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**Submission to the Australian Competition and  
Consumer Commission seeking Re-Authorisation  
under the Australian Competition and Consumer Act  
2010 (Cth)**

**Date: 26 August 2021**

**1. APPLICATION FOR RE-AUTHORISATION TO COLLECTIVELY NEGOTIATE ON BEHALF OF VISITING MEDICAL OFFICERS IN NEW SOUTH WALES**

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1.1. The Australian Medical Association (NSW) Limited (hereinafter '**AMA(NSW)**') seeks:

- (a) Revocation of Authorisation AA1000511-1.
- (b) Substitution of a new Authorisation for the same conduct authorised under Authorisation AA1000511-1 to collectively negotiate on behalf of visiting medical officers in New South Wales pursuant to section 91 of the *Competition and Consumer Act 2010 (Cth) (the Act)* with Ramsay Health Care Australia Pty Limited, Healthscope Operations Pty Limited, Healthe Care Australia Pty Limited, Adventist Healthcare Limited, St Vincent's Health Australia Limited and other private hospitals and day surgeries licensed in NSW (hereinafter '**Private Hospital Operators**') regarding the terms and conditions (including remuneration) for visiting medical officers (hereinafter '**VMOs**') engaged to provide public patient services in private hospital as the COVID-19 Pandemic continues to affect the provision of medical services in New South Wales, and authorisation for VMOs who participate in these arrangements. AMA(NSW) will promptly notify the Australian Competition and Consumer Act (hereinafter the '**ACCC**') of any additional Private Hospital Operators that are identified by the NSW Government as being facilities where public patient services are to be provided;
- (c) In the event that the current Authorisation AA1000511-1 expires before a decision has been made in relation to the Application for Substitution of a new Authorisation, AMA(NSW) seeks an urgent interim Authorisation.

1.2. The application is made for an urgent interim Authorisation for the following reasons:

- a. Since 16 June 2021 case numbers of locally acquired COVID-19 continue to rise, and daily case numbers now in 1,000's (as at the date of this Application). The current COVID-19 strain circulating in the community is the highly contagious Delta strain. In the last week there have been over 5,000 patients diagnosed

with COVID-19. The numbers of patients with COVID-19 requiring hospitalisation and admission to the ICU are rising. These numbers, in addition to those in the Special Health Accommodation (SHA) and at home, are placing increasing pressure on the health system in New South Wales.

- b. Staffing demands in the SHA, hospitals, the community, and vaccination hubs are increasing not only due to rising case numbers but also the need to furlough staff who have been exposed to COVID-19 positive cases. The NSW Government has now postponed non-urgent Category 2 surgery and Category 3 surgery in Sydney metropolitan Public Hospitals and elective surgery at many Private Hospitals across NSW.
  - c. The calls are being made for VMOs to participate in arrangements for public patient surgery to be undertaken in the private hospital system to try to stem the anticipated back-log of surgical cases that followed last year's elective surgery shut down.
- 1.3. Authorisation is sought for a period of 12 months. Whilst it is hoped that increasing vaccination rates will see case numbers decline, but perhaps more importantly, hospitalisation rates and the need for ICU admissions, as with so many aspects of the Pandemic, it is difficult to be able to say with any certainty when this will be achieved. Whilst targets have been set for the end of the year and early next year, it remains to be seen whether these targets will be achieved, and whether the experiences overseas will be replicated here.
- 1.4. Should it be the case that increased vaccination rates mean reduced levels of hospitalisation and demand for ICU beds, there will be no ongoing need for public patients to be treated in private hospitals, and thus, even if the Authorisation remains in place there will be no need for AMA(NSW) to call upon it.
- 1.5. As such, any anticipated detriment that may be envisaged as rising from the granting of Authorisation for a further 12 months will be off-set by the fact that there will be no need for the Authorisation should the benefits of vaccination be realised before the 12 months expires.
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- 1.6. The relevant provisions of the Act are as follows:

- a. making and or giving effect to a contract, arrangement or understanding that may include a cartel provision (Division 1 of Part IV);
- b. making and or giving effect to a contract, arrangement or understanding that has the purpose or would have the effect, or likely effect, of substantially lessening competition (section 45(1)(a) and (b));
- c. engaging with one or more persons in a concerted practice that has the purpose, or has or is likely to have the effect, of substantially lessening competition (section 45(1)(c));
- d. a corporation that has a substantial degree of power in a market engaging in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition (section 46(1)).

## **2. THE AUSTRALIAN MEDICAL ASSOCIATION (NSW) LIMITED**

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- 2.1. AMA(NSW) is an independent association representing the state's medical profession. As an organisation of employers AMA(NSW) is a registered industrial organisation under section 271 of the *Industrial Relations Act 1996 (NSW)*.
- 2.2. The mission of the AMA (NSW) is to advance the interests of the medical profession and their patients through effective advocacy; to uphold the integrity and honour of the profession; to provide support and services to its members in an efficient and responsive manner; and to encourage the advancement of the health of the community.
- 2.3. A core component of AMA(NSW)'s role is the provision of industrial representation for all Visiting Medical Officers (hereinafter '**VMOs**') in New South Wales Public Hospital System. AMA(NSW) makes every effort to ensure the concerns of VMOs are heard and makes representations on their behalf.
- 2.4. In New South Wales the arrangements for the contracting of doctors in state hospitals and facilities are not unilaterally determined by the MOH.
- 2.5. AMA(NSW) has a statutory role under the provisions of the *Health Services Act 1997* (hereinafter '**HSA**') to recommend to the Minister for Health (section 87) and/or seek

the appointment of an arbitrator (section 89) to determine the terms and conditions and rates of remuneration for sessional and fee-for-service VMOs.

- 2.6. In any arbitration proceedings under the HSA, AMA(NSW) has a right of representation on behalf of all sessional and fee-for-service VMOs (not just those VMOs who are members of AMA(NSW)).
- 2.7. In addition to its statutory role, AMA(NSW) has a well-established collaborative working relationship with MOH. This relationship is evidenced by the consent position reached regarding the Fee-for-Service and Sessional Determinations in 2007 and 2014. The consent position ensured and ensures the ongoing provision of medical services in the New South Wales Public Hospital system across the State, including in rural areas, and avoided the parties needing to expend considerable financial resources (as were expended in the early 1990s) on a contested arbitration process.

### **3. VISITING MEDICAL OFFICERS IN NEW SOUTH WALES**

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- 3.1. Other than the Australian Capital Territory, (and limited numbers in Victoria and Queensland) New South Wales is the only State or Territory in which VMOs in the Public Hospital System are independent contractors.
- 3.2. There are approximately 8,000 VMO appointments in the NSW Public Hospital System. Approximately 5,700 of VMOs are appointed under sessional contracts, 3,000 are appointed under fee-for-service contracts and 1,000 are appointed under fee-for-service contracts at facilities covered by the Rural Doctors Settlement Package (hereinafter '**RDASP**') (see below). Some VMOs hold multiple appointments.
- 3.3. As noted above, AMA(NSW) is appointed under statute as the industrial body representing VMOs in the Public Hospital System.
- 3.4. Many VMOs in the Public Hospital System will have appointments at Private Hospitals. There will be some who do not. Similarly, there is will some VMOs with appointments at Private Hospitals who do not have contracts in the Public Hospital System.

### ***The Health Services Act 1997 (NSW)***

- 3.5. Chapter 8 of the HSA governs the appointment of VMOs and the services contracts under which VMOs provide services in NSW public hospitals.
- 3.6. Part 1 of Chapter 8 defines who is a VMO for the purposes of the HSA; Part 2 regulates VMOs service contracts with Public Health Organisations (*'PHOs'*); Part 3 concerns the reporting of criminal and disciplinary matters; and Part 4 provides VMOs with a right of appeal following certain appointment decisions made by PHOs.
- 3.7. A VMO is a medical practitioner appointed under a service contract to provide medical services for monetary remuneration for or on behalf of a PHO (section 78).
- 3.8. A service contract is defined to include fee-for-service contracts, sessional contracts and honorary contracts (section 81). A service contract must be reduced to writing setting out the terms and conditions of the VMO's appointment (section 86(1)). An appointment made in contravention of section 86(1) is void (section 86(2)). That is, for a VMO to hold a valid appointment he/she must have a written service contract giving effect to that appointment.
- 3.9. Briefly, VMOs appointed under sessional contracts are remunerated based on an hourly rate. VMOs appointed under fee-for service contracts are remunerated for services provided – a determined percentage of the Commonwealth Medicare Benefits Schedule. VMOs who provide services at facilities covered by the RDASP are remunerated on a fee-for-service basis.
- 3.10. The Minister for Health may approve sets of conditions recommended by the Australian Medical Association (NSW) Limited for inclusion in service contracts (section 87).
- 3.11. The Minister or the Australian Medical Association (NSW) Limited may (jointly or individually) apply to the Minister for Industrial Relations for the appointment of an arbitrator to determine the terms and conditions of work, the amounts or rates of remuneration and the bases upon which those amounts or rates are applicable for VMOs appointed under sessional or fee-for-service contracts (or both) (section 89).

- 3.12. An arbitrator is bound to have regard to the economic consequences of a proposed Determination (section 92(2)).
- 3.13. Part 2 goes on to stipulate the functions and duties of the arbitrator. One of those duties is to bring the parties to agreement (section 91(2)).
- 3.14. A Determination made by an arbitrator appointed under Part 2 is final and binding and forms part of the terms and conditions of the contract. Any provision of a service contract which is inconsistent with a Determination is, to the extent of the inconsistency, of no effect (Section 98).
- 3.15. Variations to standard service contracts are not uncommon and accommodate the circumstances and needs of individual VMOs (or small groups of VMOs) and individual PHOs.

#### **4. VISITING MEDICAL PRACTITIONERS IN THE PRIVATE SECTOR**

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- 4.1. In addition to its statutory role representing the rights and interests of VMOs in the Public Hospital System, AMA(NSW) also advocates for the rights and interests of VMOs in the Private Hospital System.
- 4.2. In the Private Health System there is often no contract for services between the private hospital and medical practitioners who provide care and treatment to patients.<sup>1</sup> Rather the contact for services is between the medical practitioner and the patient. The medical practitioner is remunerated by the patient and / or health fund not the Hospital.
- 4.3. The terms and conditions of a medical practitioner's appointment at a private hospital are governed under the By-Laws and relevant policies and procedures at the hospital or hospitals at which the medical practitioner is appointed.

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<sup>1</sup> There are some medical practitioners who may be employed by the private hospital system and thereby provide services to the private hospital (and patient) as in the public system.

