

Staff Specialists - Appointment

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Summary A policy to assist public health organisations when appointing staff specialists. Setting out the appropriate standards that are to be applied to this process, as well as procedural and regulatory requirements set out in legislation, by-laws and Departmental policy directives.

Also refer to Staff Specialist and Visiting Practitioner Appointments (including clinical academics) Critical Actions Compliance Declaration PD2008_060 issued October 2008.

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This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

Appointment of staff specialists:

Policy for implementation



Foreword

Staff specialists play an important role in the NSW public health system. It is therefore crucial that their selection and engagement be fair and open, and that the most suitable eligible person is appointed when a vacancy occurs.

The purpose of this publication is to assist public health organisations (ie health services) in developing and implementing their own protocols and procedures for the appointment of staff specialists. The publication sets out the general principles for this process. In addition, it sets out the governing statutory and regulatory requirements, including the *Health Services Act 1997*, the Model By-law 2000 and the Department circulars.

This is one of a set of four documents setting out policies for senior medical staff. It should be read in conjunction with the *Appointment of Visiting Practitioners*, *the Delineation of Clinical Privileges for Visiting Practitioners and Staff Specialists*, and *Performance Review of Visiting Practitioners*.

It is anticipated that the publication will benefit both health services and staff specialists.

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- Appendix A** *Staff Specialists (State) Award*
- Appendix B** *Salaried Senior Medical Practitioners Determination (revised version)*
- Appendix C** *Level 2–5 Salaried Medical Practitioner (SMP) [Staff Specialist]
Contract of Liability Coverage for the Treatment of Private Patients in
[Rural] Public Hospitals*
- Appendix D** *Level 2–5/Scheme D Staff Specialist Contract of Liability Coverage for
Private Paediatric Patients*

Purpose and scope

The purpose of this policy is to assist public health organisations when appointing staff specialists. This policy sets out the appropriate standards that are to be applied to this process, as well as procedural and regulatory requirements set out in legislation, by-laws and Departmental circulars.

Within the overall framework of this policy, public health organisations need to develop their own procedures that are specific to their requirements. The policies consolidate the relevant legal requirements, as well as providing additional guidance.

This document reflects the similarity between the practices involved in appointing visiting practitioners and appointing staff specialists, even though the relevant statutory provisions differ. In addition, many of the principles and requirements set out are relevant to other classes of employees. However, this policy is confined to the appointment of staff specialists.

Staff specialists

A staff specialist is appointed as an employee of the public health organisation in accordance with the salary and conditions as set out in the *Staff Specialists (State) Award*. This policy is also relevant for those clinical academics (performing clinical services for public patients for more than eight hours per week) who are engaged as senior medical practitioners (academic) for 40 percent appointments under the same award. The rights of private practice arrangements under the *Salaried Senior Medical Practitioners Determination* do not apply to senior medical practitioners (academic). These policies do not apply to post-graduate fellows.

*Department Circular
2000/3*

Sources of authority

This policy relies on the following sources of authority:

NSW Health Services

- *Health Services Act 1997*
- *Health Services Model By-Law 2000*
- *Accounts and Audit Determination for Public Health Organisations.*

Clinical privileges

- *The Delineation of Clinical Privileges for Visiting Practitioners and Staff Specialists: Policy for implementation 2005.*

Professional indemnity insurance

- *Health Care Liability Act 2001*
- *Health Care Liability Regulation 2001*
- *Health Care Liability Act 2001 – Insurance Approval Order 2003*
- *Health Care Liability Act 2001 – Insurance Regulation Order 2003*
- *Rural and Paediatric Contracts of Liability Coverage.*

Appointment, recruitment and vetting

- *Child Protection (Prohibited Employment) Act 1998*
- *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct* Department Circular 97/80
- *Policy and Procedure for Employment Screening of Staff and other Persons in Child Related Areas* as amended Department Circulars 00/55 and 00/76
- *Determination of Child Related Employment* Department Circular 2001/32
- *A Framework for Recruitment and Selection* Department Circular 2001/74
- *Principles and Minimum Standards for the Development of Health Service Codes of Conduct* Department Circular 98/79.

Records management

- *State Records Act 1998*
- *State Records Act* Department Circular 99/34
- *General Disposal Authority 3 – Personnel Records* (available online from State Records website at www.records.nsw.gov.au).

Conditions of appointment

- *Staff Specialists (State) Award*
- *Salaried Senior Medical Practitioners Determination* (revised version)
- *Salary Packaging Scheme Information Guide for Senior Medical Practitioners*
- *Salaried Senior Medical Practitioners Determination Training Education and Study Leave (TESL) New Funding Entitlement 2002/2003* Department Circular 2002/71
- *Salary Increase for Salaried Senior Medical Practitioners*, Department Circular 2003/20
- *Remuneration Arrangements for Senior Medical Practitioners (academics)* Department Circular 2000/3
- *Health Service, Chief Executive Officers and Other Employees of Health Services are Not Permitted to Offer Over-Award Salaries and/or Conditions of Employment* Department Circular 2003/85.

General principles

Public health organisations must ensure that appropriate procedures are applied to the appointment process for staff specialists. The purpose of such procedures is to promote a system that is fair and to ensure that the best applicant is appointed.

There are several key principles that determine the successful appointment of staff specialists.

Merit – all staff specialist appointments are to be filled on merit. Merit selection requires that the person selected has the ability, qualifications, experience, work performance and personal attributes that best match the nature of the duties of the position.

Fairness – the process by which decisions are made in the appointment process must be fair and objective to those involved. Applicants should be provided with sufficient information about an advertised appointment to enable them to submit all information relevant to their application. Applicants are entitled to have their applications and supporting documentation considered in accordance with an objective and transparent process.

Integrity – recruitment and selection processes and decisions should be ethical and carried out in accordance with any policies, guidelines and professional codes of conduct that govern recruitment practices and the behaviour of public health organisation employees performing official duties.

Confidentiality – those associated with the selection process have a duty to treat all information arising from the selection process as confidential. This includes treating the recommendation of the Medical and Dental Appointments Advisory Committee (MDAAC) as confidential.

Conflict of interest

It is important to ensure that persons involved in the appointment process are free from any real or perceived bias or conflict of interest. It is the duty of these persons to make full disclosure of any such bias or conflict of interest and to resolve them in a way that protects the integrity of the process. Such persons should ensure that they do not place themselves under financial or other obligation to outside individuals or organisations that may or may appear to influence them in the performance of their duties.

Some examples of possible conflicts of interest include a member of a committee or subcommittee who:

- has a financial relationship with an applicant
- is a relative of an applicant
- attends a meeting which is discussing his or her own specific appointment or clinical privileges.

Any potential conflict of interest should be declared and documented. The chairman of the committee or subcommittee should decide whether the member should be limited in their contribution to discussions and or decisions of the committee or subcommittee.

It is preferable that a person on an interviewing body is not a referee for any of the applicants. If a panel member is nominated as a referee by an applicant this should be declared in advance. The nominated referee must not be the person conducting referee checks for any of the applicants.

As Department Heads usually play an important role in the appointment process, it is preferable that the re-appointment process for Department Heads is conducted separately. A Department Head who is seeking re-appointment as part of a periodic round of health service appointments should have no direct involvement in the actual process relevant to his or her appointment.

The role of the public health organisation

Each public health organisation needs to ensure that staff specialists are appointed according to the needs and the resources of the organisation. The public health organisation must ensure that it has proper procedures in place to determine the number and scope of such appointments. The issue of corporate governance is dealt with in the NSW Department of Health and Health Services Association of NSW publication *Corporate Governance and Accountability in Health: better practice reference guide* (December 2002).

Delegation of responsibility

The governing body of a public health organisation is responsible for the final decision as to whether or not a person is to be appointed as a staff specialist. As this may involve a large amount of documentation and a substantial number of applications, delegation of the appointment function may be appropriate. The appointment function may be delegated to a committee or to senior management. However the governing body retains responsibility for the consequences of the appointment of staff specialists as part of its overall clinical governance responsibility.

Any such delegation should be in accordance with the by-laws, and take the form of specific written delegations to the chief executive officer or other such senior staff or body to make appointments.

*Health Services Model
By-law 2000*

The delegation does not remove the general requirement to refer appointments to MDAAC and in turn, the credentials subcommittee for advice and recommendations.

All delegation approvals are to be recorded and maintained in a separate file. The governing body has responsibility for ensuring that the Manual of Delegations is kept up-to-date and that each delegate is adequately informed of the respective delegations.

*Accounts and Audit
Determination sections
7.9 and 7.10*

The governing body must ensure that appropriate senior staff have responsibility for ensuring adherence to the appointment process. This includes ensuring that the principles underlying appointment identified in these policies are followed and the committees and subcommittees adhere to the appropriate principles and procedures.

Documentation of the decision making

The decision maker will need to be apprised of all relevant material from MDAAC in order to make the appointment decision. The decision maker is not to simply rely on the recommendation of MDAAC that a certain person or persons be appointed as a staff specialist based on, for example, a ranking or score.

The relevant material should be documented in a manner that explains the advice and recommendations and is in a form that allows the material to be reviewed by the decision maker.

Where a decision is not in accordance with the advice and recommendations of MDAAC, it must be documented in a manner that clearly explains the decision-making process and that allows the decision to be reviewed if it is challenged.

Referring applications to MDAAC

*Model By-law 2000
clause 41*

Applications for a staff specialist appointment must be referred for advice to MDAAC. As indicated above, while the decision maker will have regard to the advice from MDAAC, the decision to appoint a particular person is ultimately the responsibility of the decision maker.

*Model By-law 2000
clause 43*

The decision maker should be particularly aware that:

- the governing body is to determine the period of office of MDAAC members
- the governing body may appoint a person to MDAAC generally or for the purpose of considering a particular matter or matters.

The final recommendation to appoint should indicate that it is subject to the terms and conditions of appointment. These will include clinical privileges allowed; whether full time or part time; where more than one facility is involved, the fraction of the appointment that initially applies to each; and the requirement to abide by relevant codes of conduct and by-laws. All letters of offer of appointment must expressly provide that the appointment is conditional on:

- satisfactory criminal record checks
- where necessary, completion of prohibited person declaration forms.

In the correspondence advising the applicant of his or her proposed appointment, the person should be asked to indicate his or her acceptance by signing the letter of offer and returning it within a specified time frame.

Medical and Dental Appointments Advisory Committee (MDAAC)

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Role of MDAAC

MDAAC is a committee of the public health organisation. The Model By-law defines the function of MDAAC in terms of both providing advice and, where appropriate, making recommendations with reasons. It should be noted that MDAAC has a similar function with respect to visiting medical practitioners.

*Health Services Model
By-law 2000
clause 41*

The composition of MDAAC, its term of office and the rules of the committee meetings are set out in Part 7 of the Model By-law. Failure to comply with these provisions may invalidate the appointment process.

Clause 44 of the Model By-law applies the following provisions of the By-law to MDAAC meetings:

*Health Services Model
By-law 2000
clause 44*

- The chairperson may determine the procedure for the conduct of meetings: clause 4.
- The quorum for a meeting is a majority of the members: clause 24.
- MDAAC may invite any person to attend a meeting: clause 25.
- A decision is determined by a majority of the votes cast at a meeting: clause 26.
- The chairperson or person authorised by the chairperson is to give written notice of a meeting to each member at least seven days prior to the meeting: clause 27.

In addition, it should be noted that a member of MDAAC is required to leave a meeting at which his or her own appointment or clinical privileges are discussed.

*Health Services Model
By-law 2000
clause 43(4)*

Referral to subcommittees

MDAAC may form subcommittees, whether at a hospital or otherwise, to provide advice or other assistance to enable it to perform its duties. For example, the MDAAC may form subcommittees to consider a class of appointments at a particular hospital or all appointments in a specific discipline (eg all dental appointments). However the MDAAC is ultimately responsible for providing the relevant advice.

*Health Services Model
By-law 2000
clause 41(3)*

Credentials (Clinical Privileges) Subcommittee

MDAAC is required to establish a Credentials (Clinical Privileges) Subcommittee. All matters referred to MDAAC that deal with the clinical privileges of staff specialists must be referred to the Credentials (Clinical Privileges) Subcommittee. A member of the Credentials (Clinical Privileges) Subcommittee may be appointed generally or for the purpose of a particular matter or matters.

*Health Services Model
By-law 2000
clause 45 and 47*

There is no requirement as to the timing of the referral of applicants to the Credentials (Clinical Privileges) Subcommittee in the course of the appointment process. Some organisations prefer to refer applicants selected for interview to the Credentials (Clinical Privileges) Subcommittee prior to interviews to ensure that MDAAC or the interview subcommittee does not interview or recommend applicants who are unable to be credentialed for the appointment. Alternatively, where the composition of MDAAC and the Credentials (Clinical

Privileges) Subcommittee is the same or substantially similar, it may be preferable that they convene consecutively.

Functions and membership of an interview subcommittee

MDAAC commonly establishes an interview subcommittee to manage the appointment process. The functions of the interview subcommittee are to review all applications, select applicants for interview, interview suitable applicants, undertake reference checks and make recommendations to MDAAC in relation to the appointment. The interview body must have regard to the principles of appointment set out in Part 2 of this document.

The interview subcommittee reports to MDAAC which, in turn, is required to advise and make recommendations to the governing body or delegate. The interview subcommittee must document the advice and recommendations in a manner that allows the recommendations to be reviewed.

The interview subcommittee is to include people with sufficient knowledge and understanding of the needs of the facility or facilities to which the proposed appointment relates. Such people may include:

- a member of the MDAAC
- a representative from the relevant clinical department
- a representative from the health facility or health service management
- an independent person from another public health organisation. Where the public health organisation is unable to identify a suitable independent committee member external to the public health organisation, then someone independent of the facility or the reporting structure within which the position is advertised should be included.
- a representative from the relevant College.

Assessing suitability

The interview body (whether MDAAC or an interview subcommittee) needs to decide on the applicants to be called for interview.

Members of the interview body must have access to copies of the advertisement, the position description, the criteria for appointment, the applications, any referees' reports and any written advice obtained from the Credentials (Clinical Privileges) Subcommittee.

Applicants are to be considered in the light of the advertisement, position description, and criteria for appointment. Regard must be given to the person's ability, qualifications, experience, performance, and the existing role and function of the relevant facility/ public health organisation.

Indicators of the applicant's past performance as a medical practitioner must be taken into account in the selection process. These may include matters such as professional performance, peer recommendation, demonstrated commitment to quality improvement, undertaking continuing medical education of self or others, maintenance of adequate medical records, participation in teaching and research, and timely management of patients.

The interview body should write a formal report to MDAAC outlining the process and conclusions, including all applicants, the reasons for any culling, the outcome of interviews, the recommended applicant and whether other applicants should be placed on an eligibility list.

If the interview body is unable to reach a unanimous position, the members in disagreement may prepare a minority report setting out the areas of disagreement and providing an alternative advice and recommendation. The minority report must be included in any report.

Checking referees and past performance

At the completion of the interviews, the appropriate person on the interview body (usually the director of clinical services) must verify referee reports or contact referees for their comments. A record of the contact and comments is to be kept.

This person must also obtain information about the applicant's past performance as a medical practitioner in accordance with the authority provided by the applicant as part of the application package (outlined in Part 6).

Written advice and recommendation with reasons

MDAAC is required to prepare a written report to the decision maker setting out its advice and recommendations for appointment and the clinical privileges that should be granted. In order to evaluate the advice and recommendations, the final decision-maker must be apprised of all the relevant material that is before MDAAC. This includes the advice and recommendations from the interview subcommittee (if any) and the Credentials (Clinical Privileges) Subcommittee.

If the advice and recommendations of MDAAC to the decision maker is not in accordance with the advice and recommendations of any subcommittees, they must be documented in a manner that clearly explains this. They must also be in a form that allows the decision to be reviewed.

Credentials (Clinical Privileges) Subcommittee

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The Credentials (Clinical Privileges) Subcommittee is established by MDAAC to advise it on matters concerning clinical privileges, including the clinical privileges to be allowed to an applicant or person proposed for appointment as a staff specialist. It should be noted that credentialling is the first step in the process for delineating clinical privileges and takes place as part of the appointment process, as well as for routine and non-routine purposes such as reviewing existing clinical privileges.

*Health Services Model
By-law 2000
clause 45*

A full description of the process for delineating clinical privileges is contained in the accompanying document; *The Delineation of Clinical Privileges for Visiting Practitioners and Staff Specialists: Policy for implementation (2005)*.

Appropriate administrative support

The public health organisation must have appropriate staff with responsibility for the various administrative support arrangements, including:

- ensuring compliance with appropriate delegations and referrals
- ensuring that the appointment process is commenced well before the expiration of the term of any current appointment of the kind to which it relates
- vetting of applicants
- convening and liaising with MDAAC, the Credentials (Clinical Privileges) Subcommittee and any other subcommittee
- forwarding to the successful applicants the appointment letters containing the terms and conditions of appointment
- ensuring letters to unsuccessful applicants are issued
- responsibility for maintenance of appointment documentation.

