

# DEPARTMENT OF HEALTH PRIVATE PRACTICE AGREEMENT 2008

UPDATED VERSION



Government  
of South Australia

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SA Health

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**DEPARTMENT OF HEALTH SALARIED MEDICAL OFFICERS  
PRIVATE PRACTICE AGREEMENT 2008**

**1. ADMINISTRATION**

This Agreement is made on the 18th day of August 2008 between the Chief Executive of the Department of Health on the one part and the South Australian Salaried Medical Officers Association on the other part.

**1.1 Term of Agreement**

This Private Practice Agreement shall operate for a minimum period of 3 years commencing on and from the date of approval of the Department of Health Salaried Medical Officers Enterprise Agreement 2008. At the instigation of either party the terms of this Agreement may be reviewed after the expiry of the first 3 year period.

**1.2 Options**

Subject to the conditions set out below, the Employing Authority will provide the following schemes for the Specialists to elect:

- Scheme One Capped Private Practice (Pay-over or Non Pay-over Model) or Status Quo; or
- Scheme Two Option A or Option B Pay-over Model or Option B Non Pay-over Model

**1.3 Commencement – Transition Year Provisions**

1.3.1 The following provisions apply for the Private Practice Period during which this Agreement commences (the “transition year”).

1.3.2 Scheme One - Capped Private Practice will be deemed to apply to a Specialist with a Private Practice Agreement in place as at the date of commencement of this Agreement unless they make an election pursuant to 1.3.3 (ie stay with “Status Quo”).

**1.3.3 Scheme One - Status Quo**

A Specialist with a Private Practice Agreement as at the date of commencement of this Agreement can elect to continue under a Status Quo arrangement that is able to be demonstrated to have been in place as at 14 April 2008. Such election must be made within 21 days of the date of commencement of this Agreement.

A Specialist who does not have a Private Practice Agreement as at the date of commencement of this Agreement has the option of electing Status Quo only where the Specialist is joining an existing Group that continues to operate under Status Quo.

1.3.4 After the date of commencement of this Agreement the following further options will be available:

- Scheme Two - Option B Non Pay-over will be available 21 days after the date of commencement of this Agreement
- Scheme Two - Option A and Option B Pay-over – Implementation of Option A and Option B Pay-over Model is contingent upon the Department of Health receiving a Class Ruling from the Australian Taxation Office. These Options will become available on and from the first full pay period one calendar month from the date the Australian Taxation Office publishes the Class Ruling;

1.3.5 For each of these options base salary will be as defined in the definitions.

1.3.6 After an option referred to in 1.3.4 becomes available a Specialist can elect to leave Scheme One - Capped Private Practice or Status Quo by giving at least one calendar month written notice to the Hospital

Any such election will take effect on the first day of the month following the expiry of the one calendar month notice period.

1.3.7 Such an election continues to have effect for subsequent Private Practice Periods unless a Specialist makes a further election.

1.3.8 Where a Specialist elects to move into a new Scheme during the transition year the Private Practice revenue generated under the former Private Practice arrangement will count towards the distribution arrangements or cap relevant to the new scheme.

#### **1.4 Election of Options - Post Transition**

1.4.1 A specialist may elect from each of the following options by notice in writing to the Hospital at least two calendar months prior to the end of the Private Practice Period:

- (i) Scheme One Capped Private Practice;
- (ii) Scheme One Capped Private Practice Pay-over Model;
- (iii) Scheme Two Option A Pay-over Model;
- (iv) Scheme Two Option B Pay-over Model;
- (v) Scheme Two Option B Non Pay-over Model

The date of effect of the elected option is the commencement of the next Private Practice Period for the selected option.



- 1.4.2 Where the Specialist elects an option other than Scheme One - Capped Private Practice or Scheme One Capped Private Practice Pay-over Model the Specialist foregoes any entitlement to the Attraction and Retention Allowance (clause 29 SMOEA) from the date of effect of the election.
- 1.4.2.a A Specialist who elects at any time to transfer to Scheme One Capped Private Practice Pay-over Model may not subsequently elect to transfer to a Non Pay-over Model unless that Specialist is joining a Group and the Group utilises a Non Pay-over model.
- 1.4.2.b A Specialist in a Group can only elect the Scheme One Capped Private Practice Pay-over Model where all Specialists in the Group make such an election.
- 1.4.3 A Specialist who elects at any time to move to Scheme Two may not subsequently revoke that election and return to Scheme One unless that Specialist is joining a Group and the Group utilises Scheme One.
- 1.4.4 A Specialist who elects at any time to move from "Status Quo" may not subsequently revoke that election and return to "Status Quo" unless that Specialist is joining a Group and the Group utilises "Status Quo".
- 1.4.5 Scheme Two is not available to the Specialists referred to in clause 3.1.2.
- 1.4.6 A Specialist commencing employment with the Employing Authority may elect either of the Schemes contained in clause 1.4.1 by giving written notice to the Hospital within one month after being advised of their private practice options. Such an election will take effect from the first day of the month following receipt of such notice, and after employment has commenced.
- 1.4.7 "Status Quo" is not available to Specialists referred to in clause 3.1.2(a)(iv). For clarification, clauses 1.3.3 and 1.4.4 do not apply to Specialists referred to in clause 3.1.2(a)(iv).

## **1.5 Execution of Memorandum or Deed of Agreement**

- 1.5.1 Rights of Private Practice arrangements will only be available to Specialists who have signed an appropriate agreement prior to commencement of their chosen option as follows:
- Scheme One, "Capped Private Practice" and "Status Quo" the Private Practice Memorandum of Agreement (Schedule 1).
  - Scheme One, "Capped Private Practice Pay-over Model" the Private Practice Deed of Agreement (Pay-over) (Schedule 2).
  - Scheme Two, Option A and Option B "Pay-over Model" the Private Practice Deed of Agreement (Pay-over) (Schedule 2); and
  - Scheme Two, Option B "Non Pay-over Model" the Memorandum of Agreement for Option B Non Pay-over Private Practice (Schedule 3).