- 4.4. Private Hospitals do not provide work for VMOs. VMOs have appointments at private hospitals and bring work to the hospital. Private Hospitals do not pay VMOs. VMOs are paid under contracts between the VMO and the private patient and / or health fund.
- 4.5. In the recent NSW Supreme Court decision of *Page v Healthscope Operations Pty Ltd* [2016] NSWSC 1608 the Court found that the re-accreditation agreement whereby Dr Page was accredited to provide services at the hospital in question was an agreement in the nature of a conditional license granted by Healthscope Operations Pty Ltd to Dr Page. The conditional licence entitled Dr Page to enter the hospital and provide medical services within his area of expertise. The accreditation did not give rise to a contract between Dr Page and Healthscope.

## **5. PUBLIC PATIENTS IN PRIVATE HOSPITALS IN NEW SOUTH WALES**

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- 5.1. In 2020 the Federal Government undertook to guarantee the viability and capacity of the private hospital sector following the shut down of elective surgery across the public and private sectors in April and May 2020.
- 5.2. At the time AMA(NSW) made its original application for Authorisation it was unclear who would be responsible for remunerating VMOs undertaking public patient work in NSW Private Hospitals, and with whom VMOs would be required to contract.
- 5.3. Last year when AMA(NSW) applied for Authorisation it was unclear how arrangements would work in the NSW Public Hospital System. Ultimately, Private Hospital Operators offered contracts based on what they represented to be the terms and conditions of their arrangements with the Federal and State governments, and there was little opportunity for AMA(NSW) to be involved in the negotiation of those contracts.
- 5.4. Ultimately, there were a variety of contractual arrangements put into place. At some NSW Private Hospitals VMOs with Public Hospital appointments undertook the work under their Public Hospital contracts. At other NSW Private Hospitals, VMOs contracted with the Private Hospital operator and submitted claims for payment to the Private Hospital Operator. The rates of payment varied depending on the Private Hospital Operator.



- 5.5. In August 2021, the call for VMOs to again undertake public patient work in NSW Private Hospitals is being made. Anecdotally we understand some VMOs have been asked to do so under the contracts they signed last year. At this time, it is difficult to know where and how much work will be undertaken in the NSW Private Hospital system, and whether this will be confined to the Sydney Metropolitan area or extended across some or all of the State.
- 5.6. AMA(NSW) did meet with Private Hospital Operators in 2020 and discussed issues of capacity to accept public patients in their facilities, and the volumes of work being undertaken. There was discussion about the terms on which facilities had contracted with VMOs, but given the contracts were determined based on the terms of the Private Hospital Operators arrangements with Federal and State governments, AMA(NSW) did not engage with Private Hospital Operators to negotiate the terms and conditions of the contracts with VMOs.
- 5.7. The Pandemic has allowed AMA(NSW) to opportunity to develop existing relationships with Private Hospital Operators. AMA(NSW) wishes, post-pandemic, to see a strong public health system and a strong private health system. In order for this to be achieved, post-Pandemic, there must be a return to pre-Pandemic arrangements under which public patients are treated in public hospitals, and private patients are treated in private hospitals. This will ensure the public appreciate the value proposition of private health and private health insurance.

## **6. PUBLIC BENEFIT and PUBLIC DETRIMENT**

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### **Public Benefit**

- 6.1. AMA(NSW) is seeking authorisation to negotiate with Private Hospital Operators on behalf of medical practitioners in New South Wales seeking to provide public patient services in private hospitals during the continuing COVID-19 Pandemic. Whilst to date there has not been a need for AMA(NSW) to engage in the negotiation of the terms and conditions of contracts, as the numbers of COVID-19 cases in New South Wales continue to increase and pressures on the health system increase, there may well be the need for arrangements to be negotiated or for existing arrangements to be re-negotiated.

- 6.2. AMA(NSW) is seeking to replicate the same arrangements that are currently in place in the Public Hospital System for any public work to be undertaken in the Private Hospital System.
- 6.3. As set out above, in the Public Health System in New South Wales there are detailed contractual arrangements between VMOs and public health organisations. Under those arrangements, public patients are treated at no charge and the VMOs are remunerated by the public health organisation for the services they provide to patients and are provided with medical indemnity cover.
- 6.4. There will be a need to ensure capacity remains within the Public Hospital System for the treatment of existing and new cases of COVID-19. As such, AMA(NSW) anticipates there will be increasing levels of public work undertaken in Private Hospitals given the current COVID-19 infection rates in New South Wales, and which are only expected to increase for some weeks to come. The current suspension of non-urgent Category 2 and Category 3 surgery in the Public Hospital System will mean that even once cases begin to decrease, the waiting list will again be significant and will need to be addressed with some degree of urgency.
- 6.5. It is important that those VMOs who are contracted to provide services in Public Hospitals are provided with the opportunity to continue to undertake that work regardless of where it is to be performed. This is important to ensure that they continue to practise their profession and maintain their skills.
- 6.6. Most junior medical staff in New South Wales undertake their training in the Public Hospital System. While it is important that the junior medical workforce is available in the Public Hospital system to assist with the provision of care for COVID-19 patients, it is also important that our future workforce of specialist practitioners is able, wherever possible, to safely continue their training. Where elective surgery for public patients may be undertaken in private hospitals, subject to the availability of appropriate PPE, it will be important to ensure junior medical staff are afforded the opportunity to continue with their training and maintain the skills they have learnt and continue to develop their skills.
- 6.7. The existing framework in the Public Hospital System provides an effective and cost-effective means of ensuring the continuing provision of medical services to public patients in NSW. That framework includes VMO contracts which make provision for:

- (a) Services provision;
- (b) Teaching and training;
- (c) Remuneration;
- (d) On-call arrangements; and
- (e) Dispute resolution procedures.

A copy of Public Hospitals (Visiting Medical Officer Sessional Contracts) Determination 2014 and the Public Hospitals (Visiting Medical Officer Fee-for-Service Contracts) Determination 2014 are **attached**.

- 6.8. As was the case in 2020 when AMA(NSW) first sought Authorisation, participation in the arrangement will be voluntary. Should a group of doctors wish to do so independently of any arrangements AMA(NSW) may seek to negotiate, they may seek exemption from the ACCC and seek to negotiate a collective arrangement with one or more Private Hospital Operators. Whilst the granting of Authorisation does not compel any Private Hospital Operator to negotiate with AMA NSW, it does provide Private Hospital Operators with the opportunity to negotiate with one organisation in relation to arrangements at their facility, or facilities, and may reduce the price payable for the services of VMOs, as opposed to possible prices if negotiations are undertaken with a number of individuals.
- 6.9. To retain VMOs to undertake public work in the private hospital system, the existing contractual framework within the Public Hospital System with some variations has the requisite degree of flexibility to accommodate variations in the terms and conditions under which VMOs may be asked to provide public patient services in Private Hospitals.
- 6.10. The role of AMA(NSW) as the collective negotiator of rates of remuneration, and the terms and conditions for service delivery to public patients for VMOs, ensures that, while endeavouring to act in the best interest of its members, and VMOs more generally, it can objectively balance the needs (and wants) of VMOs against the collective public interest in:

- (a) The continuing provision of medical services of the highest quality in the NSW public health system; and
- (b) The provision of those services on a cost-effective basis.

6.11. Whilst individually negotiated contracts may be consistent with the philosophy behind independent contracting arrangements, such negotiations will, without doubt, add to increases in the cost of public health care, both in terms of the time and cost of administrators having to negotiate with individuals, and the potential for inflated remuneration rates. Under the terms of the arrangement with Private Hospital Operators, it is the Federal and NSW Government (and ultimately the NSW taxpayers) who will have to meet the costs of those services.

#### **Public Detriment**

6.12. Should the ACCC decide not to grant authorisation to AMA(NSW) to collectively negotiate the terms and conditions of VMO contracts with Private Hospital Operators this most likely will result in:

- (a) Increased costs as individuals and/or groups of medical practitioners attempt to negotiate their fees with the Private Hospital Operators and / or the State Government.
- (b) Increased competition between craft groups may result in certain specialties withdrawing their services from some hospitals and only offering their services at other hospitals. AMA(NSW) is already seeing some disparity between different specialities in terms of the remuneration being paid.
- (c) VMOs leaving the Public Hospital System due to a lack of available work which will result in a further strain during the current crisis and following.

6.13. AMA(NSW), as the peak industrial organisation representing medical practitioners in New South Wales, has a unique understanding of the Public Hospital System and the issues confronting VMOs working within the system and providing public patient services.

- 6.14. Fundamental to ensuring that VMOs contributions to the Public Health System are recognised, is ensuring that terms and conditions are maintained to retain (and recruit) VMOs, particularly in regional areas. While VMOs can negotiate individual variations with Private Hospital Operators, AMA(NSW)'s role will help to ensure reliable service provision to those members of the public requiring treatment as public patients in the private hospital system.
- 6.15. It is AMA(NSW)'s submission that there is no readily identifiable public detriment should authorisation be granted. There will not be an associated push to increase fees over and above those currently in place in the New South Wales Public Health System.

### **Summary of public benefit and detriment**

- 6.16. There is no intention on the part of AMA(NSW) to seek that these arrangements extend beyond the period necessary to ensure the provision of public patient services at private facilities during the current pandemic. Negotiated arrangements for the provision of public patient services in the Private Hospital System should be for a defined period only.
- 6.17. An example of the role of AMA(NSW) to ensure the ongoing provision of services yet at the same time representing the interests of VMOs was its role in obtaining Treasury Managed Fund professional indemnity cover for VMOs providing services to public patients in New South Wales public hospitals in 2001. At that time the medical profession in New South Wales was facing a medical indemnity crisis – soaring medical indemnity premiums were placing many VMOs in a position whereby they considered they had no choice but to withdraw their services (from both the public and private sectors) – particularly those practising in obstetrics and neurosurgery. AMA(NSW) engaged NSW Health in discussions which ultimately resulted in the extension of TMF cover to VMOs treating public patients in public hospitals and ensured the ongoing provision of services to public patients in New South Wales.
- 6.18. When seeking to negotiate with Private Hospital Operators, AMA(NSW) will be advocating for a system that ensure a fair and equitable allocation of resources across the State for the treatment of public patients irrespective of where those patients are treated.

- 6.19. For the avoidance of doubt, AMA(NSW) is not seeking to interfere in the existing appointment arrangement for VMOs with Private Hospital appointments and does not seek to interfere in existing arrangements for the treatment of private patients in Private Hospitals, nor existing arrangements for the treatment of public patients in Private Hospitals outside of Pandemic arrangements.
- 6.20. AMA(NSW) wants to ensure a viable health system throughout the current pandemic and beyond. The system needs to be able to respond quickly and efficiently as the situation develops and changes and AMA NSW is well placed to swiftly negotiate on behalf of the VMO workforce.

