

*Workplace Relations Act 1996*  
Certified Employee Collective Agreement

**Western Health**

and

**Australian Medical Association Victoria**

and

**Australian Salaried Medical Officers Federation**

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

**PREAMBLE:**

**1 TITLE**

This Agreement shall be known as the Western Health (Staff Specialist Anaesthetists) Certified Agreement 2006.

**2 DATE AND PERIOD OF OPERATION**

This Agreement shall take effect from the beginning of the first full pay period commencing on or after date of agreement being reached and shall remain in force for three (3) years after that date.

**3 INCIDENCE AND PARTIES BOUND**

3.1 This Agreement shall bind Western Health, the Australian Medical Association Victoria ('The AMA') and the Australian Salaried Medical Officers Federation ('ASMOF').

3.2 This agreement applies to all Practitioners employed as a Staff Specialist Anaesthetist at Western Health.

**4. ARRANGEMENT**

**PAGE**

<b>1 TITLE</b>	<b>1</b>
<b>2 DATE AND PERIOD OF OPERATION</b>	<b>1</b>
<b>3 INCIDENCE AND PARTIES BOUND</b>	<b>1</b>
<b>5. EMPLOYMENT</b>	<b>2</b>
<b>6. MEDICAL APPOINTMENT</b>	<b>2</b>
<b>7. DUTIES OF THE PRACTITIONER</b>	<b>3</b>
<b>8. REMUNERATION OF THE PRACTITIONER</b>	<b>3</b>
<b>9. ADDITIONAL REMUNERATION AND BENEFITS</b>	<b>4</b>

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

<b>10. PRIVATE PRACTICE</b>	<b>4</b>
<b>11. PERFORMANCE INDICATORS</b>	<b>4</b>
<b>12. TERMINATION OF EMPLOYMENT</b>	<b>5</b>
<b>13. RENEWAL OF CERTIFIED AGREEMENT</b>	<b>6</b>
<b>14. LEAVE</b>	<b>6</b>
<b>15. DISPUTES</b>	<b>8</b>
<b>16. CONFIDENTIAL INFORMATION</b>	<b>10</b>
<b>17. INSURANCE</b>	<b>10</b>
<b>18. VARIATION</b>	<b>10</b>
<b>19. NOTICES</b>	<b>11</b>
<b>20. OTHER RIGHTS UNAFFECTED</b>	<b>11</b>
<b>21. SEVERABILITY</b>	<b>11</b>
<b>22. RELATIONSHIP TO THE AWARD</b>	<b>11</b>
<b>23. EFFECT OF LEGISLATIVE CHANGE</b>	<b>11</b>
<b>24. DEFINITIONS</b>	<b>11</b>
<b>25. OUT OF HOURS CONTACT</b>	<b>13</b>
<b>26. PUBLIC HOLIDAYS</b>	<b>13</b>
<b>27. SIGNATORIES</b>	<b>14</b>
<b>SCHEDULE A</b>	<b>15</b>
<b>SCHEDULE B</b>	<b>17</b>
<b>SCHEDULE C</b>	<b>19</b>
<b>SCHEDULE D</b>	<b>20</b>
<b>SCHEDULE E</b>	<b>24</b>
<b>SCHEDULE F</b>	<b>26</b>

**5. EMPLOYMENT**

Nothing in this Agreement affects the continuity of employment of the Practitioner for the purpose of any entitlement.

**6. MEDICAL APPOINTMENT**

If the Practitioner's Medical Appointment to provide services at Western Health is for a shorter period than the Period specified in clause 2 or as renewed pursuant to clause 13 of this Agreement, then the Practitioner's employment ends on the last day for which the Practitioner is appointed to provide services at Western Health, unless the Appointment period is extended by the appropriate due process of Western Health.