1.5.2 Status Quo – will operate in accordance with the arrangements that are able to be demonstrated to have been in place as at 14 April 2008.

## 1.6 Definitions

Unless specifically given a different meaning therein, the following definitions shall apply to the whole of this Agreement;

1.6.1 **Act** means the Health Care Act, 2008.

1.6.2 **Base Salary** means the salary (specified in either Schedule 1 or 2 of the Enterprise Agreement as appropriate) paid during the Private Practice period and where applicable includes Managerial Allowance, Continuous Duty Allowance and Remote Call Allowance but does not include any other allowances, loadings and reimbursements.

*Provided that:*

Base salary for Specialists who elect Status Quo arrangements will be in accordance with the arrangements that are able to be demonstrated to have been in place as at 14 April 2008.

1.6.3 **CMBS** means Commonwealth Medicare Benefits Schedule.

1.6.4 **Date of Commencement** means the date of approval of the Department of Health Salaried Medical Officers Enterprise Agreement 2008 by the Industrial Relations Commission of South Australia

1.6.5 **Employing Authority** (the Authority) has the same meaning contained in the Health Care Act 2008.

1.6.6 **Enterprise Agreement** means the Department of Health Salaried Medical Officers Enterprise Agreement 2008 (or its successor). **SMOEA** has the same meaning.

1.6.7 **Equipment Fund** means a fund managed by the Health Service specifically for the purchase of equipment at the discretion of the Health Service.

1.6.8 **Group** means a Group of Specialists who, for the purpose of Private Practice, have formed themselves into a Group. The Group has the power to determine membership of the Group and allocation of monies within the Group provided that membership and allocations do not contravene any aspect of this Agreement.

1.6.9 **GST** means the tax imposed by the “A New Tax System (Goods and Services Tax) Act 1999 [Cth]”

1.6.10 **GST Law** means “A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.6.11 **GPSSSS** means the General Public Sector Salary Sacrifice Scheme.



- 1.6.12 **Health Service** means a site at which activities of an incorporated hospital are undertaken.
- 1.6.13 **Holding Account** means the account of the Specialist operated by the Hospital in accordance with this Agreement.
- 1.6.14 **Hospital** means a hospital incorporated pursuant to Part 5 of the Health Care Act 2008.
- 1.6.15 **Loading** means an amount (however expressed, but usually as a percentage) which has the effect of varying the rate of pay upon which is based the calculation of other payments such as paid leave, overtime etc.
- 1.6.16 **MOSSSS** means the Medical Officer Specific Salary Sacrifice Scheme.
- 1.6.17 **Non-admitted patient** has the same meaning as 'out-patient'
- 1.6.18 **Private Practice** includes:
- (i) the provision of any medical service or other service which is listed in the Commonwealth Medicare Benefits Schedule (CMBS) or the Veteran Affairs Fee Schedule; or
  - (ii) the provision of any medical service for which a patient may be charged (including services for which a Medicare benefit may not be payable, for example ineligible and compensable patients); or
  - (iii) the provision of medical services related to assessment, treatment or care of patients for which remuneration is received by way of sessional or other arrangements which is in addition to salary paid by the Employing Authority;
- but does not include:
- (A) in the case of a Specialist employed part-time by the Employing Authority, private practice undertaken by the Specialist outside the terms of his/her employment by the Employing Authority;
  - (B) the preparation of expert opinions or reports or acting as a shadow expert;
  - (C) lecturing;
  - (D) attending as a witness in any legal proceedings or before the Medical Board of South Australia;
  - (E) provision of medical services related to the assessment, treatment or care of patients in the course of a Specialist's services in the Armed Services Reserve; or

- (F) membership of boards of management or committees other than those constituted by the South Australian Government.
- (G) the provision of private practice services outside the State of South Australia (unless otherwise approved in writing by the Employing Authority);

1.6.19 **Private Practice Deed** means the document signed by the Employing Authority and the individual Specialist in Scheme Two - Option A or Option B or Capped Private Practice Pay-over Model - to give effect to any aspect of the administration of private practice arising from the application of this Agreement.

1.6.20 **Private Practice Memorandum of Agreement** means the document signed by the Employing Authority and the individual Specialist in Scheme One – Capped Private Practice and Status Quo to give effect to any aspect of the administration of private practice arising from the application of this Agreement.

1.6.21 **Private Practice period** means:

- a) for Scheme One the period commencing 1 June and ending 31 May each year;
- b) for Option A and Option B Pay-over Model and Capped Private Practice Pay-over Model the period commencing on 1 July and ending on 30 June each year; and
- c) for Option B Non Pay-over Model the period commencing 1 June and ending 31 May each year.

1.6.21a **Private Practice receipts** means the gross amount received by the Specialist from private practice billings.

1.6.22 **Special Purpose Fund** means the existing Special Purposes Fund established by way of a Deed

1.6.23 **Specialist** means a salaried medical officer:

- (i) who has an appropriate higher degree and, where appropriate, has been recognised or has applied for recognition by the Commonwealth Department of Health and Aging as a Specialist or Consultant Physician for the purpose of the Health Insurance Act, 1973 (Cth.);
- (ii) whose terms and conditions of employment are governed by the South Australian Medical Officers Award and the SMOEA; and
- (iii) who has been granted approval by the Employing Authority to engage in private practice subject to such terms and conditions as have been agreed between the Employing Authority and the salaried medical officer.



1.6.23 ***This Agreement*** means the Department of Health Salaried Medical Officers Private Practice Agreement 2008.