## **7. THE MARKET**

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- 7.1. AMA(NSW) seeks authorisation to collectively negotiate on the part of all VMOs in New South Wales seeking to provide VMO services to public patients in private hospitals during the current pandemic.
- 7.2. It is not proposed that the practitioners must be a party to any agreement negotiated by AMA(NSW) with the Private Hospital Operators. Individual VMOs would be entitled to attempt to negotiate on their own behalf or participate in another arrangement (as they are now).

## **8. CONCLUSION**

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- 8.1. AMA(NSW) seeks authorisation to collectively negotiate with Private Hospital Operators concerning the terms and conditions upon which VMOs will be engaged to provide medical services to public patients in the Private Hospital System during the Pandemic, and authorisation for VMOs who choose to participate in such arrangements. Authorisation is sought to ensure that the rights and interests of the public (to access quality public health services), the rights and interests of those seeking appointment, and the rights and interests of junior medical officers to have access to teaching, training and mentoring.
- 8.2. The existing public health system in which AMA(NSW) represents the rights and interest of VMOs has ensured that the rights and interests of VMOs are represented and protected while the rights and interests of others working in the health system

and the New South Wales public are also protected by ongoing delivery of health services of the highest quality in a cost effective manner.

- 8.3. AMA(NSW) seeks to preserve the current status quo that is in place in the public hospital system regardless of where services to public patients are provided – be they in public or private hospitals, to ensure the safe, efficient and cost-effective delivery of health services to public patients in New South Wales be they in the public or private hospital systems.

Dated: 26 August 2021

## **Declaration by the Applicant**

The undersigned declares that, to the best of their knowledge and belief, the information give in this application is true, correct and complete and that complete copies of all documents required in this application have been supplied, and that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Fiona Davies  
Chief Executive Officer  
Australian Medical Association (NSW) Limited

26 August 2021



# **PUBLIC HOSPITALS (VISITING MEDICAL OFFICERS SESSIONAL CONTRACTS) DETERMINATION 2014**

## **1. TITLE**

This Determination shall be known as the “Public Hospitals (Visiting Medical Officers - Sessional Contracts) Determination 2014”.

## **2. ARRANGEMENT**

This Determination is arranged as follows:

| <b>Clause Number</b> | <b>Subject Matter</b>                           |
|----------------------|---|
| 1                    | Title   |
| 2                    | Arrangement                                     |
| 3                    | Definitions                                     |
| 4                    | Contract for Services                           |
| 5                    | Services  |
| 6                    | Classifications                                 |
| 7                    | Remuneration for Services                       |
| 8                    | Background Practice Costs                       |
| 9                    | Superannuation                                  |
| 10                   | On-Call and Call-Back                           |
| 11                   | Public Holiday Remuneration                     |
| 12                   | Unpaid Leave of Absence                         |
| 13                   | Professional Support for Regional Practitioners |
| 14                   | Record of Services                              |
| 15                   | Suspension of Sessional Contract                |
| 16                   | Termination of Sessional Contract               |
| 17                   | Professional Indemnity Cover                    |
| 18                   | Dispute Resolution Procedure                    |
| 19                   | Notices   |
| 20                   | Operation and Effective Date                    |
| Schedule 1           | Regional Hospitals                              |
| Annexure A           | Sessional Visiting Medical Officer Rates        |
| Annexure B           | Background Practice Cost and On-call Rates      |
| Annexure C           | Regional Visiting Medical Officer Arrangements  |

### 3. DEFINITIONS

In this Determination:

“AMA (NSW)” means the Australian Medical Association (NSW) Ltd;

“appointment” means appointment as a visiting medical officer and includes reappointment and promotion; and appointed, re-appointed and promoted have a corresponding meaning;

“approved contract of liability coverage” means a contract for professional indemnity cover by the NSW Treasury Managed Fund in a form approved by the NSW Ministry of Health and offered by public health organisations to visiting medical officers;

“approved professional indemnity insurance” is as defined in the *Health Care Liability Act 2001*;

“call-back” means called to attend a hospital, whether or not rostered on-call, at a time when the visiting medical officer would not otherwise have attended the hospital, in response to a request from the relevant hospital or public health organisation to attend for the purpose of providing services;

“clinical privileges” means the clinical privileges as defined in the *Health Services Act 1997*;

“general practitioner” means a medical practitioner who is not a specialist;

“hospital” means a hospital as defined in the *Health Services Act 1997*;

“medical practitioner” means a person registered for the time being under the *Medical Practice Act 1992*;

“on-call” means rostered to be available to attend public patients pursuant to an on-call roster prepared by a public health organisation in consultation with the relevant clinical Ministry;

“private patient” means a patient who is not a public patient;

“public health organisation” is as defined in Chapter 2 of the *Health Services Act 1997*;

“public patient” means a patient in respect of whom the public health organisation provides comprehensive care, including all necessary medical, nursing and diagnostic services, by means of its own staff or by other agreed arrangements;

“regional hospital” means a hospital listed in Schedule 1 to this Determination;

“regional visiting medical officer” means a visiting medical officer:

- (i) who is appointed for a continuous period of at least 12 months under one or more service contracts in respect of one or more regional hospitals; and
- (ii) who is engaged under standard contract arrangements approved by the NSW Ministry of Health.

“senior specialist” means a specialist who has practiced as such in a speciality for at least seven

years and who is required under a sessional contract to render services the adequate performance of which services requires a specialist of that status;

“services” means medical services provided to a public patient by a visiting medical officer under a sessional contract, including teaching, training and participation on committees, but excluding attendance at meetings of a medical staff council (howsoever called);

“service contract” means a service contract as defined in the *Health Services Act 1997*;

“sessional contract” means a sessional contract as defined in the *Health Services Act 1997*;

“specialist” means a medical practitioner, other than a general practitioner, who is a specialist as defined in the *Health Insurance Act 1973* (Commonwealth) and who is required under a sessional contract to render services the adequate performance of which services requires a medical practitioner of that status;

“visiting medical officer” means a visiting medical officer as defined in the *Health Services Act 1997* who provides services under a sessional contract, but excluding a pathologist and a radiologist; and

“visiting practitioner” means a visiting practitioner as defined in the *Health Services Act 1997*.

#### **4. CONTRACT FOR SERVICES**

- (1) A visiting practitioner who is to be appointed as a visiting medical officer to provide services under a service contract on a sessional basis shall be so appointed by a written sessional contract between the officer and public health organisation. The sessional contract shall specify the terms and conditions to which the officer is to be subject, including the clinical privileges of the officer as determined or varied from time to time by the public health organisation in accordance with any applicable Act, regulation or by-law and after advice from the appropriate credentials committee in respect of the hospital or hospitals at which the visiting medical officer provides services.
- (2) Except as otherwise affected by this Determination, the period for which a visiting medical officer may be appointed to a public health organisation is to be such period (not exceeding the maximum term specified in the *Health Services Regulation*) as the public health organisation may determine and as is specified in the sessional contract.
- (3) A visiting medical officer appointed to a public health organisation is, if otherwise qualified, eligible for but not entitled to re-appointment upon the expiry of the existing sessional contract. In the event of re-appointment, a new sessional contract shall be made.
- (4) A sessional contract shall not establish the relationship of employer and employee as between the respective parties thereto, and a visiting medical officer shall, in providing services under a sessional contract, be and be regarded as an independent contractor.
- (5) A visiting medical officer shall provide the services specified in the sessional contract to public patients at the relevant hospital or hospitals, consistent with the clinical privileges granted to the officer under the sessional contract.

- (6) A visiting medical officer shall participate in the teaching and training of postgraduate medical officers as may reasonably be required by the public health organisation.
- (7) A visiting medical officer shall participate in committees expressly established or authorised by the public health organisation to which the officer is appointed where reasonably required by the public health organisation for the proper and efficient functioning of the hospital or hospitals concerned.
- (8) A visiting medical officer shall participate in an on-call roster for the provision of services as may reasonably be required by the public health organisation, and when so rostered the officer shall be readily contactable at all times and be able and prepared to attend the hospital concerned within a reasonable period of time.
- (9) A visiting medical officer:
  - (a) shall be professionally responsible for the proper clinical management and treatment of public patients under the officer's care in the hospital concerned;
  - (b) shall take reasonable steps to ensure that the clinical records related to the services provided by the officer, and those provided for patients under the officer's care, are maintained adequately and that such completed records include details of diagnosis, treatments and operations performed and a discharge summary completed in the manner determined by the hospital;
  - (c) shall comply with all rules and by-laws in force from time to time at the public health organisation, not being inconsistent with any of the rights and obligations of the visiting medical officer under this agreement.
- (10) The public health organisation where reasonably practicable shall provide:
  - (a) all ancillary, medical, nursing and clerical assistance and facilities, instruments and equipment reasonably necessary for the proper performance of the services to be rendered by a visiting medical officer under a sessional contract; and
  - (b) to the visiting medical officer upon request and free of charge, sufficient suitable and serviceable outer uniforms and duty garments, which shall remain the property of the public health organisation and which shall be laundered at the expense of the public health organisation.

## **5. SERVICES**

- (1) The ordinary hours during which a visiting medical officer is to render services (other than those pursuant to a call-back or an on-call roster) shall be as agreed between the officer and the public health organisation, and shall be specified in the sessional contract on an annual basis or on the basis of a lesser specified period if the contract terminates sooner or if it is otherwise agreed; provided that a public health organisation shall only allocate work to the visiting medical officer which can reasonably be performed within the agreed number of ordinary hours.

- (2) In establishing the annual ordinary hours, or the ordinary hours on the basis of another specified period, under subclauses (1), (5) or (6) regard shall be had to:
- (a) the services to public patients recorded as having been provided and the hours recorded as having been worked by the visiting medical officer during the previous twelve months, or if the officer has been appointed for less than twelve months the preceding period of appointment, taking into account information available on each aspect of that officer's work such as, but not limited to, ward rounds, consultations, operating theatre sessions, other procedures, outpatient clinics, postgraduate teaching and committees to which the officer is appointed under clause 4(7);
  - (b) the clinical service needs and available resources of the public health organisation;
  - (c) the views of the visiting medical officer;
  - (d) the nature of the visiting medical officer's appointment;
  - (e) the experience, knowledge and ability of the visiting medical officer;
  - (f) any periods of leave which the visiting medical officer proposes or is required to take during the ensuing twelve months or relevant lesser period;
  - (g) any other relevant fact or circumstance.

#### Remuneration - options

- (3) In respect of remuneration for ordinary hours of services one of the following options shall apply:

##### Option 1 - Budgeted actual hours remuneration

- (a) (i) Where agreed by the parties, a visiting medical officer may be remunerated, to the limit of ordinary hours specified in the sessional contract, for the ordinary hours of services actually performed.
- (ii) The visiting medical officer shall be paid upon submission of a record and account to the public health organisation in accordance with clause 14.
- (iii) Under this option a plan of the services to be provided by the officer shall be specified.