It should be noted that the process of appointment outlined in this Part relates generally to standard staff specialist appointments. Part 7 of this document deals with particular kinds of appointments to which these procedures may not apply: conjoint appointments and temporary appointments.

Information package

Public health organisations are to develop a generic information package that can be customised for each appointment. A generic information package provides a checklist for applicants and the organisation, and also makes it clear that the organisation has the authority to obtain information about the applicant's past performance, outstanding disciplinary matters and conditions placed on practice.

An information package should include:

- appointment description, describing the nature and scope of the appointment
- appointment criteria
- advice about the need to nominate at least two referees
- advice as to whether written confidential referee reports are required
- advice that reference checks will be conducted
- advice that relevant recruitment screening checks will be conducted on applicants who are recommended for appointment
- other information considered relevant by the public health organisation
- the closing date for applications to be received
- the address at which applications are to be lodged
- the contact person for inquiries.

*Department Circulars
97/80, 2000/55
and 2000/76*

The public health organisation will require and should collect all of the following information from applicants. Applicants must be advised to provide the following in the application:

- copies of current registration certificates, including any conditions on registration
- a signed authority permitting the public health organisation to obtain relevant information from the NSW Health Care Complaints Commission and/or registration authorities relating to any conditions placed on practice, and the nature of any unresolved complaints
- a statement setting out appointments and clinical privileges held by the applicant at other health care organisations, and whether any restrictions have been placed on their clinical privileges or practice by another health care organisation
- a statement setting out the clinical privileges sought by the applicant
- a signed authority for MDAAC to obtain information about the applicant's past performance as a medical practitioner

Criteria for appointment

The criteria for appointment must be determined and documented prior to the appointment being advertised. The essential and desirable criteria particular to the position should be included in the advertisement. This information is to be provided to potential applicants who should be advised to address the criteria in their applications. MDAAC and any interview subcommittee, and referees should be provided with this information.

The position criteria must include the following:

- current or eligibility for NSW Medical Board registration
- current re-certification statement or certificate from a relevant college or association, where that college or association conducts a re-certification program
- evidence of participation in Continuing Medical Education (CME) for those practitioners whose college or association does not conduct a re-certification program
- ability to comply with the service objectives of the public health organisation, including the provision of services to the local community and effective utilisation of resources
- proof of involvement in continuous quality improvement
- capacity to communicate effectively with patients and the full range of the community
- capacity to communicate and work effectively with other staff and practitioners.

Public health organisations may consider some of the following additional criteria, intended as a guide only, to be included as appointment criteria:

- demonstrated interest in teaching and research
- an appropriate higher academic medical qualification
- other criteria deemed by the public health organisation as necessary in the provision of clinical care and participation in a clinical care team.

Past performance

Applicants should be advised that past performance will be taken into account in determining suitability for appointment. As noted in Part 4, indicators of the applicant's past performance as a medical practitioner will include the following: professional performance, peer recommendation, demonstrated commitment to quality improvement, undertaking continuing medical education of self or others, maintenance of adequate medical records, participation in teaching and research, timely management of patients, demonstrated capacity for teamwork.

The advertisement

The public health organisation must advertise the availability of a staff specialist appointment in at least one newspaper circulating generally in NSW.

*Department Circular
2001/74*

Additional methods for advertising include:

- NSW Health website
- the public health organisation internet site
- relevant college, professional or industrial association publications.

The advertisement may be limited to highlights in the information package.

The only prescribed requirement for the content of the advertisement is a statement that relevant recruitment screening checks will be conducted on applicants recommended for appointment. It is recommended that the advertisement contain all essential and desirable selection criteria specific to the position being advertised. The advertisement should note a closing date for applications, where to send applications and a contact for enquiries.

*Department Circular
97/80*

*Department Circular
2001/74*

Form of application

Applications for appointment should be in written or electronic format.

Recruitment screening checks

The public health organisation must undertake a relevant recruitment screening check for the recommended applicant prior to offering the appointment. This will include a relevant criminal record check and where necessary, completion of prohibited persons declaration forms.

*Department Circular
97/80, 00/55, 00/76 and
01/32 [Child Protection
(Prohibited Employment)
Act 1998]*

In addition, a prohibited person declaration form must be obtained where the proposed appointment 'primarily involves direct contact with children where that contact is unsupervised'. A copy of this form is Annexure A to Department Circular 2000/76. Mandatory child-related screening activities are limited to child-related employment. The interpretation of 'child-related employment' is dealt with in Department Circular 01/32.

Documentation and records management

Appropriate documentation of the appointment process should ensure that recommendation(s) can be reviewed. This is the same requirement that applies to the selection recommendation for NSW Health Service employees set out in *A Framework for Recruitment and Selection* Department Circular 01/74.

*NSW State Records Act
1998*

*Department Circular
99/34*

GDA3

The records management requirements for public health organisations are governed by the *State Records Act 1998*. Departmental documents can usually only be destroyed in accordance with either a General Disposal Authority or a normal administrative practice. General Disposal Authority 3 – Personnel Records ('GDA3') authorises the disposal of records relating to employees, which includes staff specialists.

Formal papers produced by selection committees are to be retained for six months after the date of appointment. Routine correspondence may be destroyed six months after the date of the appointment. Routine correspondence refers to correspondence of a minor nature held separately from the appointment file.

Documentation concerning unsuccessful applicants should be retained for at least six months following written notification to all applicants.

Working papers can be disposed of in accordance with normal administrative practice.

Particular kinds of appointments

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Conjoint appointments

A conjoint appointment refers to an appointment at both a public health organisation and an academic institution. Conjoint appointments involving staff specialists arise in two situations. First, a staff specialist at a public health organisation may be granted an academic appointment at a tertiary institution. In this circumstance, the academic appointment arises from the appointment at a public health organisation. Where the initial appointment to the organisation is as a staff specialist, the appointment is made in accordance with organisation standard staff specialist appointment process.

Second, a person may be granted an appointment at the public health organisation that is to be held as part of his or her teaching duties at a tertiary institution. In this instance, the appointment is as either a clinical academic (where fewer than eight hours per week clinical and administrative services to public patients in public hospitals are provided) or a senior medical practitioner (academic) ("SMP (Academic)").

Senior Medical Practitioners (Academic)

The category of SMP (Academic) refers to those specialist medical practitioners who are employees of a university and provide clinical and administrative services to public patients in public hospitals for 8 hours per week or longer. SMPs (Academic) are classified as 40 percent fractional staff specialist appointments of the public health organisation. Department Circular 2000/3 sets out the arrangements for SMPs (Academic).

*Department Circular
2000/3*

These appointment policies and guidelines apply to SMPs (Academic) for the purpose of their public patient services. Where the public health organisation decides to grant SMPs (Academic) admitting rights (with clinical privileges) to treat private patients, they will be required to hold appointments as visiting practitioners. To this extent, SMPs (Academic) who have rights of private practice will have dual appointments: as employees on fractional arrangements and as visiting practitioners for private patients.

The appointment of an SMP (Academic) does not need to follow the standard staff specialist appointment process. In particular, the appointment of a person as an SMP (Academic) does not need to be advertised and an application does not need to be made in writing.

All persons proposed for appointment as SMPs (Academic) are required to have their clinical privileges delineated. The proposed appointment must therefore be referred to MDAAC which, in turn, must refer the matter to the Credentials (Clinical Privileges) Subcommittee. The delineation of the clinical privileges must be regularly reviewed through the Credentials (Clinical Privileges) Subcommittee. It should not be based solely on the tenure of the academic appointment.

In addition the delineation of clinical privileges, the appointment of SMPs (Academic) is subject to the vetting of the individual, including recruitment screening checks (in accordance with the requirements referred to in Part 6).

As indicated above, the appointment must also be in writing and specify that it is dependent on the SMP (Academic) maintaining the relevant teaching position at the academic institution.

The requirements in relation to the appointment of SMPs (Academic) as visiting practitioners with admitting rights to treat private patients are the same as those which apply to the appointment of clinical academics set out below. In particular, the appointment needs to be in writing setting out the conditions to which it is subject, including that the appointment is conditional upon the SMP (Academic) maintaining the relevant university teaching position. The delineation of clinical privileges process and recruitment screening check for SMPs (Academic) are required to be undertaken as part of their employment as fractional staff.

Clinical academics

*Department Circular
2000/3*

The category of 'clinical academic' refers to those medical practitioners who undertake clinical work in public hospitals for fewer than 8 hours per week for which they receive a clinical loading from the university. They remain employees of the university whilst undertaking the clinical work.

Clinical academics are appointed as visiting practitioners and are required to enter into a written appointment agreement. The *Appointment of Visiting Practitioners: policy for implementation (2005)* deals with appointment and documentation.

Temporary appointments

*Health Services Model
By-law 2000
clause 41(2)*

The Model By-law 2000 imposes certain requirements where the governing body to a medical administrator (however described) the function of appointing temporary staff specialists for a single period not exceeding three months. In such circumstances, the exercise of this delegation must be considered by the Area Chief Executive and is subject to the advice of the MDAAC, if the advice or recommendation of MDAAC is required.

*Department Circular
2001/74*

Where a staff specialist is to be appointed for a temporary period of not more than three months, the availability of the position does not need to be advertised and an application does not need to be made in writing.

A decision to extend the temporary appointment beyond an initial 13 weeks period should be carefully considered, to determine if an ordinary staff specialist appointment should be made.

The temporary appointment of a staff specialist is subject to the following requirements:

- the qualifications and experience of the staff specialist being suitable to the circumstances
- an appropriate clinical privileging procedure being carried out
- the vetting of the applicant, including criminal record checks
- a written agreement between the public health organisation and the staff specialist (see Part 8).

Nature of appointment

Staff specialists are appointed as employees of the public health organisation under the *Staff Specialists (State) Award*. The terms and conditions of employment of staff specialists are as set out in that award, in the *Salaried Senior Medical Practitioners Determination (revised version)* and in other determinations made from time to time by the Health Administration Corporation. Under the *Health Services Act 1997*, the Health Administration Corporation (the Director-General of the NSW Department of Health) is the deemed employer of employees in the NSW Health Service for certain industrial purposes, and the conditions of employment of employees in the NSW Health Service which are not otherwise set by award or industrial agreement may be determined from time to time by the Health Administration Corporation.

Letters of appointment

The public health organisation must ensure that the appointment of a staff specialist is subject to the terms and conditions under the relevant awards and determinations. This must be stated in the letter of appointment.

In some circumstances, the services of a staff specialist may be required prior to the finalisation of the formal recruitment process because, for example, there was a sudden resignation. A useful approach in these circumstances may be to permit a temporary appointment for a period up to 3 months while a formal appointment process is followed. A temporary appointment still needs to be in the form of a written appointment that sets out the terms and conditions of the temporary appointment.

The letter of appointment must have attached a job description and the proposed clinical privileges and any other conditions to which the appointment will be subject, including designation, terms of speciality, facilities at which the appointment is valid and clinical privileges. The letter of offer of appointment must include a condition that requires the staff specialist to inform the public health organisation in the event of a notification of a matter concerning him or her to the NSW Health Care Complaints Commission or NSW Medical Board, the imposition of orders or conditions affecting the practitioner's registration and/or any restrictions on clinical privileges or practice imposed by another health care organisation.

All staff specialist letters of appointment should state that staff specialists are required to be available for reasonable on call and recall outside their normal duties, as may be required by their employer. These letters should further specify that when required to be on call, a staff specialist shall be readily contactable at all times and be able and prepared to attend the facility concerned within a reasonable time.

In the correspondence advising the applicant of his or her proposed appointment, the person must be asked to indicate his or her acceptance by signing the letter of offer and returning it within a specified time frame.

Care should be taken in preparing letters of appointment to ensure that any arrangements which do not form part of the ongoing terms and conditions of employment are either not referred to in the letter, or are mentioned in a way which makes it clear that they are not to be regarded as ongoing entitlements. (Particular care should be taken to avoid giving apparent commitments about the ongoing provision of a private use motor vehicle – consistent with Departmental Circular 2004/81, the availability of a vehicle will be affected by the varying fleet needs of the public health organisation.)

*Department Circular
97/80, 2000/55
and 2000/76*

All letters of appointment must expressly provide that the appointment is conditional on:

- satisfactory criminal record checks
- where necessary, completion of prohibited person declaration forms.

Written agreement

All appointments as staff specialists are to be in writing. The letter of appointment must specify the conditions of the appointment, including the clinical privileges the staff specialist is to be granted.

Under no circumstances is a staff specialist to commence an appointment prior to completing employment papers and, where appropriate, a part time agreement. Acceptance of the terms of the appointment is preferably evidenced by signing a copy of the letter of appointment.

Appointment of staff specialists

Health Service Act S115

*Department Circular
2001/16*

A public health organisation shall not, without specific approval from the Director-General offer a staff specialist remuneration or conditions of service other than in accordance with the relevant industrial instruments and the relevant determinations of the Health Administration Corporation. Determinations of the Health Administration Corporation of general application are notified by Departmental circular.

The conditions of service and remuneration are contained in the following documents as varied from time to time:

- *Staff Specialists (State) Award*
- *Salaried Senior Medical Practitioners Determination (revised version)*
- *Salary Packaging Scheme Information Guide for Senior Medical Practitioners*
- *Salaried Senior Medical Practitioners Determination Training Education and Study Leave (TESL) New Funding Entitlement 2002/2003 Department Circular 2002/71*
- *Salary Increase for Salaried Senior Medical Practitioners, Department Circular 2003/20*
- *Remuneration Arrangements for Senior Medical Practitioners (Academics) Department Circular 2000/3*
- *Health Service Boards, Chief Executive Officers and Other Employees of Health Services are not permitted to offer Over-Award Salaries and/or Conditions of Employment Department Circular 2003/85*

Key documents are placed on the NSW Health website. They will include the latest circular setting out the approved rates of remuneration (which are not dealt with in this document).

Types of employment arrangements that may be offered to staff specialists

The terms and conditions of employment that can be offered to a potential staff specialist will be determined by:

- the needs of the particular facility where the services will be performed
- the type of services that the staff specialist is qualified to perform.

Needs of the hospital or health service

Staff specialists can be employed as part time or full time. Part time staff specialists should complete a written Part Time Agreement, as provided for in the award.

Salaried Senior Medical Practitioners (State) Award clause 7

Type of services

The type of services required from a staff specialist the role delineation of the health service and the experience and skills the individual brings to the position, will determine the clinical privileges which are offered.

Delineation of Clinical Privileges for Visiting Practitioners and Staff Specialists: Policy for Implementation 2004

Election – private practice

A staff specialist is required to elect a private practice level arrangement, consistent with the provisions of the *Salaried Senior Medical Practitioners Determination (revised version)*. Remuneration arrangements will be affected by the level which is chosen.

Salaried Senior Medical Practitioners Determination (revised version) clause 2

Seniority

Staff specialists are usually appointed at the year 1 level and progress to the next incremental step on the anniversary date of their appointment. However, having regard to the skills, experience and performance of a staff specialist, an initial appointment can be made at a higher level or there can be accelerated progression through the steps.

Salaried Senior Medical Practitioners (State) Award clause 4

Appointment as a senior specialist must comply with the conditions set out in the *Staff Specialist (State) Award*.

Multiple facilities – one appointment

The terms of appointment must make it clear that a staff specialist holds one appointment with the public health organisation. Where the public health organisation requires a staff specialist to perform work in more than one facility, this will occur as part of one appointment and the letter of appointment must clearly state the clinical privileges granted at each facility. Any proposal for the staff specialist to work outside of the public health organisation's boundaries should be developed by the public health organisation in consultation with the relevant staff specialist.

Professional indemnity insurance

*Health Care Liability Act
2001 Section 19*

A person is not entitled to practise in NSW as a medical practitioner unless the person is covered by approved professional indemnity insurance. However, this requirement does not apply to a medical practitioner who is an employee of a public health organisation to the extent that the medical practitioner practises as an employee.

The position in respect of staff specialists' rights of private practice arrangements is as follows. Level 1 staff specialists (ie those who have elected to assign the proceeds of their private practice to the employer) are indemnified through the Treasury Managed Fund against liability for acts or omissions committed in the course of treating private patients (subject to certain conditions, such as eg that serious and wilful misconduct is not involved). Level 2 to 5 staff specialists must arrange for their own indemnity cover in respect of private patients who are treated pursuant to the rights of private practice arrangements. The costs of medical indemnity insurance premiums that relate to rights of private practice are presently covered by a trial arrangement under which they can be reimbursed from public health organisation No 1 Accounts, to the extent that sufficient funds are available after prior charges have been met.

The exception to these arrangements apply to the provision of private patient indemnity cover to Level 2 to 5 staff specialists treating private patients in public hospitals in rural areas and to paediatric staff specialists.