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## **2. GENERAL PROVISIONS**

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### **2.1 Taxation and Reporting Obligations**

2.1.1 The Hospital will provide such information as considered necessary and appropriate to enable the Specialist to complete his/her income tax return and Business Activity Statement only in relation to the provision of private practice services by the Specialist in respect of which total fees have been billed, collected and paid over or transferred to the Hospital.

2.1.2 The Specialist will agree:

- (i) that he/she remains solely responsible for compliance with any taxation or reporting requirements in relation to billings from the provision of private practice services;
- (ii) that neither the Employing Authority or Hospital provides any warranty as to the possible application or effect of taxation laws in relation to private practice billings either derived at the Hospital or outside the Hospital by the Specialist; and
- (iii) that it is the Specialist's responsibility to obtain independent advice on the effect of the legal and taxation implications of the rights of private practice.

### **2.2. Indemnity**

2.2.1 Subject to clause 2.2.2 where the Specialist engages in private practice the Specialist shall be indemnified under and in accordance with the Department's Professional Indemnity (Medical Malpractice) Program ("Program") against any description of civil liability whatsoever (subject to the exceptions specified in the Program) incurred by the Specialist in connection with the conduct of private practice by the Specialist whether or not the Specialist continues to be employed by the Employing Authority at the time that he/she is notified of any claim leading to such civil liability.

2.2.2 It is the Specialist's responsibility to provide the Insurer and the Employing Authority with sufficient documents and information to enable the Insurer to consider and assess any claims made under this clause.

2.2.3 The Specialist shall only be indemnified for those private practice services which the Specialist has declared and either paid over or transferred to the Hospital and subject to clause 2.2.4, paid-over or transferred the total amount received to the Hospital within the time frames specified in the relevant Deed or Memorandum of Agreement.

- 2.2.4 Where fees or part thereof have either not been paid over or transferred to the Hospital due to a Defined Exception the burden is on the Specialist to prove to the Insurer's reasonable satisfaction that the fees were not paid over or transferred due to circumstances outside the control of the Specialist.
- 2.2.5 The Specialist shall, as soon as practicable, after becoming aware of any claim under this clause give to the Insurer notice of that claim or of any claim in respect of which the Specialist is by law otherwise obliged to be indemnified or of the receipt of notice from any person of any intention to make any such claim against the Specialist or of any conduct or circumstance of such significance that it is, in the opinion of the Specialist, likely to give rise to a claim against the Specialist or the Hospital.
- 2.2.6 The Specialist shall not make any admission of liability or other admission, arrangement, offer, promise, or payment without the written consent of the Insurer which shall be entitled if it so desires, to take over in the name of the Specialist the defence of any claim or prosecute in the name of the Specialist for its own benefit any claim for indemnity or damages or otherwise against any third party and shall have full discretion in the conduct of any negotiations or proceedings or the settlement of any claim, and the Specialist shall whenever possible, give all such information and assistance as the Insurer may require in the defence of any claim without charge to the Insurer provided, however, that if the Specialist shall so request, the Insurer shall consult with the Specialist in the conduct of any negotiations and proceedings and unless the Specialist is outside Australia, or after reasonable enquiry cannot be found, the Insurer, before settlement of any such claim, shall consult the Specialist as to the terms of settlement proposed.
- 2.2.7 The Specialist shall indemnify the Employing Authority and the Hospital against any description of civil liability incurred by the Specialist in connection with any breaches of the Health Insurance Act, 1973.
- 2.2.8 For the purpose of this provision "Defined Exception" means:
- (i) bad debts;
  - (ii) remissions or waiver due to hardship or compassionate grounds;
  - (iii) legal proceedings or disputation regarding the payment of the fees;
  - (iv) patient delinquency or inability to pay.



## **2.3 Medical Records**

- 2.3.1 The Specialist will create and maintain a record of the professional services provided to any patient in the course of the Specialist engaging in private practice pursuant to this Agreement.
- 2.3.2 Such records must be of the standard set out in the Australian Medical Association guidelines for the keeping of a medical record and, where the private practice is engaged in at the Hospital:
- (a) also of a standard consistent with the Department of Health Medical Record and Data Capture Standards published August 2000 (or any revised version);
  - (b) the Specialist must ensure all patients seen by the Specialist in the course of this private practice, whether as inpatients or non-inpatients, are registered in the Hospital Patient Master Index (or equivalent record system); and
  - (c) in order to ensure quality of patient care the Specialist must for each patient either record in the Hospital Unit Medical Record or provide an up to date copy of the original of the record to any health professional providing services to the patient at the Hospital, in accordance with the protocol developed by the Hospital.

## **2.4 Billing and Related Matters**

- 2.4.1 The Specialist shall have the right to determine the fee payable for services rendered in the course of his/her private practice, provided that:
- (i) the fees charged for services provided shall not be in excess of the scheduled fee contained in the Commonwealth Department of Health and Aged Care – Medicare Benefits Schedule Book current at the time of the provision of the service or the Veteran Affairs Fee Schedule;
  - (ii) in the case of private compensable and non-Medicare patients treated as private patients, the fees charged for services provided shall not be in excess of the rates set by the third party; or
  - (iii) in the case of the Specialist being registered with an established third party Insurer “no gap” program, the fee charged for services will not be in excess of the “no gap” program rate as set by the respective third party and the patient, or those financially responsible for the patient, will not incur any out of pocket expenses due to the Specialist arising from the Specialist’s participation in the third party “no gap” program.
- 2.4.2 In addition to billing arrangements as outlined at clauses 2.4.1, the Employing Authority agrees that:
- (i) Admitted patients who do not hold private health insurance and who elect to be treated as a private patient, may be charged a fee equivalent to the

rebate payable by the combined CMBS and the amount that private health insurance would fund for the service rendered; and

- (ii) Where there is no CMBS item number applicable to a particular medical service or the patient is not eligible for Medicare, the Specialist may charge up to the Australian Medical Association schedule fee with agreement from the Hospital Chief Executive Officer and on the basis that there is prior written agreement with the patient regarding the fees to be charged.