##### Option 2 - Specified procedures remuneration

- (b) (i) For the purposes of this option, in establishing ordinary hours, or a portion thereof, the public health organisation and visiting medical officer may agree, and specify in the sessional contract, in respect of the following twelve months or relevant lesser period if the contract is to terminate sooner, the matters set out below:-

- types of procedures that the officer is to perform on public patients;
  - numbers of each such type of procedure.
- (ii) The visiting medical officer and the public health organisation shall make a reasonable assessment of the average time taken for the types of procedures concerned. The total ordinary hours shall be the sum of the hours thus assessed for each type of procedure multiplied by the number specified for each such procedure.
- (iii) The visiting medical officer shall be remunerated for the procedures actually performed, up to the numbers of each type of procedure specified in the sessional contract. For the purpose of calculating ordinary hours attracting remuneration, each such procedure shall be deemed to have taken the time assessed for such a procedure in accordance with sub-paragraph (ii).
- (iv) Any portion of ordinary hours specified in the sessional contract which is not established under sub-paragraph (i) shall be remunerated as follows:
- the portion of ordinary hours established under subparagraph (i) shall be deducted from the total ordinary hours established under clause 5(1), (5) or (6); and
  - the balance of ordinary hours then remaining shall be paid in twelve equal, or otherwise agreed, monthly instalments.

#### Option 3 - Agreed hours remuneration

- (c) Where Option 1 or 2 is not agreed upon by the parties, the visiting medical officer shall be remunerated for the number of ordinary hours specified in the officer's sessional contract in twelve equal, or otherwise agreed, monthly instalments.

#### Variation

- (4) The number of ordinary hours specified in a sessional contract may be varied at any time, either for a specified period or until the next anniversary date of the sessional contract, by an agreement in writing between the visiting medical officer and the public health organisation.

#### Annual Review

- (5) Not later than six weeks prior to each anniversary date of a sessional contract, the public health organisation and the visiting medical officer shall consult in a review of the number of ordinary hours of services specified in the sessional contract in respect of the next following year or of such lesser period until the termination of the sessional contract. If agreement is reached for a variation to that number of ordinary hours then the agreement shall be reduced to writing and the sessional contract shall be varied accordingly with effect as from the first day of the year or of such lesser period, as the case may be, to which the review related. Provided that this subclause shall not apply if

a sessional contract was made for a period of one year or less.

- (6) If agreement is not reached as a result of the review of the number of ordinary hours as contemplated in subclause (5) of this clause, then the public health organisation concerned may decide the number of ordinary hours of services to be provided by the visiting medical officer under the sessional contract for the next following year, or for such lesser period until the next anniversary date or termination of the sessional contract, whichever occurs first. Where a public health organisation decides the number of ordinary hours pursuant to this subclause it shall notify the officer in writing of its decision and the sessional contract shall be deemed to be varied so as to include the terms of that decision, unless the visiting medical officer notifies a dispute under subclause (8).
- (7) If by the anniversary date of a sessional contract the visiting medical officer's ordinary hours of services for the next following year, or relevant lesser period, have not been established either by agreement under subclause (5) or decision under subclause (6), the visiting medical officer shall continue to provide services and shall be remunerated each month under the sessional contract on the basis of the average number of ordinary hours of services performed per calendar month in the twelve months prior to the anniversary date, until agreement as to such ordinary hours is reached or a decision is made under subclause (6).

#### Dispute

- (8)
  - (a) Where a visiting medical officer is dissatisfied with a decision made in accordance with subclause (6) of this clause the visiting medical officer shall give notice in writing to the public health organisation of a dispute within 14 days of the receipt of written notification of such decision, such dispute to be dealt with in accordance with clause 18.
  - (b) Where such dispute is notified by the visiting medical officer in accordance with paragraph (a) of this subclause, then pending resolution of the dispute, the visiting medical officer shall continue to provide services and be remunerated each month under the sessional contract on the basis of the average number of hours of services performed per calendar month in the twelve months prior to the anniversary date; provided that if the dispute has not been resolved within three months of notification of such dispute (or within such further period as may be agreed between the parties), then paragraph (c) of this subclause shall apply.
  - (c) If, within three months of notification of such dispute (or within such further period as may be agreed between the parties), the dispute has not been resolved and is not the subject of mediation or arbitration under clause 18, then the decision of the public health organisation referred to in paragraph (a) of this subclause shall apply and the sessional contract shall be deemed to be varied so as to include the terms of that decision.

#### Other Matters for Annual Review

- (9) At the time of the review of ordinary hours under subclause (5), the public health organisation shall also:

- (a) review the visiting medical officer's service and performance under the sessional contract during the preceding 12 month period;
- (b) consult with the visiting medical officer on the scope of the officer's practice within the public health organisation and the resources required to support the officer in such practice in the next following year; and
- (c) consult with the visiting medical officer on the officer's level of participation in the on-call roster in the next following year. If a visiting medical officer is dissatisfied with the level of participation in the on-call roster proposed by the public health organisation, then the dispute provisions set out at subclause (8) can be invoked.

#### Cancelled Operating Theatre Time

(10) Where a visiting medical officer has a pre-arranged operating theatre session cancelled by the public health organisation:

- (a) in the case of an anaesthetist, with less than 28 days notice of such cancellation; or
- (b) in the case of a regional visiting medical officer who is not an anaesthetist, with less than 14 days notice of such cancellation; or
- (c) in the case of a visiting medical officer other than of a kind referred to in paragraph (a) or (b), with less than 7 days notice of such cancellation,

the visiting medical officer is entitled to be paid for that portion of the cancelled time that is reasonably estimated would have involved the treatment of public patients at the hourly rates specified in clauses 7 and 8 of this Determination, on the condition that the officer attends the public health organisation to provide services for the relevant period in lieu of the cancelled theatre session unless excused from such attendance by the public health organisation. For the purposes of this clause, services includes:

- (a) undertaking clinics or procedures within the scope of the officer's clinical privileges;
- (b) undertaking quality assurance or review activities specified by the public health organisation; or
- (c) undertaking training and education activities specified by the public health organisation.

(11) Where a visiting medical officer cancels a pre-arranged operating theatre session, and the cancellation is not due to illness, the officer is required to make up the cancelled time over the ensuing 14 day period at time/s of mutual convenience to the officer and the public health organisation. If such mutually convenient time is unavailable the visiting medical officer will cooperate with the public health organisation in examining the feasibility of alternate arrangements with another medical practitioner for the performance of operations or procedures upon public patients affected by such cancellation.



## **6. CLASSIFICATIONS**

- (1) A visiting medical officer on appointment by a public health organisation shall be classified as a general practitioner, specialist or senior specialist for the purposes of the officer rendering services under a sessional contract and in ascertaining the officer's remuneration, such classification is to be based on the officer's qualifications and experience and according to the criteria contained in the respective definitions in this Determination of those classifications.
- (2) A visiting medical officer may apply to the public health organisation for promotion to a higher classification of specialist or senior specialist, as appropriate, and the application shall be considered within eight weeks and according to the criteria contained in the respective definitions in this Determination of those higher classifications.
- (3) Such promotion will be considered by the public health organisation after considering the advice of the credentials committee.

## **7. REMUNERATION FOR SERVICES**

A visiting medical officer shall be paid the hourly rates of remuneration for each ordinary hour specified in a sessional contract (and on a proportionate basis to the nearest quarter hour) as set out in Annexure A of this Determination.

## **8. BACKGROUND PRACTICE COSTS**

A visiting medical officer shall be paid the background practice costs hourly rates as set out in Annexure B to this Determination (and on a proportionate basis to the nearest quarter hour) during which the officer provides services at a public health organisation during ordinary hours, on a public holiday and on a call-back, as an allowance for expenses incurred in background practice costs.

## **9. SUPERANNUATION**

- (1) Superannuation shall be payable as per the *Superannuation Guarantee (Administration) Act 1992* as varied from time to time.
- (2) Subject to any relevant Commonwealth legislation, NSW Ministry of Health Policy Directives, and any ruling or determination by the Australian Taxation Office, a visiting medical officer may elect, subject to the agreement of the public health organisation, to sacrifice all or part of the payments made to him or her as additional superannuation contributions.

## **10. ON-CALL AND CALL-BACK**

- (1) A visiting medical officer shall be paid the hourly on-call allowance as set out in Annexure B to this Determination for each hour (or part thereof) the officer is rostered to be on call and while travelling or rendering services pursuant to a call-back.

- (2) The on-call allowance shall not be payable during periods a visiting medical officer is on leave of absence.
- (3) Where a visiting medical officer is rostered to be on-call to more than one hospital at the same time the officer shall be entitled to receive an on-call allowance only from that hospital to which the officer has the greatest on-call commitment, or where the on-call commitments are equal the officer shall receive an on-call allowance only from one hospital.
- (4) Subject to sub-clause (5), in respect of a call-back, a visiting medical officer shall be remunerated as follows:
  - (a) as to services provided during a call-back within the hours of 8.00 am to 6.00 pm Monday to Friday inclusive - at the officer's ordinary hourly rate of remuneration plus a loading of 10 percent, except as to a call-back on a public holiday when the loading shall be 50 percent;
  - (b) as to services provided during a call-back outside the hours of 8.00 am to 6.00 pm Monday to Friday inclusive - at the officer's ordinary hourly rate of remuneration plus a loading of 25 percent, except as to a call-back on a public holiday when the loading shall be 50 percent;
  - (c) the duration of a call-back shall include the actual travelling time from the place of contact to the hospital concerned and return, subject to a maximum of 20 minutes travel each way;
  - (d) the minimum payment for any one call-back, including travelling time, shall be one hour at the officer's ordinary hourly rate of remuneration plus the appropriate loading.
- (5) A regional visiting medical officer who:
  - (a) provides a call-back service at a regional hospital; and
  - (b) whose usual place of residence is within a 50 kilometre radius of the regional hospital where the call-back service is provided,

shall be paid a further loading as specified in Annexure C of this Determination on the rates payable under sub-clause (4) for the call-back.

## **11. PUBLIC HOLIDAY REMUNERATION**

Where a visiting medical officer is required by the public health organisation to render services on a public holiday, other than during on-call and call-back, the officer shall be paid at the ordinary hourly rate of remuneration plus a loading of 50 percent.

