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PUBLIC HOSPITALS (VISITING MEDICAL OFFICERS SESSIONAL CONTRACTS) DETERMINATION 1994

1. TITLE

This Determination shall be known as the "Public Hospitals (Visiting Medical Officers - Sessional Contracts) Determination 1994".

2. ARRANGEMENT

This Determination is arranged as follows:

Clause Number	Subject Matter
1	Title
2	Arrangement
3	Definitions
4	Contract for Services
5	Services
6	Classifications
7	Remuneration for Services
8	Background Practice Costs
9	Superannuation
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11	Public Holiday Remuneration
12	Unpaid Leave of Absence
13	Record of Services
14	Suspension of Sessional Contract
	Termination of Sessional Contract
	Dispute Resolution Procedure
17	Notices
18	Operation and Effective Date

3. DEFINITIONS

In this Determination:

"appointment" means appointment as a visiting medical officer and includes re-appointment and promotion, and appointed, re-appointed and promoted have a corresponding meaning;

"area health service" means an area health service as defined in the *Area Health Services Act 1986*;

"board" means a board as defined in the *Public Hospitals Act 1929*, and, in relation to a hospital that is a separate institution, includes the governing body of the separate institution;

"call-back" means called to attend a hospital, whether or not rostered on-call, at a time when the visiting medical officer would not otherwise have attended the hospital, in response to a request from the relevant hospital or area health service to attend for the purpose of providing services;

"clinical privileges" means the clinical privileges as defined in the Area Health Services (Visiting Practitioners) Regulation 1989 or the Public Hospitals Regulation 1991, as the case may be;

"general practitioner" means a medical practitioner who is not a specialist;

"hospital" means a hospital as defined in the *Public Hospitals Act 1929*;

"medical practitioner" means a person registered for the time being under the *Medical Practice Act 1992*;

"officer" means a visiting medical officer;

"on-call" means rostered to be available to attend public patients pursuant to an on-call roster prepared by a hospital or an area health service, as the case may be in consultation with the relevant clinical department;

"patient" means a patient as defined in the *Public Hospitals Act 1929*;

"public patient" means a patient in respect of whom the hospital or area health service provides comprehensive care, including all necessary medical, nursing and diagnostic services, by means of its own staff or by other agreed arrangements;

"senior specialist" means a specialist who has practised as such in a specialty for at least seven years and who is required under a sessional contract to render services the adequate performance of which services requires a specialist of that status;

"services" means medical services provided to a public patient by a visiting medical officer under a sessional contract, including teaching, training and participation on committees, but excluding attendance at meetings of a medical staff council (howsoever called);

"service contract" means a service contract as defined in the *Public Hospitals Act 1929*;

"sessional contract" means a sessional contract as defined in the *Public Hospitals Act 1929*;

"specialist" means a medical practitioner, other than a general practitioner, who is a specialist as defined in the *Health Insurance Act 1973* (Commonwealth) and who is required under a sessional contract to render services the adequate performance of which services requires a medical practitioner of that status;

"visiting medical officer" means a visiting medical officer as defined in the *Public Hospitals Act 1929* who performs the said work under a sessional contract, but excluding a pathologist and a radiologist; and

"visiting practitioner" means a visiting practitioner as defined in the *Public Hospitals Act 1929*.

4. CONTRACT FOR SERVICES

A visiting practitioner who is to be appointed as a visiting medical officer to provide services under a service contract on a sessional basis shall be so appointed by a written sessional contract between the officer and the relevant hospital or area health service, as the case may be; the sessional contract shall specify the terms and conditions to which the officer is to be subject, including the clinical privileges of the officer as determined or varied from time-to-time by the board of the hospital or area health service concerned in accordance with any applicable Act, regulation or by-law and after advice from the appropriate credentials committee in respect of the hospital or hospitals at which the visiting medical officer provides services.

- (2) Except as otherwise affected by this Determination, the period for which a visiting medical officer may be appointed to a hospital or an area health service is to be such period (not exceeding 5 years) as the board of the hospital or area health service may determine and as is specified in the sessional contract.

