



SMO/VMO Contract Negotiations Update

Over the past 24 hours, Senior Medical Officers (“SMOs”) and Visiting Medical Officers (“VMOs”) have been subject to extraordinary attacks by the Queensland Government. Under the cover of Parliamentary privilege, the Premier and the Minister for Health have attacked SMO and VMO representatives, including Professor John Fraser personally, following SMOs and VMOs unanimously rejecting the Government’s offer to resolve the current dispute in respect of statutory individual contracts.

The record must be corrected.

Background to negotiations

1. On 1 November 2012, the Queensland Industrial Relations Commission (“QIRC”) certified the *Medical Officers (Queensland Health) Certified Agreement (No.3) 2012* (“MOCA3”) which set out the agreement reached between the Queensland Government and the unions representing Medical Officers, including Senior Medical Officers (“SMOs”). MOCA3 was endorsed by SMOs and had a nominal expiry date of 30 June 2015.
2. The introduction of the high-income guarantee contract (“SMO Contract”), and associated legislative amendments to the *Industrial Relations Act 1999* (“IR Act”) and *Hospital and Health Boards Act 2010* (“HHB Act”) was a clear repudiation of the MOCA3 agreement between the Government and its SMO workforce. The breaking of its agreement, less than 12 months after MOCA3 was made¹, combined with a very poor consultation and negotiation process by Queensland Health with SMOs and their representatives, has damaged the morale of Queensland SMOs and undermined SMOs trust in the Government.
3. In November 2013, the Government issued the draft contracts.
4. In December 2013, representatives from AMAQ, ASMOF and SMOs and VMOs held a number of negotiations with Queensland Health in respect of the proposed statutory individual contracts. SMOs and VMOs raised a significant number of concerns regarding the contracts and attempted to negotiate solutions. The vast majority of SMOs’ and VMOs’ concerns with the contract were not addressed and on 16 January 2014 the Government unilaterally terminated negotiations. The Government advised SMO and VMO representatives that it would not engage in further negotiations and that it would be issuing the contracts.
5. In essence the draft contract remained unchanged – it was in effect not a draft but their final position. Subsequent statements from the Minister and QH were to the effect that individual doctors were to be allowed to negotiate changes to the contract.

¹ and 12 months after the QIRC approved the *District Health Services - Senior Medical Officers' and Resident Medical Officers Award - State 2012*



6. Further clarification, later, revealed that this is fact was not correct, and changes to the contract were not allowed at all, except for details of KPIs, hours and remuneration and private practice arrangements to a limited degree.
7. On 5 March 2014, the Pineapple group held a mass meeting which overwhelmingly rejected the proposed contracts. This, combined with the intense campaign run by SMOs and VMOs against the contracts, caused the Minister for Health to agree to reopen negotiations with SMOs and VMOs.
8. The Minister issued a press release the next day, however, which indicated a refusal to change any legislation or the contract
9. On 12 March 2014, SMOs presented to Government a detailed document proposing solutions to the contract dispute. You can view it on the website
10. Negotiation meetings were held on 10 March, 13 March, 14 March and 17 March 2014. During these negotiations, the Government proposed to put an offer to SMO and VMO representatives in an attempt to address SMOs' and VMOs' concerns.
11. This offer from Government largely failed to address any of the issues raised by SMO and VMO representatives and dealt solely with a small number of important, but by no means all, of SMOs' and VMOs' demands.
12. During negotiations it was expressly stated to the Minister for Health, the Director-General ("DG") and the Chief Human Resources Officer, Ms Lyn Rowland, that SMO and VMO representatives were not empowered to accept any offer from Government. It was made clear to the Minister and the DG that any offer from Government would need to be put to SMOs and VMOs for their consideration. No SMO or VMO representatives at the negotiations agreed to the Government's proposal.
13. At 6.40pm on Tuesday 18 March 2014, the Government presented a proposal to add "addendums" to the contract. The Government requested that SMO and VMO representatives respond to this offer by 9.30am the next morning.
14. On 19 March 2014, SMO and VMO representatives advised the Government that there was insufficient time prior to the Pineapple meeting that evening to provide a response but that the offer would be put to SMO and VMO members at the Pineapple meeting to vote on the proposal.
15. Throughout the day on 19 March 2014, the Government issued a series of communications to SMOs and VMOs in respect of their contract proposal. These communications took the effect of email, meetings attended by the DG and text messaging.
16. SMOs and VMOs offered the DG the opportunity to speak at the Pineapple meeting to speak to the proposal. This was a significant act of good faith by SMO and VMO representatives as the Pineapple is our forum, not the



Government's, and the Government had a multitude of opportunities over the last 3 months to convince SMOs and VMOs of the benefits of the contract.