## **12. UNPAID LEAVE OF ABSENCE**

- (1) A visiting medical officer shall be entitled to unpaid leave of absence on a public holiday unless the public health organisation has given reasonable notice that it requires the officer to render services on any such day.
- (2) A visiting medical officer shall be entitled to unpaid leave of absence during any period the officer is unable to render services due to illness, provided that the officer shall notify the public health organisation of such incapacity as soon as it is reasonably practicable.
- (3) Unpaid leave of absence shall be granted to a visiting medical officer as annual holidays in one or more periods aggregating five calendar weeks per year at times agreed between the officer and the public health organisation. Such leave shall not accrue from year to year and it must be taken within six months of becoming due.
- (4) Unpaid leave of absence shall be granted to a visiting medical officer as study and conference leave in one or more periods to a maximum in the aggregate of two calendar weeks per year at times agreed between the officer and the public health organisation. Such leave may be accumulated from year to year to a maximum of four weeks.
- (5) Unpaid leave of absence shall be granted to a visiting medical officer as long service leave aggregating two calendar months after providing services for a period of ten years. Thereafter, further unpaid leave of absence shall be granted on the basis of one calendar month for each additional period of two years during which the officer renders services. Such leave shall be allowed at times agreed between the officer and the public health organisation.
- (6) Additional periods of unpaid leave of absence may be granted to a visiting medical officer at times agreed between the officer and the public health organisation.

## **13. PROFESSIONAL SUPPORT FOR REGIONAL VISITING MEDICAL OFFICERS**

- (1) As at 1 January each year, a regional visiting medical officer:
  - (a) who has held an appointment continuously for the immediately preceding 12 months; and
  - (b) who has provided at least 450 ordinary and/or call-back hours of services over the preceding 12 months at one or more regional hospitals; and
  - (c) whose usual place of residence is within a 50 kilometre radius of at least one regional hospital where such services are provided;

shall be entitled to claim reimbursement for expenses incurred in respect of the professional support of the visiting medical officer up to the amount set out at Annexure A of this Determination.

- (2) As at 1 January each year, a regional visiting medical officer:

- (a) who has held an appointment as such continuously for the immediately preceding 12 months; and
- (b) who has participated in a one in four or more frequent basis over the preceding 12 months in an on call roster applying in at least one regional hospital;
- (c) whose usual place of residence is within a 50 kilometre radius of such hospital

shall be entitled to claim reimbursement for expenses incurred in respect of the professional support of the visiting medical officer up to the amount set out in Annexure C of this Determination.

- (3) A visiting medical officer may be eligible for grants under both sub-clauses (1) and (2).
- (4) For the purposes of this clause, professional support expenses include:
  - (a) travel, accommodation, conference or course costs in respect of continuing medical education;
  - (b) costs of locum cover while the visiting medical officer is on unpaid leave;
  - (c) such other item/s in connection with the ongoing professional support of the visiting medical officer as a public health organisation may approve in any particular case.
- (5) Reimbursement of expenses under this clause will be made upon production of verification of expenses.
- (6) Any entitlements under either sub-clause (1) or (2) shall be able to accrue for up to two years, provided the officer continues over that two year period to satisfy the criteria set out in subclauses 13(1) and (2) above.
- (7) A visiting medical officer is not eligible to receive a grant under either sub-clause (1) or (2) from more than one public health organisation per calendar year. Where a visiting medical officer would otherwise satisfy the criteria for eligibility for a grant under sub-clauses (1) or (2) in respect of more than one public health organisation, the grant is payable by that public health organisation at which the officer has the greatest service commitment, or in the case of an equal service commitment at each organisation, by any public area health organisation.

#### **14. RECORD OF SERVICES**

- (1) Subject to subclause (2), a visiting medical officer shall maintain a record, in a form prescribed and provided by the relevant public health organisation, of services rendered by the officer under the sessional contract. Such record shall indicate in respect of each of the services so rendered:
  - (a) the date, commencing and finishing times, full name and/or medical record number of the patient and nature of service;

- (b) particulars of on-call periods;
  - (c) for call-backs, the name and/or designation of the person requesting the call-back, and appropriate entry by the visiting medical officer in the medical record of the relevant attendance and/or treatment;
  - (d) particulars of teaching, training and committee work;
  - (e) particulars of leave of absence.
- (2) Where a public health organisation and a visiting medical officer agree that sufficient information is otherwise available to the public health organisation from the medical records or the visiting medical officer's personal records, then so long as such information continues to be available there is no requirement for the visiting medical officer to provide the full name and/or medical record number of patients.
- (3) Where sufficient information to satisfy subclause (1) is not provided or where sufficient information ceases to be otherwise available from the medical records or the visiting medical officer's personal records to satisfy subclause (2), then future payments to the officer for a specified period will require the provision by the officer of additional details, such details and period to be determined by the public health organisation.
- (4) The record referred to in subclause (1) of this clause shall be maintained for each calendar month during which services are provided by an officer, and it shall be submitted to the public health organisation no later than the fifteenth day of the next succeeding calendar month.
- (5) The record when so submitted pursuant to subclause (4) of this clause shall be accompanied by an account for payment. The public health organisation shall make payment to the visiting medical officer in respect of the account within 30 days of its receipt.
- (6) Should a public health organisation fail to make payment to the visiting medical officer within 45 days of receipt of an account for payment in accordance with subclauses (1) – (5), interest shall accrue on the outstanding account from the date as specified in subclause (5) for payment at the Supreme Court interest rate applicable at the time.
- (7) The public health organisation in making payment of an account to an officer shall advise details of how the payment is made up as between the various services rendered.
- (8) Delayed claims will be discounted as follows:
- after 12 months from the date a service was provided, the value of a claim can be discounted by 50%, subject to the public health organisation having provided 28 days' notice to the visiting medical officer that a discount of 50% will apply if a claim is not received;
  - after 24 months from the date a service was provided, no payment is owing in respect of the service, subject to the public health organisation having provided 28

days' notice to the visiting medical officer that no payment will be made if a claim is not received.

Applications to submit claims later than these time limits without any, or with a lesser, discount can be made in writing (including electronically) to the relevant public health organisation within 4 weeks from the date of receipt of discount notice if there are exceptional circumstances (such as serious illness of the visiting medical officer). The public health organisation has the discretion on how to deal with such applications. If a visiting medical officer is dissatisfied with the decision of the public health organisation, the dispute resolution procedure of this Determination may be invoked.

## **15. SUSPENSION OF SESSIONAL CONTRACT**

- (1) Subject to Part 4 of Chapter 8 of the *Health Services Act 1997*, the public health organisation may suspend the appointment of a visiting medical officer in accordance with any applicable by-laws where the public health organisation considers it necessary in the interests of the hospital to which the officer is appointed.
- (2) Where the visiting medical officer is so suspended, the respective rights and obligations of the parties under the sessional contract shall be suspended for the duration of that suspension.

## **16. TERMINATION OF SESSIONAL CONTRACT**

- (1) A sessional contract shall be terminated:
  - (a) upon the expiry of the period for which it was made or on such earlier date as may be agreed between the visiting medical officer and the public health organisation;
  - (b) by three months' notice in writing given by either the visiting medical officer or the public health organisation (or a shorter period of notice if agreed between the visiting medical officer and the public organisation);
  - (c) by four weeks' notice in writing given by the visiting medical officer if dissatisfied with a decision as to the fixation of ordinary hours by the public health organisation pursuant to clause 5(6) of this Determination following an annual review, provided that the notice of termination is given within seven days of the officer receiving notification in writing of the decision;
  - (d) if the visiting medical officer ceases to be registered as a medical practitioner;
  - (e) if a condition is placed on the visiting medical officer's registration as a medical practitioner which substantially precludes the officer from providing services under the sessional contract;
  - (f) if the visiting medical officer becomes permanently mentally or physically incapable of rendering services under the sessional contract;

- (g) if the visiting medical officer commits serious and wilful misconduct; or
  - (h) if the visiting medical officer's appointment is terminated by operation of any Act or regulation.
- (2) On the termination of a sessional contract, any amount due and payable to the visiting medical officer pursuant to the sessional contract shall be paid at the time of such termination or as soon thereafter as reasonably practicable.

## **17. PROFESSIONAL INDEMNITY COVER**

- (1) Subject to sub-clauses (2) and (3) below, a public health organisation must offer a medical practitioner proposed for appointment as a visiting medical officer, who is eligible for professional indemnity cover from the New South Wales Treasury Managed Fund under the applicable policies of the NSW Ministry of Health as issued from time to time, an approved contract of liability coverage covering the term of the practitioner's proposed appointment as a visiting medical officer at the same time it provides a written service contract.
- (2) Where the proposed term of the sessional contract is for longer than 6 months, the approved contract of liability coverage and the written sessional contract must be provided to the practitioner not less than 14 days prior to the commencement of the term of the sessional contract.
- (3) A visiting medical officer must have approved professional indemnity insurance in respect of civil liability arising from the officer's practice of medicine at a public health organisation, including in respect of persons who elect to be private patients, to the extent that such liability is not covered by an approved contract of liability coverage.

## **18. DISPUTE RESOLUTION PROCEDURE**

- (1) For the purposes of this clause a 'dispute' means any dispute arising between a visiting medical officer and the public health organisation at any time as to any matter of any nature arising under or in connection with a sessional contract, including but not limited to matters relating to clinical privileges but excluding a matter relating to the non-reappointment, suspension or termination of appointment of the visiting medical officer.
- (2) A party who wishes to invoke the provisions of this clause must give written notice to the other party/parties to the dispute specifying the nature of the dispute.
- (3) On receipt of written notice specifying the nature of the dispute, the parties to the dispute must, within 14 days of receipt of the notice, seek to resolve the dispute by conference.
- (4) If the dispute is not resolved within 14 days, or within such further period as agreed between the parties, after the convening of a conference under sub-clause (3) then the dispute is to be referred to mediation. Each party must serve upon the other the name(s) of a mediator(s).

- (5) The mediator shall be agreed upon between the parties, or failing agreement, appointed by the President of the Law Society of NSW.
- (6) The mediator's fees shall be shared equally between the parties.
- (7) The parties to the mediation may be supported by persons of the parties' choice.
- (8) In the event that the dispute has not been settled within 28 days, or such other time as agreed to in writing between the parties after the appointment of a mediator, either party may refer the dispute to arbitration.
- (9) The arbitrator is not to be the same person as the mediator.
- (10) Such arbitration shall be conducted by a single arbitrator. The arbitrator shall be a legal practitioner of at least seven years' post qualification experience. The arbitrator shall be agreed upon between the parties, or failing agreement, appointed by the President of the Law Society of NSW. The parties may be legally represented.
- (11) At the request of the visiting medical officer, the AMA (NSW) shall be entitled to appear and be represented in the arbitration.
- (12) At the request of the public health organisation, the NSW Ministry of Health shall be entitled to appear and be represented in the arbitration.
- (13) In the event of either the AMA (NSW) or the NSW Ministry of Health appearing in the arbitration pursuant to sub-clauses (11) or(12), the other organisation shall be entitled to appear and be represented as of right.
- (14) The arbitrator's fees shall be shared equally between the parties unless otherwise ordered by the arbitrator.
- (15) It is agreed between the parties that the arbitrator shall determine all questions arising for determination in the course of the arbitration by reference to considerations of general justice and fairness.
- (16) The determination of the arbitrator shall be final and binding upon the visiting medical officer and the public health organisation.