The appeals process

A public health organisation should develop a mechanism to deal with grievances in relation to the appointment processes prior to an appointment decision being made, which may form part of a broader grievance policy.

If, after exhausting all internal grievance and complaint mechanisms, an eligible unsuccessful applicant is still aggrieved, the following avenues may be available for redress/assistance, in circumstances where the relevant jurisdiction can be attracted:

- NSW Anti Discrimination Board
- NSW Independent Commission Against Corruption.

*Department Circular
2001/74*

Appendix A

Staff Specialists (State Award)

IRC 1738 of 1996 – new award- effective 27.11.1997 (306 IG 1225)
IRC 1915 of 1999 – SWC – insertion of Anti-Discrimination clause – effective 3.6.99 (315 IG 760)
IRC 2277 of 1999 – McLeay C – Insert new salary sacrifice clause & vary salaries – effective 30.7.99 (315 IG 1460)
IRC 5326 of 1999 – McLeay C – var. insertion of Exclusions clause & var. schedule 2 – effective 6.10.99 (315 IG 1459)
IRC 94 of 2000 – Bishop C – var. salaries – effective 4.4.00 (322 IG 1181)
IRC 3819 of 1999 – McLeay C - Var. to cls 2, insert Anti-Discrim & Redundancy cls & Schedule 3 – effective 14.12.00 (323 IG 1152)
IRC 3025 of 2001 – Variation to Anti-Discrimination Clause – effective 31.5.01 (331 IG 1077)
IRC 7478 of 2001 – McLeay C – var. salaries – effective 4.12.01 (336 IG 132)
IRC 6939 of 2002 – Sams Deputy President – var. salaries – effective 1.1.03 (340 IG 450)
IRC 5747 of 2003 – Grayson DP – S19 review – effective 11.12.03

STAFF SPECIALISTS (STATE) AWARD

BETWEEN THE

AUSTRALIAN SALARIED

MEDICAL OFFICERS' FEDERATION (NSW)

AND

HEALTH ADMINISTRATION CORPORATION

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1 TITLE

This Award shall be known as the Staff Specialists (State) Award

2 DEFINITIONS

"Award" means the Staff Specialists (State) Award.

"Corporation" means the Health Administration Corporation as established by the *Health Administration Act 1982*.

"Employer" means an organization listed in Schedule 1,2 or 3 of the *Health Services Act 1997*.

"Entitlements" means entitlements pursuant to this Award as varied from time to time.

"Federation" means the Australian Salaried Medical Officers' Federation (New South Wales)

"Health System" means the Public Health System of New South Wales.

"Hospital" means a public hospital as defined in section 15 of the *Health Services Act 1997*.

"Normal Duties" means clinical or other duties and responsibilities undertaken by the Staff Specialist:

- (i) which fall between the hours of 8:00 am and 6:00 pm Monday to Friday; or,
- (ii) for 10 sessions per week; or,
- (iii) for sessions as otherwise agreed; or,
- (iv) performed according to a Part-Time Agreement.

In addition, the Staff Specialist will be available for reasonable on call and recall duties outside of Normal Duties.

"Part Time Agreement" means an agreement between a Staff Specialist and the Employer for the Staff Specialist to provide his/her services on a part time employment basis pursuant to Clause 7 of this Award.

"Postgraduate Fellow" means an employee who has completed postgraduate medical training but who has not yet been appointed as a specialist/senior specialist and who occupies a position classified as Postgraduate Fellow.

"Practice" means clinical or other duties and responsibilities undertaken by the Staff Specialist.

"Salary " means the salary set out in Schedule 1 to this Award as varied from time to time by Clause 4 of this Award.

"Staff Specialist" means a Specialist, Senior Specialist and Post Graduate Fellow (except where specifically excluded).

"Specialist" means a person appointed to a position of Specialist by an Employer. To be eligible for appointment a specialist must be a person who –

- (a) holds a medical qualification that is registrable in New South Wales; and,
- (b) after full registration has spent not less than five years in the practice of medicine in New South Wales in the Health System or in any other institution, whether in New South Wales or elsewhere, deemed by the Employer to be of equivalent standing; and,

- (c) inclusive within the period described in (b) above has spent not less than three years in supervised specialist training and/or experience; and,
- (d) (i) has obtained a Fellowship of a recognised Australasian Specialist College (see Schedule 3 for list of recognised Australasian Specialist Colleges); or, (ii) has proof of recognition as a specialist by the Specialist Recognition Advisory Committee; or, (iii) has conditional registration with the NSW Medical Board as an overseas-trained specialist (not including conditional registration as a general practitioner); or, (iv) does not have a qualification recognised under (i), (ii) or (iii) above but has obtained an appropriate higher qualification in his/her speciality acceptable to the Employer after consideration by the Medical and Dental Advisory Committee of the Employer.
- (e) Any decision made by the Employer in determining whether any person is eligible to be appointed as a specialist shall not contravene any applicable provision of the *Anti-Discrimination Act 1977*.

Notwithstanding the provisions of subclause (d) above, Staff Specialists who are paid pursuant to this Award or an Enterprise Agreement in place immediately before the commencement of this Award will continue to be recognised as Staff Specialists for the purpose of this Award.

"Senior Specialist" means a person who -

- (a) has been employed by an Employer on the maximum salary provided by this Award or the Award for a Specialist for a period of at least three years; and/or
- (b) has gained such experience and attained such ability in his/her specialty which is acceptable to the Employer after consideration by the Medical Appointments Advisory Committee of the employer to justify appointment to the classification; and
- (c) is appointed to a position having such duties and responsibilities as are deemed by the Employer to require the services of a Senior Specialist.

3 ISSUE RESOLUTION

- (a) All parties must:
 - (i) use their best endeavours to co-operate in order to avoid grievances and disputes arising between the parties or between the Employer and individual Staff Specialists; and
 - (ii) abide by the procedures set out in this Clause to resolve any issue which might arise; and
 - (iii) place emphasis on negotiating a settlement of any issue at the earliest possible stage in the process.
- (b) In this Clause, "issue" means any question, issue, grievance, dispute or difficulty which might arise between the parties about the interpretation, application or operation of this Award.
- (c) The following procedures will be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.
- (d) Any issue must be discussed in the first instance by the Staff Specialist and his or her immediate supervisor.

- (e) If the issue is not resolved within a reasonable time it must be referred by the Staff Specialist's immediate supervisor to the Chief Executive Officer of the Employer (or his or her nominee). Discussions at this level must take place and be concluded within a reasonable time or such extended period as may be agreed.
- (f) If the issue remains unresolved the Staff Specialist may request the Federation to then confer with the Chief Executive Officer or his/her nominee. The conclusions reached by those representatives must be reported to the parties involved in the grievance/dispute within a reasonable time or such extended period as may be agreed.
- (g) If these procedures are exhausted without the issue being resolved, either party may seek to have the matter mediated by an agreed third party being:
 - (i) by way of preference, a person who is not employed as a Staff Specialist by the Employer and who has a knowledge of Staff Specialist arrangements, including this Award; or
 - (ii) a suitably qualified mediator.

If the matter remains unresolved either party may then

 - refer the matter to the Health Administration Corporation, or
 - refer the matter in accordance with the provisions of the Industrial Relations Act 1996 (NSW) to the Industrial Relations Commission for its assistance in resolving the issue.
- (h) The parties agree that normal work will continue and there will be no stoppages of work or any other bans or limitations on the performance of work while these procedures are being followed.
- (i) The Employer must ensure that all practices applied during the operation of these procedures are in accordance with safe working practices.
- (j) Throughout all stages of these procedures adequate records must be kept of all discussions.

4 SALARY STRUCTURE

- a) A full time Staff Specialist will be paid the salary as set out in Schedule 1 of this Award.
- b) A Postgraduate Fellow will be paid the salary as set out in Schedule 1 of this Award.
- c) A Staff Specialist will progress to the next incremental step on the anniversary date of his/her commencement as a Staff Specialist pursuant to Clause 2, Definitions.
- d) This clause does not preclude the Employer, at the Employer's sole discretion:
 - i) initially appointing a Staff Specialist to a higher step within the Staff Specialist range; or
 - ii) accelerating a Staff Specialist through the steps within the Staff Specialist range irrespective of the length service.

Such accelerated progression does not include the Senior Specialist rate, which can only be accessed by appointment to a Senior Specialist position, in accordance with the definition in Clause 2 of this Award.

- e) A weekly rate will be ascertained by dividing the annual amount by 52.17857 or the annual rate will be ascertained by multiplying the weekly rate by 52.17857.

4A SALARY SACRIFICE – DEFINITION

For the purposes of Clauses 4B, 4C, 4D and 4E, “salary sacrifice” means the reduction in legally payable salary and allowances in exchange for benefits provided by the employer.

4B SALARY SACRIFICE

- (a) In this clause “superannuable salary” means the Staff Specialist’s salary as notified from time to time to the New South Wales public sector superannuation trustee corporations or, in respect of Staff Specialists who elect to have contributions made to a non public sector superannuation scheme, “superannuable salary” means the Staff Specialist’s salary that would have been notified from time to time to the New South Wales public sector superannuation trustee corporations but for the Staff Specialist’s election to have contributions made to a non public sector superannuation scheme.
- (b) Subject to the other provisions of this clause Staff Specialists may salary sacrifice from the range of benefits the Corporation and Federation agree upon from time to time.
- (c) Salary sacrifice arrangements must be formalised by an agreement between the Staff Specialist and the Staff Specialist’s employer.
- (d) The salary sacrifice agreement must be prospective, that is, the agreement must be made prior to the commencement of the period of service to which the earnings relate.
- (e) Subject to Australian Taxation Law, the sacrifice portion of superannuable salary will reduce the Staff Specialist’s remuneration subject to appropriate PAYE taxation deductions by the amount of that sacrificed portion.
- (f) The Fringe Benefits Tax on the benefits chosen by the Staff Specialist that would have been payable except for the Public Benevolent Institution status of the hospital will be calculated for each Staff Specialist who enters into a salary sacrifice arrangement. This amount will be divided equally between the employer and the Staff Specialist.
- (g) Any Fringe Benefits Tax applicable to the benefits packaged by a Staff Specialist will be deducted from the total amount sacrificed in that Staff Specialist’s salary sacrifice agreement.
- (h) The administration cost of each salary sacrifice agreement will be shared equally by the employer and the participating Staff Specialist. The employee’s share will be deducted from the total amount sacrificed in that Staff Specialist’s salary sacrifice agreement.
- (i) Subject to Clause 4D, the total amount sacrificed in any salary sacrifice agreement must not exceed 50% of the Staff Specialist’s superannuable salary.
- (j) Any allowance, payment for unused leave entitlements, weekly worker’s compensation or other payment, other than any payment for leave taken in service, to which a Staff Specialist is entitled under this award or any applicable Act or statute which is expressed to be determined by reference to a Staff Specialist’s salary, shall be calculated by reference to the

salary and allowances which would have applied to the Staff Specialist in the absence of any salary sacrifice arrangements made pursuant to this award.

4C SALARY SACRIFICE FOR SUPERANNUATION

- (a) In this clause “superannuable salary” means the Staff Specialist’s salary as notified from time to time to the New South Wales public sector superannuation trustee corporations or, in respect of Staff Specialists who elect to have contributions made to a non public sector superannuation scheme, “superannuable salary” means the Staff Specialist’s salary that would have been notified from time to time to the New South Wales public sector superannuation trustee corporations but for the Staff Specialist’s election to have contributions made to a non public sector superannuation scheme.
- (b) Consistent with the provisions of clause 4B, Salary Sacrifice, a Staff Specialist may elect, subject to the agreement of the Staff Specialist’s employer, to sacrifice a portion of his/her superannuable salary to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. Subject to Clause 4D, the amount sacrificed must not exceed 30% of the superannuable salary.
- (c) Where the Staff Specialist has elected to sacrifice a portion of that superannuable salary to additional employer superannuation contributions:
- (i) subject to Australian Taxation Law, the sacrificed portion of superannuable salary will reduce the Staff Specialist’s remuneration subject to appropriate PAYE taxation deductions by the amount of that sacrificed portion; and
 - (ii) any allowance, payment for unused leave entitlements, weekly worker’s compensation or other payment, other than any payment for leave taken in service, to which a Staff Specialist is entitled under this award or any applicable Act or statute which is expressed to be determined by reference to a Staff Specialist’s salary, shall be calculated by reference to the salary and allowances which would have applied to the Staff Specialist in the absence of any salary sacrifice arrangements made pursuant to this award.
- (d) The Staff Specialist may elect to have the portion of superannuable salary which is sacrificed to additional superannuation contributions:
- (i) paid into the superannuation scheme established under the First State Superannuation Act 1992 as optional employer contributions; or
 - (ii) subject to the employer’s agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.
- (e) Where a Staff Specialist elects to salary sacrifice in terms of subclause (d) above, the employer will pay the specified amount into the relevant superannuation fund.
- (f) Where the Staff Specialist is a member of a superannuation scheme established under:
- (i) the Police Regulation (Superannuation) Act, 1906;
 - (ii) the Superannuation Act, 1916;
 - (iii) the State Authorities Superannuation Act, 1987;
 - (iv) the State Authorities Non-contributory Superannuation Act, 1987; or
 - (v) the First State Superannuation Act, 1992,

the Staff Specialist’s employer must ensure that the amount of any additional employer superannuation contributions specified in subclause (a) above is included in the Staff Specialist’s superannuable salary which is notified to the New South Wales public sector superannuation trustee corporations.

- (g) Where prior to electing to salary sacrifice a portion of his/her superannuable salary to superannuation, a Staff Specialist had entered into an agreement with his/her employer to

have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause (f) above, the employer will continue to base contributions to that fund on the superannuable salary to the same extent as applied before the Staff Specialist sacrificed a portion of that salary to superannuation. This clause applies even though the superannuation contributions made by the employer may be in excess of the superannuation guarantee requirements after the salary sacrifice is implemented.

4D LIMITATION ON THE AMOUNT TO BE SACRIFICED

If a Staff Specialist sacrifices under both Clauses 4B and 4C the total amount to be sacrificed must not exceed 50% of the superannuable salary.

4E EXCLUSIONS

For the individuals named in Schedule 2 to this Award, the provisions of Clauses 4A, 4B, and 4D will be applied with certain modifications, while they remain in the positions they occupy as at 22 October 1999. The details of the modifications are set out in Schedule 2. Those individuals who move to new positions or who elect to be removed from Schedule 2 will be entitled to the provisions of Clauses 4A, 4B, and 4D without modification and will have no right of reversion to the previous provisions.

5 MANAGERIAL ALLOWANCE

Note: This clause shall not apply to a Staff Specialist employed as at the date of commencement of this Award who is remunerated in accordance with an existing contract relating to managerial responsibilities (however termed). This clause shall commence to apply when the existing contract expires.

- (a) It is an expectation that a certain level of management responsibility is an essential part of the duties of a Staff Specialist.
- (b) In addition to the salaries prescribed by this Award, a Staff Specialist required by the Employer to undertake additional responsibilities specifically associated with the management of a unit, department or service shall be paid an additional allowance as set out in Schedule 1 to this Award.
- (c) To be eligible for consideration of payment of this allowance, the additional management responsibilities will include direct line responsibility for a unit, department or service and involvement in a number of, but not necessarily all, of the following:
 - (i) cost centre management including budget preparation and management of allocated budget
 - (ii) line management personnel responsibilities and supervision of staff
 - (iii) participation in planning and policy development
 - (iv) responsibility for the co-ordination of research, training or teaching programs
 - (v) membership and participation in senior executive management teams
 - (vi) quality improvement co-ordination.

- (d) The Managerial Allowance at the Level 1 rate is payable to Staff Specialists who satisfy the criteria in (c) and who are specifically required by the Employer to undertake these additional managerial responsibilities.
- (e) The Managerial Allowance at the Level 2 rate is payable to those Staff Specialists satisfying the criteria in (c) and (d) who, in the assessment of the Employer, have significant additional managerial responsibility involving multiple cost centres and/or units, services and departments. This level would also be payable for single speciality Area-wide responsibilities.
- (f) The Managerial Allowance at the Level 3 rate is payable to those Staff Specialists who, in addition to satisfying the criteria in (e), have a level of managerial responsibility deemed by the Employer to require an allowance at the Level 3 rate, eg. multi-speciality Area-wide responsibility or management of an aggregation of all specialities within a hospital.
- (g) The Managerial Allowances are not cumulative and are only payable for the period in which the Staff Specialist has been allocated the additional managerial responsibilities by the employer.
- (h) The Managerial Allowances shall be paid during paid absences on approved leave, on termination of employment (on the basis of pro rata the annual amount for each week of paid leave) and for superannuation and voluntary redundancy purposes.

