notify the Health Service two hours before the start of the shift, or as soon as practicable (which may be the time after the leave has started).

(b) For other days absent due to personal illness or injury, the Health Service may require a Doctor to provide evidence of illness as follows:

(i) a Medical Certificate from another Doctor, but only in circumstances when the certificate may be properly provided; or

(ii) such other reasonable evidence as would satisfy the National Employment Standards (refer s.107 of the Act).

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

61.5 Notice and Evidence Requirements – Carer's Leave

(a) The Doctor, on the Health Service's request, must demonstrate the illness or injury of the person concerned by either Medical Certificate or Statutory Declaration.

(b) When practical, the Doctor must give the Health Service prior notice of their intended absence due to carer's leave. If not practical to provide prior notice, the Doctor must give notice by telephone at the first opportunity on the day of the absence beginning.

(c) Notice for the purposes of this subclause 61.5 means estimated date of absence, estimated length of absence, the name of the person to be cared for and their relationship to the Doctor.

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

61.7 Absence on Public Holidays

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

61.8 Transfer of Accrued Personal/Carer's Leave

(a) Other than those Doctors described at subclause 61.9 below, a Doctor appointed to a Health Service:

(i) up to five weeks after his or her termination of appointment at another Hospital or community health centre, not including any period of paid leave, or

(ii) up to twenty-four months after his or her termination of employment at another Health Service or community health centre where the Doctor was absent from employment due to the birth or adoption of a child for the period consistent with Long Parental Leave (subclause 67.4) (and provided the Doctor provides evidence that would satisfy a reasonable person as to the reason for the break in employment was consistent with this subclause),

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

(b) The accumulated personal/carer's leave must be credited at the time of appointment.

(c) A Certificate of Service will be acceptable evidence for the purpose of recognising accrued personal/carer's leave. A certificate in the form set out in Schedule C will be acceptable.

61.9 Accrual Protection for Accredited Trainees

(a) When a Doctor is employed as part of an accredited Specialist training program but not employed by a Health Service listed in Schedule A, any personal/carer's leave accrued by the Doctor under this Agreement will be recognised when returning to the employ of a Schedule A Health Service, provided that:

(i) the break between periods of employment is not more than 2 months duration; and

(ii) the personal/carer's leave or service accrued with an employer other than a Health Service listed in Schedule A is not recognised.

(b) The Health Service may require a Doctor to produce a written statement from the previous Health Service that specifies the amount of accumulated personal/carer's leave credited to the Doctor at the time of his or her termination of appointment.

61.10 Casual Doctors – Caring responsibilities

(a) Casual Doctors are entitled to be unavailable to attend work or to leave work:

(i) if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or

(ii) upon the death in Australia of an immediate family or household member.

(b) The Health Service and the Doctor will agree on the period for which the Doctor will be entitled to be unavailable to attend work. In the absence of agreement, the Doctor is entitled to be unavailable to attend work for up to two days per occasion. The Casual Doctor is not entitled to any payment for the period of non-attendance.

(c) The Health Service will require the Casual Doctor to provide satisfactory evidence to support the taking of leave pursuant to this subclause 61.10.

62 Fitness for Work

62.1 Fit for Work

(a) The Health Service is responsible for providing a workplace that is safe and without risk to health for Doctors, so far as is reasonably practicable.

(b) Each Doctor is responsible for ensuring that they are fit to perform their duties without risk to the safety, health and well-being of themselves and others within the workplace. This responsibility includes compliance with reasonable measures put in place by the Health Service and any related occupational health and safety requirements.

(c) In the event the Doctor's Employer forms a reasonable belief as defined at subclause (d) below that an Doctor may be unfit to perform their duties, the Health Service will discuss their concerns with the Doctor in a timely manner to promote physical, mental and emotional health so that employees can safely undertake and sustain work.

(d) In this clause reasonable belief means a belief based on sufficient evidence that supports a conclusion on the balance of probabilities.

(e) In this clause treating medical practitioner may, where relevant, also include programs such as the Victorian Doctor's Health Program, or a psychologist.

(f) The Health Service will:

(i) take all reasonable steps to give the Doctor an opportunity to answer any concerns;

(ii) recognise the Doctor's right to have a representative, including an Association representative, at any time when meeting with the Employer;

(iii) genuinely consider the Doctor's response with a view to promoting physical, mental and emotional health so that employees can safely undertake and sustain work; and

(iv) take these responses into account in considering whether reasonable adjustments can be made in order that the Doctor can safely undertake and sustain work.

(g) Where, after discussion with the Doctor, the Health Service continues to have a reasonable belief that the Doctor is unfit to perform the duties, the Health Service may request the Doctor's consent to obtain a report from the Doctor's treating medical practitioner regarding the Doctor's fitness for work. The Doctor will advise the Health Service of the Doctor's treating medical practitioner, and the Health Service will provide to the Doctor, in writing, the concerns that form the basis of the reasonable belief to assist and a copy of any correspondence to the Doctor's treating medical practitioner.

(h) The Doctor will provide a copy of the report to the Health Service.

(i) The Health Service and Doctor will meet to discuss any report.

(j) If, on receipt of the report, the Health Service continues to have a reasonable belief that the Doctor is unfit for duty, or the Doctor does not provide a report from the treating medical practitioner, the Health Service may require the Doctor to attend an independent medical practitioner.

(k) Where the Doctor attends a medical practitioner under either subclauses 62.1(g) or (j) above, the Health Service will:

(i) provide to the Doctor a copy of any correspondence to the medical practitioner and any resulting report;

(ii) pay for the cost of the appointment and report where the Doctor provides an invoice from the medical practitioner and evidence of payment.