## **19. NOTICES**

Any notice required by a sessional contract to be given in writing shall be properly served if delivered by hand to the addressee personally or if sent by prepaid registered mail, facsimile or telex transmission to the addressee at the address furnished in writing to the addressor, and shall be deemed to have been received by the addressee on the date of hand delivery or on the date the facsimile or telex transmission was recorded or seven days after the date of posting.

## **20. OPERATION AND EFFECTIVE DATE**



- (1) This Determination shall rescind and replace the provisions of all previous determinations made by an arbitrator under Section 29M(l) of the *Public Hospitals Act 1929*.
- (2) This Determination shall apply to all visiting medical officer appointments under sessional contracts throughout the State of New South Wales, other than those for pathologists and radiologists.
- (3) This Determination shall have effect on and from 19 November 2014.

.....  
The Honourable Justice M. J. Walton  
Arbitrator

# SCHEDULE 1

## Regional Hospitals

Albury Base Hospital  
Armidale Hospital  
Bathurst Base Hospital  
Blue Mountains District ANZAC Memorial Hospital  
Broken Hill Health Service  
Coffs Harbour Base Hospital  
Dubbo Base Hospital  
Goulburn Base Hospital  
Grafton Base Hospital  
Griffith Base Hospital  
Kempsey District

Lismore Base Hospital  
Maitland Hospital  
Manning Base Hospital  
Murwillumbah Hospital  
Orange Base Hospital  
Port Macquarie Base Hospital  
Queanbeyan District Hospital  
Shoalhaven Hospital  
Tamworth Base Hospital  
Tweed Heads District Hospital  
Wagga Wagga Hospital

## ANNEXURE A

### SESSIONAL VMO RATES

#### REMUNERATION FOR SERVICES

A visiting medical officer shall be paid the following hourly rate of remuneration for each ordinary hour (and on a proportionate basis to the nearest quarter hour) specified in a sessional contract:

| Classification  | Sessional Rate (per hour) |
|---|---------------------------|
|   | 1 July 2014<br>2.27%      |
| a) General Practitioner   |                           |
| i) with less than 5 years experience  | \$136.25                  |
| ii) with at least 5 years experience and/or who has been admitted to Fellowship of the Royal Australian College of General Practitioners and/or Fellowship of the Australian College of Rural and Remote Medicine | \$175.05                  |
| b) Specialist   | \$198.15                  |
| c) Senior Specialist  | \$212.65                  |

## ANNEXURE B

### BACKGROUND PRACTICE COSTS

| <b>Classification</b>                               | <b>Rate per hour<br/>1 July 2014</b> |
|---|--------------------------------------|
| a) Anaesthetist, Physician and General Practitioner | \$25.20                              |
| b) Surgeon  | \$42.15                              |

And on a proportionate basis to the nearest quarter hour.

### ON-CALL AND CALL BACK

| <b>Rate of Allowance (per hour)</b> |
|-------------------------------------|
| <b>1 July 2014</b><br>\$12.50       |

## ANNEXURE C

### REGIONAL VISITING MEDICAL OFFICER ARRANGEMENTS

| <b>Clause reference</b> | <b>Item</b>                                     | <b>Amount</b>                                       |
|-------------------------|---|---|
| 10(5)                   | Additional call-back loading                    | 10%   |
| 13(1)                   | Professional support for regional practitioners | Up to \$10,000 (inclusive of GST) per calendar year |
| 13(2)                   | Professional support for regional practitioners | Up to \$5,000 (inclusive of GST) per calendar year  |

# **PUBLIC HOSPITALS (VISITING MEDICAL OFFICERS FEE-FOR-SERVICE CONTRACTS) DETERMINATION 2014**

## **1. TITLE**

This Determination shall be known as the 'Public Hospitals (Visiting Medical Officers - Fee-for-Service Contracts) Determination 2014'.

## **2. ARRANGEMENT**

This Determination is arranged as follows:

| <b>Clause Number</b> | <b>Subject Matter</b>                                       |
|----------------------|---|
| 1                    | Title   |
| 2                    | Arrangement   |
| 3                    | Definitions   |
| 4                    | Contract for Services                                       |
| 5                    | Services and Remuneration                                   |
| 6                    | Unpaid Leave of Absence                                     |
| 7                    | Professional Support for Regional Visiting Medical Officers |
| 8                    | Record of Services  |
| 9                    | Suspension of Fee-for-service Contract                      |
| 10                   | Termination of Fee-for-service Contract                     |
| 11                   | Professional Indemnity Cover                                |
| 12                   | Dispute Resolution Procedure                                |
| 13                   | Notices   |
| 14                   | Operation and Effective Date                                |
| Schedule 1           | Regional Hospitals  |
| Annexure A           | Established Rates For Fee-For-Service Contracts             |
| Annexure B           | Regional Visiting Medical Officer Arrangements              |

### 3. DEFINITIONS

In this Determination:

“AMA (NSW)” means the Australian Medical Association (NSW) Ltd;

“appointment” means appointment as a visiting medical officer and includes re-appointment and promotion, and appointed, re-appointed and promoted have a corresponding meaning;

“approved contract of liability coverage” means a contract for professional indemnity cover by the NSW Treasury Managed Fund in a form approved by the NSW Ministry of Health and offered by public health organisations to visiting medical officers;

“approved professional indemnity insurance” is as defined in the *Health Care Liability Act 2001*;

“clinical privileges” means the clinical privileges as defined in the *Health Services Act 1997*;

“Commonwealth Medical Benefits Schedule” is the scale of fees, as amended from time to time, for medical services for which a patient rebate is available under arrangements established pursuant to the *Health Insurance Act 1973 (Cth)*;

"emergency after-hours medical services" means services initiated by or on behalf of public patients whose medical conditions require immediate treatment and which take place on a public holiday, on a weekend, or at any time other than between 8.00 am and 6.00 pm on a weekday not being a public holiday;

"established rates" means the rates set out at Annexure A of this Determination in respect of medical services provided by visiting medical officers under fee-for-service contracts;

“fee-for-service contract” means a fee-for-service contract as defined in the *Health Services Act 1997*;

“hospital” means a hospital as defined in the *Health Services Act 1997*;

“medical practitioner” means a person registered for the time being under the *Medical Practice Act 1992*;

“private patient” means a patient who is not a public patient;

“public health organisation” is as defined in Chapter 2 of the *Health Services Act 1997*;

“public patient” means a patient in respect of whom the public health organisation provides comprehensive care, including all necessary medical, nursing and diagnostic services, by means of its own staff or by other agreed arrangements;

“regional hospital” means a hospital listed in Schedule 1 to this Determination;

“regional visiting medical officer” means a visiting medical officer:

(i) who is appointed for a continuous period of at least 12 months under one or more service

contracts in respect of one or more regional hospitals; and

- (ii) who is engaged under standard contract arrangements approved by the NSW Ministry of Health;

“Rural Doctors Settlement Package hospital” means a hospital specified by the Ministry of Health as one where the terms and conditions and rates of remuneration for visiting medical officers are to be in accordance with those known as the Rural Doctors Settlement Package as determined from time to time by the NSW Ministry of Health following consultation with the NSW Rural Doctors Association;

“services” means medical services provided to a public patient by a visiting medical officer under a fee-for-service contract, including teaching, training and participation on committees, but excluding attendance at meetings of a medical staff council (howsoever called);

“service contract” means a service contract as defined in the *Health Services Act 1997*;

“sessional contract” means a sessional contract as defined in the *Health Services Act 1997*;

“visiting medical officer” means a visiting medical officer as defined in the *Health Services Act 1997* who provides services under a fee-for-service contract, but excluding a pathologist and a radiologist; and

“visiting practitioner” means a visiting practitioner as defined in the *Health Services Act 1997*.

#### **4. CONTRACT FOR SERVICES**

- (1) A visiting practitioner who is to be appointed as a visiting medical officer to provide services under a service contract on a fee-for-service basis shall be so appointed by a written fee-for-service contract between the officer and public health organisation. The fee-for-service contract shall specify the terms and conditions to which the officer is to be subject, including the clinical privileges of the officer as determined or varied from time to time by the public health organisation in accordance with any applicable Act, regulation or by-law and after advice from the appropriate credentials committee in respect of the hospital or hospitals at which the visiting medical officer provides services.
- (2) Except as otherwise affected by this Determination, the period for which a visiting medical officer may be appointed by a public health organisation is to be such period (not exceeding the maximum term specified in the *Health Services Regulation*) as the public health organisation may determine and as is specified in the fee-for-service contract.
- (3) A visiting medical officer appointed by a public health organisation is, if otherwise qualified, eligible for but not entitled to re-appointment upon the expiry of the existing fee-for-service contract. In the event of re-appointment, a new fee-for-service contract shall be made.
- (4) A fee-for-service contract shall not establish the relationship of employer and employee as between the respective parties thereto, and a visiting medical officer shall, in providing services under a fee-for-service contract, be and be regarded as an

independent contractor.

- (5) A visiting medical officer shall provide the services specified in the fee-for-service contract to public patients at the relevant hospital or hospitals, consistent with the clinical privileges granted to the officer under the fee-for-service contract.
- (6) A visiting medical officer shall participate in the teaching and training of postgraduate medical officers as may reasonably be required by the public health organisation.
- (7) A visiting medical officer shall participate in committees expressly established or authorised by the public health organisation where reasonably required by the public health organisation for the proper and efficient functioning of the hospital or hospitals concerned.
- (8) A visiting medical officer shall participate in an emergency after-hours medical services roster for the provision of services as may reasonably be required by the public health organisation, and when so rostered the officer shall be readily contactable at all times and be able and prepared to attend the hospital concerned within a reasonable period of time.
- (9) A visiting medical officer:
  - (a) shall be professionally responsible for the proper clinical management and treatment of public patients under the officer's care in the hospital concerned;
  - (b) shall take reasonable steps to ensure that the clinical records related to the services provided by the officer, and those provided for patients under the officer's care, are maintained adequately and that such completed records include details of diagnosis, treatments and operations performed and a discharge summary completed in the manner determined by the hospital.
  - (c) shall comply with all rules and by-laws in force from time to time at the public health organisation, not being inconsistent with any of the rights and obligations of the visiting medical officer under this agreement.
- (10) The public health organisation where reasonably practicable shall provide:
  - (a) all ancillary, medical, nursing and clerical assistance and facilities, instruments and equipment reasonably necessary for the proper performance of the services to be rendered by a visiting medical officer under a fee-for-service contract; and
  - (b) to the visiting medical officer upon request and free of charge, sufficient suitable and serviceable outer uniforms and duty garments, which shall remain the property of the public health organisation and which shall be laundered at the expense of the public health organisation.