2.4.3 The Specialist shall provide to the Employing Authority, within one calendar month, such details as are necessary to facilitate collection of the fees referred to in 2.4.1 and 2.4.2.

## **2.5 Resolution of Disputes**

Where there is a dispute between the parties to this Agreement with regards to its interpretation, implementation, variation or renewal, such dispute shall be dealt with in the first instance, pursuant to the DH Human Resources Manual (for Health Care Act 2008 employees) or the Public Sector Management Act 1995 (where applicable), provided that in the absence of resolution any party may refer the matter to the dispute settling processes available in the Industrial Relations Commission of South Australia pursuant to the Fair Work Act 1994.

## **2.6 Groups**

If the Specialist is a member of a Group, the rules of the Group with respect to the allocation of monies amongst the Group will be documented in a formal agreement between the members of the Group.

## **2.7 Standard Terms to be included in Agreements with Specialists**

2.7.1 Any agreement or Deed between a Specialist and the Employing Authority in relation to private practice entered into after the Date of Commencement of this Agreement will contain the standard clauses shown in clauses 2.1 to 2.6 above.

2.7.2 The parties commit to developing and implementing such changes as are necessary to:

- (i) refresh and update Specialist's Private Practice Agreements in existence prior to the Date of Commencement of this Agreement, including any Specialists who elect "Status Quo". Such updated Private Practice Agreements will also contain the standard clauses shown in clauses 2.1 to 2.6 above; and
- (ii) other consequential changes will be required to Private Practice Agreements to reflect the changes in employment relationships resulting from the Statutes Amendment (Public Sector Employment) Act 2006.



## **2.8 Non-admitted Patient Billing**

All patient billings, whether for non-admitted or admitted patients shall be taken to be derived by the Specialist and distributed in accordance with the terms of this Agreement.

2.9 Specialists participating in Private Practice must be willing to treat both public and private patients.

## **2.10 Efficiency of Billing Practices**

An explicit intent of implementing this agreement is to increase the amount of private practice billings. In order to maximise available private patient billing, the Hospital will undertake measures directed towards improving the efficiency of billing practices.

## **2.11 Exclusion from calculation of allowances, loadings etc**

Any payments made to or earned by the Specialist as a result of Private Practice are excluded for the purposes of calculating any other allowance(s)/loading(s)/payment(s) paid to a Specialist, whether paid under an Industrial Award, Enterprise Agreement or otherwise.

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## **3. SCHEME ONE**

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### **3.1. Capped Private Practice**

3.1.1 Specialists in receipt of a loading in accordance with clause 29 of the SMOEA will have Private Practice ceilings in accordance with clause 29 of the SMOEA, and will enter into a Private Practice Memorandum of Agreement in a form and manner shown in Schedule 1 to this Agreement.

### **3.1.2 SA Pathology and SA Medical Imaging**

- (a) In addition to the applicable loading in accordance with clause 29 of the SMOEA, the following Specialists will be entitled to a Private Practice Allowance of 65% of Base Salary in lieu of the 65% Capped Private Practice referred to in clause 29 of the SMOEA:
- (i) Specialists attached to SA Pathology;
  - (ii) Specialists previously attached to SA Pathology whose position has been transferred to the Health Service where the Specialist provides the greatest proportion of clinical services and has been previously in receipt of a SA Pathology Private Practice Allowance in accordance with this clause; and
  - (iii) Specialists who are haematologists employed by a Hospital to provide services that include the provision of laboratory services to

SA Pathology under a Service Level Agreement between SA Pathology and the Health Service.

- (iv) From 1 July 2019, Specialists attached to SA Medical Imaging with the exception of those listed in Schedule 4 of this Agreement.
- (b) Specialists will enter into a Private Practice Deed of Agreement in a form and manner shown in Schedule 2 to this Agreement.
- (c) Specialists, whether single operators or in Groups, will formally pay-over all Private Practice billings (including bulk-billed income) to the employer.
- (d) The Private Practice Allowance will be paid monthly in arrears through payroll and will not be paid for periods of leave without pay but will be paid for periods of paid leave, including leave on termination.
- (e) The Hospital will provide, to Specialists using this Model, a quarterly statement showing total private practice earnings and total amount paid over to the Hospital.
- (f) Specialists will be required by the Australian Taxation Office to lodge a quarterly Business Activity Statement that will disclose the billings received less the amount paid over to the employer, with no net income tax payable and no PAYG instalments payable on the paid over billings (subject to the Specialist applying to the Australian Taxation Office to vary his/her PAYG instalment rate to zero). GST would only apply in limited cases where billings are for a non-GST free service.
- (g) There will be no tax reporting required for contributions towards administration and indemnity, transfers to other Specialists, or transfers to the Special Purposes and Equipment Funds (or other Hospital funds), as these will be internal fund allocations by the employer from the paid over income, and not transactions involving Specialists. For Specialists referred to in clause 3.1.2(a)(iv), a single SA Medical Imaging Special Purposes Fund will be used.
- (h) The allowance is able to be salary sacrificed to superannuation only under the General Public Sector Salary Sacrifice Scheme.
- (i) Superannuation
  - a) Payments of private practice income paid through the employer payroll will count for employer superannuation contribution purposes except where the Specialist is a member of a Super SA defined benefit fund ie. pension or lump sum.
  - b) The Super SA Triple S fund will be used for this purpose.

