

**DEPARTMENT OF HEALTH MEDICAL PRACTITIONERS (CLINICAL ACADEMICS)
AMA INDUSTRIAL AGREEMENT 2008**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES THE MINISTER FOR HEALTH IN HIS INCORPORATED CAPACITY
UNDER S.7 OF THE HOSPITALS AND HEALTH SERVICES ACT 1927
(WA) AS THE HOSPITALS FORMERLY COMPRISED IN THE
METROPOLITAN HEALTH SERVICE BOARD AND THE PEEL
HEALTH SERVICES BOARD

APPLICANT

-v-

THE WESTERN AUSTRALIAN BRANCH OF THE AUSTRALIAN
MEDICAL ASSOCIATION

RESPONDENT

CORAM PUBLIC SERVICE ARBITRATOR
COMMISSIONER S WOOD

DATE WEDNESDAY, 24 SEPTEMBER 2008

FILE NO PSAAG 14 OF 2008

CITATION NO. 2008 WAIRC 01431

Result Agreement registered

Representation

Applicant Mr S Gregory

Respondent Mr G Bucknall

Order

HAVING heard Mr S Gregory on behalf of the applicant and Mr G Bucknall on behalf of the respondent, and by consent, the Public Service Arbitrator, pursuant to the powers conferred under the Industrial Relations Act 1979, hereby orders:

THAT the agreement made between the parties as lodged in the Commission on the 5th day of September 2008, amended by consent at hearing on the 24th day of September 2008, entitled the Department of Health Medical Practitioners (Clinical Academics) AMA Industrial Agreement 2008 is hereby registered;

AND replaces the Department of Health (Clinical Academics) AMA Industrial Agreement 2004 (PSAAG 12 of 2004) which is hereby cancelled.

 **(Sgd.) S. WOOD**
COMMISSIONER S WOOD
PUBLIC SERVICE ARBITRATOR

**DEPARTMENT OF HEALTH MEDICAL PRACTITIONERS (CLINICAL
ACADEMICS) AMA INDUSTRIAL AGREEMENT 2008**

PSAAG 14 of 2008

1. TITLE

This Agreement shall be known as the *Department of Health Medical Practitioners (Clinical Academics) AMA Industrial Agreement 2008*.

2. ARRANGEMENT

1.	TITLE	2
2.	ARRANGEMENT	2
3.	APPLICATION	2
4.	NO FURTHER CLAIMS	3
5.	TERM, EXPIRY AND RENEGOTIATION OF AGREEMENT	3
6.	BACKGROUND	3
7.	AGREEMENT FLEXIBILITY	3
8.	DEFINITIONS	3
9.	CONTRACT OF SERVICE	4
10.	HOURS	6
11.	SALARIES	6
12.	PRIVATE PRACTICE	7
13.	PAID LEAVE ENTITLEMENTS	8
14.	SHIFT, WEEKEND AND PUBLIC HOLIDAY PENALTIES	8
15.	ON CALL AND CALL BACK	8
16.	CALCULATION OF PENALTIES	8
17.	RECOVERY OF OVERPAYMENTS	8
18.	REMUNERATION PACKAGING	8
19.	DISPUTE SETTLING PROCEDURES	9
20.	SIGNATURES	10

3. APPLICATION

- (1) The parties to this Agreement are the Minister for Health incorporated as the Board of the hospitals formerly comprised in the Metropolitan Health Service Board under s7 of the Hospitals and Health Services Act 1927 (WA) and the Australian Medical Association (Western Australia) Incorporated (“the Association”).
- (2) This Agreement shall extend to and bind clinical academics employed by the Employer in public hospitals.
- (3) The estimated number of clinical academics bound by this Agreement upon registration is 74.
- (4) While this Agreement is in operation, it shall except as otherwise provided override all provisions of:
 - (a) the *Western Australian State Public Hospitals, Medical Practitioners' Award 1987 No. A 19 of 1986*; and
 - (b) the *Department of Health Medical Practitioners (Metropolitan Health Services) AMA Industrial Agreement 2007*.

