



Australian Salaried Medical Officers' Federation

Level 3 Suite 46 330 Wattle Street Ultimo New South Wales 2007
Locked Mail Bag No 13 Glebe New South Wales 2037
Telephone 9212 6900 Facsimile 9212 6911 Email asmof@asmof.org.au

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The Associate to Hon Justice Iain Ross AO
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000
By email: amod@fwc.org.au

Dear Associate

Re: Matter No. AM2014/300 4 yearly review of modern awards – Award flexibility

Submissions of the Australian Salaried Medical Officers' Federation

1. These submissions are filed by the Australian Salaried Medical Officers' Federation ("the Federation") with reference to the Directions made by the Full Bench on 6 October 2015. We would seek leave of the Commission to file these submissions out of time.
2. The Federation makes the following submissions in relation to the draft determination published by the Commission, varying the *Medical Practitioners Award 2010* ("the medical practitioners' award") in respect of the model time off in lieu of payment for overtime ("TOIL") term.
3. The Federation is the principal industrial representative of salaried medical practitioners in Australia. The vast majority of the Federation's members work in the public health system and can be broadly grouped as follows:
 - (a) Doctors in training;
 - (b) Non-specialist medical officers; and
 - (c) Specialists or senior doctors.
4. The medical practitioners' award currently provides at subclause 24.1(d):

A Doctor in training may elect, with the consent of the employer, to take time off instead of payment for overtime. Such time off instead will be taken at a mutually agreed time within four weeks of accrual and calculated on the basis of hour for hour worked. If time off instead is not taken within four weeks of accrual, it is to be paid out in accordance with clause 24.1 (a) to (c).

5. It is the Federation's submission that the model TOIL term departs from the current provisions in two important respects.

6. Firstly, whilst the current medical practitioners' award limits TOIL entitlements to doctors in training, there are no such limitations in the model TOIL term.
7. Secondly, whilst the current medical practitioners' award provisions state that TOIL must be taken within four weeks of accrual or otherwise paid out, we note that the model TOIL term specifies a time period here of six months.
8. The Federation submits that the aforementioned features of the current award provisions should be retained.
9. A doctor in training is defined at subclause 3.1 of the medical practitioners' award as an intern, resident medical practitioner, registrar or senior registrar.
10. Doctors in training have graduated from an accredited undergraduate or graduate medical programme which requires up to six (6) years of study depending on the candidate's previous educational attainments.
11. Upon obtaining professional registration and employment as an intern, a doctor enters into a further period of training in the hospital setting, which, depending on the medical discipline involved, could extend for a further ten (10) years.
12. This relationship between employment and training is unique to the medical profession and does not occur in any other health industry classification.
13. The training of doctors in training is undertaken by other employed doctors. Unlike any other health industry employee, it is part of the normal duties of all specialists ('senior doctors') to provide formal training to junior doctors, both in the form of lectures and educational seminars and also in the form of on-the-job teaching at the bedside.
14. The training regime is a thorough and rigorous process, often demanding extensive continuous work requirements. This will typically involve the working of significant periods of overtime by the doctor in training.
15. Doctors in training as part of their training programme are required to 'rotate' or undertake 'terms' at a variety of workplaces, including interstate in some cases. In these circumstances, any proposal that has the effect of extending the time period in which TOIL is to be taken will be more difficult to administer than the current award provisions. This may lead to difficulties in enforcing these entitlements for doctors in training.
16. For all the abovementioned reasons, the Federation contends that subclause 24.5 be amended to read as follows:
 - 24.5 Time off in lieu of payment for overtime – Doctors in training**
 - (a) A Doctor in training may elect with the consent of the employer to take time off in lieu of payment for overtime at a time or times agreed with the employer, in accordance with clause 24.5.

- (b) The following requirements apply to time off in lieu of payment for overtime:
- (i) A separate written agreement must be made by the Doctor in training and employer for each occasion on which overtime that has been worked is to be taken as time off in lieu. Each such agreement must be retained as an employee record and must:
 - (A) state when the Doctor in training started and ceased working the overtime hours;
 - (B) state that the Doctor in training and employer agree that the Doctor in training may take time off in lieu of payment for the overtime; and
 - (C) include a note in the following terms:

If requested by the Doctor in training at any time, the employer must pay the Doctor in training for any accrued entitlement to take time off in lieu of payment for overtime which the Doctor in training has not yet used.

Payment must be made at the overtime rate applying to the overtime worked and must be made in the next pay period following the request.
 - (ii) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate; that is, an hour for each overtime hour worked.
 - (iii) The time to be taken off in lieu of overtime must be agreed between the Doctor in training and employer and must be taken within four weeks of the overtime being worked. Otherwise, payment for the overtime must be made to the Doctor in training at overtime rates in the next pay period after that four week period.
 - (iv) Notwithstanding any other provision of clause 24.5(b), if requested by a Doctor in training at the time, the employer must pay the Doctor in training for any accrued entitlement to take time off in lieu of payment for overtime which the Doctor in training has not yet used. Payment must be made at the overtime rate applying to the overtime worked and must be made in the next pay period following the request for payment.

- (v) If, upon termination of employment, a Doctor in training has an accrued entitlement to take time off in lieu of payment for overtime which the Doctor in training has not yet used, the Doctor in training must be paid for the overtime at the overtime rate applying to the overtime worked.
- (c) A Doctor in training who is entitled to request a change in working arrangements under section 65 of the *Fair Work Act 2009* may make a request under that section for time off in lieu of payment for overtime at a time or times specified in the request or at a time or times to be subsequently agreed with the employer. Clause 24.5 will apply to such time off in lieu. Pursuant to section 65(5) of the *Fair Work Act 2009*, the employer may refuse such a request only on reasonable business grounds.
- (d) An employer must not exert undue influence or undue pressure on a Doctor in training in relation to a decision by the Doctor in training to make, or not make, an agreement to take time off in lieu of payment for overtime.

Note: Under s.345 of the *Fair Work Act 2009*, a person must not knowingly or recklessly make a false or misleading representation about a Doctor in training's workplace rights under clause 24.5.

Yours faithfully



Marika De Vecchis
Federal Executive Officer