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

**7. DUTIES OF THE PRACTITIONER**

7.1 The Practitioner must carry out the duties set out in Schedule A including the commitment to On Call.

In addition the Practitioner must:

7.2 Comply with Western Health By-laws, resolutions, policies (by whatever name called), all lawful directions of the Chief Executive Officer and with the terms of agreements and directions which are binding on Western Health pursuant to the Act so far as they are consistent with this Agreement;

7.3 Comply with all legal requirements statutory or otherwise pertaining to the position and responsibility of the Practitioner, including but not limited to maintaining current registration as required by the Medical Practice Act 1994 or such other relevant legislative obligation having regard to the speciality of the Practitioner;

7.4 Maintain membership of a recognised medical defence Organisation and provide evidence of this membership when requested by Western Health;

7.5 Faithfully serve Western Health and at all times use the Practitioner's best endeavours to promote the interests of Western Health.

**8. REMUNERATION OF THE PRACTITIONER**

8.1 Subject to the Practitioner at all times carrying out the duties set out in Schedule A the Practitioner is entitled to the Total Remuneration Package per annum (having regard to their period of service) set out in Schedule B inclusive of leave loading penalties, Fringe Benefits Tax and allowances ("Total Remuneration Package").

8.2 A minimum of 50% of the Total Remuneration Package and the Administrative Allowance must be taken as monetary remuneration with the remainder being allocated to employment benefits. Employment benefits may be accessed having regard to the salary packaging policy of the Western Health.

8.3 Where Western Health increases the Practitioner's remuneration during the year, a Practitioner is entitled to restructure their employment benefits in accordance with the salary packaging policy of Western Health.

8.4 If there is any increase in the cost to the Western Health of the employment benefits being provided, arising from any cause whatsoever, the Western Health has the right after notifying the Practitioner to alter the level of employment benefits by converting benefits to salary to reflect the changes in the cost of the employment benefits.

8.5 Western Health agrees to provide the prescribed minimum level of superannuation support to each practitioner, required under the Superannuation Guarantee (Administration) Act 1992 based on and in addition to the base annual salaries in Schedule B. For the avoidance of doubt, that support will be paid on salaries that exceed the capped amount specified within the Superannuation Guarantee (Administration) Act 1992, but

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

does not apply to payments associated with overtime or work undertaken outside of normal hours.

**9. ADDITIONAL REMUNERATION AND BENEFITS**

9.1 In addition to monetary remuneration and employment benefits the Practitioner is entitled to, the following benefits and allowances which must not be included in the calculation of the annual cost to Western Health of the Total Remuneration Package:

**9.1.1.** Recall – where a Practitioner is recalled, recall remuneration shall be as defined within Schedule B.

**9.1.2.** In consideration of the practitioner undertaking elective surgical lists performed outside of normal hours, which are allocated to the practitioner on a voluntary basis, the practitioner will be eligible to be reimbursed using the RVG system. For the avoidance of doubt it is understood that an elective patient / list is a patient or clinical session of patients who have been placed on a surgical waiting list to await operation when time and resources allow reimbursed using the RVG schedule defined in schedule B except that the M2 modifier will not be used.

**9.1.3.** Overtime – The employer reserves the right to require the Practitioner to undertake overtime. Overtime worked during normal hours will be remunerated at the rate of 125% of the applicable base hourly rate. Overtime worked outside normal hours will be remunerated according to the rates specified in Schedule B.

**10. PRIVATE PRACTICE**

For the duration of the Practitioner's employment, Western Health permits the Practitioner to provide services to Private and/or Compensable Patients, subject to the Practitioner executing and remaining a party to a service agreement provided by Western Health. While a party to such a service agreement, indemnity is extended for services provided to these patients.

**11. PERFORMANCE INDICATORS**

The remuneration entitlements provided pursuant to this agreement are predicated on commitment and participation by the Practitioners to the following performance indicators:

11.1. The Practitioners agree to collect and audit clinical data as defined by their relevant professional college and the health service and to work with the nominated Hospital employee to agree reporting to meet the Australian Council of Healthcare Standards ("ACHS") Accreditation.

11.2. The Practitioners will ensure that 90% of patients will be ready for their surgical intervention to commence by 0830 hours subject to the Hospital having 90% of patients ready by 0745 hours.