4. NO FURTHER CLAIMS

The parties undertake that for the period of this Agreement they shall not, other than as agreed or as provided in this Agreement, pursue any extra claims with respect to salaries and conditions to apply within the period of this Agreement to clinical academics who are bound by it.

5. TERM, EXPIRY AND RENEGOTIATION OF AGREEMENT

- (1) This Agreement shall have effect from date of registration and shall expire on 30 September 2010.
- (2) Negotiations for a new agreement shall commence by 1 April 2010 and the parties are committed to expeditiously progressing negotiations to finalise the new agreement prior to the expiration of this Agreement.
- (3) If a new agreement is not registered by 30 September 2010 this Agreement shall continue to be in force until a new agreement is made.

6. BACKGROUND

This agreement acknowledges the particular contribution that academic clinical staff make to the Health System in terms of their teaching, research and their clinical service. Such contributions are a vital part of the Health System in that they provide for the training of high quality doctors and they are important factors in the delivery of efficient and effective health care to the community.

7. AGREEMENT FLEXIBILITY

In recognition of the need for maximum flexibility within this Agreement, if an Employer, the Association and the majority of clinical academics concerned who attend or vote agree, mutually acceptable terms and conditions may be implemented in substitution of those specified in this Agreement.

Nothing in this agreement prevents an Employer from agreeing to provide additional assistance to a clinical academic where this is considered appropriate by the Employer.

8. DEFINITIONS

“Aggregate Salary” means the base salary and clinical loading paid to a clinical academic by the University, plus the salary paid to a clinical academic under this Agreement.

“Board of Reference” means a panel consisting of a person nominated by an Employer, a person nominated by the Association and an independent Chairperson nominated by the Western Australian Industrial Relations Commission.

“Clinical Academic” means a medical practitioner employed by The University of Western Australia as a professor, associate professor, senior lecturer or lecturer in the faculty of Medicine and Dentistry and also employed by an Employer as a medical practitioner.

“Consultant Level 24” means the classification of Consultant Year 9, Pay Point 24, prescribed in the Medical Practitioners Industrial Agreement.

“Director of Medical Services” means a medical practitioner who is the principal medical administrator of the hospital and/or health service and includes the Medical Superintendent.

“Hospital”, subject to the context, includes Health Services.

“Medical Practitioner” means a medical practitioner as defined under the *Medical Act 1894* as amended from time to time.

“Medical Practitioners Industrial Agreement” means the *Department of Health Medical Practitioners (Metropolitan Health Services) AMA Industrial Agreement 2007*.

“Private Patient” means a patient of a public hospital who is not a public patient. A private patient elects to accept responsibility to pay for medical care and the provision of hospital services. Patients who are covered under Workers’ Compensation or Motor Vehicle Insurance Trust legislation or policies are deemed to be private patients for the purpose of this Agreement.

"Private Practice" means those services provided in or using an Employer’s facilities and for which fees are charged by or on behalf of the clinical academic.

"Public Patient" means a patient in respect of whom a hospital or health service provides comprehensive care, including all necessary medical, nursing and diagnostic services and, if they are available at the hospital or health service, dental and paramedical services, by means of its own staff or by other agreed arrangements.

“University” means The University of Western Australia of 35 Stirling Highway Crawley Western Australia, a body corporate established under section 6 of the *University of Western Australia Act 1911 (WA)*.

“University Industrial Agreement” means the *University of Western Australia Academic Staff Agreement 2006*.

9. CONTRACT OF SERVICE

(1) Cessation or Termination of Tenure/Contract of Service with the University

It is a condition of the clinical academic’s employment that the clinical academic remains an employee of the University. Subject to sub-clause (2)(a) below, employment under this Agreement shall cease upon the termination or cessation of the clinical academic’s period of tenure or contract of service with the University.