(iii) provide the Doctor with a copy of any medical report it receives on the Doctor's capacity or fitness for work;

(iv) provide the Doctor with paid leave to attend the medical practitioner without deduction from paid leave accruals or entitlements where the appointment occurs at a time the Doctor would ordinarily be rostered to work; and

(v) reimburse the Doctor for return travel costs (see clause 55 Travelling Allowance) incurred for the distance between the Doctors ordinary place of residence and the appointment.

(l) Where the Doctor is:

(i) directed to attend an appointment at a time the Doctor would not ordinarily be rostered to work; or

(ii) the Doctor has no alternative but to attend an appointment at a time the Doctor would not ordinarily be rostered to work;

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

(m) Nothing in this clause 62 prevents a Health Service from taking any reasonable step to ensure a safe work environment in accordance with applicable legislation and this Agreement.

(n) The Health Service will respect a Doctor's privacy and ensure that any personal information provided by the Doctor or a medical practitioner under this clause 62 is kept confidential.

62.2 Reasonable Adjustments

(a) Where Doctors have a disability (whether permanent or temporary) the Health Service is required to make reasonable adjustments to enable the Doctor to continue to perform their duties, subject to subclause 62.2(b) below.

(b) A Health Service is not required to make reasonable adjustments if the Doctor could not or cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made.

(c) Definitions

(i) **Disability** has the same meaning as section 4 of the EO Act and includes:

(A) total or partial loss of a bodily function; or

(B) presence in the body of organisms that may cause disease;

(C) total or partial loss of a part of the body; or

(D) malfunction of a part of the body including a mental or psychological disease or disorder or condition or disorder that results in a person learning more slowly than those without the condition or disorder.

(ii) **Reasonable adjustments** has the same meaning as section 20 of the EO Act and requires consideration of all relevant facts and circumstances including:

(A) the Doctor's circumstances, including the nature of the disability;

(B) the nature of the Doctor's role;

(C) the nature of the adjustment required to accommodate the Doctor's disability;

(D) the financial circumstances of the Health Service;

(E) the size and nature of the workplace and the Health Service's business;

(F) the effect on the workplace and the Health Service's business of making the adjustment including the financial impact, the number of persons who would benefit or be disadvantaged and the impact on efficiency and productivity;

(G) the consequences for the Health Service in making the

adjustment; (H) the consequences for the Doctor in not making the adjustment.

63 Public holidays

63.1 Entitlement to be absent on a public holiday

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

63.2 Public holidays

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

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

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

63.4 Substitution of one public holiday for another

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

(ii) An agreement pursuant to subclause 63.4(a)(i) shall be recorded in writing and be available to every affected Doctor.

(iii) The Association shall be informed of an agreement pursuant to subclause 63.4(a)(i) and may within seven days refuse to accept it. The Association will not unreasonably refuse to accept the agreement.

(iv) If an Association refuses to accept an agreement, the Health Service, the Doctors and the Association will seek to resolve their differences to their mutual satisfaction.

63.5 Substitution of one public holiday for another

(a) Subject to the ongoing operational needs of the Health Service, a Doctor may, with the prior agreement of the Health Service, substitute a public holiday as defined in this clause with a nominated religious holiday that is not a defined public holiday.

(b) Where a religious holiday is nominated to be a substitute and the Doctor works on the defined public holiday they will be paid at ordinary time and will be allowed time off on the nominated religious day without loss of pay. Applications are to be made at least one month in advance of the date on which the nominated religious holiday occurs, and the public holiday being substituted.

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

(a) A Doctor is entitled to be absent from his or her employment on a day or part-day that is a public holiday in the place where the Doctor is based for work purposes. However, a Health Service may request a Doctor to work on a public holiday provided the request is reasonable.

(b) If a Health Service requests a Doctor to work on a public holiday, the Doctor may refuse the request if:

(i) the request is not reasonable; or (ii) the refusal is reasonable.

(c) In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:

(i) the nature of the Health Service's workplace or enterprise (including its operational requirements), and the nature of the work performed by the Doctor;

(ii) the Doctor's personal circumstances, including family responsibilities;

(iii) whether the Doctor could reasonably expect that the Health Service might request work on the public holiday;

(iv) whether the Doctor is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;

(v) the type of employment of the Doctor (for example, whether full-time, part-time, casual or shift-work);

(vi) the amount of notice in advance of the public holiday given by the Health Service when making the request;

(vii) in relation to the refusal of a request – the amount of notice in advance of the public holiday given by the Doctor when refusing the request; and (viii) any other relevant matter.

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

63.7 Penalty Payments in Respect of Public Holidays

(a) A Doctor who is requested to and does work on a day or part-day that is a Public holiday (or where Christmas Day, Boxing Day, New Year's Day or Australia Day fall

on a weekend, the day to which penalty rates apply pursuant to subclause 63.3) is entitled to be paid for the time worked:

(i) at the rate of 250%; or

(ii) by mutual agreement, at single time and have 1.5 days added to their annual leave.

63.8 Public Holidays occurring on rostered days off or day off

(a) Subject to subclause 63.8(b), a full-time Doctor will receive a sum equal to one day's ordinary pay for public holidays that occur on their rostered day off or other day off.

(b) Where on each occasion an Other Day (as defined) applies as a public holiday in respect of that occasion, and:

(i) the Doctor is rostered off for both the Actual Day and the Other Day (as defined), then only one day's payment will be made under subclause 63.8(a); or

(ii) the Doctor works only on one of either the Actual Day or the Other Day (as defined), and receives penalty rates for the day worked, the Doctor will not receive a payment under subclause 63.8(a) in respect of the day not worked.

63.9 Part-time Doctors

(a) Where a public holiday occurs on a day that a part-time Doctor would normally work, but the Doctor is not required by the Health Service to work on that day, the part-time Doctor will be paid an amount equal to the Doctor's ordinary rate of pay for the hours the Doctor would normally have worked on that day.