*Draft 26/03/2008*  
**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)**  
**CERTIFIED AGREEMENT 2006 - 2009**

**12. TERMINATION OF EMPLOYMENT**

- 12.1 Either party may terminate employment by giving three (3) months notice of termination in writing to the other party. Western Health has the right to make payment in lieu of giving notice.
- 12.2 Unless employment is terminated due to Major Change Processes resulting in the abolition of the Practitioner's position, neither party is entitled to any compensation for such termination without prejudice to any accrued rights of the Practitioner with respect to annual leave, long service leave as accrued pursuant to clause 14, and other incentive payments under clause 9 (Additional Remuneration and Benefits).
- 12.3 If Major Change Processes result in the abolition of the Practitioner's position and there is no similar position available to which deploy of the Practitioner within Western Health, then the Practitioner shall be entitled, in addition to his/her accrued entitlements, to the following payments only:
- 12.3.1 Two (2) weeks salary prorated per year of continuous service up to ten (10) years to a maximum of twenty (20) weeks
- 12.3.2 "Weeks Salary" means in this sub paragraph the Total Remuneration Package for the Practitioner for the week.
- 12.4 Subject only to summary dismissal set out in clause 12.5, if Western Health for any reason, including but not limited to non-compliance by the Practitioner with the Performance Criteria or the abolition of the position due to Major Change Processes, is considering terminating the Practitioner's employment, Western Health must, before giving notice of termination to the Practitioner, consult and confer with the Practitioner and give the Practitioner the reasons for and details of the proposed action. If the proposed termination relates to the Practitioner's behaviour, the Practitioner must be given an appropriate written warning or if due to unsatisfactory performance, must be given appropriate instructions, a written warning and the opportunity for a reasonable period of time to improve that performance. Termination shall not be harsh, unjust, or unreasonable.
- 12.5 Consistent with Section 41 of the *Health Services Act*, Western Health may summarily dismiss the Practitioner at any time without the requirement to give notice, counselling or warning if the Practitioner is guilty of misconduct such as would at common law give the right to summary dismissal. This may include but is not limited to:
- 12.5.1 Neglect of duty of a serious nature or acts of dishonesty;
- 12.5.2 Breach of confidentiality or a serious conflict of interest affecting the performance of the duties of the Practitioner;
- 12.5.3 Revocation of the Practitioner's clinical credentials;
- 12.5.4 Refusal to carry out lawful requests or directions;

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

- 12.5.5 Alcohol abuse or improper drug or substance use adversely affecting the performance and behaviour of the Practitioner;
  - 12.5.6 Ceasing to hold current registration as required by the Medical Practice Act 1994, such other registration as is acceptable to Western Health or ceasing to hold membership of a recognised medical defence Organisation;
  - 12.5.7 Being found to have engaged in unprofessional conduct of a serious nature as referred to in Section 50 of the Medical Practice Act 1994 or having any limitation, condition or restriction imposed on the Practitioner's right to practice by the Medical Board of Victoria;
  - 12.5.8 Failing to meet the standards required by the Practitioner's specialist medical college in respect of continuing education of the Practitioner;
  - 12.5.9 Being found guilty of an indictable offence under the Crimes Act 1958.
- 12.6 Clauses 12.4. and 12.5, should be read in conjunction with Clause 15.3.

**13. RENEWAL OF CERTIFIED AGREEMENT**

- 13.1. Either party may serve upon the other party a notice to renew this agreement within six (6) months of the expiration of this agreement.
- 13.2. Subject to clause 13.1 of this agreement, either party may refer to the Australian Industrial Relations Commission, for conciliation a renewal of this agreement where the parties fail to agree upon the terms of an agreement within 3 (3) months of the expiration of this agreement.

**14. LEAVE**

- 14.1 The Practitioner is entitled to the following leave entitlements:
  - 14.1.1 **Annual Leave**  
Four (4) weeks paid leave for each year of employment pro-rated provided that the Practitioner must take leave within twelve (12) months of it accruing, unless otherwise approved by the Director of the Department, and provided that one (1) week's additional paid leave accrues where the Practitioner is available On Call.
  - 14.1.2 **Sick Leave**  
Twenty-eight (28) days paid leave for each year of employment pro-rated with the entitlement to sick leave being cumulative. The accrual of sick leave does not carry the right to be paid for any untaken sick leave on the termination of the Practitioner for any reason and sick leave in excess of two (2) days must be supported by a medical certificate or the leave will be deducted from the Practitioner's annual leave entitlement.

