



SMO & VMO contracts – the latest

Original Contracts and Background

1. In 2013 the Newman Government introduced new draft contracts for Senior Medical Officers (SMO's). These contracts offered no protection for unfair dismissal; no dispute resolution or collective bargaining options; compromised clinical autonomy and patient advocacy; and granted unfettered managerial powers in respect of all aspects of work (e.g. rosters, relocations, etc). Additionally legislative amendments to the *Industrial Relations Act 1999* were introduced as a means to coerce doctors into signing these new contracts.
2. In January 2014 the Government refused to enter into negotiations regarding the terms of the contracts, adopting a 'take it or leave it' approach. Despite widespread concerns and criticism, no changes were made to either the contracts or the recent legislative amendments. In response, the 'Keep Our Doctors' campaign was launched.

Legislative Changes

3. On 3 April 2014, the Government passed the *Hospital and Health Boards Amendment Bill 2014* (the "HHB Bill"). This bill introduces two amendments to the *Hospital and Health Boards Act 2011* - the amendment of s.51C(3) and the insertion of s.65B into the Act.
4. The amended s51C(3) provides;
 - (3) *If a health employment directive is inconsistent with a high-income guarantee contract, the high-income guarantee contract prevails over the health employment directive to the extent of the inconsistency.*
5. The newly created s69B provides;

69B Relationship of high-income guarantee contract with legislation

 - (1) *A high-income guarantee contract for a health service employee prevails over an employment regulation.*
6. These amendments mean that neither a Health Employment Directive nor an Employment Regulation has the power to override a terms of the contract. A HED may still have an effect on a SMOs employment, provided the HED is not inconsistent with the contract. Furthermore the contract may still be changed by subsequent legislation.

Relocation

7. Originally the contracts contained no ability for MOs to challenge relocation within the service. Now, however, the service has a requirement to consult with MOs and MOs may refuse the request if they can establish 'reasonable grounds' based on their personal circumstances.
8. MOs must also be provided with reasonable notice of any proposed relocation, and may refer any disagreements to the Queensland Industrial Relations Commission for arbitration.

Clinical Autonomy/Patient advocacy

9. Clause 6 of the VMO contract sets out the duties of Medical Officers. Clause 6(2) of the contract originally stated;

"The Medical Officer is subject to the reasonable directions of the Service in exercising or performing the Medical Officer's functions within their scope of practice. The Service respects the Medical Officer's professional ability to exercise clinical autonomy within their scope of practice. ~~The Medical Officer commits to exercising their clinical autonomy in a manner consistent with the policies of the Service and in such a way that the proposed clinical practice would be supported by a group of clinical peers.~~"

Subsequent negotiations however, resulted in the removal of the last sentence of CI 6(2), which linked clinical autonomy to service policies.

10. Clause 23 of the VMO contract relates to the termination of a Medical Officer's employment, with Clause 23(7) originally providing;

The Service may terminate the Medical Officer's employment at any time without notice if:

(e) *Taking into account the Duties of the Medical Officer and relevant health and safety legislation and policies, the Medical Officer engages in conduct that causes, or may cause imminent and serious risk to;*

i. The health and safety of a person; or

ii. ~~The reputation, viability or profitability of the Service's business~~

The reference to 'reputation, viability or profitability' has since been removed, so that Clause 23(7)(e) now only refers to conduct that causes or may cause imminent and serious risk to the health and safety of a person.

11. A robust arbitration process also allows for a Deputy President of the Queensland Industrial Relations Commission to arbitrate over workplace issues which may arise.

Dispute Resolution

12. While the proposed contracts originally removed binding arbitration from the dispute resolution process, after successful negotiations the contracts were amended to include a robust and fair arbitration process for the resolution of contractual and workplace issues.
13. Under the newly negotiated process, if a dispute remains unresolved a Medical Officer may elect to have the matter resolved by binding arbitration. In such a case the Director-General must, within seven days, request that a Deputy President of the QIRC be appointed to arbitrate the matter.

14. This process reflects the current process and powers contained with the *Industrial Relations Act 1999*. Additionally, Medical Officers have the right to legal or union representation throughout the dispute resolution process.

Remuneration

15. Clause 10 of the contract concerns remuneration for SMOs and VMOs, with clause 10(3) of the contract providing;

“The compensation attached to Tiers 2 and 4 will be set by the Service and may be reviewed and varied as required by the Service from time to time having regard to its operational requirements and in accordance with the Total Remuneration Framework, provided that, where a term is set for a Tier 4 benefit, it will not be amended during the term, except by written agreement between the parties.”

As Tier 4 remuneration components cannot be amended without written agreement during the agreed term of the payment, SMOs and VMOs may insist on a perpetual term.

Hours of Work

16. Under clause 15(6) of the contract, where a service proposes a new shift where any part of the new shift falls between 6.00pm and 7.00am, the service has a requirement to first consult suitable MOs and call for expressions of interest for the shift.
17. MOs may refuse a proposed shift or roster if they can establish ‘reasonable grounds’ to do so. This is not limited to personal circumstances but may include the inability to manage care arrangements; concerns that the shift will lead to adverse patient outcomes; or where the risk of fatigue cannot be mitigated.
18. The service is required to provide reasonable notice of a change to rosters, meaning that where a roster change includes shifts between 6.00pm and 7.00am on any one day, a minimum of four weeks notice must be provided.
19. If an agreement cannot be reached, the Medical Officer may access the grievance/dispute resolution process conducted through the QIRC.

