



SMO & VMO TASKFORCE PROPOSAL FOR OPTIONS TO RESOLVE DISPUTE

- 1) This document has been developed by Senior Doctors on the SMO & VMO Taskforce for the consideration of doctors across Queensland.
- 2) These proposals are for discussion at upcoming medical staff association meetings and at the next "Pineapple" mass meeting of doctors at the Brisbane Entertainment and Convention Centre on 9 April 2014.

SENIOR DOCTOR EXECUTIVE SUMMARY

Option 1 - Vary MOCA3 and Awards

- 3) Renegotiate the MOCA3 and Awards. Requires:
 - a) by good faith negotiations with the SMO & VMO Taskforce, vary the MOCA3 and Awards to meet the Government's stated health policy objectives;
 - b) amend the *Industrial Relations Act 1999* to MOCA3 and Awards cannot be overridden by contract or directive;
 - c) amendment to the *Hospital and Health Boards Act* to allow for certified agreements to prevail over contracts;
 - d) retain high-income guarantee contracts for those who chose which are negotiated to deal with the deficiencies identified by Senior Doctors;
 - e) issue Health Employment Directive providing for PPA for all Senior Doctors who freely chose to remain on MOCA3 and Awards;

Option 2 - Contract and Collective Agreement - the Victorian Model

- 4) This is the model which is used in Victoria to determine Senior Doctors terms and conditions of employment.
- 5) This option allows for the Government to implement high-income guarantee contracts which would be underpinned by a MOCA3-style collective agreement;
- 6) Requires:
 - a) by good faith negotiations with the SMO & VMO Taskforce, negotiate a MOCA3-style agreement to meet the Government's stated health policy objectives;
 - b) amend the *Industrial Relations Act 1999* to MOCA3-style agreement cannot be overridden by contract or directive;
 - c) amendment to the *Hospital and Health Boards Act* to allow for certified agreements to prevail over contracts;



- d) retain high-income guarantee contracts for those who chose which are negotiated to deal with the deficiencies identified by Senior Doctors;

Option 3 - Contract negotiations under HHB Act

- 7) The creation of a separate jurisdiction for regularly determining by collective bargaining and, in the absence of agreement, binding and independent arbitration by a member of the QIRC, the terms and conditions of employment "senior health service employees" on contract and their PPA.
- 8) Requires:
 - a) good faith negotiations with the SMO & VMO Taskforce;
 - b) amendments to the *Hospital and Health Boards Act* to create this new jurisdiction to be implemented with effect from 1 July 2014 to allow negotiations of a contract commencing on 1 July 2015;
 - c) renegotiation of the current proposed contract to address Senior Doctors concerns;
 - d) Senior Doctors are able to freely choose to stay on MOCA3 and Awards or sign the contract, without threat of loss of PPA, until new contract commences;
 - e) issue Health Employment Directive providing for PPA for all Senior Doctors who freely chose to remain on MOCA3 and Awards until the new contract to be introduced on 1 July 2015;
 - f) Contracts to be negotiated every three (3) years.

Background

- 9) The Government's initial proposal to add addendums to the contract and amend section 51C(3) of the *Hospital and Health Board's Act 2011* ("HHB Act") was unanimously rejected by Senior Doctors at the Pineapple meeting on 19 March 2013.
- 10) Following the Pineapple meeting on 19 March 2013, the SMO & VMO Taskforce wrote to the Director General, Mr Ian Maynard, and requested urgent negotiations recommence on 24 March 2014. The Director General did not respond to this correspondence.
- 11) The SMO & VMO Taskforce considers the Government's conduct, particularly the personal attacks on individual SMOs and VMOs and the profession, since the last Pineapple meeting to be regrettable and counter productive to resolving this dispute.
- 12) Despite the refusal of the Government to reconvene negotiations, Senior Doctors wish to resolve the present dispute and reach an agreement with the Government which:



- a) ensures that the public health system remains on of the best in the world; and
 - b) ensures that Senior Doctors clinical autonomy in caring for patients is not undermined by unfettered managerial prerogative
 - c) provides certainty to Senior Doctors in respect of their terms and conditions of their employment;
- 13) It is clear that the Governments current contract and addendum model is deeply flawed and does not adequately address the vast majority of the concerns raised by the SMO & VMO Taskforce contained within the claim document presented to Government on 12 March 2013. A new, fair, model is necessary.
- 14) The SMO & VMO Taskforce seeks Senior Doctors endorsement to negotiate three potential new models for resolving the current dispute.