(2) Cessation or Termination of Employment with an Employer

- (a) Notwithstanding any other provision in this clause, an Employer may, without prior notice, dismiss a clinical academic for refusal to obey lawful orders or for serious misconduct.
- (b) A clinical academic who is dismissed may appeal to a Board of Reference if the application is made within one month of the operative date of the dismissal.
- (c) A clinical academic may terminate the contract of employment with an Employer by giving to the Employer not less than three months’ notice in writing provided that the Employer and the clinical academic may agree to a shorter period of notice. In lieu of giving the required notice, the clinical academic may forfeit salary commensurate with the residual period of notice otherwise required.

(3) No Effect of Termination by Employer on Tenure/Contract of Service with the University

- (a) A clinical academic’s right of tenure or term of service with the University shall not be affected by the operation of this Agreement.
- (b) A decision by an Employer to terminate the employment of a clinical academic under sub-clause (2) above shall not, by this Agreement, cause the University to terminate the employment or tenure of a clinical academic or otherwise impose any obligation or commitment upon the University.

(4) No Incorporation of Terms

- (a) Except as expressly provided herein, no right, entitlement or condition of employment of a medical practitioner employed under the Medical Practitioners Industrial Agreement shall, by this Agreement, be conferred upon a clinical academic.
- (b) No right, entitlement or condition of employment established pursuant to:

- (i) *The University of Western Australia Academic Staff Agreement 2000* or its successor agreements; or
- (ii) any award, including a successor award, incorporated in *The University of Western Australia Academic Staff Agreement 2000*; or
- (iii) any other industrial instrument regulating the terms and conditions of employment of medical practitioners employed by the University,

shall be implied, inferred or incorporated into the contract of employment of a clinical academic.

- (c) No provision of any administrative policy, protocol, regulation or practice (however titled) established by the University shall be implied, inferred or incorporated into the contract of employment of a clinical academic.

(5) Compliance with Public Sector and Employer Policy/Procedure etc

A clinical academic shall, pursuant to this Agreement, comply with the provisions of the *Public Sector Management Act 1994* and with the provisions of the *Western Australian Public Sector Code of Ethics*, *Public Sector Standards*, and the Employer's Code of Conduct and such other policy, procedure and regulation relevant to the clinical academic's employment with their Employer as may be introduced or amended from time to time.

(6) Membership of Hospital Clinical Staff

A clinical academic shall be deemed to be a full member of the clinical staff of the applicable hospital. A clinical academic shall, subject to the provisions of this Agreement, have the same clinical rights, duties and obligations as other members of the clinical staff and shall be bound by the same clinical and related administrative policies, procedures and protocols as other members of the clinical staff who are employed pursuant to the Medical Practitioners Industrial Agreement.

(7) Medical Practitioners

The parties recognise:

- (a) the primacy of the personal responsibility of medical practitioners to their patients;
- (b) that medical practitioners are responsible and accountable to the statutory authorities including the Medical Board established under the *Medical Act 1894*; and
- (c) that medical practitioners are responsible and accountable to the ethical codes and standards of relevant colleges and professional associations.

(8) Patient Confidentiality

A clinical academic shall not be bound, without the patient's consent, to divulge any information which the clinical academic has acquired in attending the patient to any person other than the Director of Medical Services or their Deputy or equivalent, other than in accordance with the requirements of this Agreement or any relevant agreement between the Association and their Employer.

(9) Professional Autonomy in Teaching and Research

Nothing in this Agreement shall limit a clinical academic in exercising reasonable academic freedom in the pursuit of teaching and research consistent with their status as a member of the academic staff of the University.

- (10) An Employer shall be free to disclose, from time to time, relevant particulars of the terms of employment of a clinical academic to the University. A clinical academic shall not unreasonably withhold approval for the University to likewise disclose to the Employer relevant particulars of the terms of employment of the clinical academic by the University.