Review of Performance/KPIs

20. Key performance indicators for MOs will only be developed and varied by agreement between MOs and the service. If an agreement cannot be reached, an MO may access the dispute resolution process.
21. Any variation of KPIs must include consideration of MO duties and clinical autonomy, as well as operational requirements of the service.
22. Any affect on remuneration will not occur until June 30 2016 at the earliest. Agreed KPIs for the 2015/2016 financial year will be measured and outcomes may impact remuneration for the 2016/2017 financial year. These terms apply to both current and future Medical Officers.

Intellectual Property

23. The newly negotiated contract contains significantly narrower clauses regarding intellectual property compared to the originally proposed contract.

24. As per clause 24(5) of the contract, unless a written agreement provides otherwise, the service will only hold rights to intellectual property produced or conceived by an MO in the course of their employment or in connection with their duties performed for the service,
25. Under this agreement, the service cannot claim rights to existing intellectual property, nor any intellectual property developed in private practice.

Termination

26. Negotiations have resulted in significant changes to provisions relating to termination. The originally proposed contract removed protections from unfair dismissal and in the event that a dispute concerning a termination could not be resolved, a Medical Officer's only recourse was to bring a contractual claim before the Supreme Court of Queensland.
27. If a MO's employment is terminated a MO may appeal the termination decision to the Director-General, with 21 days of receiving written notice of the termination. The Director-General must then request a Deputy President of the QIRC be appointed to independently arbitrate the appeal of the termination decision.
28. In determining the appeal the arbitrator must consider whether the decision to terminate was harsh, unjust or unreasonable. Clause 25(13) of the contract provides;
"In conducting an appeal under this clause, the arbitrator must apply the procedures applicable to a claim made under section 73(1)(a) of the IR Act as at 7 July 2014 and may only award those remedies applicable to such a claim."
29. Additionally MOs now have the right to legal and/or union representation throughout the appeal process.
30. These changes are a huge win for MOs, restoring employee rights and protections which were abolished under the originally proposed contract.

Professional Development Leave

31. Clause 29(5) of the contract provides;
"Where the Service has identified during performance planning and/or review discussions a need for the Medical Officer to participate in certain professional development activities to address or improve performance issues, the Service may require the Medical Officer to undertake these professional development activities and may require the Medical Officer to take professional development leave for such periods as is necessary".
32. This provision limits the scope of the originally proposed clause relating to professional development leave.

Reversions

33. Clause 31 of the contract, relating to reversions has now been amended to expressly reference the *Medical Officers (Queensland Health) Certified Agreement (No. 3) 2012*.

Formal Provisions

34. The qualification in clause 32 of the original contract has been removed, so that clause 32 now provides;

“Any variation ~~that is not specifically contemplated by~~ to this Contract may only be made by written agreement between the parties to this Contract”.

Health Employment Directives

35. On 22 April 2014 the Department of Health issued *Health Employment Directive No. 7/14*. The purpose of this HED was;

“To require Hospital and Health Services (HHSs) and the Department of Health (the department) to use the framework contract of employment attached to this directive when making an offer of a new employment contract to, or entering into a new employment contract with, a Senior Medical Officer (SMO), whether new or existing, who is to commence on or after 4 August 2014.”

36. The HED also states that a Queensland Health Contract Advisory Committee will be established to provide expert advice and recommendations to the Director-General with regards to matters relating to the implementation, operation and ongoing management of contracts for senior medical officers.
37. Attached to this HED were the amended VMO and SMO contract and contract framework documents, as well as the VMO and SMO Dispute Resolution procedures.

Contract Advisory Committee

38. The purpose of the Contract Advisory Committee (CAC) is to provide expert advice and recommendations to the Director-General with regards to matters relating to the implementation and strategic review of contracts.

CAC Composition

39. The CAC will be comprised of nine members including the chairperson.
40. There will be 4 employer representatives, including 3 from the HHS and one from the Department of Health.
41. There will be 4 employee representatives; 1 from metropolitan services, 1 VMO, 1 from remote/rural services and 1 from regional services.
42. The Director-General will appoint 1 non-voting chairperson. MOs will elect employee representatives, with terms of 3 years.

CAC Decision Making

43. The Committee will make decisions by consensus, wherever possible. Where the independent chair is satisfied that, having taken reasonable steps, consensus is unlikely to be reached, the Committee will appoint an independent reviewer to assess the matter/s at issue and to recommend an outcome. The Committee will be bound by the independent reviewer's recommended outcome. As the Committee performs an advisory role to the Director-General, the Committee has no decision making responsibilities.

CAC Remuneration

44. In the event that the CAC is unable to reach a decision regarding remuneration, the chairperson will not appoint an independent reviewer.
45. Instead, if the committee cannot reach a consensus, or if the consensus reached is rejected by the Director General, a Deputy President of the QIRC will be requested to arbitrate the remuneration base rates for SMO/VMO classification levels, professional development allowances and inaccessibility incentives.

Conclusion

46. We have accomplished a considerable amount, achieving contractual and legislative changes as well as new HEDs. The current offer is significantly fairer than that which was originally proposed in January 2014, but it is not the arrangement that was in place on 30 November 2013.
47. While there have been very important gains and improvements addressing key concerns, there is still the need to organise collectively to ensure true representation on the Contract Advisory Committee. This can be achieved by employees joining and becoming active within their unions in order safeguard the rights and protections which we've secured so far and ensure fairness and bargaining strength into the future.