

St John of God Healthcare – AMA (WA) – Medical Practitioners Agreement 2016 **SJOG MIDLAND - TRANSFERRING PRACTITIONERS**

The Australian Medical Association (WA) has reached agreement with St John of God Healthcare (SJOG) over the provisions that will cover doctors directly employed by SJOG, at all of their healthcare facilities in Western Australia.

The negotiation process has been protracted. SJOG had insisted that all employed practitioners should be covered by one industrial agreement, despite there currently being two distinct industrial instruments and multiple, varying sets of contractual obligations that apply to different groups of medical practitioners employed by SJOG. The initial proposals from SJOG failed to account for the multiple contractual obligations that existed for different groups of practitioners and the process of reviewing these entitlements and ensuring they were fairly maintained further delayed the negotiation process. In addition, SJOG was under no legal obligation to replicate or match the provisions of any other industrial instrument that currently applies to SJOG employees and until recently, their proposals represented a significant reduction in the proposed terms, conditions and salaries of practitioners currently employed at SJOG Midland Hospital and other public hospitals in WA.

After lengthy negotiations, the AMA (WA) has now secured agreement on the terms of the *St John of God Healthcare – AMA (WA) – Medical Practitioners Agreement 2016* (the SJOG EBA), containing salaries, terms and conditions that are comparable with or better than those presently enjoyed by practitioners employed in the public sector or provided for by the current Copied State Instrument that covers employees at SJOG Midland Hospital who transferred from Swan District Hospital.

What is the Agreement and how does it affect my employment?

The SJOG EBA is a collective agreement, negotiated between SJOG and the Australian Medical Association (WA) (through ASMOF (WA)) acting as your bargaining representative. Following a positive ballot and seven days after registration by the Fair Work Commission, the SJOG EBA will become an enforceable, legal document that prescribes the minimum salaries, terms and conditions of your employment with SJOG, but does not replace your Contract of Employment.

Your Contract of Employment remains a valid legal document that sets out the length of employment, your employment particulars and any other special arrangements you have negotiated with SJOG on an individual basis. Your Contract of Employment cannot reduce any of the conditions prescribed by the SJOG EBA but SJOG is legally bound to meet any contractual obligations which are better than or additional to those terms and conditions set out in the SJOG EBA.

Who is covered by the new SJOG EBA?

The SJOG EBA applies to all medical practitioners employed by SJOG in Western Australia, whose positions are set out in the classifications table in Schedules A and B of the SJOG EBA. Senior Executives and practitioners working in research and non-medical roles are not covered by the SJOG EBA.

What is the operative date?

Following a successful ballot and in accordance with the *Fair Work Act 2009*, the SJOG EBA will operate 7 days from approval by the Fair Work Commission. SJOG has, however, agreed to apply all terms and conditions, including salaries and allowances, from the first full pay period commencing 27 March 2017, and they have inserted a provision in the Agreement to provide for retrospectivity to this date. This means that practitioners will receive a 1.5% salary increase and all hours worked from that date

will be recalculated on the basis of the new base salary prescribed in the SJOG EBA (see 'Base Salaries and Shift Penalties').

How will the Agreement affect me as a Transferring Practitioner?

Doctors In Training

With the exception of Long Service Leave and Paid Parental Leave, Doctors in Training will be employed receive the same salaries, terms and conditions as Doctors in Training employed in the public sector.

The Long Service Leave provisions prescribed in the SJOG EBA are as follows:

- 10 years of continuous service – 8.66 weeks (representing 0.866 weeks' leave per annum)
- Every 5 years thereafter– 4.33 weeks (representing 0.866 weeks' leave per annum).

Following a period of Paid Parental Leave, practitioners must have worked continuously for at least 6 months prior to the expected birth or adoption placement of a subsequent child in order to be eligible for subsequent periods of paid parental leave.