10. HOURS

- (1) Clinical Academics are concurrently engaged on a no-fixed hours basis by both the University and the Employer.
- (2) A full-time clinical academic's ordinary hours professional commitment to hospital duties, when not on approved leave, shall be not less than 50% of that required of a full-time consultant, unless otherwise agreed.
- (3) Rostered on call and call back commitments are not included in the ordinary professional commitment.

11. SALARIES

- (1) Calculation of Annual Salary

Subject to sub-clauses (2) to (5) below, the salary for clinical academics shall be calculated in accordance with the relevant formula as follows:

- (a) Professor

The salary for a clinical academic appointed to the full-time position of Professor (Level E) under the University Industrial Agreement shall be the difference between 105% of the base salary for a full-time Consultant Level 24, and the base salary for a full-time Professor plus the clinical loading for a full-time Professor.

- (b) Associate Professor

The salary for a clinical academic appointed to the full-time position of Associate Professor (Level D) under the University Industrial Agreement shall be the difference between 100% of the base salary for a full-time time Consultant Level 24, and the base salary for a full-time Associate Professor plus the clinical loading for a full-time Associate Professor.

- (c) Senior Lecturer

The salary for a clinical academic appointed to the full-time position of Senior Lecturer (Level C) under the University Industrial Agreement shall be the difference between 90% of the base salary for a full-time Consultant Level 24, and the base salary for a full-time Senior Lecturer plus the clinical loading for a full-time Senior Lecturer.

- (d) Lecturer

The salary for a clinical academic appointed to the full-time position of Lecturer (Level B) under the University Industrial Agreement shall be the difference between 80% of the base salary for a full-time Consultant Level 24, and the base salary for a full-time Lecturer plus the clinical loading for a full-time Lecturer.

- (2) Base salary for a full-time Professor, Associate Professor, Senior Lecturer and Lecturer shall:

- (a) Include the maximum applicable salary paid by the University pursuant to the University Industrial Agreement or such higher base salary as is determined and paid by the University for the Academic classifications of Professor (Level E), Associate Professor (Level D), Senior Lecturer (Level C) and Lecturer (Level B) from time to time.

(b) Not include such additional remuneration as is paid by the University pursuant to any administrative policy, protocol, regulation or practice (however titled) established by the University.

(3) Clinical Loading

For the purposes of this clause, clinical loading shall be the amount in clinical loading paid by the University to a clinical academic provided that such amount shall not be less than the clinical loading prescribed in the *Australian Universities Academic and Related Staff (Salaries) Award 1987*, as amended from time to time, for a medically qualified full-time Professor, Associate Professor, Senior Lecturer or Lecturer employed in a full clinical department in a medical school and responsible for patient care.

(4) Adjustment of Salary

Salaries shall be amended from time to time in accordance with the formula for the calculation of annual salary specified in sub-clause (1), above, to reflect adjustments to the base salaries and clinical loading as specified in sub-clauses (2) to (3), above. Allowances payable pursuant to subclauses (5) and (6), below, are not counted for the purpose of adjustment of salary pursuant to this sub-clause.

(5) Psychiatrist's Allowance

The psychiatrist's allowance of 15% of aggregate salary prescribed under the industrial agreement replaced by this industrial agreement shall be struck as a fixed rate, as at the date of commencement, and shall continue to be paid at that rate until 30 September 2008.

(6) Head of Department

A Clinical Academic appointed as a Head of Department in a hospital shall have the same duties, obligations and allowance entitlements as are prescribed for Heads of Departments in the Medical Practitioners Industrial Agreement.

(7) Fractional Appointments

(a) The salary for a clinical academic appointed by the University on a fractional basis shall be calculated pro-rata in the proportion to which the fractional appointment bears to full-time appointment.

(b) A clinical academic appointed on a fractional basis shall be allowed entitlements in accordance with the provisions of this Agreement in the proportion which the fractional appointment bears to a full-time appointment.