63.10 Recall on a public holiday

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

63.11 Annual leave on a public holiday

(a) See clause 60 (Annual Leave).

63.12 Personal leave on a public holiday

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

64 Compassionate leave

64.1 Amount of Compassionate Leave

- (a) Doctors are entitled to two days' compassionate leave on each occasion when a member of the Doctor's immediate family or a member of the Doctor's household:
- (i) contracts or develops a personal illness that poses a serious threat to his or her life;
 - (ii) sustains a personal injury that poses a serious threat to his/her life; or
 - (iii) dies;
- (each constituting a '**permissible occasion**').

64.2 Payment Calculation

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

64.3 Taking of Leave

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

65 Prenatal leave

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

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

66 Pre-adoption leave

66.1 A Doctor seeking to adopt a child is, on the production of satisfactory evidence if required, entitled to unpaid leave for the purpose of attending any interviews or examinations necessary to the adoption procedure.

66.2 The Doctor and the Health Service may agree on the length of the unpaid leave.

- 66.3** Where agreement cannot be reached, the Doctor is entitled to take up to two days unpaid leave.
- 66.4** Where paid leave is available to the Doctor, the Health Service may require the Doctor to take such leave instead.

67 Parental leave

67.1 Structure of clause

This clause is structured as follows:

- (a) Relationship with the NES: subclause 67.2
- (b) Definitions: subclause 67.3
- (c) Long parental leave – unpaid: subclause 67.4
- (d) Short parental leave – unpaid: subclause 67.5
- (e) Paid parental leave: subclause 67.6
- (f) Notice and evidence requirements: subclause 67.7
- (g) Parental leave associated with the birth of a Child – additional provisions: subclause 67.8
- (h) Unpaid pre-adoption leave: subclause 67.9
- (i) Where placement does not proceed or continue: subclause 67.10
- (j) Special maternity leave: subclause 67.11
- (k) Variation of period of unpaid parental leave up to 12 months: subclause 67.12
- (l) Right to request extension of period of unpaid parental leave beyond 12 months: subclause 67.13
- (m) Parental leave and other entitlements: subclause 67.14
- (n) Transfer to a safe job: subclause 67.15
- (o) Extension of contract – Parental Leave: subclause 67.16
- (p) Returning to work after a period of parental leave: subclause 67.17
- (q) Replacement Doctors: subclause 67.18
- (r) Communication during parental leave – organisational change: subclause 67.19
- (s) Keeping in touch days: subclause 67.20

Other provisions associated with parental leave are also included in this Agreement. Specifically, prenatal leave at clause 65, flexible working arrangements at clause 15, leave to attend interviews and examinations relevant to adoption leave (pre-adoption leave) at clause 66, and breastfeeding at clause 74.

67.2 Relationship with the NES

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

67.3 Definitions

For the purposes of this clause:

- (a) **Child** means:
 - (i) in relation to birth-related leave, a child (or children from a multiple birth) of the Eligible Doctor or the Eligible Doctor's Spouse; or
 - (ii) in relation to adoption-related leave, a child (or children) under 16 (as at the day of placement or expected day of placement) who is placed or who is to be placed with the Eligible Doctor for the purposes of adoption, other than a child or step-child of the Eligible Doctor or of the Spouse of the Eligible Doctor or a child who has previously lived continuously with the Eligible Doctor for a period of six months or more (**Adopted Child**).
- (b) **Continuous Service** for the purpose of this clause has the same meaning as continuous service for long service leave purposes (set out in subclauses 68.6 to 68.8) and includes any period of employment that would count as service under the Act.
- (c) **Eligible Casual Doctor** means an Doctor employed by the Health Service in casual employment on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months and who has, but for the birth or expected birth of a Child or the decision to adopt a Child, a reasonable expectation of continuing engagement by the Health Service on a regular and systematic basis.
- (d) **Eligible Doctor** for the purposes of this clause means a Doctor who has at least 12 months' Continuous Service or an Eligible Casual Doctor as defined above.
- (e) **Employee Couple** has the same meaning as under the Act.
- (f) **Long Parental Leave** means the 12 months parental leave an Eligible Doctor may take under subclause 67.4. A person taking Long Parental Leave under subclause 67.4 is the Primary Carer for the purpose of this clause.
- (g) **Primary Carer** means the person who has or will have a responsibility for the care of the Child. For the purpose of subclause 67.6, only one person can be the Child's Primary Carer on a particular day.
- (h) **Short Parental Leave** means the up to eight weeks' concurrent parental leave an Eligible Doctor who will not be the Primary Carer of a Child may take under subclause 67.5.
- (i) **Spouse** includes a person to whom the Eligible Doctor is married and a de facto partner, former spouse or former de facto spouse of the Doctor. A de

facto Spouse means a person who lives with the Doctor as husband, wife or same-sex partner on a bona fide domestic basis.

67.4 Long Parental Leave – Unpaid

- (a) An Eligible Doctor is entitled to 12 months' unpaid Long Parental Leave if:
 - (i) the leave is associated with:
 - (A) the birth of a Child of the Eligible Doctor or the Eligible Doctor's Spouse; or
 - (B) the placement of a Child with the Eligible Doctor for adoption;
 - and (ii) the Eligible Doctor is the Primary Carer.
- (b) The Eligible Doctor must take the leave in a single continuous period.
- (c) Where an Eligible Doctor is a member of an Employee Couple, except as provided at subclause 67.5 (Short Parental Leave – Unpaid), parental leave must be taken by only one parent of an Employee Couple at a time in a single continuous period.
- (d) Each member of an Employee Couple may take a separate period of up to 12 months of Long Parental Leave less any period of Short Parental Leave taken by the Eligible Doctor.
- (e) An Eligible Doctor may be able to extend a period of unpaid parental leave in accordance with subclauses 67.12 and 67.13.