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

**14.1.3 Bereavement Leave**

Four (4) days paid leave at any time during the period of employment pro-rated upon the death of a Close Family Relative in Australia or the illness or death overseas of a spouse (including de facto spouse), parent, partner, sibling or child provided that the Practitioner must not take compassionate leave whilst on other leave and must provide proof of illness or death or relationship when requested by Western Health.

**14.1.4 Conference Leave (Schedule C)**

Two (2) weeks paid leave for each year of employment provided that the Practitioner may carry up to four (4) week's conference leave into a subsequent year. The accrual of conference leave does not carry the right to be paid for any untaken conference leave on the termination of the Practitioner for any reason. The Practitioner must seek prior approval to attend from the Department Head or nominee and provide the Executive Director, Medical Services with a written report of conferences attended.

**14.1.5 Long Service Leave (Schedule D)**

Twenty-six (26) weeks paid leave for each fifteen (15) years of continuous employment with Western Health pro-rated provided that with the agreement of Western Health accrued leave equal to 1/30<sup>th</sup> of the period of employment may be taken when more than ten (10) years but less than 15 years of continuous employment with Western Health has been completed. With the agreement of Western Health, the leave may be taken in instalments, of one (1) week and the leave may be taken on half pay for twice the period of leave entitlement or on double the pay for half the period of leave entitlement.

This sub-clause is a summary only. This sub-clause is to be read in conjunction with, and is not intended to replace, Schedule D – Long Service Leave

**14.1.6 Sabbatical Leave (Schedule E)**

A Practitioner is entitled to a maximum of twenty six (26) weeks Sabbatical Leave for each six (6) years of continuous employment. Such leave may be taken in four (4) week periods. Sabbatical Leave is granted provided:

14.1.6 (a) The Practitioner is a specialist of at least three (3) years standing and has engaged in medical undergraduate and graduate teaching in Western Health;

14.1.6 (b) The dominant purpose of the leave is to under-take a course of study or research related to the Practitioner's work;

14.1.6 (c) The course of study or research is approved by Western Health;

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

14.1.6 (d) The Practitioner undertakes to remain in the employment of Western Health for at least two years after returning from leave;

14.1.6 (e) Western Health may recover costs in excess of the monetary remuneration paid to the Practitioner or incurred by Western Health in respect of the leave if the Practitioner voluntarily leaves the employment of Western Health within two years of returning from leave;

14.1.6 (f) Upon termination of employment, the Practitioner has no entitlement to be remunerated for any accrued Sabbatical Leave.

**14.1.7 Family Leave**

Five (5) days leave for each year of employment pro-rated provided that the Practitioner may not carry family leave into a subsequent year and provided that family leave is deducted from the sick leave entitlement.

**14.1.8 Parental Leave (Schedule F)**

Parental leave shall be in accordance with the Hospital Specialists and Medical Administrators Award 2002, except that six weeks maternity leave and one week paternity leave shall be on full pay.

This sub-clause is a summary only. This sub-clause is to be read in conjunction with, and is not intended to replace, Schedule F – Parental Leave

**15. DISPUTES**

**15.1 Grievances**

- (a) A Practitioner will have the right for grievances to be heard through all levels of line management.
- (b) In the first instance the Practitioner will attempt to resolve the grievance with her or his immediate supervisor. The local Australian Medical Association (“AMA”) or Australian Salaried Medical Officers Federation (“AMSOF”) or other representative will be present if desired by either party.
- (c) If the Practitioner still feels aggrieved, then the matter will be referred to her or his Department Head. The local union or other representative will be present if desired by either party.
- (d) If the grievance is still unresolved, the matter shall be referred to senior management and the senior local or state branch union or other representative.
- (e) If the grievance is still unresolved, then the state branch of the AMA or AMSOF or other representative shall be advised and a meeting arranged. At this stage the Employer’s representative shall be advised and shall be present at the request of either party.