Option 1 - Renegotiate MOCA and Awards

- 15) Prior to the Government unilaterally breaking its agreement with Senior Doctors by introducing the high-income guarantee contract in November 2012, Senior Doctors were employed pursuant to the *Medical Officers Certified Agreement (No.3)* ("MOCA3") and a number of awards. In addition to this Senior Doctors were also employed pursuant to common law contracts of employment.
- 16) The Government has purported to introduce the contracts on the basis that they are necessary to address a range of difficulties currently existing within the Queensland public hospital system.
- 17) Senior Doctors are of the view that the Government could have requested that the current industrial instruments be renegotiated and varied to accommodate the changes the Government believed were necessary. This would have averted the current dispute.
- 18) Senior Doctors are open to renegotiating the MOCA3 and underlying awards to address the Government's concerns.
- 19) The MOCA3 and awards can be renegotiated, for example in respect to private practice arrangements, and doctors can continue to be employed on these new agreements and common law contracts.
- 20) This option would require amendment to the *Industrial Relations Act 1999* ("the IR Act").
- 21) This option would also necessarily entail amendments to s.51C of the HHB Act to provide that a Health Employment Directive ("HED") (or other statutory instrument) cannot override an industrial instrument.
- 22) This proposal has the advantages of providing certainty to Senior Doctors in respect of their terms and conditions of employment by ensuring that they are



employed pursuant to industrial instruments that cannot be overridden by the issuing of Health Employment Directives or ministerial directions without proper negotiation and agreement with Senior Doctors.

- 23) Such arrangements could subsist concomitantly with a high income guarantee contract. Senior Doctors could choose to continue to be engaged pursuant to a varied MOCA3 or sign a high income guarantee contract including proposed addendums. These addendums would need to be significantly amended to address in detail the concerns doctors presently with them.
- 24) In addition to this the Director General would issue an HED which provides for practice arrangements on the models currently proposed by Government in the contract be offered to Senior Doctors who elect chose to stay on the MOCA and Awards.

Option 2 - Contract and Collective Agreement

- 25) This option proposes a model similar to that currently utilised in the State of Victoria whereby doctors are employed pursuant to a contract and have an underlying industrial instrument which regulates their remaining terms and conditions of employment.
- 26) This option could entail a high income guarantee contract, amended to address Senior Doctors' present concerns, with an underlying MOCA3 style industrial instrument which deals with matters presently contained within the MOCA3 and the matters currently contained within the documents appended to the present Health Employment Directives which establishes the contract framework.
- 27) This option would necessarily entail amendments to s.51C(3) of the HHB Act to provide that a HED (or other statutory instrument) cannot override an industrial instrument.
- 28) This option has the advantage of allowing Government to proceed with its high income guarantee contracts, but to provide to doctors the security of an underlying industrial instrument which cannot be varied on the whim of DG, Minister or Government of the day.
- 29) The underlying industrial instrument and contracts could then be negotiated on a regular, for example a three yearly, basis.

Option 3 - Contracts and amendments to the HHB Act to provide for the independent arbitration of contracts on a regular basis

- 30) This option would provide for doctors to be employed pursuant to high income guarantee contracts.



- 31) It requires the Government to make legislative amendments to the HHB Act to create a jurisdiction for "*senior health service employees*" to negotiate the standard form contract applicable to their employment on a regular three yearly basis.
- 32) This option would require amendment to Part 3 division 2A of the HHB Act to provide for an amendment to section 51C(3) of the HHB Act to provide that to the extent of any inconsistency between a high income guarantee contract negotiated between senior doctor representatives and Government, the contract would prevail.
- 33) Part 5 of the HHB Act which presently deals with matters relating to health service employees, in particular health executive service and senior health service employees, would also need to be amended to include the model for negotiating the contract.
- 34) The option entails the insertion of a new subdivision which relates to the negotiation of high income guarantee contracts between Government and senior health service employees' representative industrial organisations.
- 35) The legislation should be introduced and be effective from 1 July 2014, in order to allow Senior Doctors to negotiate a new contract to commence on 1 July 2015.
- 36) The amendments would deal with the following matters:

The Contracts

- a) The legislation should provide for the Minister to approve a standard contract in respect of the employment of each of the different categories of senior health service employee;
- b) The contract is to have a maximum duration of three years;
- c) Standard contracts are to be used for the engagement of senior health service employees in each particular category ultimately prescribed by regulation, for example, senior medical officers, visiting medical officers or senior nursing staff;

Arbitration

- d) The amendments would provide for the arbitration of the contracts on the application of either the Minister or the industrial representatives of senior health service employees.