67.5 Short Parental Leave – Unpaid

- (a) This clause applies to an Eligible Doctor who is a member of an Employee Couple.
- (b) An Eligible Doctor who will not be the Primary Carer of a Child may take up to eight weeks' leave concurrently with any parental leave taken by the parent who will be the Primary Carer. Short Parental Leave may be taken in separate periods but, unless the Health Service agrees, each period must not be shorter than two weeks.
- (c) The period of Short Parental Leave will be deducted from the period of Long Parental Leave to which the Eligible Doctor is entitled under subclause 67.4 (if applicable).

67.6 Paid Parental Leave

- (a) Upon an Eligible Doctor commencing parental leave:
 - (i) a Primary Carer taking Long Parental Leave will be entitled to 10 weeks' paid parental leave and superannuation in accordance with subclause 43.4; and
 - (ii) a non-Primary Carer taking Short Parental Leave will be entitled to one week's paid parental leave;

save that an Eligible Doctor who has taken Short Parental Leave does not also receive the Long Parental Leave entitlement at (i), even if the Eligible Doctor later takes Long Parental Leave.

- (b) Paid parental leave is in addition to any relevant Commonwealth Government paid parental leave scheme (subject to the requirements of any applicable legislation).
- (c) The Health Service and Eligible Doctor may reach agreement as to how the paid parental leave under this Agreement is paid. For example, such leave may be paid in smaller amounts over a longer period, consecutively or concurrently with any relevant Commonwealth Government parental leave scheme (subject to the requirements of any applicable legislation) and may include a voluntary contribution to superannuation.
- (d) Such agreement must be in writing and signed by the parties. The Eligible Doctor must nominate a preferred payment arrangement at least four weeks prior to the expected date of birth or date of placement of the Child. In the absence of agreement, such leave will be paid during the ordinary pay periods corresponding with the period of the leave.
- (e) A variation to the payment of paid parental leave resulting in the paid leave being spread over more than 10 weeks does not affect the period of continuous service recognised. For example, a Doctor taking 20 weeks at half pay will, for the purpose of calculating continuous service, have ten weeks of continuous service recognised. A Doctor taking five weeks at double pay will have 10 weeks of continuous service recognised.
- (f) The paid parental leave prescribed by this clause will be concurrent with any relevant unpaid entitlement prescribed by the NES / this Agreement.

67.7 Notice and evidence requirements

- (a) A Doctor must, as far as reasonably practicable and subject to section 74 of the Act, give at least 10 weeks written notice of the intention to take parental leave, including the proposed start and end dates. At this time, the Doctor must also provide a statutory declaration stating:
 - (i) that the Doctor will become either the Primary Carer or non-Primary Carer of the Child, as appropriate;
 - (ii) the particulars of any parental leave taken or proposed to be taken or applied for by the Doctor's Spouse; and
 - (iii) that for the period of parental leave the Doctor will not engage in any conduct inconsistent with their contract of employment.
- (b) At least four weeks before the intended commencement of parental leave, the Doctor must confirm in writing the intended start and end dates of the parental leave, or advise the Health Service of any changes to the notice provided in subclause 67.7(a), unless it is not practicable to do so.
- (c) The Health Service may require the Doctor to provide evidence which would satisfy a reasonable person of:
 - (i) in the case of birth-related leave, the date of birth of the Child (including without limitation, a medical certificate or certificate from a registered midwife, stating the date of birth or expected date of birth); or
 - (ii) in the case of adoption-related leave, the commencement of the placement (or expected day of placement) of the Child and that the Child

will be under 16 years of age as at the day of placement or expected day of placement.

(d) An Doctor will not be in breach of this clause if failure to give the stipulated notice is occasioned by the birth of the Child or placement occurring earlier than the expected date or in other compelling circumstances. In these circumstances the notice and evidence requirements of this clause should be provided as soon as reasonably practicable.

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

(a) Subject to the limits on duration of parental leave set out in this Agreement and unless agreed otherwise between the Health Service and Eligible Doctor, an Eligible Doctor who is pregnant may commence Long Parental Leave at any time up to six weeks immediately prior to the expected date of birth. (b) Six weeks before the birth

(i) Where a pregnant Eligible Doctor continues to work during the six week period immediately prior to the expected date of birth, the Health Service may require the Eligible Doctor to provide a medical certificate stating that she is fit for work and, if so, whether it is inadvisable for her to continue in her present position because of illness or risks arising out of the Eligible Doctor's pregnancy or hazards connected with the position.

(ii) Where a request is made under subclause 67.8(b)(i) and an Eligible Doctor:

(A) does not provide the Health Service with the requested certificate within seven days of the request; or

(B) within seven days after the request, the Eligible Doctor gives the Health Service a medical certificate stating that the Eligible Doctor is not fit for work;

the Health Service may require the Eligible Doctor to commence their parental leave as soon as practicable.

(iii) Where a request is made under subclause 67.8(b)(i) and an Eligible Doctor provides a medical certificate that states that the Eligible Doctor is fit for work but it is inadvisable for the Eligible Doctor to continue in her present position during a stated period, subclause 67.15 (Transfer to a safe job) will apply.

67.9 Unpaid pre-adoption leave

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

67.10 Where placement does not proceed or continue

(a) Where the placement of the Child for adoption with an Eligible Doctor does not proceed or continue, the Eligible Doctor must notify the Health Service immediately.

(b) Where the Eligible Doctor had, at the time, started a period of adoption-related leave in relation to the placement, the Eligible Doctor's entitlement to adoption-related leave is not affected, except where the Health Service gives written notice under subclause 67.10(c).