(8) The salaries and allowances prescribed in this clause shall be paid pro rata on a fortnightly basis.

(9) If from time to time the inadvertent effect of a combination of increases in the salaries and allowances prescribed in the University Industrial Agreement would otherwise result in the Aggregate Salary being reduced then the Aggregate Salary will be maintained at the existing rate.

12. PRIVATE PRACTICE

(1) Subject to this clause, a Clinical Academic and the Employer shall have the same private practice rights and obligations that are prescribed for Consultants in the Medical Practitioners Industrial Agreement including access to the full Arrangement A allowance regardless of academic classification provided that the Professional Development and Expenses Allowance does not apply to Clinical Academics.

(2) The Employer shall impose no limitation on the reasonable exercise of private practice rights outside a facility under the control of the Employer that are permitted by virtue of the clinical academic's employment by the University and consistent with the University's policy for consultative work for clinical academics.

- (3) A clinical academic shall have no entitlement to private practice within a facility under the control of an Employer, other than pursuant to this Agreement.
- (4) Other arrangements may be agreed between an Employer and a clinical academic to govern the exercise of rights of private practice provided that the clinical academic shall disclose to the University all the particulars of any proposed alternative arrangements prior to entering into such an agreement.
- (5) Private practice must not interfere with the clinical academics responsibility to carry out all the necessary duties of the clinical academic's appointment or give rise to a conflict of interest.

13. PAID LEAVE ENTITLEMENTS

- (1) Where the University grants paid leave pursuant to *The University of Western Australia Academic Staff Agreement 2006* to a clinical academic, an Employer shall likewise approve paid leave under the same terms, provided the Employer is given reasonable notice of the granting of such leave.
- (2) Where the University grants study leave, in addition to the entitlements prescribed in *The University of Western Australia Academic Staff Agreement 2006*, pursuant to its administrative policy current as at the date of effect of this Agreement, an Employer shall likewise approve paid leave under the same terms, provided the Employer is given reasonable notice of the granting of such leave.

14. SHIFT, WEEKEND AND PUBLIC HOLIDAY PENALTIES

- (1) Subject to this Clause, a clinical academic shall have the same shiftwork obligations and penalties' entitlement as are prescribed for full-time Consultants in the Medical Practitioners Industrial Agreement.
- (2) For the purpose of this clause the hourly rate of pay shall be calculated on the basis of the aggregate salary as defined.

15. ON CALL AND CALL BACK

- (1) A clinical academic shall have the same On-Call and Call-Back obligations and the same On-Call and Call-Back penalties' entitlement as are prescribed for full-time Consultants in the Medical Practitioners Industrial Agreement.
- (2) Notwithstanding the provisions of this clause, if the Employer and the Association agree, other arrangements may be made for compensation of On-Call and Call-Back.

16. CALCULATION OF PENALTIES

If a clinical academic works hours which would entitle that clinical academic to payment of more than one of the monetary penalties payable in accordance with the relevant public holidays, On-Call and Call-Back or shift and weekend work provisions of this Agreement, only the highest of any such penalty shall be payable.

17. RECOVERY OF OVERPAYMENTS

A clinical academic and the Employer shall have same Recovery of Overpayments obligations and entitlements as are prescribed in the Medical Practitioners Industrial Agreement.

18. REMUNERATION PACKAGING

A clinical academic and the Employer shall have same Remuneration Packaging obligations and entitlements as are prescribed in the Medical Practitioners Industrial Agreement.