Senior Practitioners

Transferring Practitioners are those who were previously employed by WA Health at Swan District Hospital and whose employment was transferred to SJOG Midland Public Hospital as a result of Swan District Hospital closing. Until a new Agreement is voted up, Transferring Practitioners are covered by the terms and conditions of the *Department of Health Medical Practitioners (Metropolitan Health Services) AMA Industrial Agreement 2013*, which became the '*Copied State Instrument*' on 25 November 2015.

At the time of transfer, all Transferring Practitioners were issued with a SJOG Contract of Employment. This contract typically provides for an Ex-Gratia Payment which represented the difference in superannuation paid between WA Health and SJOG. However, the Ex-Gratia Payment prescribed by the SJOG EBA is for a different purpose, being equivalent to the Professional Development Allowance. In accordance with Clause 28 of the SJOG EBA, Transferring Practitioners cannot receive two Ex-Gratia payments and are therefore required to sign a new Contract of Employment if they wish to access the higher Ex-Gratia Payment, set out in the Agreement. With respect to the original Ex-Gratia Payment to compensate for the loss of superannuation paid, this has been preserved by rolling the respective amount into the all-inclusive base salary prescribed in the SJOG EBA. The AMA (WA) has successfully negotiated with SJOG to ensure that under the new SJOG EBA, Transferring Practitioners will continue to receive an equal value of the terms, conditions and entitlements outlined in the *Copied State Instrument*.

SJOG's preference was to include a higher base salary, in lieu of certain entitlements such as Overseas Professional Development Leave. The provisions are summarised in the below table:

Copied State Instrument	SJOG EBA
Superannuation Contributions WA Health pays uncapped superannuation contributions, even if your pre-tax salary exceeds \$51,620 per quarter.	Superannuation Contributions SJOG meet their legal obligations and pay superannuation contributions up to the statutory limit, which is currently \$19,615 per annum. To offset the Superannuation

	<p>Contributions that practitioners would have received working for WA Health, Transferring Practitioners were paid an 'Ex-Gratia Payment' set out in their Contract of Employment. Under the new Agreement, this amount has been rolled into practitioner's base salary. The Ex-Gratia Payment prescribed by the Agreement, despite having the same name as the contractual entitlement, is for a different purpose and is equivalent to the Professional Development Allowance which was payable under the Copied State Instrument.</p> <p>Therefore, to ensure that Transferring Practitioners receive both the Professional Development Allowance (the Ex-Gratia Payment under the SJOG EBA) and the amount to compensate for loss of uncapped superannuation contributions (the Ex-Gratia Payment outlined in your original Contract of Employment), a new Contract of Employment must be signed.</p>
<p>Professional Development Allowance (PDA) A Professional Development Allowance of \$27,322 per annum, is payable fortnightly. This allowance is not paid when accrued Annual Leave is cashed out on termination and is not paid when taking paid Parental Leave.</p>	<p>Ex-Gratia Payment (in lieu of PDA) SJOG initially refused to pay PDA as a cash allowance, instead offering reimbursements up to the value of \$27,732 on production of proof of professional development expenditure. The AMA (WA) continued to refuse to accept this position on the basis that it amounted to a reduction in practitioners' salary and a loss of autonomy over their professional development, given the feedback by members that the reimbursement scheme applicable to non-transferring practitioners, was not working.</p> <p>SJOG have now agreed to pay a cash allowance to all senior practitioners, equivalent to the value of the PDA under the AMA-WA Health Agreement. This allowance has been termed the 'Ex-Gratia Payment' in the SJOG EBA (see Clause 28). Transferring Practitioners already have a contractual Ex-Gratia Payment (Contractual Ex-Gratia Payment) that is paid to offset the difference in Superannuation paid by WA Health and SJOG. The SJOG Agreement clearly states that practitioners cannot receive two 'Ex-Gratia Payments', therefore in order to access the higher dollar value Ex-Gratia Payment outlined in the Agreement, Transferring Practitioners are required to sign a new Contract of Employment. Transferring Practitioners will continue to receive the value of their</p>