(c) The Health Service may give the Eligible Doctor written notice that, from a stated day no earlier than four weeks after the day the notice is given, any untaken long adoption-related leave is cancelled with effect from that day.

(d) Where the Eligible Doctor wishes to return to work due to a placement not proceeding or continuing, the Health Service must nominate a time not exceeding four weeks from receipt of notification for the Eligible Doctor's return to work.

67.11 Special maternity leave

(a) Entitlement to unpaid special birth-related leave

(i) A female Eligible Doctor is entitled to a period of unpaid special leave if she is not fit for work during that period because:

(A) she has a pregnancy-related illness; or

(B) she has been pregnant, and the pregnancy ends within 28 weeks of the expected date of birth of the Child otherwise than by the birth of a living Child.

(ii) A female Eligible Doctor who has an entitlement to personal leave may, in part or whole, take personal leave instead of unpaid special leave under this clause.

(iii) Where the pregnancy ends more than 28 weeks from the expected date of birth of the Child, the Eligible Doctor is entitled to access any paid and/or unpaid personal leave entitlements in accordance with the relevant personal leave provisions.

(b) Entitlement to paid special birth-related leave

(i) A female Eligible Doctor is entitled to a period of paid special leave if the pregnancy terminates at or after the completion of 20 weeks' gestation or the Eligible Doctor gives birth but the baby subsequently dies.

(ii) Paid special leave is paid leave not exceeding the amount of paid leave available to Primary Carers under subclause 67.6(a)(i) (plus superannuation).

(iii) Paid special leave is in addition to any unpaid special leave taken under subclause 67.11(a)(i).

(iv) Paid leave available to non-Primary Carers under subclause 67.6(a)(ii) will also apply in these circumstances.

(c) Evidence

If an Eligible Doctor takes leave under this clause the Health Service may require the Eligible Doctor to provide evidence that would satisfy a reasonable person of the matters referred to in subclauses 67.11(a)(i) or 67.11(b)(i) or to provide a certificate from a registered medical practitioner. The Eligible Doctor must give notice to the Health Service as soon as practicable, advising the Health Service of the period or the expected period of the leave under this provision.

67.12 Variation of period of unpaid parental leave (up to 12 months)

(a) Where an Eligible Doctor has:

(i) given notice of the taking of a period of Long Parental Leave under subclause

67.4; and

(ii) the length of this period of Long Parental Leave as notified to the Health Service is less than the Eligible Doctor's available entitlement to Long Parental Leave; and

(iii) the Eligible Doctor has commenced the period of Long Parental Leave, the Eligible Doctor may notify the Health Service of an extension to the period of parental leave on one occasion. Any extension is to be notified as soon as possible but no less than four weeks prior to the commencement of the changed arrangements. Nothing in this subclause 67.12 detracts from the basic entitlement in subclause 67.4 or subclause 67.13.

(b) If the Health Service and Eligible Doctor agree, the Eligible Doctor may further change the period of parental leave.

67.13 Right to request an extension of period of unpaid parental leave beyond 12 months

(a) An Eligible Doctor entitled to Long Parental Leave pursuant to the provisions of subclause 67.4 may request the Health Service to allow the Eligible Doctor to extend the period of Long Parental Leave by a further continuous period of up to 12 months immediately following the end of the available parental leave.

(b) Request to be in writing

The request must be in writing and must be given to the Health Service at least four weeks before the end of the available parental leave period.

(c) Response to be in writing

The Health Service must give the Eligible Doctor a written response to the request stating whether the Health Service grants or refuses the request. The response must be given as soon as practicable, and not later than 21 days, after the request is made.

(d) Refusal only on reasonable business grounds

The Health Service may only refuse the request on reasonable business grounds.

(e) Reasons for refusal to be specified

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

(f) Reasonable opportunity to discuss

The Health Service must not refuse the request unless the Health Service has given the Eligible Doctor a reasonable opportunity to discuss the request.

(g) Employee Couples

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

(i) the request must specify any amount of Long Parental Leave that the other member of the Employee Couple has taken, or will have taken in relation to the Child before the extension starts;

(ii) the period of extension cannot exceed 12 months, less any period of Long Parental Leave that the other member of the Employee Couple has taken, or will have taken, in relation to the Child before the extension starts;

(iii) the amount of Long Parental Leave to which the other member of the Employee Couple is entitled under subclause 67.4 in relation to the Child is reduced by the period of the extension.

(h) No extension beyond 24 months

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

67.14 Parental leave and other entitlements

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

67.15 Transfer to a safe job

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

(i) illness or risks arising out of the pregnancy, or (ii) hazards connected with the position, the Doctor must be transferred to an appropriate safe job if one is available for the risk period, with no other change to the Doctor's terms and conditions of employment.

(b) Paid no safe job leave

If:

(i) subclause 67.15(a) applies to a pregnant Eligible Doctor but there is no appropriate safe job available; and

(ii) the Eligible Doctor is entitled to Long Parental Leave; and

(iii) the Eligible Doctor has complied with the notice of intended start and end dates of leave and evidence requirements under subclause 67.7 for taking

Long Parental Leave; then the Eligible Doctor is entitled to paid no safe job leave for the risk period.

(c) If the Eligible Doctor takes paid no safe job leave for the risk period, the Health

Service must pay the Eligible Doctor at the Eligible Doctor's rate of pay set out in Schedule B for the Eligible Doctor's ordinary hours of work in the risk period.

(d) This entitlement to paid no safe job leave is in addition to any other leave entitlement the Eligible Doctor may have.