## **5. SERVICES AND REMUNERATION**

- (1) The services, other than emergency after-hours medical services, which the visiting medical officer is to provide under his or her fee-for-service contract, and a services plan



(including budget) for the provision of such services, shall be as agreed between the officer and the public health organisation, and shall be specified in the fee-for-service contract on an annual basis or on the basis of a lesser specified period if the contract terminates sooner or if it is otherwise agreed; provided that the public health organisation shall only allocate work to the visiting medical officer which can reasonably be performed in accordance with the services plan.

- (2) In establishing the annual services plan or the services plan on the basis of another specified period, under subclauses (1), (7) or (8) of this clause regard shall be had to:
  - (a) the services to public patients recorded as having been provided by the visiting medical officer during the previous twelve months, or if the officer has been appointed for less than twelve months the preceding period of appointment;
  - (b) the clinical service needs and available resources of the public health organisation;
  - (c) the views of the visiting medical officer;
  - (d) the nature of the visiting medical officer's appointment;
  - (e) the experience, knowledge and ability of the visiting medical officer;
  - (f) any periods of leave which the visiting medical officer proposes or is required to take during the ensuing twelve months or relevant lesser period;
  - (g) any other relevant fact or circumstance.

#### Remuneration

- (3) A visiting medical officer shall be remunerated in accordance with the established rates, to the limit of the budget forming part of the agreed services plan specified in the fee-for-service contract, for the services, other than emergency after-hours medical services, actually provided under a service contract.
- (4) A visiting medical officer shall be remunerated, in accordance with the established rates, for emergency after-hours medical services actually provided to public patients under a service contract.
- (5) A visiting medical officer shall be remunerated for his or her time spent participating in teaching and training (as required under subclause 4(6)) and participating in committees (as required under subclause 4(7)) in accordance with the hourly remuneration rates applying at that time under sessional contracts.
- (6) Where, under subclauses 5(5) and 5(14) of this Determination, a visiting medical officer is entitled to be remunerated in accordance with the hourly rates applying at that time under the sessional contracts, a specialist with more than 7 years experience in his or her area of speciality is entitled to be remunerated at the senior specialist rate then applicable under sessional contracts.

- (7) A visiting medical officer shall be paid upon submission of a record and account to the public health organisation concerned in accordance with clause 8.

#### Variation

- (8) The services plan specified in the fee-for-service contract may be varied at any time by an agreement in writing between a visiting medical officer and the public health organisation concerned.

#### Annual Review

- (9) Not later than six weeks prior to each anniversary date of a fee-for-service contract, the public health organisation and the visiting medical officer shall consult in a review of the services plan specified in the fee-for-service contract in respect of the next following year or of such lesser period until the termination of the fee-for-service contract. If agreement is reached for a variation to the services plan then the agreement shall be reduced to writing and the fee-for-service contract shall be varied accordingly with effect as from the first day of the year or of such lesser period, as the case may be, to which the review related. Provided that this subclause shall not apply if a fee-for-service contract was made for a period of one year or less.
- (10) If agreement is not reached as a result of the review of the services plan as contemplated in subclause (9) of this clause, then the public health organisation may decide the services plan for the visiting medical officer's services under the fee-for-service contract for the next following year, or for such lesser period until the next anniversary date or termination of the fee-for-service contract, whichever occurs first. Where a public health organisation decides the services plan pursuant to this subclause it shall notify the officer in writing of its decision and the fee-for-service contract shall be deemed to be varied so as to include the terms of that decision unless the visiting medical officer notifies a dispute under subclause (12).
- (11) If by the anniversary date of a fee-for-service contract the visiting medical officer's services plan for the next following year, or relevant lesser period, has not been established either by agreement under subclause (9) or decision under subclause (10), the visiting medical officer shall continue to provide services and be remunerated on a fee-for-service basis in accordance with the existing services plan until agreement as to the services plan is reached or a decision is made under subclause (10).

#### Dispute

- (12) (a) Where a visiting medical officer is dissatisfied with a decision made in accordance with subclause (10) of this clause the visiting medical officer shall give notice in writing to the public health organisation of a dispute within 14 days of the receipt of written notification of such decision, such dispute to be dealt with in accordance with clause 12.
- (b) Where such dispute is notified by the visiting medical officer in accordance with paragraph (a) of this subclause, then pending resolution of the dispute, the visiting medical officer shall continue to provide services and be remunerated in accordance with the previous year's service plan; provided that if the dispute has not been resolved within three months of notification of such dispute (or

within such further period as may be agreed between the parties) then paragraph (c) of this subclause shall apply.

- (c) If, within three months of notification of such dispute (or within such further period as may be agreed between the parties), the dispute has not been resolved and is not the subject of mediation or arbitration under clause 12, then the decision of the public health organisation referred to in paragraph (a) of this subclause shall apply and the fee-for-service contract shall be deemed to be varied so as to include the terms of that decision.

#### Other Matters for Annual Review

- (13) At the time of the review of the services plan under subclause (9), the public health organisation shall also:
  - (a) review the visiting medical officer's service and performance under the fee-for-service service contract during the preceding twelve month period;
  - (b) consult with the visiting medical officer on the scope of the visiting medical officer's practice within the public health organisation and the resources required to support the officer in such practice in the next following year; and
  - (c) consult with the visiting medical officer on the officer's level of participation in the emergency after hours medical services roster in the next following year. If a visiting medical officer is dissatisfied with the level of participation in the emergency after hours medical services roster proposed by the public health organisation, then the dispute provisions set out in subclause (12) can be invoked.

#### Cancelled Operating Theatre Time

- (14) Where a visiting medical officer has a pre-arranged operating theatre session cancelled by the public health organisation:
  - (a) in the case of a regional visiting medical officer, with less than 14 days notice of such cancellation; or
  - (b) in the case of a visiting medical officer other than of a kind referred to in paragraph (a), with less than 7 days notice of such cancellation,

the visiting medical officer is entitled to be paid for that portion of the cancelled time that is reasonably estimated would have involved the treatment of public patients in accordance with the total hourly rates applying at that time under sessional contracts, on the condition that the officer attends the public health organisation to provide services for the relevant period in lieu of the cancelled theatre session unless excused from such attendance by the public health organisation. For the purposes of this clause, services includes:

- (a) undertaking clinics or procedures within the scope of the officer's clinical privileges

- (b) undertaking quality assurance or review activities specified by the public health organisation; or
  - (c) undertaking training and education activities specified by the public health organisation.
- (15) Where a visiting medical officer cancels a pre-arranged operating theatre session, and the cancellation is not due to illness, the officer is required to make up the cancelled time over the ensuing 14 day period at time/s of mutual convenience to the officer and the public health organisation. If such mutually convenient time is unavailable the visiting medical officer will co-operate with the public health organisation in examining the feasibility of alternative arrangements with another medical practitioner for the performance of operations or procedures upon public patients affected by such cancellation.

## **6. UNPAID LEAVE OF ABSENCE**

- (1) A visiting medical officer shall be entitled to unpaid leave of absence on a public holiday unless the public health organisation has given reasonable notice that it requires the officer to render services on any such day.
- (2) A visiting medical officer shall be entitled to unpaid leave of absence during any period the officer is unable to render services due to illness, provided that the officer shall notify the public health organisation of such incapacity as soon as it is reasonably practicable.
- (3) Unpaid leave of absence shall be granted to a visiting medical officer as annual holidays in one or more periods aggregating five calendar weeks per year at times agreed between the officer and the public health organisation. Such leave shall not accrue from year to year and it must be taken within six months of becoming due.
- (4) Unpaid leave of absence shall be granted to a visiting medical officer as study and conference leave in one or more periods to a maximum in the aggregate of two calendar weeks per year at times agreed between the officer and the public health organisation. Such leave may be accumulated from year to year to a maximum of four weeks.
- (5) Unpaid leave of absence shall be granted to a visiting medical officer as long service leave aggregating two calendar months after providing services for a period of ten years. Thereafter, further unpaid leave of absence shall be granted on the basis of one calendar month for each additional period of two years during which the officer renders services. Such leave shall be allowed at times agreed between the officer and the public health organisation.
- (6) Additional periods of unpaid leave of absence may be granted to a visiting medical officer at times agreed between the officer and the public health organisation.

## **7. PROFESSIONAL SUPPORT FOR REGIONAL VISITING MEDICAL OFFICERS**

- (1) As at 1 January each year, a regional visiting medical officer:

- (a) who has held an appointment continuously for the immediately preceding 12 months; and
- (b) who has provided services (including planned services and emergency after hours medical services) to the public health organisation involving fees of at least \$100,000 in total over the preceding 12 months at one or more regional hospitals; and
- (c) whose usual place of residence is within a 50 kilometre radius of at least one regional hospital where such services are provided,

shall be entitled to claim reimbursement for expenses incurred in respect of the professional support of the visiting medical officer up to the amount set out at Annexure B of this Determination.

(2) As at 1 January each year, a regional visiting medical officer:

- (a) who has held an appointment as such continuously for the immediately preceding 12 months
- (b) who has participated in a one in four or more frequent basis over the preceding 12 months in an emergency after-hours medical services roster applying in at least one regional hospital; and
- (c) whose usual place of residence is within a 50 kilometre radius of such hospital,

shall be entitled to claim reimbursement for expenses incurred in respect of the professional support of the visiting medical officer up to the amount set out at Annexure B of this Determination.

(3) A visiting medical officer may be eligible for grants under both sub-clauses (1) and (2).

(4) For the purposes of this clause, professional support expenses include:

- (a) travel, accommodation, conference or course costs in respect of continuing medical education;
- (b) costs of locum cover while the visiting medical officer is on unpaid leave;
- (c) such other item/s in connection with the ongoing professional support of the visiting medical officer as the public health organisation may approve in any particular case.

(5) Reimbursement of expenses under this clause will be made upon production of verification of expenses.

(6) Any entitlement under either sub-clause (1) or (2) shall be able to accrue for up to two years provided the officer continues over that two year period to satisfy the criteria set out in subclauses 7(1) and (2) above.

- (7) A visiting medical officer is not eligible to receive a grant under either sub-clause (1) or (2) from more than one public health organisation per calendar year. Where a visiting medical officer would otherwise satisfy the criteria for eligibility for a grant under sub-clause (1) or (2) in respect of more than one public health organisation the grant is payable by that public health organisation at which the officer provides the most number of services, or in the case of an equal service commitment at each organisation, by one public health organisation.