6 PERFORMANCE AGREEMENT

- (a) Each Staff Specialist will have a written annual Performance Agreement developed jointly by the Practitioner and his/her designated supervisor. The Performance Agreement will be developed and completed within one month of the offer of a draft performance agreement. A Staff Specialist who at the time of signing of this Award does not have a written Performance Agreement, will develop and complete a Performance Agreement within one month of the offer of a draft performance agreement.
- (b) The Staff Specialist and his/her designated supervisor will jointly review the practitioner's performance under the Performance Agreement twice in each 12 month period.
- (c) The Performance Agreement will be reviewed and updated annually by the Staff Specialist and his/her designated supervisor.

In exceptional circumstances where agreement has not been reached within the specified time the parties will continue to work towards finalisation of the Performance Agreement. In the event that agreement is not reached either party may utilise the provisions of the Issue Resolution procedure provided for in Clause 3 of this Award.

- (d) Each Performance Agreement must be endorsed by the Employer's Chief Executive Officer or his/her nominee.
- (e) A Performance Agreement will include, but not necessarily be limited to, the following:
 - * General job description (including clinical duties) and location of work
 - * Any specific variations from time to time
 - * Expectations in respect of management responsibilities, quality activities, post graduate and undergraduate teaching activities, continuing education, research, customer focus activities, health outcomes
 - * Any proposed variations in "Normal Duties" e.g. college activities

- * Private billing expectations for Level 1 Staff Specialists
- * Any written agreements re part-time employment, geographic limits and outside practice
- * Where appropriate, any financial, activity targets or health targets
- * Subject to available resources, specific commitments and standards from the employer for the provision of clinical support, including staff, equipment, facilities and billing.
- * Time commitments on management tasks including workload and performance reviews and the support to be provided by the Employer including systems and information subject to available resources to make best use of the Staff Specialists' time in planning and monitoring activities.

The above items may be developed to more appropriately reflect the Employer's requirements.

- (f) Each assessment is to include an evaluation of the Staff Specialist's level of achievement of specified service improvement objectives which are agreed between the Staff Specialist and his/her supervisor.

7 PART TIME EMPLOYMENT AND ARRANGEMENTS.

- (a) Staff Specialists covered by this Award may with the approval of the Employer, in portions of 10% (or other percentage as agreed), engage in part-time employment by entering into a written Part Time Agreement. A 10% portion of a Part Time Agreement, for the purpose of this Clause, will be 1 session per week.

The Part Time Agreement must be by agreement between the Staff Specialist and the Employer.

- (b) Transfer from a Part Time Agreement to full time employment must be by mutual agreement between the Staff Specialist and the Employer.
- (c) A dispute on the operation of a Part Time Agreement must be dealt with pursuant to Clause 3 Issue Resolution.
- (d) A Staff Specialist employed under a Part Time Agreement pursuant to this Clause will be entitled to accrue all entitlements including salary on a proportionate basis to a Staff Specialist employed on a full time basis.
- (e) A Staff Specialist who works pursuant to a Part Time Agreement will progress to the next incremental step every 12 months from the date of the Staff Specialists commencement of employment, provided the work performed by the Staff Specialist extraneous to the Part Time Agreement is commensurate with the experience of a full-time Staff Specialist and is acceptable to the Employer. This subclause does not preclude accelerated progression.
- (f) Staff Specialists employed pursuant to a Part Time Agreement must be available to participate on the on call roster to a reasonable extent.

8 GEOGRAPHIC LIMITS WHILST PERFORMING NORMAL DUTIES

All practice may not necessarily be confined to the geographic limits of the Employer. Staff Specialists may engage in practice outside the geographic limits of the Employer while performing Normal Duties, including places of work extraneous to the Public Health System.

Where a Staff Specialist engages in practice outside the geographic limits of the Employer while performing Normal Duties, the following will apply:

- (a) There must be agreement between the Staff Specialist and the Employer. The Agreement must be in writing, setting out the agreed duties and proposed geographic location of practice where those agreed duties are to be performed.
- (b) A breach of the Agreement referred to in (a) above, will be dealt with in accordance with Clause 3 Issue Resolution.

9 OUTSIDE PRACTICE

A Staff Specialist, either employed full-time or part-time, may seek the Employer's agreement to permit him/her to engage in practice outside his/her Normal Duties. Any such agreement must be in writing and must not conflict with the Staff Specialist's commitments to the Health System or the Code of Conduct issued by the Department of Health as varied from time to time and must not include practice in any facility in which he/she carries out his/her Normal Duties. Agreement will not be unreasonably withheld.

10 POSTGRADUATE FELLOW

- (a) The Employer may establish a classification of Postgraduate Fellow to be utilised for medical staff who have completed postgraduate medical training but have not yet been appointed as a Specialist/Senior Specialist in accordance with the definition in Clause 2 of this Award
- (b) Appointment will be limited to one year with eligibility for re-appointment on an annual basis for a maximum of 3 years unless there is specific agreement between the individual and the employer for a lesser period.
- (c) Remuneration will be as outlined in Schedule 1 to this Award.

11 ANNUAL LEAVE

- (a) All Staff Specialists shall be allowed 5 weeks annual leave on full pay in respect of each 12 months service with an Employer plus 1 day on full pay in respect of each public holiday occurring within the period of such leave.
- (b) Annual leave shall be given and shall be taken within a period of 6 months after the date when the right to the annual leave accrued; provided that the giving and taking of the whole or any separate period of such annual leave may, by mutual agreement between the Employer and the Staff Specialist be postponed for a further period not exceeding 6 months.
- (c) If the Staff Specialist and the Employer so agree, the annual leave or any such separate period may be taken wholly or partly in advance, before the Staff Specialist has become entitled to that leave, but where leave is taken in such circumstances a further period of annual leave shall not commence to accrue until the expiration of the 12 months in respect of which the annual leave or part thereof has been so taken.

- (d) Except as provided by this clause, payment shall not be made by an Employer to a Staff Specialist in lieu of any annual leave or part thereof nor shall any such payment be accepted by the Staff Specialist.
- (e) Subject to the provisions of the New South Wales *Annual Holidays Act 1944*, the Staff Specialist and the Employer should determine a mutually agreeable date from which annual leave is to be taken and unforeseen circumstances excepted, agreement should be reached two months prior to the commencement of the annual leave.
- (f) The Employer shall pay each Staff Specialist before entering upon annual leave his/her salary for the period of leave if requested by the Staff Specialist, otherwise, the payment will be made in the usual pay period.
- (g) Where the employment of a Staff Specialist is terminated, the Staff Specialist shall be entitled to receive proportionate payment for each completed month of service at the Salary which such Staff Specialist is entitled under this Award.
- (h) Where the annual holiday under this clause or any part thereof has been taken in advance by a Staff Specialist pursuant to subclause (c) of this clause, and
 - (i) the employment of the Staff Specialist terminates before he/she has completed the year of employment in respect of which such annual holiday or any part was taken; and
 - (ii) the sum paid by the Employer to the Staff Specialist as ordinary pay for the annual holiday or any part so taken in advance exceeds the sum which the Employer is required to pay to the Staff Specialist under subclause (f) of this clause;

the Employer shall not be liable to make any payment to the Staff Specialist under the said subclause (f), and shall be entitled to deduct the amount of such excess from any remuneration payable to the Staff Specialist upon the termination of the employment.
- (i) Staff Specialists are entitled to Annual Leave Loading in accordance with the provisions of Departmental Circular 95/85 as amended from time to time.

12 LONG SERVICE LEAVE

- (a) (i) Each Staff Specialist shall be entitled to two months long service leave on full pay or four months long service leave on half pay after 10 years service; thereafter additional long service leave shall accrue on the basis of 5 months long service leave or ten months on half pay for each ten years service.

The right of a Staff Specialist to exercise a right to long service leave on half pay is subject to mutual agreement between the Staff Specialist and the Employer. Agreement by the Employer will not unreasonably be withheld.
- (ii) Where the services of a Staff Specialist with at least 5 years service and less than ten years service are terminated by the Employer for any reason other than the Staff Specialist's serious and wilful misconduct, or by the Staff Specialist on account of illness, incapacity or domestic or other pressing necessity, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of 2 months long service leave for 10 years service.
- (b) For the purposes of subclause (a) of this clause -

- (i) Service shall mean continuous service with one or more Employer/s. For the purpose of this paragraph, continuous service shall have the same meaning as in the Transferred Officers Extended Leave Act, 1961
- (ii) Broken periods of service with one or more Employers shall count as service:
 - (1) where a Staff Specialist, after ceasing with an Employer, is re-employed by the same or another Employer subsequent to the operative date of this Award, providing that the Staff Specialist has completed at least 5 years continuous service from the date of his/her being so re-employed.
 - (2) where a Staff Specialist was employed by an Employer at the operative date of this Award and was entitled to count broken service under the provisions of industrial instruments binding on the employer prior to the date of this Award.
- (iii) Service shall not include:
 - (1) any period of leave without pay except in the case of Staff Specialists who have completed at least 10 years service (any period of absence without pay being excluded there from) in which case service shall include any period of leave without pay not exceeding 6 months taken after the operative date of this Award.
- (c) Long service leave shall be taken at a time mutually arranged between the Employer and the Staff Specialist.
- (d)
 - (i) On the termination of employment of a Staff Specialist, otherwise than by his/her death, the Employer shall pay to the Staff Specialist the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the Salary payable to the Staff Specialist at the date of such termination;

provided that where a Staff Specialist is transferring from one Employer to another he/she may, if he/she so desires and by agreement with the Employer and the proposed Employer, be allowed to retain his or her credit to long service leave in lieu of payment of the monetary value under this Sub-Clause.
 - (ii) Where a Staff Specialist who has acquired a right to long service leave, or after having had 5 years service and less than 10 years service, dies, the Staff Specialist's estate, shall be entitled to receive the monetary value of the leave not taken or which would have accrued to such Staff Specialist had his/her services terminated as referred to in Sub-Clause (d) (i), and such monetary value shall be determined according to the Salary payable to the Staff Specialist at the time of his/her death.
- (e) Rights to long service leave under this Clause shall be in replacement of rights to long service leave, if any, which at the commencement of this Award may have accrued or may be accruing to a Staff Specialist and shall apply only to persons in the employ of the Employer on or after the date of commencement of this Award. Where a Staff Specialist has been granted long service leave or has been paid its monetary value prior to the date of commencement of this Award, the Employer shall be entitled to debit such leave against any leave to which the Staff Specialist may be entitled pursuant to this Clause.
- (f) During a period of long service leave at half pay exercised consistent with subclause (a) (i) of this Clause, a Staff Specialist's Award entitlements will continue to accrue at the full time equivalent rate except annual leave which will accrue at a rate of 50%.

13 SICK LEAVE

A full-time Staff Specialist shall be entitled to sick leave on full pay calculated by allowing ten working days for each year of continuous service less any sick leave on full pay already taken, subject to the following conditions;

- (a) The Employer may require the sickness to be certified to by a legally qualified medical practitioner approved by the Employer or may require other satisfactory evidence of the sickness.
- (b) a Staff Specialist shall not be entitled to sick leave until after 3 months' continuous service.
- (c) a Staff Specialist shall not be entitled to sick leave on full pay for any period in respect of which such Staff Specialist is entitled to workers' compensation; provided, however, that an Employer shall pay to a Staff Specialist who has a sick leave entitlement under this clause the difference between the amount received as workers' compensation and full pay. The Staff Specialist's sick leave entitlement under this clause shall, for each week during which such difference is paid, be reduced by that proportion of 1 week which the difference paid bears to full pay.
- (d) For the purposes of this clause "service" means service in any of the positions covered by this Award, provided that any person who was employed by an Employer immediately prior to becoming a Staff Specialist in any position covered by this Award shall be entitled to add to his/her service under this Award the service that he/she has had under any other award/agreement covering his/her employment by such Employer(s) provided that Staff Specialists who are employed by an Employer at the date of the commencement of this Award shall retain to their credit until exhausted, any accumulation of sick leave to their credit immediately prior to such date, and provided further that such credit is not less than the entitlement otherwise prescribed by this clause.
- (e) An Employer shall not terminate the services of a Staff Specialist, except on the grounds of misconduct, during the currency of any period of paid sick leave unless an agreed independent registered medical practitioner certifies that a Staff Specialist is fit to continue in employment and the employee refuses to resume duty.
- (f) If a dispute arises as to whether an employee is fit to continue in employment, such dispute shall be addressed in accordance with Clause 3, Issue Resolution.

14 PERSONAL CARERS LEAVE

- (i) The entitlement to Personal/Carer's Leave, Family and Community Services Leave for Staff Specialists is set out in Departmental Circular 97/11 or its equivalent from time to time.
- (ii) The provisions of Departmental Circular 97/11 which relate to time off in lieu/payment of overtime have no application to Staff Specialists.

15 PARENTAL LEAVE

- (i) The entitlement to Maternity and Adoption Leave for Staff Specialists is set out in Departmental Circular 98/93 issued by the Department of Health as varied from time to time.
- (ii) The provisions of the Industrial Relations Act 1996 will apply in relation to paternity leave.

16 TELEPHONES

A Staff Specialist required by the Employer to have a telephone for the purposes of official duty at his/her home address shall, on presenting an account relating to that telephone be reimbursed -

- (i) three-quarters of the cost of the rental of the telephone; and
- (ii) the cost of all official STD telephone calls or its equivalent.

17 OFFICE, SECRETARIAL and ADMINISTRATIVE SUPPORT

Staff Specialists shall have access to reasonable office, secretarial and administrative support, as agreed between the Staff Specialist and the Employer, subject to resources being available. Mobile telephones and other communication devices may be provided to a Staff Specialist at the discretion of the Employer.

18 SPECIALIST MEDICAL ADMINISTRATORS

- (a) Where the Employer determines that Fellowship of the Royal Australian College of Medical Administrators is an essential requirement for appointment to a medical administration position, the holder of that position will be paid as a Specialist Medical Administrator in accordance with the arrangements set out below.

Title	Salary - Staff Specialist (SMP) Scale
Deputy Director of Medical Services B	Step 1 = Year 1 SMP
Deputy Director of Medical Services A Director of Medical Services C	Step 2 = Year 2 SMP
Director of Medical Services B Chief Executive Officer C	Step 3 = Year 3 SMP
Director of Medical Services A Rural Area Director of Medical Services Chief Executive Officer B	Step 4 = Year 4 SMP
Chief Executive Officer A Metropolitan Area Director of Medical Services	Step 5 = Year 5 SMP
	Step 6 = Senior SMP

Where a position covers more than one hospital, the highest-ranked hospital shall determine which step is applicable.

"Metropolitan" areas are Central Coast, Central Sydney, Hunter, Illawarra, Northern Sydney, South Eastern Sydney, South Western Sydney, Wentworth and Western Sydney.

Any Deputy Directors of Medical Services in Level C hospitals will not be paid under this Award.

Levels A, B and C are defined in lists of hospitals agreed between the parties, as varied from time to time.

- (b) (i) Subject to (b)(ii), there will be no progression between the salary rates in subclause (a) above.

- (ii) A Specialist Medical Administrator may be appointed to the step immediately above the appointment level if he/she meets the requirements set out in the definition of senior specialist in Clause 2, Definitions. For the purposes of this clause, "maximum salary" shall mean the Specialist Medical Administrator's appointment level.
- (c) Specialist Medical Administrators paid in accordance with this clause are not entitled to the provisions of Clause 5, Managerial Allowances.
- (d) Except as otherwise provided, Specialist Medical Administrators paid in accordance with this clause are entitled to the terms and conditions of employment applicable to Staff Specialists. Specialist Medical Administrators paid in accordance with this clause are not entitled to the terms and conditions of employment applicable to medical superintendents.

19 LABOUR FLEXIBILITY

- (a) The Employer may direct a Staff Specialist to carry out such duties as are reasonable, and within the limits of the Staff Specialist's skill, competence and training consistent with his/her classification, grouping and/or career stream provided that such duties are not designed to promote deskilling.
- (b) The Employer may direct a Staff Specialist to carry out such duties and use such equipment as may be required provided that the employee has been properly trained or has otherwise acquired the necessary skills in the use of and equipment.
- (c) Any direction issued by the Employer pursuant to sub-clause (a) and (b) shall be consistent with the Employer's responsibilities to provide a safe and healthy work environment.

20 ANTI-DISCRIMINATION

- (a) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the Industrial Relations Act 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (b) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (c) Under the Anti-Discrimination Act 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (d) Nothing in this clause is to be taken to affect:
 - i. any conduct or act which is specifically exempted from anti-discrimination legislation;
 - ii. offering or providing junior rates of pay to persons under 21 years of age;
 - iii. any act or practice of a body established to propagate religion which is exempted under section 56(d) of the Anti-Discrimination Act 1977;
 - iv. a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

- (e) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

21 REDUNDANCY

The provisions of Department of Health Circular No. 2000/78, as amended from time to time, shall apply.

22 NO EXTRA CLAIMS

The Federation undertakes not to pursue any new salaries or condition claims arising from negotiation of productivity and efficiency improvements covered by the Memorandum of Understanding between the NSW Government and the Federation dated 28 March 2000.