### **3.2 Status Quo Option**

3.2.1 A Specialist can elect the Status Quo option as per the provisions of 1.3.3 of this Agreement.

3.2.2 "Status Quo" means the continuation of all arrangements relating to private practice applicable to a Specialist or Group that can be demonstrated to have been in place immediately prior to 14 April 2008. Such arrangements may include but are not limited to the following:

- the use of additional loadings/allowances to determine base salary on which the private practice ceiling is based for that Specialist;
- the use of total earnings to determine base salary on which the private practice ceiling is based for that Specialist;
- continuation of the earnings distribution model;
- continuation of any arrangements around the administration/indemnity fee and/or billing arrangements generally;
- any other matter in a Specialist's existing private practice agreement.

3.2.3 A Specialist who elects Status Quo remains subject to clause 2 of this Agreement.

### **3.3 Capped Private Practice – Pay-over Model**

#### **Private Practice Receipts**

3.3.1 The following arrangements will apply in respect of:

- (i) admitted and non-admitted patients within the Hospital; and
- (ii) private practice undertaken outside the Hospital where such approval has been granted to the Specialist.



3.3.2 Private Practice receipts will be distributed according to the following table:

	Private Practice distribution up to cap* of Base Salary	Private Practice distribution over cap* of Base Salary
Administration and Indemnity	9%	9%
<b>Split of PP Receipts less 9%</b>		
Superannuation Recovery (applicable where the Specialist is a member of the Super SA Triple S fund)	An amount equal to the Triple S employer contribution percentage for the Specialist multiplied by the balance of private practice receipts after deduction of Administration and Indemnity.	0%
Specialist	100% of balance after deduction of Administration and Indemnity and Superannuation Recovery	0%
Special Purpose fund	0%	52%
Equipment fund	0%	13%
Department of Health	0%	35%

\*Refer to clause 29.8.4 of the SMOEA 2017.

3.3.3 An exception to the table in 3.3.2 is where the Specialist has previously contributed private practice receipts over the cap of base salary to a Hospital fund or funds other than the Special Purpose and Equipment Fund, or is joining a Group or Department which does so as its custom and practice. In this case, the Specialist will contribute the 35% to the Department of Health, and 65% to these other Hospital fund or funds.

### 3.3.4 Payment of Distribution to the Specialist

The Capped Private Practice Pay-over Model will operate as follows.

- (a) Specialists, whether single operators or in Groups, will formally pay-over all Private Practice billings (including bulk-billed income) to the employer.
- (b) The employer will, on a monthly basis, pay all Specialists electing this model their Private Practice earnings through payroll (withholding PAYG tax) in accordance with the distribution arrangements set out in the above table.
- (c) **Superannuation**
  - i) Payments of private practice income paid through the employer payroll will count for employer superannuation contribution purposes except where the Specialist is a member of a Super SA defined benefit fund i.e. pension or lump sum.
  - ii) The Super SA Triple S fund will be used for this purpose.
- (d) The Hospital will provide, to Specialists using this Model, a quarterly statement showing total private practice earnings and total amount paid over to the Hospital.



- (e) Specialists will be required by the Australian Taxation Office to lodge a quarterly Business Activity Statement that will disclose the billings received less the amount paid over to the employer, with no net income tax payable and no PAYG instalments payable on the paid over billings (subject to the Specialist applying to the Australian Taxation Office to vary his/her PAYG instalment rate to zero). GST would only apply in limited cases where billings are for a non-GST free service.
- (f) There will be no tax reporting required for contributions towards administration and indemnity, transfers to other Specialists, or transfers to the Special Purposes and Equipment Funds (or other Hospital funds), as these will be internal fund allocations by the employer from the paid over income, and not transactions involving Specialists.
- (g) The amount to be distributed to the Specialist is able to be salary sacrificed to superannuation only under GPSSSS.

### **3.4 Implementation of Capped Private Practice Pay-over Model**

The Scheme One Capped Private Practice Pay-over Model will be made available with effect from 1 July 2010.

A Specialist conducting Capped Private Practice during the private practice period ending 31 May 2010 may elect to transfer to the Scheme One Capped Private Practice Pay-over Model by notice in writing to the Hospital by 31 March 2010.

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## **4. SCHEME TWO**

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### **4.1 Option A – Private Practice Allowance**

Specialists electing Option A will pay-over all private practice receipts to the employer and will be paid a Private Practice Allowance in accordance with 4.1.2 below.

The Hospital will provide, to Specialists in Option A, a quarterly statement showing total private practice receipts and total amount paid over to the Hospital.

Specialists will be required by the Australian Taxation Office to lodge a quarterly Business Activity Statement that will disclose the billings received less the amount paid over to the employer, with no net income tax payable and no PAYG instalments payable on the paid over billings (subject to the Specialist applying to the Australian Taxation Office to vary his/her PAYG instalment rate to zero). GST would only apply in limited cases where billings are for a non-GST free service.

#### **4.1.1 Eligibility**

- 4.1.1.1 A Private Practice Allowance will be available to a Specialist who is;

- (a) Full-time; or
- (b) Part-time and fully committed to the public sector unless in accordance with this Agreement.

4.1.1.2 The payment of the allowance will be contingent on the Specialist at all times making all reasonable and best efforts to exercise their private practice arrangements to the full extent permissible by law together with the consequential invoicing of private patients where possible and not desisting from so doing.

#### **4.1.2 Quantum**

4.1.2.1 A Private Practice Allowance (refer 4.1.2.2 (a) & (b) below) will be paid to all Specialists in Option A.

4.1.2.2 (a) Specialists working at Lyell McEwin Hospital, Modbury Hospital, Noarlunga Health Service, or in community services associated with those Health Services or combination thereof, or employed within Country Health SA Hospital Inc, will be paid a Private Practice Allowance of 45% of Base Salary.