(e) If an Eligible Doctor, during the six week period before the expected date of birth, is on paid no safe job leave, the Health Service may request that the Eligible Doctor provide a medical certificate within seven days stating whether the Eligible Doctor is fit for work.

(f) If, the Eligible Doctor has either:

(i) not complied with the request from the Health Service under (e) above; or (ii) provided a medical certificate stating that she is not fit for work; then the Eligible Doctor is not entitled to no safe job leave and the

Health Service may require the Eligible Doctor to take parental leave as soon as practicable.

(g) Unpaid no safe job leave

If:

- (i) subclause 67.15(a) applies to a pregnant Doctor but there is no appropriate safe job available; and
- (ii) the Doctor will not be entitled to Long Parental Leave as at the expected date of birth; and
- (iii) the Doctor has given the Health Service evidence that would satisfy a reasonable person of the pregnancy if required by the Health Service (which may include a requirement to provide a medical certificate), the Doctor is entitled to unpaid no safe job leave for the risk period.

67.16 Extension of contract – Parental Leave

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

67.17 Returning to work after a period of parental leave

(a) An Eligible Doctor must confirm to the Health Service that the Eligible Doctor will return to work as scheduled after a period of Long Parental Leave at least four weeks prior to the end of the leave, or where that is not practicable, as soon as practicable. (b) An Eligible Doctor will be entitled to return:

(i) unless subclause 67.17(b)(ii) or subclause 67.17(b)(iii) applies, to the position which they held immediately before proceeding on parental leave;

(ii) if the Eligible Doctor was promoted or voluntarily transferred to a new position

(other than to a safe job pursuant to subclause 67.15), to the new position;

(iii) if subclause 67.17(b)(ii) does not apply, and the Eligible Doctor began working part-time because of the pregnancy of the Eligible Doctor, or his or her Spouse, to the position held immediately before starting to work part-time.

(c) Subclause 67.17(b) is not to result in the Eligible Doctor being returned to the safe job to which the Eligible Doctor was transferred under subclause 67.15. In such circumstances, the Eligible Doctor will be entitled to return to the position held immediately before the transfer.

(d) Where the relevant former position (per subclauses 67.17(b) and 67.17(c) above) no longer exists, an Eligible Doctor is entitled to return to an available position for which the Eligible Doctor is qualified and suited nearest in status and pay to that of their pre-parental leave position.

(e) The Health Service must not fail to re-engage an Eligible Doctor because:

(i) the Eligible Doctor or Eligible Doctor's Spouse is pregnant; or

(ii) the Eligible Doctor is or has been immediately absent on parental leave.

(f) The rights of the Health Service in relation to engagement and re-engagement of casual Doctors are not affected, other than in accordance with this subclause 67.17.

67.18 Replacement Doctors

(a) A replacement Doctor is an Doctor specifically engaged or temporarily promoted or transferred, as a result of an Eligible Doctor proceeding on parental leave.

(b) Before the Health Service engages a replacement Doctor, the Health Service must ensure that it notifies the replacement Doctor of the matters set out in section 84A of the Act, including the temporary nature of the engagement and of the rights of the Eligible Doctor who is being replaced.

67.19 Communication during parental leave – organisational change

(a) Where an Eligible Doctor is on parental leave and the Health Service proposes a change that will have a significant effect within the meaning of clause 10

(Consultation) of this Agreement on the Eligible Doctor's pre-parental leave position, the Health Service will comply with the requirements of clause 10 (Consultation) which include but are not limited to providing:

- (i) information in accordance with subclause 10.4; and
- (ii) an opportunity for discussions with the Eligible Doctor and, where relevant, the Eligible Doctor' representative in accordance with subclause 10.6.

(b) The Eligible Doctor will take reasonable steps to inform the Health Service about any significant matter that arises whilst the Eligible Doctor is taking parental leave that will affect the Eligible Doctor's decision regarding the duration of parental leave to be taken, whether the Eligible Doctor intends to return to work and whether the Eligible Doctor intends to request to return to work on a part-time basis.

(c) The Eligible Doctor will also notify the Health Service of changes of address or other contact details which might affect the Health Service's capacity to comply with subclause 67.19.

67.20 Keeping in touch days

(a) This clause does not prevent an Eligible Doctor from performing work for the Health Service on a keeping in touch day while the Eligible Doctor is taking Long Parental Leave. If the Eligible Doctor does so, the performance of that work does not break the continuity of the period of Long Parental Leave.

(b) Any day or part of a day on which the Eligible Doctor performs work for the Health Service during the period of leave is a keeping in touch day if:

- (i) the purpose of performing the work is to enable the Eligible Doctor to keep in touch with his or her employment in order to facilitate a return to that employment after the end of the period of leave; and
- (ii) both the Eligible Doctor and Health Service consent to the Eligible Doctor performing work for the Health Service on that day; and (iii) the day is not within:

(A) if the Eligible Doctor suggested or requested that they perform work for the Health Service on that day – 14 days after the date of birth, or day of placement, of the Child to which the period of leave relates; or

(B) otherwise – 42 days after the date of birth, or day of placement, of the Child; and

(iv) the Eligible Doctor has not already performed work for the Health Service or another entity on ten days during the period of leave that were keeping in touch days.

(c) The Health Service must not exert undue influence or undue pressure on an Eligible Doctor to consent to a keeping in touch day.

(d) For the purposes of subclause 67.20(b)(iv) the following will be treated as two separate periods of unpaid parental leave:

(i) a period of Long Parental Leave taken during the Eligible Doctor's available parental leave period under subclause 67.4; and

(ii) an extension of the period of Long Parental Leave under subclause 67.13.

68 Long service leave

68.1 Entitlement

(a) A Doctor is entitled to Long Service Leave with pay for continuous service as follows.