A visiting medical officer appointed to a hospital or an area health service is, if otherwise qualified, eligible for but not entitled to re-appointment upon the expiry of the existing sessional contract. In the event of re-appointment, a new sessional contract shall be made.

- (4) A sessional contract shall not establish the relationship of employer and employee as between the respective parties thereto, and a visiting medical officer shall, in providing services under a sessional contract, be and be regarded as an independent contractor.
- (5) A visiting medical officer shall provide the services specified in the sessional contract to public patients at the relevant hospital or hospitals, consistent with the clinical privileges granted to the officer under the sessional contract.
- (6) A visiting medical officer shall participate in the teaching and training of post-graduate medical officers as may reasonably be required by the relevant hospital or area health service.

- (7) A visiting medical officer shall participate in committees expressly established or authorised by the board of a hospital or an area health service and to which the officer is appointed by such board, where reasonably required by the relevant hospital or area health service for the proper and efficient functioning of the hospital concerned.
- (8) A visiting medical officer shall participate in an on-call roster for the provision of services as may reasonably be required by the relevant hospital or area health service, and when so rostered the officer shall be readily contactable at all times and be able and prepared to attend the hospital concerned within a reasonable period of time.
- (9) A visiting medical officer:
- (a) shall be professionally responsible for the proper clinical management and treatment of public patients under the officer's care in the hospital concerned;
 - (b) shall take reasonable steps to ensure that the clinical records related to the services provided by the officer, and those provided for patients under the officer's care, are maintained adequately and that such completed records include details of diagnosis, treatments and operations performed and a discharge summary completed in the manner determined by the hospital;
 - (c) shall comply with all rules and by-laws in force from time to time at the relevant hospital or area health service, not being inconsistent with any of the rights and obligations of the visiting medical officer under this agreement.

The hospital or area health service, as the case may be, where reasonably practicable shall provide:

- (a) all ancillary, medical, nursing and clerical assistance and facilities, instruments and equipment reasonably necessary for the proper performance of the services to be rendered by a visiting medical officer under a sessional contract; and,
- (b) to the visiting medical officer upon request and free of charge, sufficient suitable and serviceable outer uniforms and duty garments, which shall remain the property of the relevant hospital or area health service and which shall be laundered at the expense of the said hospital or area health service.

5. SERVICES

- (1) The ordinary hours during which a visiting medical officer is to render services

(other than those pursuant to a call-back or an on-call roster) shall be as agreed between the officer and the relevant hospital or area health service, and shall be specified in the sessional contract on an annual basis or on the basis of a lesser specified period if the contract terminates sooner or if it is otherwise agreed; provided that a hospital or area health service shall only allocate work to the officer which can reasonably be performed within the agreed number of ordinary hours.

- (2) In establishing the annual ordinary hours, or the ordinary hours on the basis of another specified period, under sub-clauses (1), (5) or (6) regard shall be had to:
- (a) the services to public patients recorded as having been provided and the hours recorded as having been worked by the visiting medical officer during the previous twelve months, or if the officer has been appointed for less than twelve months the preceding period of appointment, taking into account information available on each aspect of that officer's work such as, but not limited to, ward rounds, consultations, operating theatre sessions, other procedures, outpatient clinics, postgraduate teaching and committees to which the officer is appointed under clause 4(7);
 - (b) the clinical service needs and available resources of the hospital or area health service;
 - (c) the views of the visiting medical officer;
 - (d) the nature of the visiting medical officer's appointment;
 - (e) the experience, knowledge and ability of the visiting medical officer;
 - (f) any periods of leave which the visiting medical officer proposes or is required to take during the ensuing twelve months or relevant lesser period;
 - (g) any other relevant fact or circumstance.

Remuneration - options

- (3) In respect of remuneration for ordinary hours of services one of the following options shall apply:-

Option 1 - Budgeted actual hours remuneration

- (a) (i) Where agreed by the parties, a visiting medical officer may be remunerated, to the limit of ordinary hours specified in the sessional contract, for the ordinary hours of services actually performed.

- (ii) The visiting medical officer shall be paid upon submission of a record and account to the hospital or area health service in accordance with clause 13.
- (iii) Under this option a plan of the services to be provided by the officer shall be specified.