(b) All other Specialists electing Option A will be paid a Private Practice Allowance equivalent to 30% of Base Salary.

4.1.2.3 Where a Specialist works in more than one location where different percentages apply, the allowance will be paid pro rata to the time worked at those sites.

#### **4.1.3 Other Considerations**

4.1.3.1 The Private Practice Allowance will be paid fortnightly in arrears through payroll. The Private Practice Allowance will not be paid for periods of leave without pay but will be paid for periods of paid leave, excluding paid leave on termination.

4.1.3.2 The Private Practice Allowance will not be counted for the purpose of salary sacrifice arrangements under MOSSSS.

#### **4.1.3.3 Superannuation**

(a) Payments of private practice income paid through the employer payroll will count for employer superannuation contribution purposes except where the Specialist is a member of a Super SA defined benefit fund ie. pension or lump sum.

(b) The Super SA Triple S fund will be used for this purpose.

4.1.3.4 The allowance is able to be salary sacrificed to superannuation only under GPSSSS.

## 4.2 Option B – Private Practice Ceiling in Excess of 65%

### Private Practice Receipts

4.2.1 The following arrangements will apply in respect of:  
 (i) admitted and non- admitted patients within the Hospital; and  
 (ii) private practice undertaken outside the Hospital where such approval has been granted to the Specialist.

#### 4.2.2 Private Practice receipts up to 65%

Specialists will retain all receipts up to 65% of Base Salary (after retention of 9% contribution towards indemnity and administration).

#### 4.2.3 Private Practice receipts over 65%

Specialists will retain 33.33% of all receipts above 65% up to a distribution to the Specialist of 100% of the Specialist's Base Salary (after retention of 9% contribution towards indemnity and administration).

#### 4.2.4 Private Practice receipts over 100%

Specialists will retain 15% of receipts above 100% of Base Salary (after retention of 9% contribution towards indemnity and administration).

4.2.5 Private Practice receipts will be distributed according to the following table unless specifically indicated to the contrary in this Agreement:

	PP distribution up to 65% of Base Salary	PP distribution above 65% of base salary until distribution to Specialist reaches 100% base salary	PP distribution over 100% of Base Salary
Admin & Indemnity	9%	9%	9%
<b>Split of PP receipts less 9%</b>			
Specialist	100%	33.33%	15%
Special Purpose fund	0%	30% of 66.67% = 20%	0%
Equipment Fund	0%	50% of 66.67% = 33.34%	50% of 85% = 42.50%
Dept of Health	0%	20% of 66.67% = 13.33%	50% of 85% = 42.50%

## 4.3 Payment of Distribution to the Specialist

### 4.3.1 Option B Pay-over Model

Specialists in Option B may elect to utilise the Pay-over Model which will operate as follows:



- (a) Specialists, whether single operators or in Groups, will formally pay-over all Private Practice billings (including bulk-billed income) to the employer.
- (b) The employer will, on a monthly basis, pay all Specialists electing this model their Private Practice distribution through payroll (withholding PAYG tax) in accordance with the distribution arrangements as set out in 4.2.
- (c) **Superannuation**
  - i) Payments of private practice income paid through the employer payroll will count for employer superannuation contribution purposes except where the Specialist is a member of a Super SA defined benefit fund ie. pension or lump sum.
  - ii) The Super SA Triple S fund will be used for this purpose
- (d) The Hospital will provide, to Specialists using this Model, a quarterly statement showing total private practice receipts and total amount paid over to the Hospital.
- (e) Specialists will be required by the Australian Taxation Office to lodge a quarterly Business Activity Statement that will disclose the billings received less the amount paid over to the employer, with no net income tax payable and no PAYG instalments payable on the paid over billings (subject to the Specialist applying to the Australian Taxation Office to vary his/her PAYG instalment rate to zero). GST would only apply in limited cases where billings are for a non-GST free service.
- (f) There will be no tax reporting required for contributions towards administration and indemnity, transfers to other Specialists, or transfers to the Special Purposes and Equipment Funds, as these will be internal fund allocations by the employer from the paid over income, and not transactions involving Specialists.
- (g) The amount to be distributed to the Specialist under Option B Pay-over Model is able to be salary sacrificed to superannuation only under GPSSS.

#### 4.3.2 Option B Non Pay-over Model

Specialists may elect to utilize the Non Pay-over Model and receive gross private practice receipts in accordance with the distribution arrangements as set out in 4.2.

Under this Model:

- (a) the Hospital shall pay all fees collected on behalf of the Specialist into a holding account maintained by the Hospital for the Specialist;



- (b) the Hospital shall make interim deductions and payments from the holding account in accordance with and having regard to the provisions of 4.2;
- (c) The administration of distributions (including application of GST) shall be made in accordance with the Private Practice Memorandum of Agreement in Schedule 3 and in the following order:
  - (i) an amount equal to 9% of the gross fees held in the holding account will be paid to the Hospital towards the provision of professional indemnity cover and the billing service for the Specialist
  - (ii) to the Specialist or the Specialist in the Group an amount up to but not exceeding the percentages of the Specialist's base salary as described in the distribution table in 4.2.5
  - (iii) From the balance, the amounts payable to the Special Purpose Fund, the Equipment Fund and the Department of Health in the proportions described in the distribution table in 4.2.5

#### **4.4 Special Purposes and Equipment Funds**

- 4.4.1 Funds in existence at the time of the implementation of the Agreement will continue under this Agreement.
- 4.4.2 Distributions will be made to the Special Purpose Fund and Equipment Fund at each Health Service where the Specialist principally conducts his/her private practice.