## **8. RECORD OF SERVICES**

- (1) Subject to subclause (2), a visiting medical officer shall maintain a record, in a form prescribed and provided by the public health organisation, of services rendered by the officer under the fee-for-service contract. Such record shall indicate in respect of each of the services so rendered:
- (a) the date, full name and/or medical record number of the patient and nature of service;
  - (b) for emergency after-hours medical services, the name and/or designation of the person requesting the service, and appropriate entry by the visiting medical officer in the medical record of the relevant attendance and/or treatment;
  - (c) particulars of teaching, training and committee work;
  - (d) particulars of leave of absence.
- (2) Where a public health organisation and a visiting medical officer agree that sufficient information is otherwise available to the public health organisation from the medical records or the visiting medical officer's personal records, then so long as such information continues to be available there is no requirement for the visiting medical officer to provide the full name and/or medical record number of patients.
- (3) Where sufficient information to satisfy subclause (1) is not provided or where sufficient information ceases to be otherwise available from the medical records or the visiting medical officer's personal records to satisfy subclause (2), then future payments to the officer for a specified period will require the provision by the officer of additional details, such details and period to be determined by the public health organisation.
- (4) The record referred to in subclause (1) of this clause shall be maintained for each calendar month during which services are provided by an officer, and it shall be submitted to the public health organisation no later than the fifteenth day of the next succeeding calendar month.
- (5) The record when so submitted pursuant to subclause (4) of this clause shall be accompanied by an account for payment. The public health organisation shall make payment to the visiting medical officer in respect of the account within 30 days of its receipt.
- (6) Should a public health organisation fail to make payment to the visiting medical officer within 45 days of receipt of an account for payment in accordance with subclauses (1) –

(5), interest shall accrue on the outstanding account for payment from the date specified in subclause (5) at the Supreme Court interest rate applicable at the time.

(7) The public health organisation in making payment of an account to an officer shall advise details of how the payment is made up as between the various services rendered.

(8) Delayed claims will be discounted as follows:

- after 12 months from the date a service was provided, the value of a claim can be discounted by 50%, subject to the public health organisation having provided 28 days' notice to the visiting medical officer that a discount of 50% will apply if a claim is not received;
- after 24 months from the date a service was provided, no payment is owing in respect of the service, subject to the public health organisation having provided 28 days' notice to the visiting medical officer that no payment will be made if a claim is not received.

Applications to submit claims later than these time limits without any, or with a lesser, discount can be made in writing (including electronically) to the relevant public health organisation within 4 weeks from the date of receipt of discount notice if there are exceptional circumstances (such as serious illness of the visiting medical officer). The public health organisation has the discretion on how to deal with such applications. If a visiting medical officer is dissatisfied with the decision of the public health organisation, the dispute resolution procedure of this Determination may be invoked.

## **9. SUSPENSION OF FEE-FOR-SERVICE CONTRACT**

(1) Subject to Part 4 of Chapter 8, of the *Health Services Act 1997*, the public health organisation may suspend the appointment of a visiting medical officer in accordance with any applicable by-laws where the public health organisation considers it necessary in the interests of the hospital to which the officer is appointed.

(2) Where the visiting medical officer is so suspended, the respective rights and obligations of the parties under the fee-for-service contract shall be suspended for the duration of that suspension.

## **10. TERMINATION OF FEE-FOR-SERVICE CONTRACT**

(1) A fee-for-service contract shall be terminated:

- (a) upon the expiry of the period for which it was made or on such earlier date as may be agreed between the visiting medical officer and the public health organisation;
- (b) by three months' notice in writing given by either the visiting medical officer or the public health organisation (or a shorter period of notice if agreed between the

visiting medical officer and the public organisation);

- (c) by four weeks' notice in writing given by the visiting medical officer if dissatisfied with a decision as to the fixation of the services plan by the public health organisation pursuant to clause 5(8) of this Determination following an annual review, provided that the notice of termination is given within seven days of the officer receiving notification in writing of the decision;
  - (d) if the visiting medical officer ceases to be registered as a medical practitioner;
  - (e) if a condition is placed on the visiting medical officer's registration as a medical practitioner which substantially precludes the officer from providing services under the fee-for-service contract;
  - (f) if the visiting medical officer becomes permanently mentally or physically incapable of rendering services under the fee-for-service contract;
  - (g) if the visiting medical officer commits serious and wilful misconduct; or
  - (h) if the visiting medical officer's appointment is terminated by operation of any Act or regulation.
- (2) On the termination of a fee-for-service contract, any amount due and payable to the visiting medical officer pursuant to the fee-for-service contract shall be paid at the time of such termination or as soon thereafter as reasonably practicable.

## **11. PROFESSIONAL INDEMNITY COVER**

- (1) Subject to sub-clauses (2) and (3) below, a public health organisation must offer a medical practitioner proposed for appointment as a visiting medical officer, who is eligible for professional indemnity cover from the New South Wales Treasury Managed Fund under the applicable policies of the NSW Ministry of Health as issued from time to time, an approved contract of liability coverage covering the term of the practitioner's proposed appointment as a visiting medical officer at the same time it provides a written service contract.
- (2) Where the proposed term of the fee-for-service contract is for longer than 6 months, the approved contract of liability coverage and the written fee-for-service contract must be provided to the practitioner not less than 14 days prior to the commencement of the term of the fee-for-service contract.
- (3) A visiting medical officer must have approved professional indemnity insurance in respect of civil liability arising from the officer's practice of medicine at a public health organisation, including in respect of persons who elect to be private patients, to the extent that such liability is not covered by an approved contract of liability coverage.

## **12. DISPUTE RESOLUTION PROCEDURE**

- (1) For the purposes of this clause a 'dispute' means any dispute arising between a visiting medical officer and the public health organisation at any time as to any matter of any



nature arising under or in connection with a fee-for-service contract, including but not limited to matters relating to clinical privileges but excluding a matter relating to the non-reappointment, suspension or termination of appointment of the visiting medical officer.

- (2) A party who wishes to invoke the provisions of this clause must give written notice to the other party/parties to the dispute specifying the nature of the dispute.
- (3) On receipt of written notice specifying the nature of the dispute, the parties to the dispute must, within 14 days of receipt of the notice, seek to resolve the dispute by conference.
- (4) If the dispute is not resolved within 14 days, or within such further period as agreed between the parties, after the convening of a conference under sub-clause (3) then the dispute is to be referred to mediation. Each party must serve upon the other the name(s) of a mediator(s).
- (5) The mediator shall be agreed upon between the parties, or failing agreement, appointed by the President of the Law Society of NSW.
- (6) The mediator's fees shall be shared equally between the parties.
- (7) The parties to the mediation may be supported by persons of the parties' choice.
- (8) In the event that the dispute has not been settled within 28 days, or such other time as agreed to in writing between the parties after the appointment of a mediator, either party may refer the dispute to arbitration.
- (9) The arbitrator is not to be the same person as the mediator.
- (10) Such arbitration shall be conducted by a single arbitrator. The arbitrator shall be a legal practitioner of at least seven years post qualification experience. The arbitrator shall be agreed upon between the parties, or failing agreement, appointed by the President of the Law Society of NSW. The parties may be legally represented.
- (11) At the request of the visiting medical officer, the AMA (NSW) shall be entitled to appear and be represented in the arbitration.
- (12) At the request of the public health organisation, the NSW Ministry of Health shall be entitled to appear and be represented in the arbitration.
- (13) In the event of either the AMA (NSW) or the NSW Ministry of Health appearing in the arbitration pursuant to sub-clauses (11) or (12), the other organisation shall be entitled to appear and be represented as of right.
- (14) The arbitrator's fees shall be shared equally between the parties unless otherwise ordered by the arbitrator.
- (15) It is agreed between the parties that the arbitrator shall determine all questions arising for determination in the course of the arbitration by reference to considerations of general justice and fairness.

- (16) The determination of the arbitrator shall be final and binding upon the visiting medical officer and the public health organisation.

### **13. NOTICES**

Any notice required by a fee-for-service contract to be given in writing shall be properly served if delivered by hand to the addressee personally or if sent by prepaid registered mail, facsimile or telex transmission to the addressee at the address furnished in writing to the addressor, and shall be deemed to have been received by the addressee on the date of hand delivery or on the date the facsimile or telex transmission was recorded or seven days after the date of posting.

### **14. OPERATION AND EFFECTIVE DATE**

- (1) This Determination shall apply to all visiting medical officer appointments under fee-for-service contracts throughout the State of New South Wales, other than those for pathologists and radiologists and Rural Doctors Settlement Package hospitals.
- (2) This Determination shall have effect on and from 19 November 2014.

.....  
The Honourable Justice M. J. Walton  
Arbitrator

# **SCHEDULE 1**

## **Regional Hospitals**

|   |                               |
|---|-------------------------------|
| Albury Base Hospital                            | Lismore Base Hospital         |
| Armidale Hospital                               | Maitland Hospital             |
| Bathurst Base Hospital                          | Manning Base Hospital         |
| Blue Mountains District ANZAC Memorial Hospital | Murwillumbah Hospital         |
| Broken Hill Health Service                      | Orange Base Hospital          |
| Coffs Harbour Base Hospital                     | Port Macquarie Base Hospital  |
| Dubbo Base Hospital                             | Queanbeyan District Hospital  |
| Grafton Base Hospital                           | Shoalhaven Hospital           |
| Goulburn Base Hospital                          | Tamworth Base Hospital        |
| Griffith Base Hospital                          | Tweed Heads District Hospital |
| Kempsey District Hospital                       | Wagga Wagga Base Hospital     |

**Established Rates for fee-for-service contracts**

1. Except as provided for below, the rate of remuneration for the provision of a medical service under a fee-for-service contract is 100% of the relevant Commonwealth Medical Benefits Schedule fee.
2. The rate of remuneration for the provision of a medical service under a fee-for-service contract where the medical service is provided in a hospital which has no Resident Medical Officer, Registrar or Career Medical Officer available as medical practitioner of first contact on a 24 hour a day 7 days a week basis, is 110% of the relevant Commonwealth Medical Benefits Schedule fee.
3. The rate of remuneration under a fee-for-service contract for the provision of an emergency after-hours medical service is 110% of the relevant Commonwealth Medical Benefits Schedule fee.
4. The rate of remuneration payable to a regional visiting medical officer:
  - (a) who provides an emergency after-hours service at a regional hospital listed at Schedule 1 to this Determination, and
  - (b) whose usual place of residence is within a 50 kilometre radius of the regional hospital where the service is provided,

is 120% of the relevant Commonwealth Medical Benefits Schedule fee in respect of that occasion of service.

## ANNEXURE B

### REGIONAL VISITING MEDICAL OFFICERS

| <b>Clause reference</b> | <b>Item</b>                                     | <b>Amount</b>                                       |
|-------------------------|---|---|
| 7(1)                    | Professional support for regional practitioners | Up to \$10,000 (inclusive of GST) per calendar year |
| 7(2)                    | Professional support for regional practitioners | Up to \$5,000 (inclusive of GST) per calendar year  |