	Contractual Ex-Gratia Payment, as it has been rolled into the base salary.
<p>Long Service Leave Practitioners who meet the continuous service requirements are entitled to the following Long Service Leave:</p> <ul style="list-style-type: none"> • 10 years of continuous service – 13 weeks (representing 1.3 weeks’ leave per annum) • Every 7 years thereafter – 13 weeks (representing 1.86 weeks’ leave per annum) 	<p>Long Service Leave Practitioners who meet the continuous service requirements accrue the following values of Long Service Leave:</p> <ul style="list-style-type: none"> • 10 years of continuous service – 8.66 weeks (representing 0.866 weeks’ leave per annum) • Every 5 years thereafter– 4.33 weeks (representing 0.866 weeks’ leave per annum) <p>Monetised benefit in lieu of Leave To compensate for the lower LSL entitlement, practitioners will receive an hourly cash value equivalent to 0.5 weeks per annum, included in their base salary. This monetised value has been based on what a full time practitioner of an equivalent level would have earned, including all regularly paid allowances and uncapped superannuation.</p>
<p>Overseas Professional Development Leave Senior Practitioners are entitled to 5 weeks of Overseas Professional Development Leave after each 5 years of continues service, for the purpose of overseas training, education and study. Practitioners can only accrue up to a maximum of 10 weeks and unused leave is not paid out on termination. No monetary payments can be made in lieu of this leave.</p>	<p>Overseas Professional Development Leave Monetised benefit in lieu of Leave SJOG have monetised OPDL and rolled the amount into your base salary. Regardless of whether or not you meet the minimum continuous service requirements, practitioners will now receive an hourly cash value equivalent to 1 week’s pay per annum. This monetised value has been based on what a full time practitioner of an equivalent level would have earned for that period, including all regularly paid allowances and uncapped superannuation. As this now forms part of your base salary it is paid out on all forms of paid leave and on termination.</p>

Term of Employment

The AMA (WA) has secured an express provision for recognising permanent employment as the preferred form of employment.

Base Salary and Shift Penalties

Base Salaries

Salaries and allowances will increase by 1.5 per cent per annum over the term of the agreement, effective 27 March 2017, 1 October 2017 and 1 October 2018 respectively.

A number of entitlements have been rolled into practitioners' base salary. Consequently, practitioners' base salaries have increased by up to 73% compared to the equivalent base salary under the *Copied State Instrument* and 7% higher than the equivalent salary paid under the *WA Health System – Medical Practitioners – AMA Industrial Agreement 2016*. The fact that these allowances and monetised leave entitlements are now part of the base salary means that they are guaranteed to be paid on all forms of paid leave and paid out on termination. It also secures the future of these payments.

What components are now part of my Base Salary?

Private Practice Income Allowance

Following the model adopted by WA Health in the 2016 public sector bargaining, in which the AMA (WA) secured the Arrangement A Private Practice Income Allowance (PPIA) in the base salary, SJOG has agreed to roll the PPIA into practitioners' base salary. This claim of the AMA (WA) recognises the important pecuniary benefit that SJOG enjoys, as a result of practitioners utilising their right of private practice. As a rolled amount, the former allowance is now guaranteed to be paid on leave and leave paid out on termination. This also secures the future of the equivalent monetary remuneration for exercising the right of private practice, which has been removed and remodelled in other States.

Above Statutory Superannuation Contributions

As part of the AMA (WA)'s ongoing advocacy during the commissioning and opening of SJOG Midland Hospital, SJOG agreed to pay practitioners the difference between WA Health's uncapped statutory superannuation contributions and the capped amount that SJOG is legally obligated to pay. Transferring Practitioners have received an Ex-Gratia Payment in their Contract of Employment equivalent to the difference in what a full time practitioner would receive if working with WA Health and the contributions SJOG make. In the SJOG EBA this amount has been rolled into the base salary, and therefore no longer exists as an additional payment.