**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

- (f) It is agreed that the above steps in **sub-clauses 15.1(a) to (e)** shall take place within seven days (or such longer period as may be mutually agreed).
- (g) If the grievance has not been resolved to the satisfaction of the Practitioner or the Employer, either party to the grievance may refer the grievance to the Australian Industrial Relations Commission for resolution by conciliation, and if necessary by arbitration. Despite this paragraph, a dispute over the application of this Agreement shall be dealt with in accordance with **sub-clause 15.2(a)**.
- (h) Until the grievance is determined, work shall continue normally in accordance with custom and practice existing before the grievance arose while discussions take place. No party shall be prejudiced as to the final settlement by the continuance of work. Health and safety matters are exempted from this subclause.

**15.2 Disputes over the Application of this Agreement**

- (a) In accordance with Section 170LW of the Act, the Commission is empowered to settle by conciliation, any dispute over the application of this Agreement between the parties to this Agreement, which is referred to it, by a party to this Agreement. If a dispute over the application of this Agreement cannot be resolved by conciliation, the Commission may, where the parties directly affected by such a dispute first agree, exercise arbitration power to settle that dispute.
- (b) For the avoidance of doubt, a dispute concerning the application of this Agreement to a newly created classification or to work under a new position title is to be dealt with in accordance with **sub-clause 15.2(a)**.

**15.3 Discipline**

- (a) Where disciplinary action is necessary, the management representative shall notify the Practitioner of the reason. The first warning shall be verbal and will be recorded on the Practitioner's personal file. A union or other representative shall be present if desired by either party.
- (b) If the problem continues the matter will be discussed with the Practitioner and a second warning in writing will be given to the Practitioner and recorded on the Practitioner's personal file. The local union or other representative shall be present if desired by either party.
- (c) If the problem continues the management representative will again notify the Practitioner. If a final warning is to be given then it shall be issued in writing and if required by either party, a copy sent to the relevant union or relevant representative. The Practitioner has the right to union or other representation.
- (d) If the problem re-occurs, the Practitioner's employment may be terminated. However, the Practitioner's employment must be terminated in accordance with section 41 of the Health Services Act.
- (e) Despite **sub-clauses 15.3(a) to (d)**, a Practitioner may still be summarily dismissed for acts of serious and willful misconduct, as specified within **clause 12.5** of this agreement.

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

- (f) If a dispute arises over any disciplinary action instigated against a Practitioner by a management representative, the course of action to be followed shall be in accordance with **sub-clause 15.1(g)**.
- (g) If after any warning, a period of twelve months elapses without any further warning or action being required, all adverse reports relating to the warning must be removed from the Practitioner's personal file.
- (h) All new Practitioners shall be handed a copy of these procedures on commencement of employment.

**16. CONFIDENTIAL INFORMATION**

- 16.1 Information, whether or not in material form, other than that generally published and available regarding Western Health's business transactions, operations and systems, financial affairs and structures, is of value to Western Health, and is of a restricted, confidential nature. During the continuance of this Agreement and for any time thereafter, the Practitioner must not use or disclose such confidential information to any other person, firm or corporation without the prior written consent of Western Health.
- 16.2 On completion or termination of his/her employment, the Practitioner must immediately deliver to Western Health all books, notes and other records based on or incorporating information referred to in clause 16.1, and all keys, computer software or other property relating to the business of Western Health which belongs to Western Health or relates to the duties of the Practitioner during the period of the employment.
- 16.3 The Practitioner acknowledges and agrees that the Practitioner is aware of the provisions of Section 141 of the Act that relates to the unlawful disclosure of patient information.

**17. INSURANCE**

- 17.1 Western Health represents to the Practitioner intending that the Practitioner rely on the representation, that under the Liability and Malpractice Insurance Contract made between Victorian Managed Insurance Authority (VMIA) and the Minister for Human Services for the State of Victoria and in force at the date of this Agreement, Western Health is a named insured therein and the Practitioner is entitled to indemnity subject to the terms and conditions of that insurance contract.
- 17.2 Where the Practitioner's treatment of Private and Compensable Patients is undertaken within an agreed private practice arrangement, indemnity provided by Western Health will also cover these services.