Option 2 - Specified procedures remuneration

- (b) (i) For the purposes of this option, in establishing ordinary hours, or a portion thereof, the hospital or area health service and visiting medical officer may agree, and specify in the sessional contract, in respect of the following twelve months or relevant lesser period if the contract is to terminate sooner, the matters set out below:-
 - types of procedures that the officer is to perform on public patients;
 - numbers of each such type of procedure.
- (ii) The visiting medical officer and hospital or area health service shall make a reasonable assessment of the average time taken for the types of procedures concerned. The total ordinary hours shall be sum of the hours thus assessed for each type of procedure multiplied by the number specified for each such procedure.
- (iii) The visiting medical officer shall be remunerated for the procedures actually performed, up to the numbers of each type of procedure specified in the sessional contract. For the purpose of calculating ordinary hours attracting remuneration, each such procedure shall be deemed to have taken the time assessed for such a procedure in accordance with sub-paragraph (ii).
- (iv) Any portion of ordinary hours specified in the sessional contract which is not established under sub-paragraph (i) shall be remunerated as follows:
 - the portion of ordinary hours established under sub-paragraph (i) shall be deducted from the total ordinary hours established under clause 5(1), (5) or (6); and
 - the balance of ordinary hours then remaining shall be paid in twelve equal, or otherwise agreed, monthly instalments.

Option 3 - Agreed hours remuneration

- (c) Where option 1 or 2 is not agreed upon by the parties, the visiting medical

officer shall be remunerated for the number of ordinary hours specified in the officer's sessional contract in twelve equal, or otherwise agreed, monthly instalments.

Variation

- (4) The number of ordinary hours specified in a sessional contract may be varied at any time, either for a specified period or until the next anniversary date of the sessional contract, by an agreement in writing between the visiting medical officer and the hospital or area health service concerned.

Annual review

Not later than six weeks prior to each anniversary date of a sessional contract, the relevant hospital or area health service and the visiting medical officer shall consult in a review of the number of ordinary hours of services specified in the sessional contract in respect of the next following year or of such lesser period until the termination of the sessional contract. If agreement is reached for a variation to that number of ordinary hours then the agreement shall be reduced to writing and the sessional contract shall be varied accordingly with effect as from the first day of the year or of such lesser period, as the case may be, to which the review related. Provided that this sub-clause shall not apply if a sessional contract was made for a period of one year or less.

- (6) If agreement is not reached as a result of the review of the number of ordinary hours as contemplated in sub-clause (5) of this clause, then the hospital or area health service concerned may decide the number of ordinary hours of services to be provided by the visiting medical officer under the sessional contract for the next following year, or for such lesser period until the next anniversary date or termination of the sessional contract, whichever occurs first. Where a hospital or an area health service decides the number of ordinary hours pursuant to this sub-clause it shall notify the officer in writing of its decision and the sessional contract shall be deemed to be varied so as to include the terms of that decision, unless the visiting medical officer notifies a dispute under sub-clause (8).
- (7) If by the anniversary date of a sessional contract the visiting medical officer's ordinary hours of services for the next following year, or relevant lesser period, have not been established either by agreement under sub-clause (5) or decision under sub-clause (6), the visiting medical officer shall continue to provide services and shall be remunerated each month under the sessional contract on the basis of the average number of hours of services performed per calendar month in the twelve months prior to the anniversary date, until agreement as to such ordinary hours is reached or a decision is made under sub-clause (6), whichever occurs.

Dispute

- (8) (a) Where a visiting medical officer is dissatisfied with a decision made in accordance with sub-clause (6) of this clause the visiting medical officer shall give notice in writing to the relevant hospital or area health service of a dispute within seven days of the receipt of written notification of such decision, such dispute to be dealt with in accordance with clause ~~15.11~~
- (b) Where such dispute is notified by the visiting medical officer in accordance with paragraph (a) of this sub-clause, then pending resolution of the dispute, the visiting medical officer shall continue to provide services and be remunerated each month under the sessional contract on the basis of the average number of hours of services performed per calendar month in the twelve months prior to the anniversary date; provided that if the dispute has not been resolved within 3 months of notification of such dispute then paragraph (c) of this sub-clause shall apply.
- (c) If, within three months of notification of such dispute, the dispute has not been resolved and is not the subject of mediation or arbitration under Stage 4 or Stage 5 respectively, of clause ~~15~~¹⁶, then the decision of the hospital or area health service referred to in paragraph (a) of this sub-clause shall apply and the sessional contract shall be deemed to be varied so as to include the terms of that decision.