68.2 Normal Entitlement

(a) six months of long service leave after 15 years of continuous service then two months of long service leave after each additional five years of continuous service.

(b) The Health Service may grant pro-rata long service leave after 10 years of continuous service.

68.3 Pro-rata Entitlement

(a) Pro-rata entitlements accrue on termination of employment as follows:

(i) after 15 years of service; or

(ii) after 10 years of service but before 15 years of service as long as employment ends for any reason other than serious and wilful misconduct pursuant to clause 29 (Termination of Employment).

(b) Pro-rata entitlements are calculated as 1/30th of the period of continuous service since beginning employment, or since the last normal long service leave entitlement became due, whichever is later.

68.4 Payment

(a) The Doctor is entitled to be paid the ordinary rate of pay under Schedule B payable at the time the leave is taken or the period of employment ends. If appropriate, the Health Service may deduct rental charges consistent with clause 75 (Deductions for Board and Lodging).

(b) Payment of a Doctor's long service leave entitlement must be made by one of the following methods:

- (i) in full and in advance of the Doctor commencing leave;
- (ii) at the same time as the Doctor would normally be paid when on duty; or (iii) in any other way agreed between the Doctor and the Health Service.

(c) If the Agreement provides for an increase to ordinary pay pursuant to Schedule B (Rates of Pay) while the Doctor is on long service leave, the difference between any long service leave payment received and the increase must be paid to the Doctor at the end of the long service leave period.

68.5 Taking of Leave

(a) A Doctor must be granted long service leave within six months of the date eligibility arose under this clause. By agreement, the taking of the leave may be postponed.

(b) Any long service leave is inclusive of public holidays occurring during the period when the leave is taken.

(c) By agreement, the following may occur:

(i) the first six months of the Doctor's long service leave entitlement may be taken in two or three separate periods;

(ii) any further period of long service leave may be taken in two separate periods.

(d) Flexible taking of leave: Double leave at half pay or half leave at double pay

(i) A Health Service may approve an application by a Doctor to take double the period of long service leave at half pay or half the period of long service leave at double the pay.

(ii) Doctors should seek independent advice regarding the taxation and superannuation implications of seeking payment under this subclause 68.5(d). The Health Service will not be held responsible in any way for the cost or outcome of any such advice.

(iii) The Health Service, if requested by the Doctor, will provide information as to the amount of tax the Health Service intends to deduct where payment of long service leave is sought under subclause 68.5(d)(i).

(iv) If granting the request under this subclause would result in an additional cost to the Health Service, then it is not practical to grant a Doctor's request.

(v) Flexible taking of long service leave does not affect a Doctor's period of Continuous Service recognised. For example, a Doctor taking 12 months at half pay will, for the purpose of calculating Continuous Service, have six months of Continuous Service recognised. A Doctor taking three months at double pay will have 6 months of Continuous Service recognised. In either case service will not be broken.

68.6 Calculating Service for Entitlement to Leave

- (a) To determine a period of service of a Doctor, the Health Service must include the following service or breaks. To calculate an entitlement, service or breaks listed in subclauses 68.7(a) to 68.7(g) are counted as service, while subclauses 68.8(a) to 68.8(g) are not counted as service but do not break continuity of service.

Example: If a Doctor was engaged nine years ago and has within that time taken 12 months of Parental Leave, he or she must wait 11 years from the date of engagement before being eligible for pro-rata Long Service Leave.

68.7 Counted as Service:

- (a) Service for which long service leave or payment in lieu has not been received.
- (b) Service with her majesty's armed forces.
- (c) Service with a business that was transmitted, transferred, assigned, conveyed or succeeded from one business to another.
- (d) Annual leave, long service leave or personal/carer's leave.
- (e) Leave of absence where the absence is authorised in advance in writing by the Health Service to be counted as service.
- (f) Service as part of a specialist training program accredited by a Specialist Medical College with an employer not covered by this Agreement where:
- (i) The break between period of employment is not more than two months duration or such longer period as provided in subclause 68.9(a)(ii) (Allowable period of absence for Parental Leave); and
 - (ii) The Doctor has not received payment for long service leave benefit for that service.
- (g) On application, for a Doctor who commenced employment with a Health Service listed in Schedule A after 30 November 2008, service with an interstate Government health service, provided that such interstate Government health service employment was within two months of commencing employment with a Health Service listed in Schedule A.

68.8 Not Counted as Service but Not Breaking Continuity of Service:

- (a) Absence on account of injury arising out of or in the course of his or her employment.
- (b) Absence on parental leave under clause 67 or an equivalent period for parental leave purposes (up to 24 months between engagements).
- (c) Absence arising directly or indirectly from an industrial dispute.
- (d) Any period of time from employment between engagements with the Department, any hospital, Benevolent Home, Community Health Centre, Society or Association that is registered under the Health Services Act and any other provider that is less than the Doctor's allowable period of absence from employment pursuant to subclause 68.9 below.
- (e) The dismissal of a Doctor by a Health Service if re-employed within two months of the dismissal.

- (f) Any other leave of absence authorised by the Health Service.
- (g) Service that lasts less than six months with the Department, any Hospital, Benevolent Home, Community Health Centre, Society or Association that is registered under the Health Services Act.

68.9 Allowable Break in Service

- (a) A Doctor's allowable period of absence from employment will be the greater of:
 - (i) five weeks in addition to the total period of paid annual leave and/or personal leave that the Doctor actually receives on termination, or for which he or she is paid in lieu; or
 - (ii) such longer period of absence equivalent to and for the purpose of parental leave under the NES.

68.10 Health Service Cannot Avoid Obligations (a) Where the institution interrupts the Doctor's work, causes the Doctor to be absent from work, or terminates the Doctor's employment with the intention of avoiding obligations under this clause, the period of absence is counted as continuous service.