- e) The Department and senior health service employee industrial representatives would be required to meet three months prior to the expiration of the agreement to negotiate a new agreement;
- f) The arbitrator would be empowered to determine:
 - i) a contract which provided for
 - (1) the terms and conditions of work;
 - (2) the amounts or rates of remuneration;
 - (3) the period the agreement is to have effect;
 - ii) private practice arrangements, including schedule of service fees, where applicable.
- g) The application for arbitration cannot be made prior to the expiration of the previous agreement.

Appointment of Arbitrator

- h) The Minister shall, within 7 days of receipt of an application for arbitration, request that the Vice-President of the Queensland Industrial Relations Commission ("QIRC") appoint a member of the QIRC to act as the arbitrator for the determination;
- i) The arbitrator will be given the protections and immunity of a Judge of the Supreme Court of Queensland;

The Determination

- j) The nature of the determination the arbitrator would be required to make would be to determine:
 - i) a contract which provided for:
 - (1) the terms and conditions of work;
 - (2) the amounts or rates of remuneration;
 - (3) the period the agreement is to have effect;
 - ii) private practice arrangements, including schedule of service fees, where applicable.

Powers of the Arbitrator

- k) The arbitrator would be given the power to require persons to attend the arbitration who the arbitrator believes are required in order to obtain an agreement and would otherwise have all the powers provided to the QIRC for



the purposes of arbitrating a certified agreement or dispute under the *Industrial Relations Act 1999* ("IR Act");

- l) The arbitrator would be empowered to bring together the parties to the agreement and to try and obtain agreement prior to issuing a determination through an alternative dispute resolution process determined by the arbitrator, for example conciliation;
- m) The arbitrator may administer an oath to anyone who appears during the arbitration to give evidence;
- n) The proceedings will be conducted in the manner as determined by the arbitrator.
- o) The arbitrator may determine to conduct the proceedings in public or in private;
- p) The manner and exercise of the arbitrator's functions will be as follows:
 - i) The arbitrator is not to be bound by the rules of evidence and may inform themselves in the manner they see fit;
 - ii) the arbitrator must act judicially and be governed by equity and good conscience without regard to legal technicalities or legal forms and that facilitates the fair and practical conduct of arbitration;
 - iii) in making a determination the arbitrator would be required to consider the claims of the parties;
 - (1) the likely effect of the proposed determination, and any matters agreed between the negotiating parties before the arbitration, on the employees and employers who will be bound by the proposed arbitration determination;
 - (2) the extent to which the negotiating parties have negotiated in good faith;
 - (3) the public interest.

Representation

- q) The Government and senior health service employee will be entitled to be represented during the arbitration by representatives of their choosing, including an Australian Legal Practitioner;
- r) Other parties outside of the Minister, and industrial associations representing senior health service employees, may be heard to provide submissions provided they obtain the leave of the arbitrator on the basis they have a special interest in the outcome of the arbitration;



Notification of the Decision

- s) The determination will be notified to the parties. The decision will be final and may only be appealed to a full bench of the QIRC in the manner provided for pursuant to the IR Act for appeals.
- t) In respect of any difficulties in terms of interpreting the determination, the parties may apply to the full bench of the QIRC for interpretation, application and operation of the determination;

Ongoing Role of Arbitrator

- u) The Arbitrator, or in their absence a member of the QIRC appointed by the Vice-President of the QIRC, shall hear any disputes under the dispute resolution provision of the Determination.

Binding Contract - No unilateral change

- 37) The determination will be contractually binding.
- 38) The determination will be implemented by way of Regulation.
- 39) Any provision of a contract inconsistent with the determination will be of void and no effect. Similarly the determination cannot be overridden by a ministerial direction, HED, public service commission directive or regulation.

Implementation of Present Contract

- 40) Although Senior Doctors have unanimously rejected the current contract, provided the above legislative changes are made, or binding commitments to make those changes are given, during the transition period SMOs and VMOs do not object to the Government continuing to roll out high income guarantee contracts with effect until 30 June 2015.
- 41) However, Senior Doctors should similarly have the choice during the transition period (as already contemplated by the Government) of remaining on MOCA3 until 30 June 2015 without any detriment to their remuneration by the termination of private practice arrangements..

Private Practice HED

- 42) In order to ensure that Senior Doctors have a free choice as to whether to remain on the MOCA3 or sign a high income guarantee contract during the transition period a HED must be issued providing for private practice arrangements for those who chose to remain on the MOCA3, including payments referable to the



various private practice schemes and schedule of service fees currently operative.

Undertaking to negotiate new contract

- 43) Following the implementation of the above legislative amendments, the Government will need to undertake to commence negotiations with senior doctor representatives for the implementation, if needs be by arbitration, of high income guarantee contracts for SMOs and VMOs which will commence on 1 July 2015.

Legal Professional Privileged is claimed