Monetised Leave

An amount equivalent to 1.5 weeks' total remuneration (including all allowances and uncapped superannuation) has been monetised, in lieu of accruing Overseas Professional Development Leave and above statutory minimum Long Service Leave. While this monetary component added into practitioners' base salary offsets the loss of leave, there is no minimum period of continuous service that needs to be met before practitioners receive the benefit. Further, practitioners will now receive the monetised value of these leave accruals on termination and on all other forms of paid leave.

Shift Penalties

As a result of having an all-inclusive base salary, the shift penalties for Senior Practitioners have been adjusted as follows:

- 6pm to midnight on weekdays – 12.75%
- Midnight to 7am – 16.5%
- Midnight Friday to midnight Saturday – 32.5%
- Midnight Saturday to 7 am the following Monday – 47.5%
- Public Holiday - 100%

The AMA (WA) has fought hard to secure the above shift penalties which represent a significant improvement on what was initially proposed by SJOG. The AMA (WA) has argued that no practitioner

should see a reduction in their take home pay for unsociable shifts worked as a result of revised shift penalties. After many adjustments we can now be confident that although the percentages may appear lower than what was prescribed in the CSI, the cash value of working these shifts remains unchanged (other than an increase of 1.5%). The fact that certain leave entitlements have been monetised means that practitioners' receive the monetised equivalent of this leave for the hours worked, as opposed to a future leave balance that is dependent on continuous service.

Professional Development Allowance

Throughout the bargaining process the AMA (WA) has argued that a Professional Development Allowance should be paid as a cash allowance to practitioners. Initially, SJOG not only refused to pay any such allowance, instead proposing practitioners be reimbursed on proof of expenditure, they refused to put a value on what could be claimed. The AMA (WA) recognised that this position was not only unworkable, as precedent had shown, but it amounted to a reduction in Senior Practitioners' salary. After much advocacy on behalf of Senior Practitioners, the AMA (WA) has secured a cash allowance equal to the value of the Professional Development Allowance in the *Copied State Instrument* and subject to a 1.5% increase, in line with salary increases. This payment is now called an Ex-Gratia Payment and is payable to all Senior Practitioners (see Clause 28 of the SJOG EBA), except those who are covered by the provisions in Schedule B.

Non Clinical and Clinical Time

SJOG has continued to refuse to specify, a percentage of a practitioner's time for Non Clinical Duties. The AMA (WA) recognises that while the delineation in the *Copied State Instrument* only provides a "guide" of 20% for Non Clinical Time, it is an essential component of a practitioners work and employers must provide adequate staffing numbers and rostered time to enable practitioners to complete non clinical duties during rostered hours. On that basis, SJOG has agreed that the expectation is that non clinical time should be rostered and included this in the SJOG EBA.

On Call Allowance and Call-In Payments

The On Call and Call In provisions in the SJOG Agreement reflect those in the *Copied State Instrument*, with a 1.5% increase on the On Call Allowance from 27 March 2017, 1 October 2017 and 1 October 2018 respectively.

Call-In payments are made on the same basis as those in the *Copied State Instrument*, albeit on a now all-inclusive base salary with a 1.5% salary increase. As such, there will be a pecuniary increase in the value of hours worked as a Call In above the 1.5% increase.

Authority to Render Accounts

In acting as a billing agent, SJOG shall ensure that no account is rendered which could place the practitioners in breach of the *Health Insurance Act 1973*. Further, following negotiation, the AMA (WA) has secured provisions which allow practitioners to request a statement detailing the total amount of accounts rendered in their name and access to information of a patient's election to be a private patient.

Additional Annual Leave

All practitioners are able to accrue an additional 40 hours of annual leave per annum, regardless of their fractional appointment. The additional 40 hours can be accrued the following ways:

- One weeks' additional leave (pro rata) for practitioners who are continuous shift workers.
- 8 hours of additional annual leave for each completed period of 120 hours rostered on call, to a maximum of 40 hours per annum.