23 AREA, INCIDENCE AND DURATION

- a) This Award rescinds and replaces the Medical Officers - Hospital Specialists (State) Award published 3 October 1979 and all variations of that award.
- b) It shall apply to all Staff Specialists as defined in Clause 2, Definitions, of this Award.
- c) This Award will take effect the beginning of the first pay period to commence on or after 30 July 1999. The Award will remain in force until varied or rescinded.

SCHEDULE 1: STAFF SPECIALISTS AWARD RATES

Staff Specialist	First Pay Period 1/7/2003 \$ per annum
1	95,379
2	100,958
3	106,530
4	112,121
5	117,700
Senior	128,861
Postgraduate fellow	110,793

Managerial allowances	First Pay Period 1/7/2003 \$ per annum
Level 1	5,062
Level 2	8,860
Level 3	13,362

SCHEDULE 2

Part A

1. List of individuals

The following individuals shall be entitled to the provisions of Clauses 4A, 4B, and 4D of this Award with certain modifications, as set out below.

Dr J Bardon
Dr J Death
Dr M Donoghue
Dr P Gale
Dr D Kirkpatrick
Dr P Lipski
Dr G Nieuwkamp
Dr J Palmer
Dr M Pallas
Dr P Watt
Dr D York

2. Election rights

(a) An individual named in paragraph 1 above may elect to access either: -

Option 1 - the provisions set out in paragraph 3 below, i.e. a modified form of the provisions of Clauses 4A, 4B, and 4D of this Award; or,

Option 2 - on the condition that he/she forfeits the right to his/her existing motor vehicle arrangement, the provisions of Clauses 4A, 4B, and 4D of this Award without modification.

(b) This election may be exercised prior to each salary sacrifice review date.

(c) Subject to: -

- (i) the conditions outlined in paragraph 3 below; and,
- (ii) remaining in his/her current position (as at 22 October 1999); and,
- (iii) retaining an entitlement to payment of the abnormal hours or managerial allowance (as the case may be);

an individual who elects Option 1 will be able to continue to trade the relevant allowance (abnormal hours or managerial) for the provision of a motor vehicle for full private and business use. This entitlement will not be considered to be part of the salary sacrifice arrangements for the purposes of the calculation of the 30%.

(d) An individual who elects to access Option 2 will have no right of reversion to the existing motor vehicle arrangement. The parties agree that such an individual will be deemed to have had his/her name deleted from the list in paragraph 1 above until such time as the Award is varied to reflect that election.

3. Modifications

If an individual elects Option 1 in paragraph 2 above he/she may access the provisions of Clauses 4A, 4B and 4D of the Award subject to an additional contribution being made to the employer in accordance with the following.

Each individual who elects Option 1 in paragraph 2 above shall contribute an amount equivalent to 55% of the average FBT liability for the motor vehicles provided as calculated for those individuals participating in this option. Such calculation is to be based on the assumption that each individual is packaging the maximum permissible FBT exempt amount. This FBT calculation shall be made at the end of each FBT year and shall be applied to contributions for the following year.

PART B

1. List of individuals

The following individuals shall be entitled to the provisions of Clauses 4A, 4B, 4C and 4D of this Award with certain modifications, as set out below.

Dr V de Carvalho	Dr A Gill
Dr R Burstal	Dr P Byth
Dr J Gani	Dr R Kerridge
Dr W Saul	Dr C Wake

2. Modifications

The individuals listed immediately above shall be entitled to the provisions of Clauses 4A-D of the Award. In addition, whilst ever these individuals remain in their current positions (as at 22 October 1999) and retain an entitlement to payment of the abnormal hours allowance or managerial allowance (as the case may be), they shall be entitled to continue the current arrangements approved by the Health Administration Corporation under which they forego payment of the abnormal hours allowance or managerial allowance (as the case may be), receive a motor vehicle under SES provisions and pay the difference up to the SES motor vehicle contribution rate. This entitlement is subject to payment of the full amount of fringe benefits tax payable by SES officers, i.e. the FBT exemption will not be shared between the employer and the employee. This entitlement will not be considered to be part of the salary sacrifice arrangements for the purposes of the calculation of the 30%.

Schedule 3: Recognised Australasian Specialist Colleges

Australasian College for Emergency Medicine

Australasian College of Dermatologists

Australian and New Zealand College of Anaesthetists

- Joint Faculty of Intensive Care Medicine
- Faculty of Pain Medicine

Royal Australasian College of Medical Administrators

Royal Australasian College of Physicians

- Australasian Chapter of Palliative Medicine
- Australasian Chapter of Community and Child Health
- Australasian Chapter of Addiction Medicine
- Joint Faculty of Intensive Care Medicine
- Australasian Faculty of Public Health Medicine
- Australasian Faculty of Rehabilitation Medicine
- Australasian Faculty of Occupational Medicine

Royal Australasian College of Surgeons

Royal Australian and New Zealand College of Psychiatrists

Royal Australian and New Zealand College of Radiologists

- Faculty of Radiation Oncology

Royal Australian College of Ophthalmologists

Royal College of Pathologists of Australasia

Appendix B

Salaried Senior Medical Practitioners
Determination (revised version)

SALARIED SENIOR MEDICAL PRACTITIONERS

DETERMINATION (REVISED VERSION)

INDEX

4	ABNORMAL WORKING HOURS AND RECALL
1	DEFINITIONS
3A	IMPLEMENTATION OF GST
3	INFRASTRUCTURE CHARGES
6	ISSUE RESOLUTION
2	PRIVATE PRACTICE ARRANGEMENTS
5	TRAINING, EDUCATION AND STUDY LEAVE

1 DEFINITIONS

- (a) The Definitions which appear in Clause 2 of the Salaried Senior Medical Practitioners (State) Award also apply to this Determination.
- (b) In addition to the definitions referred to in sub-clause (a), the following definitions also apply to this Determination.

“Account” means the financial institution account in the name of the individual Senior Medical Practitioner or in the name of an agreed group of Senior Medical Practitioners.

“annual component of the infrastructure charge” means the amount paid from the amount remaining to the credit of the account in the name of the Senior Medical Practitioner or agreed group of Senior Medical Practitioners in the Private Practice Trust Fund at the end of the financial year after deduction of the monthly charges for the Public Health Organisation and drawings to the Senior Medical Practitioner or agreed group of Senior Medical Practitioners with the addition of 10% to cover GST which the Public Health Organisation is required to include in its GST calculation;

“Arrangement” means a right of private practice arrangement.

“General Fund” means the operating budget of the Public Health Organisation.

“GST” means the goods and services tax imposed under Commonwealth legislation including *A New Tax System (Goods and Services Tax) Act 1999*;

“Facility charge”, “facility fee” and “monthly charge” mean the monthly component of the infrastructure charge;

“infrastructure charge” means the monthly component of the infrastructure charge (however called) and the annual component of the infrastructure charge;

“Private Practice Trust Fund” means the fund in existence immediately prior to the commencement of this Determination or it’s equivalent from time to time and which contains accounts in the name of an individual Senior Medical Practitioner or group of Senior Medical Practitioners.

“Public health organisation” is as defined in section 7 of the Health Services Act 1997.

“Second Trust Fund” means the fund into which the balance of the Private Practice Trust Funds are transferred at the end of each financial year.

2 PRIVATE PRACTICE ARRANGEMENTS (excluding Postgraduate Fellows)

(a) General Provisions

(i) Upon commencement of employment, a Senior Medical Practitioner shall elect to participate in a level arrangement ie either a Level 1, 2, 3, 4 or 5. Senior Medical Practitioners employed at the date of this Determination will make an election pursuant to this sub-clause immediately after the commencement of this Determination. A Senior Medical Practitioner may then, if he/she so chooses, elect prior to 30 June each year to change his/her level arrangement (drawing rights) to commence on 1 July of the following financial year. This election cannot be changed during the year unless by the mutual agreement of the Senior Medical Practitioner and the Public Health Organisation. A Senior Medical Practitioner is under no compulsion to alter the level arrangement under which he/she works. A summary table of the private practice arrangements is provided in Schedule 1 of this Determination.

Current Scheme "D" Senior Medical Practitioners may only make an election in accordance with the provisions of subclause (d) below.

- (ii) The salaries referred to in Schedule 2, Column 2 of this Determination, as varied from time to time to reflect the Award, shall be paid to Senior Medical Practitioners subject to the level arrangement elected. The salaries shall be paid during paid absences on approved leave and shall be paid where the monetary value of leave is paid on termination of employment. These salaries include the Award salary and the special allowance (17.4% of Award salary). PAYE deductions are to be made from these payments.
- (iii) The allowances referred to in Schedule 2, Column 3 of this Determination shall be paid during paid absences on approved leave, where the monetary value of leave is paid on termination of employment and for superannuation and voluntary redundancy purposes. PAYE deductions are to be made from these payments.
- (iv) Subject to subclause (v) below, the drawing rights referred to for Levels 2 to 5 (refer Schedule 2, Column 4) shall be payable during paid absences on workers compensation (subject to a maximum of six months), approved annual, sick, long service, parental and training education and study leave but shall not be paid where the monetary value of leave is paid out on termination of employment. The drawing rights shall not be taken into account for the calculation of any entitlements or public sector superannuation purposes. PAYE deductions are not to be made from these payments.
- (v) Senior Medical Practitioners working pursuant to part-time agreements or taking long service leave or maternity leave at half pay are entitled to drawing rights on a pro rata basis. Senior Medical Practitioners on leave without pay (including maternity/paternity leave) are not entitled to drawing rights.

- (vi) Senior Medical Practitioners who elect either Level 2, 3, 4 or 5 will contribute to the same Private Practice Trust Fund or sub-ledger in accordance with subclause (viii) below.
- (vii) An agreed group can elect to share all benefits of the Private Practice Trust Fund (subject to the Trustees agreement) to the limit of their entitlement amongst the agreed group, irrespective of the length of service of any member of the agreed group.
- (viii) An agreed group for the purpose of this clause means a group of Senior Medical Practitioners (whether an individual, in partnership or other approved legal entity) who elect to form a group for the purpose of a sub-ledger of the Private Practice Trust Fund.
- (ix) All accounts for services rendered to private patients by a Senior Medical Practitioner working under Levels 1-5 are to be issued by the Public Health Organisation acting as the agent for the Senior Medical Practitioner.
- (x) The Public Health Organisation must obtain, in writing, authority from each Senior Medical Practitioner to issue accounts in his/her name.
- (xi) A Senior Medical Practitioner shall exercise his/her right of private practice subject to:
 - (1) the provisions of Clause 8 of the Award; and
 - (2) the private practice occurring within the agreed facilities; and
 - (3) the income arising from the exercise of such right of private practice (including the income generated whilst engaged in practice in accordance with Clause 8 of the Award) being paid into the Private Practice Trust Fund.

The provisions of this clause do not apply to "Outside Practice" pursuant to Clause 9 of the Award.

- (xii) Payment of drawing rights up to the maximum prescribed (refer Schedule 2, Column 4) averaged over the year to date is to be made calendar monthly, subject to there being sufficient trust funds available.

(b) Level Arrangements

(i) Level 1

- (1) A Senior Medical Practitioner who elects a Level 1 arrangement pursuant to this Clause, will be paid the salary referred to in Schedule 2, Column 2 of this Determination.

- (2) A Senior Medical Practitioner who elects Level 1 shall be entitled to an allowance of 20% of salary (refer Schedule 2, Column 3) in return for the assignment of the billings from the Senior Medical Practitioner's private practice to the Public Health Organisation.

(ii) Level 2

- (1) A Senior Medical Practitioner who elects a Level 2 arrangement pursuant to this Clause will be entitled to salary referred to in Schedule 2, Column 2 of this Determination.
- (2) A Senior Medical Practitioner who elects Level 2 shall be entitled to an allowance of 14% of salary (refer Schedule 2, Column 3).
- (3) A Senior Medical Practitioner who elects a Level 2 arrangement will have drawing rights (to be made calendar monthly) up to a maximum of 24% of the full time salary applicable for a Level 4 arrangement for a Senior Medical Practitioner as referred to in Schedule 2, Column 2 of this Determination. Drawing rights are subject to sufficient individual or agreed group contributions being available in the Private Practice Trust Fund.
- (4)
 - (A) For a Senior Medical Practitioner who has elected Level 2, where individual or agreed group contributions are not sufficient to permit drawings of up to 11% of salary (as provided in Schedule 2, Column 2) averaged over the year to date, supplementation equalling the difference between the drawings and 11% of salary will be made monthly by the Public Health Organisation from that proportion of the charges which would otherwise have been appropriated as facility charges paid to the Public Health Organisation by Senior Medical Practitioners.
 - (B) Where an individual Senior Medical Practitioner has elected a Level 2 arrangement and individual or agreed group contributions are sufficient to permit drawings of 11% of salary (as provided in Schedule 2, Column 2) averaged over the year to date but not sufficient to permit drawings of 18% of salary averaged over the year to date, supplementation equalling the difference between the drawings and 18% of salary will be made by the Public Health Organisation monthly. The Public Health Organisation supplementation is therefore up to 7% of salary, where this subclause applies.

(iii) Level 3

- (1) A Senior Medical Practitioner who elects a Level 3 arrangement pursuant to this Clause will be entitled to salary referred to in Schedule 2, Column 2 of this Determination.

- (2) A Senior Medical Practitioner who elects Level 3 shall be entitled to an allowance of 8% of salary (refer Schedule 2, Column 3).
- (3) A Senior Medical Practitioner who elects a Level 3 arrangement will have drawing rights (to be made calendar monthly) up to a maximum of 36% of the full time salary applicable for a Level 4 arrangement for a Senior Medical Practitioner as referred to in Schedule 2, Column 2 of this Determination. Drawing rights are subject to sufficient individual or agreed group contributions being available in the Private Practice Trust Fund.
- (4) For a Senior Medical Practitioner who has elected Level 3, where individual or agreed group contributions are not sufficient to permit drawings of up to 17% of salary (as provided in Schedule 2, Column 2) averaged over the year to date, supplementation equalling the difference between the drawings and 17% of salary will be made monthly by the Public Health Organisation from that proportion of the charges which would otherwise have been appropriated as facility charges paid to the Public Health Organisation by Senior Medical Practitioners.

(iv) Level 4

- (1) A Senior Medical Practitioner who elects a Level 4 arrangement pursuant to this Clause will be entitled to salary referred to in Schedule 2, Column 2 of this Determination.
- (2) A Senior Medical Practitioner who elects a Level 4 arrangement will have drawing rights (to be made calendar monthly) up to a maximum of 50% of the full time salary applicable for a Level 4 arrangement for a Senior Medical Practitioner as referred to in Schedule 2, Column 2 of this Determination. Drawing rights are subject to sufficient individual or agreed group contributions being available in the Private Practice Trust Fund.
- (3) For a Senior Medical Practitioner who has elected Level 4, where individual or agreed group contributions are not sufficient to permit drawings of up to 25% of salary (as provided in Schedule 2, Column 2) averaged over the year to date, supplementation equalling the difference between the drawings and 25% of salary will be made monthly by the Public Health Organisation from that proportion of the charges which would otherwise have been appropriated as facility charges paid to the Public Health Organisation by Senior Medical Practitioners.

(v) Level 5

- (1) A Senior Medical Practitioner who elects a Level 5 arrangement pursuant to this Clause will be entitled to salary which represents 75% of the rate applicable for a Level 4 arrangement for a Senior Medical Practitioner (refer Schedule 2, Column 2 of this Determination).
- (2) A Senior Medical Practitioner who elects a Level 5 arrangement will have drawing rights (to be made calendar monthly) to a maximum of 100 % of the full time salary applicable for a Level 4 arrangement for a Senior Medical Practitioner as referred to in Schedule 2, Column 2 of this Determination. Drawing rights are subject to sufficient individual or agreed group contributions being available in the Private Practice Trust Fund.
- (3) The 75% of salary referred to in subclause (1) above reflects the fact that leave without pay is permitted for 25% of the full-time commitment in that speciality. No private practice is to be undertaken during the 75% of time for which a salary is payable (this relates to aggregated time and means that participating specialist must not spend more than an average of 25% of his/her total working time in the treatment of private patients).

(c) Postgraduate Fellow

A Senior Medical Practitioner appointed as a Postgraduate Fellow pursuant to Clause 10 of the Award has no entitlement to any Private Practice Arrangement.

(d) Preserved Arrangement - Scheme D

- (i) A Senior Medical Practitioner who participated in Scheme D immediately prior to the commencement of this Determination, will be entitled to 50% of the award salary plus the 17.4% special allowance, as varied from time to time. PAVE taxation deductions are to be made in respect of these payments.

The general terms and conditions will be those applying under Scheme D immediately prior to the commencement date of this Determination (refer to Departmental Circular 90/39).

- (ii) Where a Senior Medical Practitioner's current arrangement is Scheme D then:
 - (A) the Senior Medical Practitioner can only move to another Level (ie Private Practice Arrangement) by agreement with the Public Health Organisation; and
 - (B) upon moving to another private practice arrangement the Senior Medical Practitioner cannot move back to Scheme D.