17. At the Pineapple meeting on Wednesday night SMOs and VMOs, having received the Government's offer, unanimously rejected the offer.
18. SMOs and VMOs passed a series of resolutions, which empower SMO and VMO representatives to return to negotiations with the State Government and negotiate for a model which guarantees SMOs and VMOs have the capacity to regularly negotiate fair and just terms and conditions of employment which do not have the possible effect of compromising patient care or the high quality of health services provided by the public hospital system.

The Government's offer

19. SMO and VMO representatives have always been clear that the contract framework that is being enforced upon SMOs and VMOs is unfair and does not provide SMOs and VMOs the certainty which the previous certified agreements and award structure provided. SMO and VMO representatives have been unequivocal by stating that the only way to resolve this dispute is to:
 - a. implement legislative changes which guarantee that SMOs have certainty in respect of their terms and conditions of employment;
 - b. have contracts which do not have the capacity for management to override the clinical autonomy of clinicians and thereby compromise patient care;
 - c. that guarantee that SMOs and VMOs cannot have their terms and conditions of employment unilaterally changed by Government without consultation and agreement.
20. Unfortunately the proposal put by Government on 19 March 2014 to SMOs and VMOs did not address the majority of SMOs' and VMOs' concerns. Disappointingly it did not address all the matters that the Minister undertook to address in the proposal at the negotiation meeting on 17 March 2014. The contract addendum document and the proposed amendment to the *Hospitals and Health Boards Act 2011* ("HHB Act") are entirely inadequate.

Ministerial directions

21. The Minister has proposed issuing a "ministerial direction" pursuant to s.44F of the HHB Act to limit the powers of the Director-General to ensure that only changes which do not disadvantage Medical Officers are permitted without prior agreement.
22. This does not provide the certainty that SMOs and VMOs have requested.

Problems



23. Ministerial directions can change at the whim of the Minister, with a change in Minister, or with a change in Government policy. We have just been subjected to such changes by the eradication of our industrial instruments and our removal from all the protections of the *Industrial Relations Act 1999* ("IR Act").
24. Section 44F of the HHB Act provides for the Minister to direct the DG in "*managing the department*". Whether this power is broad enough to be effective in respect of SMOs and VMOs soon to be directly employed by Services needs to be clarified (though note s.45(f)).
25. The phrase "do not disadvantage" lacks content and is ambiguous. It is liable to be rendered ineffective given the likelihood of disputation to arise as to what constitutes "disadvantage". The DG may consider that disadvantage only applies to financial disadvantage. Clearly there are many conditions of employment, such as access to clinical support time or professional development leave, which do not have a remunerative component. The DG may implement a change to the contracts on the basis that he considers it does not "financially disadvantage" a Senior Doctor.
26. Section 44F(2) curtails the Ministers powers to direct the DG in respect of decisions about particular individuals.
27. Section 44(3)(b) provides that the Minister cannot give a direction to a Service about "*the employment of a particular person*".

Amendment to HHB Act

28. The Minister has proposed an amendment to the HHB Act to provide that if a Health Employment Directive ("HED") contains provisions which are inconsistent with a SMO's or VMO's contract, the contract prevails over the HED unless a Regulation provides otherwise.
29. Again, this proposal does not provide the certainty which SMOs and VMOs demand. The proposed amendment would still allow the DG to issue a HED to SMOs' and VMOs' disadvantage which would be allowed by the issuing of a Regulation.
30. SMOs and VMOs have been subjected to change by Regulation already in this process. On 1 December 2013, the Government issued a Regulation which made all SMOs and VMOs "high income positions" and stripped SMOs and VMOs of the protections of the IR Act, including:
 - a. dispute resolution;
 - b. unfair dismissal;
 - c. unfair contract;
 - d. collective agreements; and
 - e. industrial actions.