6. CLASSIFICATIONS

- (1) A visiting medical officer on appointment by a hospital or an area health service shall be classified as a general practitioner, specialist or senior specialist for the purposes of the officer rendering services under a sessional contract and in ascertaining the officer's remuneration, such classification to be based on the officer's qualifications and experience and according to the criteria contained in the respective definitions in this Determination of those classifications.
- (2) A visiting medical officer may apply to the relevant hospital or area health service for promotion to a higher classification of specialist or senior specialist, as appropriate, and the application shall be considered within a reasonable period of time and according to the criteria contained in the respective definitions in this Determination of those higher classifications.
- (3) Such promotion will be considered by the Board of the hospital or area health service after considering the advice of the credentials committee.

7. REMUNERATION FOR SERVICES

A visiting medical officer shall be paid the following hourly rate of remuneration for each ordinary hour specified in a sessional contract:

Classification	Ordinary Rate of Remuneration per hour \$
(a) general practitioner -	
(i) with less than 5 years' experience	75.25
(ii) with at least 5 years' but less than 10 years' experience	82.00
(iii) with at least 10 years' experience or who has been admitted to Fellowship in the Royal Australian College of General Practitioners	96.75
(b) specialist	109.50
(c) senior specialist	117.50

and on a proportionate basis to the nearest quarter hour.

8. BACKGROUND PRACTICE COSTS

A visiting medical officer shall be paid the following hourly rate during which the officer provides services at a hospital during ordinary hours, on a public holiday and on a call-back as an allowance for expenses incurred in background practice costs:

Classification	Rate of Allowance per hour \$
(a) anaesthetist, physician	15.00
(b) surgeon	25.00

and on a proportionate basis to the nearest quarter hour.

9. SUPERANNUATION

- (1) A hospital or an area health service shall pay for and on account of a visiting medical officer an amount being a component for superannuation of 2.5% of the ordinary hourly rate of remuneration to which the visiting medical officer is entitled provided:
 - (a) the visiting medical officer was appointed as at 31 January 1994 under a sessional contract with that hospital or that area health service, as the case may be; or
 - (b) at the expiration of an appointment referred to in paragraph (a), the visiting medical officer continues to be appointed under successive sessional contracts with a hospital or area health service.
- (2) The requirement to make payments in accordance with sub-clause (1) shall be varied such that:
 - (a) on and from 1 July 1995 an amount being 1.5% of the ordinary rate of remuneration per hour shall be paid;
 - (b) on and from 1 July 1998 an amount being 0.5% of the ordinary rate of remuneration per hour shall be paid.
- (3) On and from 1 July 2000 the requirement to make any payments in accordance with this clause shall cease.

10. ON-CALL AND CALL-BACK

- (1) A visiting medical officer shall be paid an amount of \$7.00 per hour for each hour (or part thereof) the officer is rostered to be on-call.
- (2) The on-call allowance shall not be payable during periods a visiting medical officer is on leave of absence nor whilst travelling or rendering services pursuant to a call-back or otherwise in accordance with a sessional contract.
- (3) Where a visiting medical officer is rostered to be on-call to more than one hospital at the same time the officer shall be entitled to receive an on-call allowance only from that hospital to which the officer has the greatest on-call commitment, or where the on-call commitments are equal the officer shall receive an on-call allowance only from one hospital.
- (4) In respect of a call-back, a visiting medical officer shall be remunerated as follows:

- (a) as to services provided during a call-back within the hours of 8.00 a.m. to 6.00 p.m. Monday to Friday inclusive - at the officer's ordinary hourly rate of remuneration plus a loading of 10 percent, except as to a call-back on a public holiday when the loading shall be 50 per cent;
- (b) as to services provided during a call-back outside the hours of 8.00 a.m. to 6.00 p.m. Monday to Friday inclusive - at the officer's ordinary hourly rate of remuneration plus a loading of 25 percent, except as to a call-back on a public holiday when the loading shall be 50 percent;
- (c) the duration of a call-back shall include the actual travelling time from the place of contact to the hospital concerned and return, subject to a maximum of 20 minutes travel each way;
- (d) the minimum payment for any one call-back, including travelling time, shall be one hour at the officer's ordinary hourly rate of remuneration plus the appropriate loading.

11. PUBLIC HOLIDAY REMUNERATION

Where a visiting medical officer is required by the relevant hospital or area health service to render services on a public holiday, other than during on-call and call back, the officer shall be paid at the ordinary hourly rate of remuneration plus a loading of 50 percent.

12. UNPAID LEAVE OF ABSENCE

- (1) A visiting medical officer shall be entitled to unpaid leave of absence on a public holiday unless the relevant hospital or area health service has given reasonable notice that it requires the officer to render services on any such day.
- (2) A visiting medical officer shall be entitled to unpaid leave of absence during any period the officer is unable to render services due to illness, provided that the officer shall notify the relevant hospital or area health service of such incapacity as soon as is reasonably practicable.
- (3) Unpaid leave of absence shall be granted to a visiting medical officer as annual holidays in one or more periods aggregating five calendar weeks per year at times agreed between the officer and the relevant hospital or area health service. Such leave shall not accrue from year to year and it must be taken within six months of becoming due.
- (4) Unpaid leave of absence shall be granted to a visiting medical officer as study and conference leave in one or more periods to a maximum in the aggregate of two calendar weeks per year at times agreed between the officer and the

relevant hospital or area health service. Such leave may be accumulated from year to year to a maximum of four weeks.

- (5) Unpaid leave of absence shall be granted to a visiting medical officer as long service leave aggregating two calendar months after providing services for a period of ten years. Thereafter, further unpaid leave of absence shall be granted on the basis of one calendar month for each additional period of two years during which the officer renders services. Such leave shall be allowed at times agreed between the officer and the relevant hospital or area health service.
- (6) Additional periods of unpaid leave of absence may be granted to a visiting medical officer at times agreed between the officer and the relevant hospital or area health service.

13. RECORD OF SERVICES

- (1) Subject to sub-clause (2), a visiting medical officer shall maintain a record, in a form prescribed and provided by the relevant hospital or area health service, of services rendered by the officer under the sessional contract. Such record shall indicate in respect of each of the services so rendered:
 - (a) the date, commencing and finishing times, full name and/or medical record number of the patient and nature of service;
 - (b) particulars of on-call periods;
 - (c) for call-backs, the name and/or designation of the person requesting the call-back, and appropriate entry by the visiting medical officer in the medical record of the relevant attendance and/or treatment;
 - (d) particulars of teaching, training and committee work;
 - (e) particulars of leave of absence.
- (2) Where a hospital or an area health service and a visiting medical officer agree that sufficient information is otherwise available to the hospital or area health service from the medical records or the visiting medical officer's personal records, then so long as such information continues to be available there is no requirement for the visiting medical officer to provide the full name and/or medical record number of patients.
- (3) Where sufficient information to satisfy sub-clause (1) is not provided or where sufficient information ceases to be otherwise available from the medical records or the visiting medical officer's personal records to satisfy sub-clause (2), then future payments to the officer for a specified period will require the provision by the officer of additional details, such details and period to be determined by the hospital or area health service.

- (4) The record referred to in sub-clause (1) of this clause shall be maintained for each calendar month during which services are provided by an officer, and it shall be submitted to the relevant hospital or area health service no later than the fifteenth day of the next succeeding calendar month.
- (5) The record when so submitted pursuant to sub-clause (4) of this clause shall be accompanied by an account for payment. The relevant hospital or area health service shall make payment to the visiting medical officer in respect of the account within 30 days of its receipt.
- (6) The relevant hospital or area health service in making payment of an account to an officer shall advise details of how the payment is made up as between the various services rendered.