5. SIGNATORIES


CHIEF EXECUTIVE OF THE DEPARTMENT OF HEALTH (OR DELEGATE)

  
\_\_\_\_\_

  
WITNESS

DATED THIS 16<sup>th</sup> DAY OF April 2019

SIGNED FOR AND ON BEHALF OF THE SOUTH AUSTRALIAN SALARIED  
MEDICAL OFFICERS ASSOCIATION

  
\_\_\_\_\_

  
WITNESS

DATED THIS 16<sup>th</sup> DAY OF APRIL 2019

**Schedule 1 – Form of Memorandum of Agreement for Scheme 1 Specialists**

**Schedule 2 – Form of Deed of Agreement for Scheme 1 and Scheme 2 Pay-over Model Specialists**

**Schedule 3 – Form of Memorandum of Agreement for Scheme 2 Non-Pay-over Model Specialists**

**Schedule 4 – Specialists attached to SA Medical Imaging for which clause 3.1.2(a)(iv) does not apply**

- 1) All Specialists attached to Nuclear Medicine at the Lyell McEwin Hospital.
- 2) All Specialists attached to Nuclear Medicine at The Queen Elizabeth Hospital.
- 3) All Specialists attached to Nuclear Medicine at the Royal Adelaide Hospital



## History of Changes

This schedule of changes does not form part of the Agreement.

### December 2009 Changes

1. Clause 1.2 was amended as follows:

#### 1.2 Options

Subject to the conditions set out below, the Employing Authority will provide the following schemes for the Specialists to elect:

- Scheme One Capped Private Practice (Pay-over or Non Pay-over Model) or Status Quo; or
- Scheme Two Option A or Option B Pay-over Model or Option B Non Pay-over Model

2. Clause 1.4.1 was amended as follows:

- 1.4.1 (i) Scheme One Capped Private Practice;  
(ii) Scheme One Capped Private Practice Pay-over Model;  
(iii) Scheme Two Option A Pay-over Model;  
(iv) Scheme Two Option B Pay-over Model;  
(v) Scheme Two Option B Non Pay-over Model

3. Clause 1.4.2 was amended as follows:

- 1.4.2 Where the Specialist elects an option other than Scheme One - Capped Private Practice or Scheme One Capped Private Practice Pay-over Model the Specialist foregoes any entitlement to the Attraction and Retention Allowance (clause 26 SMOEA) from the date of effect of the election.

4. Clause 1.4.2a was inserted as follows:

- 1.4.2a *A Specialist who elects at any time to transfer to Scheme One Capped Private Practice Pay-over Model may not subsequently elect to transfer to a Non Pay-over Model unless that Specialist is joining a Group and the Group utilises a non Pay-over model.*

5. Clause 1.4.2b was inserted as follows:

- 1.4.2b *A Specialist in a Group can only elect the Scheme One Capped Private Practice Pay-over Model where all Specialists in the Group make such an election.*

6. Clause 1.5.1 was amended as follows:

- 1.5.1
- Scheme One, "Capped Private Practice" and "Status Quo" the Private Practice Memorandum of Agreement (Schedule 1).
  - Scheme One, "Capped Private Practice Pay-over Model" the Private Practice Deed of Agreement (Pay-over) (Schedule 2).
  - Scheme Two, Option A and Option B "Pay-over Model" the Private Practice Deed of Agreement (Pay-over) (Schedule 2); and
  - Scheme Two, Option B "Non Pay-over Model" the Memorandum of Agreement for Option B Non Pay-over Private Practice (Schedule 3).

7. Clause 1.6.19 was amended as follows:

- 1.6.19 Private Practice Deed means the document signed by the Employing Authority and the individual Specialist in Scheme Two - Option A or Option B or Capped

Private Practice Pay-over Model - to give affect to any aspect of the administration of private practice arising from the application of this Agreement.

8. Clause 1.6.21 was amended as follows:

1.6.21 b) for Option A and Option B Pay-over Model and Capped Private Practice Pay-over Model the period commencing on 1 July; and

9. Clause 3.3 was inserted as follows:

3.3 Capped Private Practice – Pay-over Model

Private Practice Receipts

3.3.1 The following arrangements will apply in respect of:

- (i) admitted and non- admitted patients within the Hospital; and
- (ii) private practice undertaken outside the Hospital where such approval has been granted to the Specialist.

3.3.2 Private Practice receipts will be distributed according to the following table:

	Private Practice distribution up to cap* of Base Salary	Private Practice distribution over cap* of Base Salary
Administration and Indemnity	9%	9%
<b>Split of PP Receipts less 9%</b>		
Superannuation Recovery (applicable where the Specialist is a member of the Super SA Triple S fund)	An amount equal to the Triple S employer contribution percentage for the Specialist multiplied by the balance of private practice receipts after deduction of Administration and Indemnity.	0%
Specialist	100% of balance after deduction of Administration and Indemnity and Superannuation Recovery	0%
Special Purpose fund	0%	52%
Equipment fund	0%	13%
Department of Health	0%	35%

\*Refer to clause 26.9.4 of the SMOEA 2008.

3.3.3 An exception to the table in 3.3.2 is where the Specialist has previously contributed private practice receipts over the cap of base salary to a Hospital fund or funds other than the Special Purpose and Equipment Fund, or is joining a Group or Department which does so as its custom and practice. In this case, the Specialist will contribute the 35% to the Department of Health, and 65% to these other Hospital fund or funds.

3.3.4 **Payment of Distribution to the Specialist**

The Capped Private Practice Pay-over Model will operate as follows.

- (a) Specialists, whether single operators or in Groups, will formally pay-over all Private Practice billings (including bulk-billed income) to the employer.
- (b) The employer will, on a monthly basis, pay all Specialists electing this model their Private Practice earnings through payroll (withholding PAYG tax) in accordance with the distribution arrangements set out in the above table.