31. A Regulation is simply a document developed by Government which the Governor-in-Council rubber stamps and which only needs to be tabled within 14 days of the next sitting of Parliament after it is made. It can commence before that date. This proposal does not provide the certainty to SMOs and VMOs that they have consistently and clearly demanded.

Contract addendums

32. The Government has proposed a number of “addendums” to the contract, purportedly with the aim of meeting SMOs’ and VMOs’ demands.
33. Bizarrely, the Government has maintained its refusal to amend the contract, yet wishes to increase the complexity of the contract arrangements by adding a range of addendums to the back of the contract.
34. There is no information as to how these addendums will be effected. These addendums could be made by separate HEDs, incorporated into the current contract framework HED, made by ministerial direction or Regulation or simply attached to the contracts when they are presented to SMOs and VMOs. All these possible options have differing enforceability and are open to being unilaterally changed at the whim of Government.
35. The addendums are also liable to create confusion as they are to be “read and applied in conjunction” with the contracts. SMOs and VMOs are concerned that this will create confusion, most importantly with Services tasked with implementing the contracts. SMOs and VMOs do not have faith in the Services to fairly interpret these addendums and believe that the addendums are liable to create disputation, hardship and unfairness for SMOs and VMOs.

Collective Negotiation

36. SMOs and VMOs have requested the ability to be able to collectively negotiate, on a regular basis, the contracts.
37. These contracts are rushed and it is inevitable that changes will need to be made to the contracts over time. SMOs and VMOs simply request the right to have a collective negotiation process by which contracts can be regularly renegotiated, in the same way as a certified agreement, and that in respect of any matters which cannot be agreed, they are entitled to have an independent arbitrator issue a binding decision.
38. The Ministerial Direction will require the Director-General to consult with the newly established Contract Advisory Committee (terms of reference to be finalised by 30 April 2014) before varying the Medical Officer Health Employment Directives.
39. There is no obligation for the DG to reach agreement with Senior Doctors over changes to the contract. The DG can simply advise the Contract Advisory Committee of changes and implement unilaterally.



40. The membership of the Committee has not been identified. There is no guarantee that the people chosen are true representatives of Senior Doctors. They could be selected by Government to ensure their proposals are not opposed.
41. The Committee proposal also does not require the terms of the contract to be collectively negotiated on a regular, for example 3 yearly, basis as is currently the case with certified agreements.

Termination of Employment

42. SMO and VMO representatives have asked that their ability to bring an Application for Unfair Dismissal in respect of a termination of their employment which is harsh, unjust and unreasonable be returned. They wish to have the same entitlement to challenge a termination of their employment as every other employee in the public sector.
43. The Government has stated that SMOs and VMOs still have access to an unfair dismissal claim if they are terminated for an "invalid reason". This is correct. Such terminations are exceptionally rare. They related to terminations for such this as SES activity, trade union membership or activity, discrimination, whistleblower complaints or being sick or injured.
44. The vast majority of unfair dismissal application related to dismissals which are said to be unfair because they are "harsh, unjust and/or unreasonable". This is the protection which the Government has taken away from Senior Doctors.
45. The offer from Government does not provide for binding independent arbitration of unfair dismissals for Senior Doctors. It only provides for a "review".
46. The addendum proposes that SMOs and VMOs who wish to challenge the termination of their employment can "appeal" to the DG, who will appoint a Deputy President of the Queensland Industrial Relations' Commission ("QIRC") to "review" the decision.
47. No detail has been provided as to powers given to this "reviewer". For example, in an unfair dismissal before the QIRC, a SMO or VMO would be entitled to call witness evidence, cross-examine their accusers, call expert evidence and provide detailed written and oral submissions to the Commissioner arbitrating the matter. None of these processes are contained within the Government's offer.
48. The Government's offer simply appears to be a review of the material generated during the investigation process. SMO and VMO representatives have had significant experience dealing with Queensland Health disciplinary processes. They are sometimes deeply flawed, denying employees both procedural and substantive fairness. A review of material in a disciplinary



process which is deeply flawed will not result in SMOs having any real prospects of challenging the decision to terminate their employment.

49. Further, the addendum does not provide any ability to challenge a termination which is purportedly for serious misconduct pursuant to clause 25(5) of the contract. This means that there is no capacity to challenge a termination where the Department or the Service has alleged that you have engaged in serious misconduct. This is entirely inadequate.
50. Finally, the addendum does not allow a medical officer to be represented during any review process. SMOs and VMOs reasonably require the right to be represented by a lawyer or a union representative during any "review" of their termination.