**18. VARIATION**

This Agreement can only be varied pursuant to the Workplace Relations Act (1996) (as amended).

*Draft 26/03/2008*  
**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

**19. NOTICES**

Any notice required to be given under this Agreement must be delivered to Western Health at Sunshine Hospital, Furlong Road, St Albans 3021 and if to the Practitioner must be delivered or sent by pre-paid post to the Practitioner's last known address.

Any notice given accordingly to this clause is deemed to have been served at the time of delivery, if delivered, and on the day following posting, if posted.

**20. OTHER RIGHTS UNAFFECTED**

The rights created under this Agreement are not intended to affect any rights, which either of the parties may have apart from this Agreement.

**21. SEVERABILITY**

If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement. The rest of the Agreement is not affected.

**22. RELATIONSHIP TO THE AWARD**

This Agreement shall be read in conjunction with the *Hospital Specialists and Medical Administrators Award 2002*, provided that to the extent of any inconsistency the Agreement shall prevail.

**23. EFFECT OF LEGISLATIVE CHANGE**

If any legislation referred to in this Agreement is amended, re-enacted or replaced with another, substantially similar provision, the resulting provision is to be treated as being substituted in this Agreement for the original one. The substitution takes places from the time the new provision takes effect.

**24. DEFINITIONS**

24.1 "**Award**" means the Hospital Specialists and Medical Administrators Award 2002.

24.2 "**Chief Executive Officer**" means the Chief Executive Officer of Western Health and / or his/her nominee.

24.4 "**Close Family Relative**" means a spouse, parent, partner, sibling, child, stepchild, grandparent, grandchild and parent-in-law and includes a de facto spouse and their parents and children.

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

- 25.5 "**Compensable Patient**" means an eligible person as defined in section 3(l) of the Health Insurance Act 1973 (Commonwealth) who is entitled to be paid compensation damages, or other benefits in respect of an injury, illness or disease for which he or she is receiving hospital services and includes a Work Cover patient, Accident Compensation Commission and Veterans Affairs patients.
- 24.6 "**Department Head**" means the Head of Anaesthesia Department of Western Health.
- 24.7 "**Family Leave**" means leave allowed to a Practitioner being required to provide primary care to a sick partner, parent, brother, sister, child or stepchild.
- 24.8 "**Health Care Facilities**" means a facility in Victoria, which provides public hospital services to patients.
- 24.9 "**Higher Qualification**" means a qualification appropriate to the speciality in which a Practitioner is employed conferred upon by the Practitioner by a University, Medical School or Learned College which is recognised by the National Specialists Qualification Advisory Committee to Australia (NSQAC) including:
- 24.9.1 Postgraduate degrees and diplomas of Universities, which are recognised by NSQAC;
- 24.9.2 membership or fellowship of a College or Association of Specialists recognised as being indicative of higher qualification by NSQAC;
- 24.9.3 any other postgraduate qualification at the level of Masters or above appropriate to the speciality in which a Practitioner is employed.
- 24.10 "**Major Change Processes**" includes but is not confined to changes in the role or functions of Western Health or a constituent hospital, the cessation of the provision of medical or surgical services in a Practitioner's discipline or speciality and the abolition of the Unit or Department in which a Practitioner works.
- 24.11 "**Medical Appointment**" means appointment of the Specialist to the Senior Medical Staff of Western Health with clinical credentials applicable to the medical services to be provided by the Specialist pursuant to this Agreement in respect of all campuses at Western Health and shall be for a fixed term of not less than one (1) year and not more than five (5) years.
- 24.12 "**Western Health**" means Western Health as incorporated under the Health Services Act (1988) and regulations made there under by the Governor in Council. At the date of this agreement it comprises the following hospitals and campuses; Western Hospital - Footscray, Sunshine Hospital and the Williamstown Hospital.
- 24.13 "**On Call Period**" Means the hours between 1800 and 0800 Monday to Friday. Each Weekend day and Public Holidays shall consist of 2 on call periods (0800 to 1800 and 1800 to 0800).