- (iii) The Scheme D arrangement as provided for in Departmental Circular 90/39 is not available to any Senior Medical Practitioner who is not employed under Scheme D as at the date of this Determination.

(e) Outside Practice (ie not as an employee of the Public Health Organisation)

- (i) Income generated by a Senior Medical Practitioner while engaged in practice pursuant to Clause 9 of the Award, will be retained exclusively by the Senior Medical Practitioner. The Senior Medical Practitioner is under no obligation to provide records regarding the income generated pursuant to Clause 9 of the Award. The Senior Medical Practitioner will be liable for all expenses incurred while engaged in practice including professional indemnity insurance, administration, facility costs and any other expenses arising from the conduct of such practice.
- (ii) A breach of the agreement referred to in Clause 9 of the Award will be dealt with pursuant to Clause 3 of the Award.
- (iii) A referral to a Senior Medical Practitioner for the work prescribed in Clause 9 of the Award must be in accordance with the provisions of the Health Insurance Act or its equivalent from time to time.
- (iv) The use of any of the Public Health Organisation's employees, equipment or other resources in conducting outside practice is not permitted unless approved by the Chief Executive Officer.

(f) Privately Referred Non-inpatients

- (i) The charging arrangements for privately referred non-inpatients to all staff specialists who have been granted rights of private practice by the Public Health Organisation remain unaltered (refer to previous Departmental Circulars 80/252, 80/290, 81/355 and 90/39).
- (ii) The charging arrangements will not affect those patients who are inpatients or registered non-inpatients of a recognised hospital but will apply to privately referred non-inpatients who satisfy the following conditions.
 - (A) The referral must be to the doctor by name and not to the hospital or the outpatient department.
 - (B) The referral must be made by a doctor in private practice (including a staff specialist or visiting medical officer exercising a right of private practice); it must not be made by an intern, resident medical officer, career medical officer, registrar or medical superintendent.
 - (C) No patient who presents at the emergency department or an outpatient clinic is to be privately referred for treatment of, or examination relating to, the episode of illness which caused

him/her to present at the emergency department or the outpatient clinic.

- (D) At the time the appointment is being made, patients are to be advised that they will not be treated as registered non-inpatients of the hospital, and that they will be charged by the attending Senior Medical Practitioner/s as well as for diagnostic services ordered by that Senior Medical Practitioner.
- (E) Referrals are to be genuine referrals made at “arm’s length”, ie the referral letter should be completed before the patient’s first appointment is made for an examination, treatment or consultation.

3 INFRASTRUCTURE CHARGES

- (a) All fees received from the rendering of accounts to private patients seen by Senior Medical Practitioners employed in a Level 2, 3, 4 or 5 arrangement pursuant to Clause 2, Private Practice Arrangements of this Determination shall be paid into the Private Practice Trust Fund.
 - (aa) From the fees paid into the Private Practice Trust Fund, infrastructure charges are to be paid in accordance with Schedule 3 of the Determination.
 - (b) From the fees paid into the Private Practice Trust Fund, facility fees (to compensate for the provision of services and the use of facilities used in generating such private practice fees), as a percentage of the gross fees received, shall be paid to the Public Health Organisation as a first charge against the Private Practice Trust Fund.
 - (c) The facility fees paid in accordance with authorised arrangements as at the date of this Determination shall continue to apply without variation until the review outlined in subclause (d) below is completed. For the purposes of this clause, “authorised arrangements” shall mean Department of Health Circular No. 1977/15 (as amended by 1978/236), or schedules of fees attached to enterprise agreements approved by the Director-General, or any specific variations to facility fees approved by the Director-General.
 - (d) The parties agree that a review of facility fees will be completed within 12 months of the making of this Determination. Upon completion and implementation of the review the facility fees identified in the review will apply to all Senior Medical Practitioners.
 - (e) The annual component of the infrastructure charge is to be paid into the Second Trust Fund.

3A IMPLEMENTATION OF GST

NOTE: Schedule 3 to this Determination can be found at Attachment 2 in Departmental Circular 2000/106.

- (a) Clauses 1, 2, 3 and 5 of this Determination are to be read subject to this clause. In the event of any inconsistency between this clause and any other provision of the Determination this clause is to prevail.
- (b) The Public Health Organisation and Senior Medical Practitioners are to comply with the Procedures Document at Schedule 3 of the Determination, as varied from time to time by further determination.
- (c) The monthly component of the infrastructure charge under Clause 3 is varied from 1 July 2000 to have 10% added to cover GST which the Public Health Organisation is required to include in its GST calculation.
- (d) Any amounts required to be calculated in accordance with this Determination are to take account of the respective GST liabilities and rights to GST input tax credits of the Public Health Organisation and Senior Medical Practitioners.

Senior Medical Practitioners Levels 2- 5

- (e) Drawings for Senior Medical Practitioners Levels 2, 3, 4 and 5 under Clause 2 are to be varied in accordance with following subclauses:

Senior Medical Practitioners not in a Private Practice Partnership with a monthly charge of less than 90%

- (i) The above Senior Medical Practitioners' drawings are to be reduced by an amount equal to their net GST credits referable to private practice activities (exclusive of annual infrastructure GST effects) in accordance with the procedures set out at Schedule 3.

Senior Medical Practitioners in a Private Practice partnership with a monthly charge of less than 90%

- (ii) The partnership, on behalf of the above Senior Medical Practitioners, is to pay into the Private Practice Trust Fund an amount equivalent to its net GST credits referable to private practice activity (exclusive of annual infrastructure GST effects) in accordance with the procedures set out at Schedule 3.
- (iii) The partnership will pay these amounts into the Private Practice Trust Fund, on a quarterly basis, by the date required by and in accordance with the Procedures at Schedule 3. If the partnership has not paid such amounts then drawings of the Senior Medical Practitioner members of the partnership, on a pro-rated basis, are to be reduced by such amounts in that month and successive months as required, in

accordance with the Procedures set out at Schedule 3.

Senior Medical Practitioners (whether individually or in partnership) with a monthly charge of 90% or more

- (iv) The above Senior Medical Practitioners are to pay into the Private Practice Trust Fund an amount equivalent to their net GST credits referable to private practice activity (exclusive of annual infrastructure GST effects) in accordance with the procedures set out at Schedule 3.
- (v) If such a Senior Medical Practitioner does not pay such amount to the Private Practice Trust Fund by the date required by and in accordance with the Procedures set out at Schedule 3, then the Senior Medical Practitioner's drawings are to be reduced by such amount in that month and successive months as required, in accordance with the Procedures set out at Schedule 3.

Annual Component of the Infrastructure Charge

- (iv) Senior Medical Practitioners or a Senior Medical Practitioner partnership on behalf of its members are to pay to the Private Practice Trust Fund an amount equivalent to 1/11th of the annual component of the infrastructure charge by the date required by and in accordance with the Procedures at Schedule 3.
- (vii) If a Senior Medical Practitioner, or a Senior Medical Practitioner partnership on behalf of its members does not pay to the Private Practice Trust Fund an amount equivalent to 1/11th of the annual component of the infrastructure charges by the date required by and in accordance with the Procedures set out at Schedule 3, then the Senior Medical Practitioner's drawings are to be reduced by such amount in that month and successive months as required, in accordance with the Procedures set out at Schedule 3.

Senior Medical Practitioners changing to Level 1

- (f) The right, under Clause 2, to a change of election to Level 1 is conditional upon a Senior Medical Practitioner paying to the Private Practice Trust Fund all outstanding amounts relating to infrastructure charges for the period prior to changing to Level 1. A change of election to Level 1 may only be effected where the relevant Senior Medical Practitioner has paid the requisite amount to the Private Practice Trust Fund or provided the Public Health Organisation with an irrevocable written authority to deduct from his/her drawings and/or salary the requisite amount and pay it into the Private Practice Trust Fund. The Public Health Organisation is to give a Senior Medical Practitioner seven days notice of its intention to deduct in accordance with this authority.

Termination of employment

- (g) Senior Medical Practitioners are to provide to the Public Health Organisation an irrevocable written authority for the Public Health Organisation to deduct from termination payments (including annual leave and long service leave payouts) an amount to meet all outstanding liabilities they may have in relation to infrastructure charges arising from the exercise of their rights of private practice. The Public Health Organisation is to give a Senior Medical Practitioner seven days notice, where practicable, of its intention to deduct in accordance with this authority in the event that payments are not made in accordance with the Procedures Document at Schedule 3.
- (h) Senior Medical Practitioners employed as at 1 July 2000 are to provide the Public Health Organisation with such written authorisation as soon as practicable.
- (j) Senior Medical Practitioners commencing employment are to provide such written authorisation to the Public Health Organisation on commencement of employment

4 ABNORMAL WORKING HOURS AND RECALL

- (a) It is acknowledged and recognised that Senior Medical Practitioners are required to be available for reasonable on call and recall outside of their Normal Duties and that there is a component within the salary which reflects this.
- (b) The parties agree that some Senior Medical Practitioners may be required to work in excess of Normal Duties and reasonable on call/recall to provide direct patient care.
- (c) Where a Senior Medical Practitioner is required to work in excess of Normal Duties and reasonable on call/recall to provide direct patient care, the Public Health Organisation, in conjunction with the affected Senior Medical Practitioner, will review the work pattern of the Senior Medical Practitioner to reduce the number of hours. The review will attempt to reduce the number of hours worked by the Senior Medical Practitioner to conform with sub-clause (a) and the reduction may be achieved by means of time in lieu or other variations in Normal Duties as agreed between the Senior Medical Practitioner and the Public Health Organisation.
- (d) In the first instance every effort should be made to reduce the number of hours. However, in those exceptional circumstances where the hours worked by the Senior Medical Practitioner cannot be reduced in accordance with sub-clause (c) and this work:
 - is required by the Public Health Organisation, and
 - relates to direct patient care, and
 - occurs in accordance with subclause (e) below,

the hours may be determined to be abnormal and an additional payment may be authorised by the Chief Executive Officer.

- (e) Subclause (d) above only applies when a Senior Medical Practitioner is regularly required by the Public Health Organisation to work abnormal hours over a six month period. In these circumstances, a payment of up to 5% of the rate applicable to a Senior Medical Practitioner under a Level 1 arrangement (including the Special Allowance and allowance for the assignment of Private Practice earnings), as provided for in Clause 2 of this Determination, may be authorised. Any such payment will be subject to review every six months. The review should again attempt to reduce the number of hours worked by the Senior Medical Practitioner to conform with subclause (a).

Following approval by the Chief Executive Officer, payments may commence at the commencement of this Determination where a review of the hours worked in the 6 months immediately preceding this Determination revealed that the Senior Medical Practitioner worked abnormal hours in accordance with subclause (d).

- (f) Where the six monthly review identifies an exceptionally high level of abnormal hours which cannot be reduced, the Chief Executive Officer may submit all relevant details of that individual case to the Director-General. The submission should include evidence of how the allowance can be demonstrated to be cost neutral in accordance with Department of Health guidelines, as amended from time to time. In such cases, the Chief Executive Officer may recommend payment of up to 10% of the rate applicable to a Senior Medical Practitioner under a Level 1 arrangement (including the Special Allowance and allowance for the assignment of Private Practice earnings), as provided for in Clause 2 of this Determination.

Upon commencement of this Determination the Chief Executive Officer may immediately make application to the Director-General for approval to pay the allowance to a Senior Medical Practitioner where a review of the hours worked by the Senior Medical Practitioner in the 6 months immediately preceding the date of making this Determination revealed that an exceptionally high level of abnormal hours were worked by the Senior Medical Practitioner.

In making the application the Chief Executive Officer may recommend that payment of the allowance should commence from a time agreed between the Senior Medical Practitioner and the Chief Executive Officer, but in any case the payment shall not commence earlier than the date of ratification of the Award.

This recommendation must include details of the cost neutral basis of such a payment. This payment would be made instead of, not in addition to, the payment described in subclause (e) above.

- (g) The payments provided under (e) and (f) above shall not be paid to more than 10% of the Senior Medical Practitioners employed by the Public Health Organisation at any one time without the written approval of the Director-General. Chief Executive Officers who believe that the 10% figure is inappropriate because they employ only

a small number of Senior Medical Practitioners should make a written submission to the Director-General about appropriate parameters for the payment of the allowance.

- (h) The payments provided under (e) and (f) above shall not count as salary for the purposes of calculating any entitlement.

5 TRAINING, EDUCATION AND STUDY LEAVE (excluding Postgraduate Fellows)

- (a) The Parties agree that the Health System has a responsibility to ensure that all Senior Medical Practitioners employed in the Health System have appropriate and equitable access to Training, Education and Study Leave that is relevant to both the Senior Medical Practitioner and the Area.

- (b) Leave Entitlement - The parties agree that Senior Medical Practitioners are entitled to 25 calendar days of Training, Education and Study Leave each year.

- (c) Funding entitlement -

- (i) The parties agree that Senior Medical Practitioners are entitled to funding for the purpose of Training, Education and Study Leave. Such entitlement shall accumulate to a maximum of the dollar value of two years of entitlement unless otherwise approved by the Chief Executive Officer.

- (ii) Based on the approved travel and leave arrangements, funds will be paid to the Senior Medical Practitioner on application.

- (iii) The entitlement for Level 1 Senior Medical Practitioners is outlined in (l) below. The entitlement for Senior Medical Practitioners employed under Levels 2 to 5 is a matter for the trustees of the appropriate Trust Fund to determine having regard to the payment made to Senior Medical Practitioners under Level 1.

- (iv) Funding will be based on a dollar value to be determined by a committee representative of the parties. The committee will use the formula contained in subclause (l). It is agreed that the amount identified in the Central Sydney Area Health Service Staff Specialists Wages Agreement in respect to the annual sum shall apply to all Senior Medical Practitioners until the committee has reached agreement.

(d) Senior Medical Practitioners (Fractional Appointments)

- (i) The entitlement to leave and funding for Senior Medical Practitioners who are working pursuant to a Part Time Agreement is pro rata based on the full-time rate.

- (ii) Senior Medical Practitioners working pursuant to a Part Time Agreement may accumulate the same maximum dollar value as a full-time Senior Medical Practitioner ie accrue two years full time equivalent entitlement as provided for in subclause (c).

- (iii) The Chief Executive Officer may require a Senior Medical Practitioner who is working pursuant to a Part Time Agreement to take Training, Education and Study Leave at the full-time equivalent daily rate. Alternatively, by agreement with the Chief Executive Officer, a Senior Medical Practitioner who is working pursuant to a Part Time Agreement may take Training, Education and Study Leave at the same part-time daily rate of pay, provided that his/her leave entitlement is not exceeded. Agreement will not be unreasonably withheld. Full-time Senior Medical Practitioners shall take Training, Education and Study Leave, however accrued, at the full-time equivalent daily rate.
- (iv) Payment of the per diem element of the available funding should match the rate at which Training, Education and Study Leave is taken, eg. a part-time Senior Medical Practitioner who takes Training, Education and Study Leave at the full-time daily rate of pay should also be paid the per diem funding at the full-time daily rates, provided that his/her entitlement is not exceeded.

(e) Source of Funding

- (i) The funding provided for in (c) above, will be funded by:
 - 1) the General Fund for Senior Medical Practitioners employed pursuant to Level 1.
 - 2) the appropriate Trust Fund for Senior Medical Practitioners employed pursuant to Levels 2 to 5. The quantum of the funding is a matter for the trustees of the appropriate Trust Fund to determine having due regard to the payment made to Senior Medical Practitioners under Level 1. Such allocation is to be limited to the ability of the appropriate Trust Fund to meet the allocation.

The funding provided for in (c) above is a minimum entitlement. Additional drawings for Senior Medical Practitioners employed pursuant to Levels 2 to 5 will be dependent on the monies available in the appropriate trust Fund.

Note: Any questions about the “appropriate Trust Fund” should be directed to the Workforce Relations Branch of the Department of Health.

- (ii) Where a Senior Medical Practitioner has accrued a right to Training, Education and Study Leave with the same Public Health Organisation partly under Level 1 and partly under Level 2, 3, 4 or 5, he/she shall be entitled to access from the Public Health Organisation’s general fund 1/12th of the annual funding entitlement pursuant to subclause (c) above for each completed month of service under Level 1 (subject to subclause (c) (i) of this Determination), less any funding entitlement already taken. In the cases of Levels 2 to 5, approval must be obtained from the trustees or the body authorised by the trustees, in order for that portion of the funding entitlement accrued under Level 2, 3, 4, or 5 to be accessed.

(f) Approval of Leave

Training, Education and Study Leave can be taken for purposes relevant to both the Senior Medical Practitioner and the Public Health Organisation, at the discretion of the Senior Medical Practitioner, within or outside Australia, subject to approval by the Chief Executive Officer or his/her nominee:

Approval should not be unreasonably withheld.