68.11 Payment on Termination

- (a) On termination of employment Doctors are entitled to receive payment for any outstanding normal or pro-rata long service leave entitlement.

68.12 Transfer of Entitlement

- (a) Where a Doctor has a pro-rata long service leave entitlement and/or a normal entitlement on termination of employment and they move to the Department, any Hospital, Benevolent Home, Community Health Centre, Society or Association registered under the Health Services Act within two months, they may elect to transfer the entitlements rather than have them paid out.
- (b) A Doctor may, in writing, request that the Hospital defer payment in respect of any pro-rata leave entitlements beyond two months. Unless this notice is given, the leave entitlement must be paid out when six months is exceeded. When the Doctor finally gives notice in writing that they are employed by the Department, any Hospital, Benevolent Home, Community Health Centre, Society or Association that is registered under the Health Services Act, then the Hospital is no longer required to make payment to the Doctor.

68.13 Long Service Leave that was Granted in Advance

- (a) Where a Doctor who has been granted long service leave in advance and who has been terminated consistent with subclause 29.1(c) (i.e. for serious and wilful misconduct), may have an amount equal to the amount paid in respect of the advance leave deducted and withheld from any payments owed by the institution on termination.

68.14 What Happens on Doctor's death?

- (a) For a Doctor who has completed at least ten years' service and who has died, the Hospital must pay the Doctor's authorised representative an amount equal to 1/30th of the Doctor's continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the Doctor.

68.15 Health Service Must Keep Records

- (a) The Health Service must keep a record of long service leave for each Doctor. This record must show details of service, leave taken and payments made.

68.16 Doctor Responsible for Proof of Service

- (a) The Doctor is at all times responsible for proving that he or she has completed sufficient service consistent with subclauses 68.6 through 68.10 to access the long service leave entitlement.
- (b) A certificate in the form set out in Schedule C shall constitute proof, but not the only possible proof.

69 Jury service leave

- 69.1** A Doctor required to attend for Jury Service during ordinary working hours must be paid the difference between the amount paid for the Jury Service and the amount the Doctor could have reasonably expected to receive had the Doctor attended for work.
- 69.2** A Doctor must notify the Health Service as soon as possible of the date(s) when he or she is required to attend for Jury Service. Further, the Doctor must give his or her Health Service proof of attendance, the duration of the attendance and the amount paid for the Jury Service.

70 Community service leave

- 70.1** A Doctor is entitled to a reasonable period of unpaid leave release to attend a recognised voluntary emergency management activity related to an emergency or natural disaster situation in accordance with Division 8 (Community Service Leave) of the Act.

71 Family Violence Leave

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

71.1 General Principle

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

71.2 Definition of Family Violence

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

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

71.3 Eligibility

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

71.4 General Measures

- (a) Evidence of family violence may be required and can be in the form an agreed document issued by the Police Service, a Court, a registered health practitioner, a Family Violence Support Service, district nurse, maternal and child health nurse or Lawyer. A signed statutory declaration can also be offered as evidence.
- (b) All personal information concerning family violence will be kept confidential in line with the Health Service's policies and relevant legislation. No information will be kept on a Doctor's personnel file without their express written permission.
- (c) No adverse action will be taken against a Doctor if their attendance or performance at work suffers as a result of experiencing family violence.
- (d) The Health Service will identify contact/s within the workplace who will be trained in family violence and associated privacy issues. The Health Service will advertise the name of any Family Violence contacts within the workplace.
- (e) A Doctor experiencing family violence may raise the issue with their immediate supervisor, Family Violence contacts, union delegate or nominated Human Resources contact. The immediate supervisor may seek advice from Human Resources if the Doctor chooses not to see the Human Resources or Family Violence contact.
- (f) Where requested by a Doctor, the Human Resources contact will liaise with the Doctor's manager on the Doctor's behalf, and will make a recommendation on the most appropriate form of support to provide in accordance with subclause 71.5 and subclause 71.6.

(g) The Health Service will develop guidelines to supplement this clause and which details the appropriate action to be taken in the event that a Doctor reports family violence.

71.5 Leave

(a) A Doctor experiencing family violence will have access to 20 days per year of paid special leave (pro-rata for part time Doctors) following an event of family violence and for related purposes such as counselling appointments, medical appointments, legal proceedings or appointments with a legal practitioner and other activities related to, and as a consequence of, family violence (this leave is not cumulative but if the leave is exhausted consideration will be given to providing additional leave). This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval.

(b) A Doctor who supports a person experiencing family violence may utilise their personal/carer's leave entitlement to accompany them to court, to hospital, or to care for children. The Health Service may require evidence consistent with subclause 71.4(a) from a Doctor seeking to utilise their personal/carer's leave entitlement.

71.6 Individual Support

(a) In order to provide support to a Doctor experiencing family violence and to provide a safe work environment to all Doctors, the Health Service will approve any reasonable request from a Doctor experiencing family violence for:

- (i) temporary or ongoing changes to their span of hours or pattern or hours and/or shift patterns;
- (ii) temporary or ongoing job redesign or changes to duties;
- (iii) temporary or ongoing relocation to suitable employment;
- (iv) a change to their telephone number or email address to avoid harassing contact;
- (v) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.

(b) Any changes to a Doctor's role should be reviewed at agreed periods. When a Doctor is no longer experiencing family violence, the terms and conditions of employment may revert back to the terms and conditions applicable to the Doctor's substantive position.

(c) A Doctor experiencing family violence will be offered access to the Doctor Assistance Program (**EAP**) and/or other available local employee support resources. The EAP will include professionals trained specifically in family violence.

(d) A Doctor that discloses that they are experiencing family violence will be given information regarding current support services.