14. SUSPENSION OF SESSIONAL CONTRACT

- (1) Subject to Part 6B of the *Public Hospitals Act* 1929, the board of a hospital or an area health service, as the case may be, may suspend the appointment of a visiting medical officer in accordance with any applicable by-laws where the board considers it necessary in the interests of the hospital to which the officer is appointed.
- (2) Where the visiting medical officer is so suspended, the respective rights and obligations of the parties under the sessional contract shall be suspended for the duration of that suspension.

15. TERMINATION OF SESSIONAL CONTRACT

- (1) A sessional contract shall be terminated:
 - (a) upon the expiry of the period for which it was made or on such earlier date as may be agreed between the visiting medical officer and the relevant hospital or area health service;
 - (b) by three months' notice in writing given by either the visiting medical officer or the relevant hospital or area health service;
 - (c) by four weeks' notice in writing given by the visiting medical officer if dissatisfied with a decision as to the fixation of ordinary hours by the relevant hospital or area health service pursuant to clause 5(6) of this Determination following an annual review, provided that the notice of termination is given within seven days of the officer receiving notification in writing of the decision;
 - (d) if the visiting medical officer ceases to be registered as a medical practitioner;

- (e) if the visiting medical officer becomes permanently mentally or physically incapable of rendering services under the sessional contract;
 - (f) if the visiting medical officer commits serious and wilful misconduct; or
 - (g) if the visiting medical officer's appointment is terminated by operation of any Act or regulation.
- (2) On the termination of a sessional contract, any amount due and payable to the visiting medical officer pursuant to the sessional contract shall be paid at the time of such termination or as soon thereafter as reasonably practicable.

16. DISPUTE RESOLUTION PROCEDURE

The objective of each stage of this procedure is to achieve a result which is fair and equitable in the circumstances. It is expected that both the visiting medical officer and the relevant hospital or area health service will be prepared at all times to take part in bona fide negotiations to agree on such a result in any dispute between them without the necessity of taking it to arbitration under sub-clause (7).

Stage 1 - Consultation

- (2) In the event of a dispute arising, the visiting medical officer or the hospital or area health service may give notice in writing to the other party identifying the matter or matters the subject of dispute.
- (3) As soon as practicable after the giving of notice under sub-clause (2) the parties shall meet to discuss the dispute and attempt to resolve it by a mutually agreed method.

Stage 2 - Local hospital level

- (4) If the dispute is not resolved within 14 days after the giving of the notice under sub-clause (2) or such further time as the parties may agree in writing the local hospital administration shall at the earliest practicable time and in any event within a further 14 days convene a meeting of the following participants:
 - (i) the visiting medical officer;
 - (ii) the clinical head responsible for the Department or Unit in which the officer performs duties or the nominee of the clinical head;
 - (iii) the executive officer for the local hospital at which the officer performs duties or the nominee of the executive officer;

- (iv) at the option of the visiting medical officer, a representative of the Australian Medical Association (New South Wales Branch) or an independent person of the officer's choice, not being a qualified barrister or solicitor; and
- (v) such other persons as may be agreed by the parties to the dispute.

The meeting will consider the dispute with the objective of assisting the parties to resolve the dispute in a fair and equitable manner. With the consent of the parties the meeting may be continued on adjourned dates.

Stage 3 - Hospital or area health service level

If the dispute is not resolved within 14 days after the convening of the meeting under sub-clause (4) or such further time as the parties may agree in writing the hospital or area health service shall at the earliest practicable time and in any event within a further 14 days convene a meeting of the following participants:

- (i) the visiting medical officer;
- (ii) an appropriate clinical head nominated by the relevant Chief Executive Officer (however called) of the hospital or area health service;
- (iii) an executive of the hospital or area health service nominated by the relevant Chief Executive Officer (however called) of the hospital or area health service;
- (iv) at the option of the visiting medical officer, a representative of the Australian Medical Association (New South Wales Branch) or an independent person of the officer's choice, not being a qualified barrister or solicitor; and
- (v) such other persons as may be agreed by the parties to the dispute.