Transfer

51. The contract addendum in relation to transfer is silent on whether an SMO or VMO have the ability to engage in arbitration in the event of a dispute.
52. A Senior Doctor can only dispute a transfer on the basis of personal circumstances, not impacts on patients, impacts on the delivery of clinical service or any other issue.
53. Further, the review by the DG will only examine whether the personal circumstances raised by the Senior Doctor, not clinical issues.

Rostering and Fatigue

54. The Governments proposal does not address the claim made by Senior Doctor representatives.
55. We asked that current Fatigue provisions in the MOCA3 and Award to be built into the contract. This was rejected.
56. The Government proposal is linked to the establishment of individual Service fatigue policies which have not been released. It is also contingent on Department's *Policy 11, Medical Fatigue Risk Management System* which, as clause 18 of the contract provides, is able to be amended from "time to time" with no consultation or agreement with Senior Doctors. There is no agreement to consult and reach agreement with Senior Doctors in the development of these fatigue policies.
57. We asked for the current extended hours and shift work provisions in the MOCA3 and Award to be included in the contract. This was rejected.
58. The rostering proposal does not affect the Services ability to require a Senior Doctor to undertake shift work and extended rosters or the power to vary or amend rosters or shifts as required by the Service as provided for in clause 15 of the Contract.



59. It provides only a limited right to dispute a change in rosters in respect of an individual Senior Doctors reason for refusal as not being unreasonable.

Arbitration of disputes

60. The contract addendum in respect of arbitration of disputes does not provide the independent process that SMOs and VMOs have demanded. Previously in respect of a dispute regarding their employment a senior doctor, or group of senior doctors, could seek independent arbitration in the QIRC. The proposal does not provide for the process to be engaged in by the independent reviewer.
61. This proposal suffers the same deficiencies as the proposal in respect of termination of employment.

KPIs

62. The KPI addendum proposal is also deeply flawed. It does not guarantee the KPIs cannot be unilaterally changed by the Service once agreement with the medical officer has been reached.
63. It provides no certainty that what is agreed is what will be applied.
64. Payments under tier 3 will only be guaranteed until 1 July 2016, and only in respect of contracts which commenced on 7 July 2014. This means that new SMOs employed after 7 July 2014, will not be able to have KPIs determined by agreement.
65. Furthermore, there is nothing in the addendum which prevents changes being made by the Service to tier 3 remuneration or KPIs which result in the SMOs or VMOs being worse off as a result of those changes.

Does not address key demands

66. The contract addendum, ministerial direction, and amendment to the HHB Act, still fail to address the vast majority of the concerns raised by SMOs and VMOs during negotiations.
67. Significantly, unilateral changes may still be made to the SMOs or VMOs conditions of employment, for example:
- a. remuneration under clauses 10(2) and (3) of the contract;
 - b. hours of work under clause 15(2) of the contract.
68. The power of the Service to terminate a Senior Doctor who engages in conduct which impacts on the profitability of the Service remains.
69. So too does the power to terminate if your registration with the Medical Board is restricted, for example because of a medical condition or a vexatious complaint.



70. Concerns regarding the scope of the intellectual property powers in clause 24 have not been addressed. SMOs have objected to intellectual property they create outside of hours potentially becoming the property of the Service if it is connected with the Medical Officer's work within the Service.

Resolution

71. On 21 March 2014, despite the barrage of abuse thrown at SMOs and VMOs and their representatives in Parliament on 20 March 2014, we wrote to the DG stating that we were prepared to sit down with Government and negotiate a resolution to this dispute.
72. We have proposed submitting to them a detailed document which sets out a range of models, referred to in our claim, which guarantee SMOs and VMOs the ability to regularly negotiate terms and conditions of employment enshrined in legislation.
73. Although SMOs and VMOs have been deeply offended by the inappropriate and aggressive behaviour of Government in Parliament and the media, SMOs and VMOs remain open and committed to resolving this dispute. However, such a resolution cannot occur unless the Government is prepared to engage in real legislative change which allows SMOs and VMOs to negotiate fair terms and conditions of employment which are set in stone and cannot be unilaterally varied by Government as has just happened to us.