19. DISPUTE SETTLING PROCEDURES

- (1) Subject to Clause 3 – No Further Claims and the provisions of the *Industrial Relations Act, 1979*, any questions, disputes or difficulties raised by a party to this Agreement, shall be settled in accordance with the following procedures.
- (2) If the matter is raised by a clinical academic, or a group of clinical academics, the following steps shall be observed -
 - (a) The clinical academic(s) concerned shall discuss the matter with the Head of Department. If the matter cannot be resolved at this level the Head of Department shall, within three working days, refer the matter to the Director of Medical Services and the clinical academic(s) shall be advised accordingly.
 - (b) The Director of Medical Services shall, if so able, answer the matter raised within one week of it being referred and, if the Director of Medical Services is not able, refer the matter to the Hospital Executive for its attention, and the clinical academic(s) shall be advised accordingly.
 - (c) If the matter has been referred in accordance with paragraph (b) above the clinical academic(s) or the appropriate AMA hospital clinical academic representative shall notify the Association, to enable the opportunity of discussing the matter with the Employer.
 - (d) The Employer shall, as soon as practicable after considering the matter before it, advise the clinical academic(s) or, if necessary, the Association of its decision. Such advice shall be given within one month of the matter being referred to the Employer.
 - (e) If the parties agree that a matter is non-industrial it may by agreement be referred to other appropriate bodies (e.g. relevant Colleges) for advice and/or assistance.
 - (f) Nothing in this procedure shall prevent the parties agreeing to shorten or extend the periods prescribed.
- (3) Subject to Clause 3 - No Further Claims, should a question, dispute or difficulty remain in dispute after the above processes have been exhausted the matter may:
 - (a) be referred by either party to the Western Australian Industrial Relations Commission (the persons involved in the question, dispute or difficulty must confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking these matters to the Commission); or
 - (b) if the parties agree, be referred to another independent arbitrator chosen by the parties or as a last resort nominated by the Western Australian Industrial Relations Commission. In such a case:
 - (i) either party may be represented in the arbitration by an agent or legal representative and shall bear the costs of that representation; and
 - (ii) the Employer will meet the costs of the arbitration, but if the arbitrator determines that a claim is frivolous or vexatious, the arbitrator may assign the costs of the arbitration (but not the costs of representation) against the claimant or apportion them in any manner between the parties. The parties undertake to accept the arbitrated decision as final and binding.
- (4) System wide issues will be dealt with by discussions between the appropriate AMA official(s) and Employer representative(s). Should a matter remain in dispute after discussions have been exhausted it may be dealt with in accordance with sub-clause (3).
- (5) While the above procedures are being followed no party shall take action, of any kind, which may frustrate a settlement in accordance with the above procedures. The status quo (i.e. the condition applying prior to the issue arising) will remain until the issue is resolved in accordance with the above procedures.

- (6) If an Employer seeks to discipline or terminate a clinical academic the principles of natural justice shall apply and the following steps shall be observed:
- (a) If a clinical academic commits a misdemeanour, the clinical academic's immediate supervisor or any authorised medical practitioner may reprimand the clinical academic so that the clinical academic understands the nature and implications of their conduct. The clinical academic has a right to be represented when being reprimanded.
 - (b) The first two reprimands shall take the form of warnings and, if given verbally, shall be confirmed in writing as soon as practicable after the giving of the reprimand.
 - (c) Should it be necessary, for any reason, to reprimand a clinical academic three times, the contract of service shall, upon the giving of that third reprimand, be terminable in accordance with the provisions of this Agreement.
 - (d) This procedure shall not limit the right of an Employer to summarily dismiss a clinical academic for misconduct. Nor shall it limit the right of a clinical academic to refer a claim for alleged wrongful or unlawful termination to a Board of Reference.
 - (e) A decision by an Employer to discipline a clinical academic or terminate the employment of a clinical academic shall not, by this Agreement, cause the University to discipline a clinical academic or terminate the employment or tenure of a clinical academic or otherwise impose any obligation or commitment upon the University.

20. SIGNATURES

_____/_____/_____
Paul Boyatzis
Executive Director
Australian Medical Association (Western Australia) Incorporated

_____/_____/_____
Marshall Warner
Director
Health Industrial Relations Service