(g) If a dispute occurs as to the interpretation of this Clause, the matter will be dealt with in accordance with the Issues Resolution, Clause 6 of this Determination.

(h) The Parties agree that leave entitlements to Conference and Study Leave accrued prior to the commencement of this Determination pursuant to Circular 90/39 or any Enterprise Agreement, will be transferred in full, to the entitlements accrued pursuant to this Clause.

In respect to leave accrued for study leave purposes a Senior Medical Practitioner who has been employed for less than 5 years will be entitled to a proportionate amount of leave based on his/her length of service less any study leave taken.

(i) Transfer of leave entitlement - a senior medical practitioner who transfers:

- (i) between levels pursuant to Clause 2 of this Determination; or,
- (ii) between Public Health Organisations in accordance with the provisions of the *Transferred Officers Extended Leave Act*:

will have his/her leave entitlement pursuant to subclause (b) of this clause transferred at the same time on the basis of 25/12 days for each completed month of service, less any leave already taken.

(j) A Senior Medical Practitioner will not be entitled to any entitlement pursuant to this Clause upon retirement, resignation (except as outlined in subclause (i) above), redundancy or dismissal.

(k) This Clause shall not apply to Senior Medical Practitioners participating in Scheme D (current scheme), who shall receive Conference and Study Leave in accordance with circular number 90/39 issued by the Department of Health on 23 May 1990.

(l) Pursuant to Subclause (c) (iv) the funding entitlement will be determined by the committee based on the following:

i) Airfare

I. Total each year based on:

- a) 3/5 of a Qantas round the world business class airfare (including departure tax); and

- b) 1 Qantas Sydney-Perth business class airfare.
- 2. This money may be used to purchase any number of airfares for the Senior Medical Practitioner provided the total value is not exceeded.
- 3. On 30 June each year any residual will be indexed by using the average of the airfares on that date divided by the average of the airfares for 30 June of the preceding year.

ii) Perdiem

- 1. Total each year based on:
 - a) Overseas: Based on sample of hotel rates and published government incidentals allowances for representative capital cities for 18 days. This should be calculated at June 30 of each year. The calculation should be based on the 10 cities most commonly visited and the 3 hotel chains most commonly used by Senior Medical Practitioners.
 - b) Local: Based on government capital city rates for 7 days available at 30 June.
- 2. These amounts are totalled each year and may be used in any combination of overseas or local travel.
- 3. If insufficient funds exist to pay for registration, airfares, or other allowable expenses then all or some of the per diem may be used for this purpose.
- 4. On 30 June each year any residual of the funding entitlement will be indexed by multiplying the residual by the total of the assigned value for overseas and Australian per diems divided by the previous year's total.

iii) Registration

- 1. Based each year on:
 - a) 1 overseas conference
 - b) 1 Australian conference
 - c) 2 local continuing education meetings.
- 2. This money may be applied to any number of registrations provided the total entitlement is not exceeded.
- 3. On 30 June each year any residual will be indexed by using the assigned value for conference registration divided by the assigned value for the previous year.

(m) Specialist Medical Administrators

A Specialist Medical Administrator employed in accordance with Clause 18 of the Award may make a once-only election for the term of the Award to either:

- (i) accrue the Training, Education and Study Leave funding entitlement pursuant to this clause; or
- (ii) use a motor vehicle consistent with Senior Executive Service guidelines and charges.

The election must be made within one month of the date of commencement of the Award, or the commencement of employment.

If a Specialist Medical Administrator elects option (ii) above, he/she will be entitled to access an amount of Training, Education and Study Leave annual funding entitlement which represents the difference in value between (i) and (ii) above. With regard to the accumulation of the funding entitlement, a Specialist Medical Administrator who elects option (ii) above may accumulate the same dollar value as a Specialist Medical Administrator who elects option (i) above. The number of days of Training, Education and Study Leave available shall be reduced by the same proportion as the annual funding entitlement is reduced.

This provision shall not apply to Senior Medical Practitioners who are not Specialist Medical Administrators employed in accordance with Clause 18 of the Award.

6 ISSUE RESOLUTION

Any disagreement in relation to matters contained within this Determination will be resolved in accordance with the Issue Resolution procedure provided for in Clause 3 of the Award.

SCHEDULE 1

SCHEDULE 1 – EXISTING PRIVATE PRACTICE ARRANGEMENTS						
(1)	(2)	(3)	(4)	(5)	(6)	(7)
LEVEL	SALARY	ALLOWANCE	DRAWING RIGHTS	MAXIMUM INCOME	GUARANTEED SUPPLEMENTATION IF INSUFFICIENT BILLING	GUARANTEED SUPPLEMENTATION IF BILLING SUFFICIENT TO ACHIEVE 11% OF SALARY BUT NOT 18% OF SALARY
1	100	20	0	120	N/A	N/A
2	100	14	24	138	up to 11	up to 7
3	100	8	36	144	up to 17	NA
4	100	N/A	50	150	up to 25	N/A
5	75	N/A	100	175	N/A	N/A

NOTES:

- All figures are expressed as a percentage of Level 4 salary.
- For the purposes of this table, “salary” means the award salary plus the 17.4% special allowance.

Revised Schedule 2 to Senior Medical Practitioners Determination

Private Practice Arrangements - 01 July 2003				
1	2	3	4	5
LEVEL/YEAR	SALARY	ALLOWANCE	DRAWING RIGHTS	MAXIMUM INCOME
1/1	111975	22395		134370
1/2	118525	23705		142230
1/3	125066	25013		150079
1/4	131630	26326		157956
1/5	138180	27636		165816
1/Senior	151283	30257		181540
2/1	111975	15677	26874	154526
2/2	118525	16594	28446	163565
2/3	125066	17509	30016	172591
2/4	131630	18428	31591	181649
2/5	138180	19345	33163	190688
2/Senior	151283	21180	36308	208771
3/1	111975	8958	40311	161244
3/2	118525	9482	42669	170676
3/3	125066	10005	45024	180095
3/4	131630	10530	47387	189547
3/5	138180	11054	49745	198979
3/Senior	151283	12103	54462	217848
4/1	111975		55988	167963
4/2	118525		59263	177788
4/3	125066		62533	187599
4/4	131630		65815	197445
4/5	138180		69090	207270
4/Senior	151283		75642	226925
5/1	83981		111975	195956
5/2	88894		118525	207419
5/3	93800		125066	218866
5/4	98723		131630	230353
5/5	103635		138180	241815
5/Senior	113462		151283	264745

Appendix C

Level 2–5 Salaried Medical
Practitioner (SMP) [Staff Specialist]
Contract of Liability Coverage for the
Treatment of Private Patients in
[Rural] Public Hospitals

**LEVEL 2 – 5 SALARIED MEDICAL PRACTITIONER (SMP) CONTRACT OF
LIABILITY COVERAGE FOR TREATMENT OF PRIVATE PATIENTS IN
PUBLIC HOSPITALS**

THIS CONTRACT is made on the _____ **day of** _____ **2003,**
BETWEEN *(insert the name of public health organisation)* ("the PHO") **AND** *(insert name of the salaried medical practitioner)* ("the SMP").

WHEREAS:

- A. The SMP is an employee of the PHO who has elected to exercise rights of private practice in public hospitals or other health services under the control of the PHO.
- B. The PHO agrees to indemnify the SMP for certain health care claims arising in the course of the SMP's private practice in such public hospitals or health services.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Term of Contract

- 1.1 Unless sooner terminated in accordance with this contract, the term of this contract is concurrent with the SMP's employment contract.

2. Liability Coverage

- 2.1 Subject to clause 2.2 and clause 4, the PHO will indemnify the SMP for civil liability arising from any health care claim in respect of occurrences during the coverage period relating to the provision, by the SMP, of health care to private patients in public hospitals or other health services under the control of the PHO, provided the SMP is exercising a right of private practice as permitted under the terms of employment with the PHO, and in accordance with any relevant determination of the Health Administration Corporation and Department of Health policy in respect of such private practice arrangements.
- 2.2 The indemnity under clause 2.1 does not apply to the following:
 - 2.2.1 any health care claim arising out of conduct on the part of the SMP that constitutes a criminal offence or any other serious and wilful misconduct;
 - 2.2.2 any claim arising from the manufacture of any products or the construction, alteration, repackaging, repair, servicing, treating of any products sold, supplied or distributed by the SMP, other than where the product is supplied to the SMP by the PHO; or
 - 2.2.3 any claim arising out of the failure of any product to fulfil the purpose for which it was designed, specified, warranted or guaranteed to perform, other than where the product is supplied to the SMP by the PHO.

3. Salaried Medical Practitioner's Responsibilities

Prompt notification of certain incidents

- 3.1 The SMP is required to promptly report in writing to the PHO any incident which could reasonably be expected to trigger the indemnity under this contract in the future, as soon as the SMP becomes aware of such an incident. The report must be in the form of the NSW Treasury Managed Fund (TMF) Incident Report as varied from time to time. **The TMF Incident Report Form current as at the date of this contract is Attachment A to this contract.**

Quality assurance, quality improvement and risk management

- 3.2 The SMP is required to cooperate with and participate in any clinical quality assurance, quality improvement or risk management process, project or activities as required by the PHO.

In particular, the SMP is required to actively participate in the PHO's programs to implement the initiatives set out in the NSW Department of Health document titled "The Clinician's Toolkit for Improving Patient Care". This involves activities to minimise and deal with human error and improve patient safety. It includes the SMP undertaking the following activities:

- 3.2.1 facilitated incident monitoring
- 3.2.2 participation in sentinel event management.
- 3.2.3 the use of clinical indicators for the purpose of improving clinical practice.

Health Care Claims History

- 3.3 The SMP must, within ten working days of receiving a written request from the PHO, provide to the PHO his or her record of health care claims history for the past 6 year period.

Private inpatient classification and billing

- 3.4 The SMP must participate in the simplified billing system, if any, used by the PHO for services to private patients in public hospitals under the control of the PHO.
- 3.5 The SMP is to take all reasonable steps to ensure that his or her patients are properly identified as compensable patients, entitled veterans or ineligible patients, as applicable.

4. Reporting, management and conduct of claims

- 4.1 The SMP must report in writing to the PHO any claim against the SMP (or his or her practice company) for which the practitioner seeks indemnity under clause 2 as soon as practicable.

- 4.2 The management and conduct of a health care claim indemnified under this contract passes entirely to the PHO and the NSW Treasury Managed Fund. The PHO and the NSW Treasury Managed Fund are responsible for the incurring and payment of legal and other costs in managing and conducting the claim. The PHO and the NSW Treasury Managed Fund are entitled at any time to conduct, in the name of the SMP the investigation, defence or settlement of any such claim.
- 4.3 The indemnity provided under clause 2 is conditional upon the rights of subrogation and the co-operation of the SMP in the management and conduct of the claim as set out in Schedule 1 to this contract.
- 4.4 Where a health care claim against the SMP or his or her practice company is not the subject of indemnity under this contract but the PHO holds information in respect of the particular occurrence giving rise to the claim the PHO will, upon request, provide such information to the SMP or the medical indemnity provider of the SMP or his or her practice company, provided it is lawful and reasonable to do so.

5. Process prior to termination

- 5.1 Prior to being given written notice of termination under this contract, the Fund Manager or PHO, as the case may be, must:
- 5.1.1 request in writing that the SMP show cause why termination should not occur. This "show cause" letter must outline the reasons for the proposed termination, and provide the SMP with a period of 30 days from the date of receipt of the letter within which to respond; and
- 5.1.2 advise the SMP in writing of the outcome of its consideration of the response to the "show cause" letter.

6. Termination

- 6.1 This contract may be terminated by written notice given to the SMP by the Fund Manager. Subject to clause 5 the Fund Manger may give such notice where:
- 6.1.1 the SMP has an incident and/or health care claims experience which the Fund Manger considers warrants termination of the contract; or
- 6.1.2 the SMP breaches clause 3.1.
- 6.2 Subject to clause 5 the PHO may terminate this contract by the giving of written notice in the event that the SMP repeatedly fails to comply with clause 3.2, 3.4 or 3.5 or fails to comply with a request under clause 3.3.
- 6.3 The SMP may at any time terminate this contract by written notice given to the PHO.
- 6.4 Termination does not take effect unless the notice of termination contains advice to the SMP as to the process for requesting a review of the decision to terminate.

- 6.5 Where the SMP requests a review under clause 7, termination does not take effect unless the outcome of a review (which complies with clause 7) has determined that termination of the contract should occur.
- 6.6 Termination does not take effect until whichever is the later of the following:
- 6.6.1 the expiration of three months following the giving of notice under this clause; or
- 6.6.2 where the SMP requests a review in accordance with clause 7, the expiration of 30 days following receipt by the SMP of written advice of the outcome of a review undertaken in accordance with clause 7.

7. Review

- 7.1 The SMP may make a request in writing to the Director-General for review of a decision:
- 7.1.1 to give notice of termination of this contract under clause 6; or
- 7.1.2 that indemnity is not to be provided, or will cease to be provided, in accordance with the terms and conditions of this contract,
- within 30 days of receipt of notice of termination or written advice of a decision that indemnity is not, or is no longer, to be provided in accordance with the terms of the contract in respect of a claim.
- 7.2 A review panel convened by the Director-General will consider the request for review.
- 7.3 A review panel is to consist of the following persons:
- 7.3.1 the person for the time being holding the position of Chief Health Officer of the NSW Department of Health (however called);
- 7.3.2 the person for the time being holding the position of Chief Financial Officer of the NSW Department of Health (however called);
- 7.3.3 the person holding the position of General Counsel with the NSW Department of Health (however called); and
- 7.3.4 a nominee of the Australian Salaried Medical Officers Federation.
- 7.4 If, following review, the review panel determines that the termination decision should not proceed or that indemnity is, or will continue, to be provided in accordance with the terms and conditions of this contract in respect of the relevant claim, the Director-General will direct the Fund Manager or the PHO, as the case may be, to withdraw the notice of termination or to provide or continue to provide indemnity for a particular claim and will advise the SMP of the outcome of the review. Where the Director-General has directed that a notice of termination be withdrawn, a further notice of termination may not be issued under this contract for at least three months following the date of withdrawal of the notice.

7.5 If, following review, the review panel determines that termination of the contract should occur or indemnity in respect of a claim is not, or is no longer, available in accordance with the terms and conditions of this contract, the Director-General will advise the SMP of the outcome of the review.

8. Continuing Rights

The rights and obligations conferred by clause 2, clause 4 and, insofar as clause 7 confers an entitlement to review of a decision not to provide or to cease to provide an indemnity, clause 7 of this contract survive the expiration or termination of this contract.

9. Notices

The addresses of the parties for the purposes of giving any notice shall be as may from time to time be specified in writing between the parties.

10. Applicable Law

This contract will be governed by, and construed in accordance with, the law for the time being in force in New South Wales, and the parties submit to the jurisdiction of the courts of that State.

11. Definitions

coverage period means the term of this contract.

compensable patient means a patient:

- who is receiving public hospital services for an injury, illness or disease; and
- who has received, or has established a right to receive, payment by way of compensation or damages (including payment in settlement of a claim for compensation or damages) under a law that is or was in force in a State or Territory (other than Veterans; Affairs legislation) in respect of the injury illness or disease for which he or she is receiving health care;

Department of Health means the NSW Department of Health;

Director-General means the person for the time being holding the office of Director-General of the NSW Department of Health (however called);

eligible person means eligible person as defined by section 3 of the Commonwealth Health Insurance Act 1973;

entitled veteran means an entitled veteran as defined by the Australian Health Care Agreement applying from time to time;

Fund Manager is the body engaged from time to time by the NSW Treasury to manage the NSW Treasury Managed Fund;

Health Administration Corporation means the corporation sole constituted by section 9 of the Health Administration Act 1982;

health care means any care, treatment advice, service or goods provided in respect of the physical or mental health of a person;

health care claim means a claim for damages or other compensation, whether by verbal or written demand or the commencement of legal proceedings, in respect of an injury or death caused wholly or partly by the fault or alleged fault of the SMP in providing or failing to provide health care;

NSW Treasury Managed Fund is the self-insurance and risk management scheme established by the NSW Government to cover certain liabilities of the State and its agencies. A reference in this contract to the NSW Treasury Managed Fund is taken to include any officer or employee of the NSW Government, the Fund Manager or any employee or agent of the Fund Manager involved in the investigation, management or conduct of health care claims indemnified under this contract;

private inpatient means a patient who is admitted to a public hospital under the control of the PHO, and who is not a public patient;

private patient means a patient who is not a public patient. Unless the contrary intention is expressed in this contract, "private inpatient" includes a compensable patient, entitled veteran and an ineligible patient. It does not include, for the purposes of this contract only, an ineligible person who the SMP is required, by the PHO, to treat as a public patient in a public hospital or public health service in the course of the SMP's employment;

public health organisation means a public health organisation as defined by the Health Services Act 1997;

public hospital means a public hospital as defined by the *Health Services Act 1997*;

public patient means an eligible person who receives or elects to receive health care at a public hospital or public health service free of charge. It also means, for the purposes of this contract only, an ineligible patient who the SMP is required, by the PHO, to treat as a public patient in a public hospital or public health service in the course of the SMP's employment;

record of health care claims history means a record of the number of health care claims, or incidents that may give rise to health care claims, notified to the SMP professional indemnity provider, including date of notification of each health care claim, date and brief description of each relevant incident and the compensation range within which the health care claim fell, or is estimated to fall, as follows:

- (i) < \$50,000
- (ii) \$50,000 - <\$100,000
- (iii) \$100,000 - <\$250,000
- (iv) \$250,000 - <\$500,000
- (v) \$500,000 - <\$1 million
- (vi) \$1 million + .