Private Practice Cost Allowance

SJOG will employ practitioners on either a full time or part time basis. Practitioners will not be employed as Sessional Practitioners. The AMA (WA) has successfully argued that nevertheless, the Private Practice Cost Allowance should be maintained and extended to cover all part time practitioners whose commitment to contracted hours impacts on the operation of their private practice.

The Private Practice Cost Allowance has been reduced to an hourly rate of pay, to be increased by 1.5% per annum, in line with salary increases.

Professional Development Leave & Overseas Professional Development

Professional Development Leave

Practitioner's entitlement to Professional Development Leave remains the same as that prescribed by the *Copied State Instrument*.

Overseas Professional Development Leave

SJOG has monetised the value of Overseas Professional Development Leave and rolled this amount into practitioners' base salary.

Prior to 27 March 2017, Transferring Practitioners accrued 5 weeks of Overseas Professional Development Leave following 5 years of continuous service. While negotiations with SJOG have resolved some of the issues raised by monetising this leave accrual, there remain three possible outcomes for those practitioners who are currently accruing Overseas Professional Development Leave:

1. OPDL Accrued Prior to Transfer to SJOG Midland

Practitioners who had an accrued, unused balance of OPDL at the date of transfer to SJOG Midland did not have that leave paid out by WA Health. The AMA (WA) believes that SJOG, must recognise the accrued balance. In a letter to the AMA (WA) on 1 May 2015, SJOG expressly stated that they "*understand our obligation under the Fair Work Act 2009 to recognise accruals.*" SJOG have since reneged on this commitment and have indicated they will not recognise OPDL balances accrued prior to the transfer to SJOG Midland.

2. OPDL Accrued between 24 November 2015 and 27 March 2017

Practitioners who have reached 5 years of continuous service between 24 November 2015 and 27 March 2017 will be entitled to 5 weeks of OPDL. This leave can be used for any approved development purpose and will not expire. From 27 March 2017, Transferring Practitioners will no longer be eligible to accrue OPDL, with the monetised equivalent being rolled into the base salary.

3. OPDL that would accrue after 27 March 2017

As OPDL will no longer exist as an accruing entitlement under the SJOG EBA, practitioners can no longer accrue OPDL. Any "pro rata" leave accrued to 27 March 2017 will fall away.

Improved Productivity & Direction to Work at another Location

The SJOG EBA has express provisions which provide for a joint commitment to actively cooperate in implementing changes in work and staffing procedures designed to improve productivity. While the AMA (WA) is not opposed to the philosophy behind these provisions, the AMA (WA) had serious concerns over the initial drafting of the clauses.

Direction to Work at another Location

Following negotiation, the AMA (WA) successfully advocated for the removal of provisions which could have been utilised to direct practitioners to work at other SJOG locations.

Christmas and New Year Closedown

SJOG insisted upon including provisions to allow direction to take paid annual leave over Christmas and New Year. Leave can only be directed if SJOG temporarily closes a ward, unit or department and practitioners must be provided with at least three months' notice. The AMA (WA) successfully argued for the inclusion of non-clinical work as an alternative, in addition to alternative clinical work, which SJOG must use its best endeavours to identify and offer, where the practitioner does not want to take such directed leave.

Leave Management

The parties have ultimately reached agreement on the principles around which a practitioner can, in very limited circumstances, be requested to take leave. Safeguards have been included to ensure practitioners have reasonable access to leave and that practitioners who wish to accrue excess leave are given the opportunity to enter into a recorded leave management plan. The practitioner must have an accrued balance of at least: 2 years annual leave; one year Shift/On Call Leave; and any Long Service Leave which remains untaken more than 3 years after its accrual.

Head of Department Allowance

The AMA (WA) argued strongly for the inclusion of a minimum monetary allowance payable to Heads of Department. SJOG initially refused to include a minimum amount but have now agreed to reflect the minimum amounts payable to Heads of Department, as outlined in the *Copied State Instrument*, with increases to those amounts in line with salary increases.

The allowance has increase by 1.5%, in line with salary increases.