The meeting will consider the dispute with the objective of assisting the parties to resolve the dispute in a fair and equitable manner. With the consent of the parties the meeting may be continued on adjourned dates.

Stage 4 - Mediation

- (6) (a) If the dispute is not resolved within 14 days after the convening of the meeting under sub-clause (5) or such other time as the parties may agree in writing, then the parties shall appoint a mediator to assist in the resolution of the dispute unless both parties agree to immediately refer the matter to arbitration under sub-clause (7). The mediator shall be a

person agreed upon by the visiting medical officer and the hospital or area health service, and in the absence of agreement within 7 days, a person nominated by the President or other most senior office bearer of the Council of the Law Society of New South Wales or its successor. The parties agree to co-operate with the mediator in the procedural steps necessary to constitute the mediation and to participate in bona fide discussions with the assistance of the mediator in seeking to agree on a resolution of the dispute.

- (b) The fees of the mediator and the administrative costs of the mediation shall be shared equally between the visiting medical officer and the hospital or area health service.

5 - Arbitration

- (7) If the dispute is not resolved within 14 days after the appointment of the mediator or such other time as the parties may agree in writing, then the officer or the hospital or area health service may serve a further notice in writing on the other referring the dispute to arbitration. Such dispute shall thereupon be and is hereby referred to arbitration by a single arbitrator to be agreed upon by the visiting medical officer and the hospital or area health service or, in the absence of agreement, to be appointed by the President or other most senior office bearer of the Council of the Law Society of New South Wales or its successor.
- (8) The arbitrator's fees shall be as negotiated on the appointment of the arbitrator and shall be shared equally between the visiting medical officer and the hospital or area health service, unless otherwise ordered by the arbitrator.
- (9) The visiting medical officer and the hospital or area health service shall each appoint an assessor to sit with the arbitrator in a consultative capacity, but the determination shall be made solely by the arbitrator.
- (10) The visiting medical officer and the hospital or area health service shall have the right to appear before the arbitrator and may be represented by a barrister or by a solicitor or, with the leave of the arbitrator, by an agent.
- (11) At the request of the visiting medical officer, the AMA (NSW Branch) shall be entitled to appear and be represented in the arbitration.
- (12) At the request of the hospital or area health service, the NSW Department of Health shall be entitled to appear and be represented in the arbitration.
- (13) In the event of either the Australian Medical Association (NSW Branch) or the NSW Department of Health appearing in the arbitration pursuant to a request under sub-clause (11) or (12), the other organisation shall be entitled to appear and be represented as of right.

- (14) It is agreed between the parties that the arbitrator shall determine all questions arising for determination in the course of the arbitration by reference to considerations of general justice and fairness.
- (15) The determination of the arbitrator shall be final and binding upon the visiting medical officer and the hospital or area health service.

Definitions

- (16) In this clause:
- (a) "dispute" means any dispute arising between a visiting medical officer and the relevant hospital or area health service at any time as to any matter or thing of whatsoever nature arising under a sessional contract or in connection therewith, including but not limited to matters relating to clinical privileges, but excluding a matter relating to the non-reappointment, suspension or termination of appointment of the visiting medical officer;
- (b) "local hospital" means a health facility conducted by the hospital or area health service at which the visiting medical officer provides services under the sessional contract.

17. NOTICES

Any notice required by a sessional contract to be given in writing shall be properly served if delivered by hand to the addressee personally or if sent by prepaid registered mail, facsimile or telex transmission to the addressee at the address furnished in writing to the addressor, and shall be deemed to have been received by the addressee on the date of hand delivery or on the date the facsimile or telex transmission was recorded or seven days after the date of posting.

18. OPERATION AND EFFECTIVE DATE

- (1) This Determination shall rescind and replace the provisions of all previous determinations made by an arbitrator under section 29M(l) of the *Public Hospitals Act 1929*.
- (2) This Determination shall apply to all visiting medical officer appointments under sessional contracts throughout the State of New South Wales, other than those for pathologists and radiologists.
- (3) This Determination shall have effect on and from 1 February 1994.