SIGNED for and on behalf of)
the Public Health Organisation)
in the presence of :)

.....

.....
Witness

SIGNED by the SMP)
in the presence of:)

.....
Salaried Medical Practitioner

.....
Witness

SCHEDULE 1

Conditions related to the management and conduct of claims

- 1.1 It is a condition precedent to the provision of indemnity under clause 2 of this contract in respect of a claim that the SMP.
- (i) give the PHO, the NSW Treasury Managed Fund and any legal representatives appointed by the NSW Treasury Managed Fund all information and assistance in relation to the claim as they may reasonably require to determine liability, investigate, defend or settle the claim;
 - (ii) release to the PHO and the NSW Treasury Managed Fund all documents that they may require to determine the existence or extent of the PHO's obligations and assertion of its rights of contribution as against any and all other persons, entities or organisations;
 - (iii) waive in favour of the PHO and the NSW Treasury Managed Fund any client legal privilege that may arise between the SMP and the legal representatives appointed by the NSW Treasury Managed Fund or by or on behalf of the PHO in the management or conduct of the claim.
- 1.2 The continued provision of indemnity under clause 2 in respect of a claim is conditional upon the SMP continuing to comply with the requirements of clause 1.1 (i), (ii) and (iii) of this Schedule during the period that the claim is being managed and conducted by the PHO or the NSW Treasury Managed Fund.

Subrogation

2. The PHO is entitled to all of the SMP's rights of recovery in respect of a claim for which indemnity is, or is to be, provided under clause 2 of this contract and the SMP will do everything to secure and preserve such rights, including but not limited to the execution of documents necessary to allow the PHO or the NSW Treasury Managed Fund to take legal action in the name of the SMP in exercise of the PHO's rights under this contract.

Appendix D

Level 2–5/Scheme D Staff Specialist
Contract of Liability Coverage for
Private Paediatric Patients

**LEVEL 2 – 5/SCHEME D STAFF SPECIALIST CONTRACT OF LIABILITY
COVERAGE FOR PRIVATE PAEDIATRIC PATIENTS**

THIS CONTRACT is made on the _____ **day of** _____ **2005,**
BETWEEN *(insert the name of public health organisation)* ("the PHO") **AND** *(insert name of the staff specialist).*

WHEREAS:

- A. The Staff Specialist is an employee of the PHO who has elected a level 2 – 5 private practice arrangement, or who participates in a Scheme D staff specialist arrangement, within the meaning of clause 2 of the Salaried Senior Medical Practitioners Determination.
- B. The PHO agrees to indemnify the Staff Specialist for certain health care claims arising in the course of the Staff Specialist's private practice in such public hospitals or health services.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Term of Contract

- 1.1 Unless sooner terminated in accordance with this contract, the term of this contract is concurrent with the Staff Specialist's employment contract.

2. Liability Coverage

- 2.1 Subject to clause 2.2 and clause 4, the PHO will indemnify the Staff Specialist for civil liability arising from any health care claim in respect of occurrences during the coverage period relating to the provision, by the Staff Specialist, of health care to private paediatric patients in public hospitals or through other health services under the control of, or conducted by, the PHO, provided:
 - (i) in the case of a Level 2-5 Staff Specialist, at the time of the occurrence the Staff Specialist is exercising a right of private practice under a private practice arrangement with the PHO, as permitted under the terms of employment with the PHO and in accordance with any relevant determination of the Health Administration Corporation and Department of Health policy in respect of such private practice arrangements;
 - (ii) in the case of a Scheme D Staff Specialist, at the time of the occurrence the Staff Specialist is conducting his or her private practice as a visiting practitioner appointed by the PHO and in accordance with the requirements of any relevant determination of the Health Administration Corporation and Department of Health policy in respect of Scheme D staff specialist arrangements.
- 2.2 The indemnity under clause 2.1 does not apply to the following:
 - 2.2.1 any health care claim arising out of conduct on the part of the Staff Specialist that constitutes a criminal offence or any other serious and wilful misconduct;
 - 2.2.2 any claim arising from the manufacture of any products or the construction, alteration, repackaging, repair, servicing, treating of any

products sold, supplied or distributed by the Staff Specialist, other than where the product is supplied to the Staff Specialist by the PHO; or

- 2.2.3 any claim arising out of the failure of any product to fulfil the purpose for which it was designed, specified, warranted or guaranteed to perform, other than where the product is supplied to the Staff Specialist by the PHO.

3. Staff Specialist's Responsibilities

Prompt notification of certain incidents

- 3.1 The Staff Specialist is required to promptly report in writing to the PHO any incident which could reasonably be expected to trigger the indemnity under this contract in the future, as soon as the Staff Specialist becomes aware of such an incident. The report must be in the form of the NSW Treasury Managed Fund (TMF) Incident Report as varied from time to time. **The TMF Incident Report Form current as at the date of this contract is Attachment A to this contract.**

Quality assurance, quality improvement and risk management

- 3.2 The Staff Specialist is required to cooperate with and participate in any clinical quality assurance, quality improvement or risk management process, project or activities as required by the PHO.

In particular, the Staff Specialist is required to actively participate in the PHO's programs to implement the initiatives set out in the NSW Department of Health document titled "The Clinician's Toolkit for Improving Patient Care". This involves activities to minimise and deal with human error and improve patient safety. It includes the Staff Specialist undertaking the following activities:

- 3.2.1 facilitated incident monitoring
- 3.2.2 participation in sentinel event management.
- 3.2.3 the use of clinical indicators for the purpose of improving clinical practice.

Health Care Claims History

- 3.3 The Staff Specialist must, within ten working days of receiving a written request from the PHO, provide to the PHO his or her record of health care claims history for the past 6 year period.

Private patient classification and billing

- 3.4 The Staff Specialist must participate in the simplified billing system, if any, used by the PHO for services to private patients.
- 3.5 The Staff Specialist is to take all reasonable steps to ensure that his or her patients are properly identified as compensable patients, entitled veterans or ineligible patients, as applicable.

4. Reporting, management and conduct of claims

- 4.1 The Staff Specialist must report in writing to the PHO any claim against the Staff Specialist for which the practitioner seeks indemnity under clause 2 as soon as practicable.
- 4.2 The management and conduct of a health care claim indemnified under this contract passes entirely to the PHO and the NSW Treasury Managed Fund. The PHO and the NSW Treasury Managed Fund are responsible for the incurring and payment of legal and other costs in managing and conducting the claim. The PHO and the NSW Treasury Managed Fund are entitled at any time to conduct, in the name of the Staff Specialist the investigation, defence or settlement of any such claim.
- 4.3 The indemnity provided under clause 2 is conditional upon the rights of subrogation and the co-operation of the Staff Specialist in the management and conduct of the claim as set out in Schedule 1 to this contract.
- 4.4 Where a health care claim against the Staff Specialist or his or her practice company is not the subject of indemnity under this contract but the PHO holds information in respect of the particular occurrence giving rise to the claim the PHO will, upon request, provide such information to the Staff Specialist or the medical indemnity provider of the Staff Specialist or his or her practice company, provided it is lawful and reasonable to do so.

5. Process prior to termination

- 5.1 Prior to being given written notice of termination under this contract, the Fund Manager or PHO, as the case may be, must:
- 5.1.1 request in writing that the Staff Specialist show cause why termination should not occur. This "show cause" letter must outline the reasons for the proposed termination, and provide the Staff Specialist with a period of 30 days from the date of receipt of the letter within which to respond; and
- 5.1.2 advise the Staff Specialist in writing of the outcome of its consideration of the response to the "show cause" letter.

6. Termination

- 6.1 This contract may be terminated by written notice given to the Staff Specialist by the Fund Manager. Subject to clause 5 the Fund Manger may give such notice where:
- 6.1.1 the Staff Specialist has an incident and/or health care claims experience which the Fund Manger considers warrants termination of the contract; or
- 6.1.2 the Staff Specialist breaches clause 3.1.
- 6.2 Subject to clause 5 the PHO may terminate this contract by the giving of written notice in the event that the Staff Specialist repeatedly fails to comply with clause 3.2, 3.4 or 3.5 or fails to comply with a request under clause 3.3.

- 6.3 The Staff Specialist may at any time terminate this contract by written notice given to the PHO.
- 6.4 Termination does not take effect unless the notice of termination contains advice to the Staff Specialist as to the process for requesting a review of the decision to terminate.
- 6.5 Where the Staff Specialist requests a review under clause 7, termination does not take effect unless the outcome of a review (which complies with clause 7) has determined that termination of the contract should occur.
- 6.6 Termination does not take effect until whichever is the later of the following:
 - 6.6.1 the expiration of three months following the giving of notice under this clause; or
 - 6.6.2 where the Staff Specialist requests a review in accordance with clause 7, the expiration of 30 days following receipt by the Staff Specialist of written advice of the outcome of a review undertaken in accordance with clause 7.

7. Review

- 7.1 The Staff Specialist may make a request in writing to the Director-General for review of a decision:
 - 7.1.1 to give notice of termination of this contract under clause 6; or
 - 7.1.2 that indemnity is not to be provided, or will cease to be provided, in accordance with the terms and conditions of this contract,

within 30 days of receipt of notice of termination or written advice of a decision that indemnity is not, or is no longer, to be provided in accordance with the terms of the contract in respect of a claim.
- 7.2 A review panel convened by the Director-General will consider the request for review.
- 7.3 A review panel is to consist of the following persons:
 - 7.3.1 the person for the time being holding the position of Chief Health Officer of the NSW Department of Health (however called);
 - 7.3.2 the person for the time being holding the position of Chief Financial Officer of the NSW Department of Health (however called);
 - 7.3.3 the person holding the position of General Counsel with the NSW Department of Health (however called); and
 - 7.3.4 a nominee of the Australian Salaried Medical Officers Federation.

- 7.4 If, following review, the review panel determines that the termination decision should not proceed or that indemnity is, or will continue, to be provided in accordance with the terms and conditions of this contract in respect of the relevant claim, the Director-General will direct the Fund Manager or the PHO, as the case may be, to withdraw the notice of termination or to provide or continue to provide indemnity for a particular claim and will advise the Staff Specialist of the outcome of the review. Where the Director-General has directed that a notice of termination be withdrawn, a further notice of termination may not be issued under this contract for at least three months following the date of withdrawal of the notice.
- 7.5 If, following review, the review panel determines that termination of the contract should occur or indemnity in respect of a claim is not, or is no longer, available in accordance with the terms and conditions of this contract, the Director-General will advise the Staff Specialist of the outcome of the review.

8. Continuing Rights

The rights and obligations conferred by clause 2, clause 4 and, insofar as clause 7 confers an entitlement to review of a decision not to provide or to cease to provide an indemnity, clause 7 of this contract survive the expiration or termination of this contract.

9. Notices

The addresses of the parties for the purposes of giving any notice shall be as may from time to time be specified in writing between the parties.

10. Applicable Law

This contract will be governed by, and construed in accordance with, the law for the time being in force in New South Wales, and the parties submit to the jurisdiction of the courts of that State.

11. Definitions

coverage period means the term of this contract.

compensable patient means a patient:

- who is receiving public hospital services for an injury, illness or disease; and
- who has received, or has established a right to receive, payment by way of compensation or damages (including payment in settlement of a claim for compensation or damages) under a law that is or was in force in a State or Territory (other than Veterans; Affairs legislation) in respect of the injury illness or disease for which he or she is receiving health care;

Department of Health means the NSW Department of Health;

Director-General means the person for the time being holding the office of Director-General of the NSW Department of Health (however called);

eligible person means eligible person as defined by section 3 of the Commonwealth Health Insurance Act 1973;

entitled veteran means an entitled veteran as defined by the Australian Health Care Agreement applying from time to time;

Fund Manager is the body engaged from time to time by the NSW Treasury to manage the NSW Treasury Managed Fund;

Health Administration Corporation means the corporation sole constituted by section 9 of the Health Administration Act 1982;

health care means any care, treatment advice, service or goods provided in respect of the physical or mental health of a person;

health care claim means a claim for damages or other compensation, whether by verbal or written demand or the commencement of legal proceedings, in respect of an injury or death caused wholly or partly by the fault or alleged fault of the Staff Specialist in providing or failing to provide health care;

NSW Treasury Managed Fund is the self-insurance and risk management scheme established by the NSW Government to cover certain liabilities of the State and its agencies. A reference in this contract to the NSW Treasury Managed Fund is taken to include any officer or employee of the NSW Government, the Fund Manager or any employee or agent of the Fund Manager involved in the investigation, management or conduct of health care claims indemnified under this contract;

Paediatric patient means

- (i) a patient aged 15 years or under; or
 - (ii) a patient who is admitted as an inpatient or who is treated as a privately referred non inpatient by a Staff Specialist exercising rights of private practice at to one of the following public hospitals:
 - (a) The Royal Alexandria Hospital for Children (The Children's Hospital at Westmead)**
 - (b) Sydney Children's Hospital, Randwick **
 - (c) John Hunter Children's Hospital, Newcastle **
- or;
- (iii) any patient who receives health care from a Staff Specialist who has been appointed as a paediatrician by a PHO in accordance with clause 2 (d) of the Staff Specialists (State) Award, provided the health care is part of a course of treatment initiated when the patient is aged 15 years or under.

private patient means a patient who is not a public patient. Unless the contrary intention is expressed in this contract, "private patient" includes a compensable patient, entitled veteran and an ineligible patient. It does not include, for the purposes of this contract only, an ineligible person who the Staff Specialist is required, by the PHO, to treat as a public patient in a public hospital or public health service in the course of the Staff Specialist's employment;

public health organisation means a public health organisation as defined by the Health Services Act 1997;

public hospital means a public hospital as defined by the *Health Services Act 1997*;

public patient means an eligible person who receives or elects to receive health care at a public hospital or public health service free of charge. It also means, for the purposes of this contract only, an ineligible patient who the Staff Specialist is

required, by the PHO, to treat as a public patient in a public hospital or public health service in the course of the Staff Specialist's employment;

record of health care claims history means a record of the number of health care claims, or incidents that may give rise to health care claims, notified to the Staff Specialist professional indemnity provider, including date of notification of each health care claim, date and brief description of each relevant incident and the compensation range within which the health care claim fell, or is estimated to fall, as follows:

- (i) < \$50,000
- (ii) \$50,000 - <\$100,000
- (iii) \$100,000 - <\$250,000
- (iv) \$250,000 - <\$500,000
- (v) \$500,000 - <\$1 million
- (vi) \$1 million + .

SIGNED for and on behalf of)
 the Public Health Organisation)
 in the presence of :)

.....
 Witness

SIGNED by the Staff Specialist)
 in the presence of:)
 Staff Specialist

.....
 Witness

SCHEDULE 1

Conditions related to the management and conduct of claims

- 1.1 It is a condition precedent to the provision of indemnity under clause 2 of this contract in respect of a claim that the Staff Specialist.
- (i) give the PHO, the NSW Treasury Managed Fund and any legal representatives appointed by the NSW Treasury Managed Fund all information and assistance in relation to the claim as they may reasonably require to determine liability, investigate, defend or settle the claim;
 - (ii) release to the PHO and the NSW Treasury Managed Fund all documents that they may require to determine the existence or extent of the PHO's obligations and assertion of its rights of contribution as against any and all other persons, entities or organisations;
 - (iii) waive in favour of the PHO and the NSW Treasury Managed Fund any client legal privilege that may arise between the Staff Specialist and the legal representatives appointed by the NSW Treasury Managed Fund or by or on behalf of the PHO in the management or conduct of the claim.
- 1.2 The continued provision of indemnity under clause 2 in respect of a claim is conditional upon the Staff Specialist continuing to comply with the requirements of clause 1.1 (i), (ii) and (iii) of this Schedule during the period that the claim is being managed and conducted by the PHO or the NSW Treasury Managed Fund.

Subrogation

2. The PHO is entitled to all of the Staff Specialist's rights of recovery in respect of a claim for which indemnity is, or is to be, provided under clause 2 of this contract and the Staff Specialist will do everything to secure and preserve such rights, including but not limited to the execution of documents necessary to allow the PHO or the NSW Treasury Managed Fund to take legal action in the name of the Staff Specialist in exercise of the PHO's rights under this contract.