**(c) Superannuation**

- i) Payments of private practice income paid through the employer payroll will count for employer superannuation contribution purposes except where the Specialist is a member of a Super SA defined benefit fund i.e. pension or lump sum.
- ii) The Super SA Triple S fund will be used for this purpose.
- (d) The Hospital will provide, to Specialists using this Model, a quarterly statement showing total private practice earnings and total amount paid over to the Hospital.
- (e) Specialists will be required by the Australian Taxation Office to lodge a quarterly Business Activity Statement that will disclose the billings received less the amount paid over to the employer, with no net income tax payable and no PAYG instalments payable on the paid over billings (subject to the Specialist applying to the Australian Taxation Office to vary his/her PAYG instalment rate to zero). GST would only apply in limited cases where billings are for a non-GST free service.
- (f) There will be no tax reporting required for contributions towards administration and indemnity, transfers to other Specialists, or transfers to the Special Purposes and Equipment Funds (or other Hospital funds), as these will be internal fund allocations by the employer from the paid over income, and not transactions involving Specialists.
- (g) The amount to be distributed to the Specialist is able to be salary sacrificed to superannuation only under GPSSSS.

#### 3.4 Implementation of Capped Private Practice Pay-over Model

The Scheme One Capped Private Practice Pay-over Model will be made available with effect from 1 July 2010.

A Specialist conducting Capped Private Practice during the private practice period ending 31 May 2010 may elect to transfer to the Scheme One Capped Private Practice Pay-over Model by notice in writing to the Hospital by 31 March 2010.

#### August 2009 Changes

1. Clause 4.2.5 was amended as follows:

- 4.2.5 Private Practice receipts will be distributed according to the following table unless specifically indicated to the contrary in this Agreement:

	<b>PP receipts <u>distribution</u> up to 65% of Base Salary</b>	<b>PP <u>distribution</u> above receipts 65% of base salary <u>until</u> <u>distribution to</u> <u>Specialist reaches</u> 100% base salary</b>	<b>PP receipts <u>distribution</u> over 100% of Base Salary</b>
Admin & Indemnity	9%	9%	9%
<b>Split of PP receipts less 9%</b>			
Specialist	100%	33.33%	15%
Special Purpose fund	0%	30% of 66.67% = 20%	0%
Equipment Fund	0%	50% of 66.67% = 33.34%	50% of 85% = 42.50%
Dept of Health	0%	20% of 66.67% = 13.33%	50% of 85% = 42.50%



2. Clause 4.2.3 was amended as follows:

4.2.3 Private Practice Receipts over 65%

Specialists will retain 33.33% of all earnings *receipts* above 65% up to *a distribution to the Specialist* of 100% of the Specialist's Base Salary (after retention of 9% contribution towards indemnity and administration).

3. Clause 1.6.21a was inserted as follows:

1.6.21a **Private Practice receipts:** means the gross amount received by the Specialist from private practice billings.

4. The word "earnings" was changed to "receipts" in clauses 4.1, 4.2.2, 4.2.3, 4.2.4, 4.3.1(a) and 4.3.2.

5. In clause 4.3.1(b) the word "earnings" was replaced with "distribution" as follows:

4.3.1 (b) The employer will, on a monthly basis, pay all Specialists electing this model their Private Practice *distribution* earnings through payroll (withholding PAYG tax) in accordance with the distribution arrangements as set out in 4.2.

6. The heading 4.3 was changed to "**Payment of *Distribution* Earnings to the Specialist**".

7. Private Practice Election of for Employees new to SA Health

The following clause was inserted:

1.4.6 *A Specialist commencing employment with the Employing Authority may elect either of the Schemes contained in clause 1.4.1 by giving written notice to the Hospital within one month after being advised of their private practice options. Such an election will take effect from the first day of the month following receipt of such notice, and after employment has commenced.*

8. Clause 3.2.2 definition of Status Quo, the following words were deleted:

"contribution of private practice earnings above the ceiling to a hospital, a Departmental or Unit special purpose and equipment fund/s;"

9. Clause 1.5.1 was amended as follows:

1.5.1.....

Scheme Two, Option B "Non Pay-over Model" the ~~Variation to the Private practice memorandum of Agreement~~ *Memorandum of Agreement for Option B Non Payover Private Practice* (Schedule 3)

10. Clause 4.1.2.2 reference to Country Health SA Inc was changed to Country Health SA Hospital Inc.

11. Clause 4.1 reference to the "Authority" was changed to "Hospital".

12. Grammatical correction to clause 4.1.3.1 as follows "...excluding paid on leave on termination."

December 2017 Changes

1. Clause 1.4.5 was updated to refer to clause 3.1.2.

2. Clause 3.1.2 was amended to reflect private practice arrangements for specialists transitioning from SA Pathology to Local Health Networks arising from the 2012 Clinical Governance Review.
3. References to clause 26 of the SMOEA were updated to refer to the revised numbering for clause 29 Attraction and Retention Allowance in the SMOEA 2017.

#### April 2019 Changes

1. Clause 1.4.7 was added: *"Status Quo" is not available to Specialists referred to in clause 3.1.2(a)(iv). For clarification, clauses 1.3.3 and 1.4.4 do not apply to Specialists referred to in clause 3.1.2(a)(iv).*
2. Clause 3.1.2, added "and SA Medical Imaging".
3. Clause 3.1.2(a)(iv) was added: *From 1 July 2019, Specialists attached to SA Medical Imaging with the exception of those listed in Schedule 4 of this Agreement.*
4. Clause 3.1.2(g), added "For Specialists referred to in clause 3.1.2(a)(iv), a single SA Medical Imaging Special Purposes Fund will be used."
5. Added Schedule 4 - Specialists attached to SA Medical Imaging for which clause 3.1.2(a)(iv) does not apply