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

- 24.14. **"Normal Hours"** means the hours between 0730 and 1830 hours Monday to Friday, or as otherwise agreed between the Practitioner and the Director of the Anaesthesia Western Health.
- 24.15. **"Period of Service"** means the bands, determined by years of service with Western Health, which will be used as the determinant for establishing the remuneration package of the Practitioner.
- 24.16 **"Practitioner"** means a Staff Specialist Anaesthetist employed by Western Health on a full time basis or fractional allocation, to provide anaesthetic services at any or all campuses of Western Health.
- 24.17 **"Private Patient"** means an eligible person as defined in section 30 of the Health Insurance Act 1973 (Commonwealth) who elects to be treated on Western Health premises as an inpatient or day patient by a medical practitioner of his or her choice and is responsible for paying for the provision of medical services, but does not include a Public Patient or a Compensable Patient.
- 24.18 **"Public Patient"** means an eligible person as defined in section 3(l) of the Health Insurance Act 1973 (Commonwealth) who elects to be treated as a public in-patient or a public outpatient in respect of whom Western Health provides comprehensive care, including all necessary medical, nursing and diagnostic services by means of its own staff and by other agreed arrangements without charge to the eligible person.
- 24.19 **"RVG (Relative Values Guide)"** means a fee for service provided payable to a Practitioner and defined in accordance with the modified implementation of the Australian Society of Anaesthetists (ASA) Relative Values Guide 2006 edition, and further detailed within Schedule B of this agreement.
- 24.20 **"Specialist"** means a Practitioner appointed who possesses a higher qualification appropriate to the speciality in which he/she is employed.

**25. OUT OF HOURS CONTACT**

Where Western Health requires the Practitioner to be On Call, Western Health will provide a mobile telephone and meet such costs associated with the provision of a mobile phone for business purposes only.

**26. PUBLIC HOLIDAYS**

26.1 A practitioner shall be entitled to holidays on the days observed as:

New Years Day, Australia Day, Labour Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queens Birthday, Melbourne Cup Day, Christmas Day, Boxing Day; and

26.2 When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

26.3 When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

- 26.4 When New Years Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.
- 26.5 Where, public holidays are declared or prescribed on days other than those set out in sub clause 26.1 above, those days shall constitute additional holidays for the purposes of this Agreement.
- 26.6 A practitioner who is required to work on a day specified in subclause 26.1, in addition to being paid for the time so worked at ordinary time rates, shall be entitled to have one day added to paid annual leave, or by mutual agreement one day of paid leave may be taken at any other time.
- 26.7 A practitioner who ordinarily works Monday to Friday and who does not work on Easter Saturday is entitled to one days pay, or by mutual consent may take one day off in lieu within four weeks following that day or have one day added to annual leave.

**27. SIGNATORIES**

**Executed as an Agreement**

Signed for an on behalf of  
**WESTERN HEALTH:**

.....

Title .....

Date .....

Signed for an on behalf of  
**AUSTRALIAN MEDICAL ASSOCIATION  
(VICTORIA):**

.....

Title .....

Date .....

Signed for an on behalf of  
**AUSTRALIAN SALARIED MEDICAL  
OFFICERS FEDERATION:**

.....

Title .....

Date .....

*Draft 26/03/2008*  
**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)**  
**CERTIFIED AGREEMENT 2006 - 2009**

**SCHEDULE A**

**A. HOURS OF DUTY**

The ordinary hours of duty of the Practitioner are thirty eight (38) hours per week to be worked between 0730 and 1830 hours, during a minimum of four (4) days, Monday to Friday, except days appointed as public holidays in accordance with the provisions of clause 26 of this Agreement. The Practitioner must be available to perform clinical and other duties as directed outside of those ordinary hours.

Specialists are required to work a minimum of seven (7) clinical sessions per week, except at the discretion of the Director of Anaesthetics Western Health who may reduce this allocation subject to the needs of the Department. Any hours not allocated to clinical work shall be used in administration, research or teaching in consultation with the Director of Anaesthetics Western Health.

Only practitioners who work at least 20 hours per week shall be entitled to non clinical time involving administration, research or teaching. For those fractionally appointed practitioners the allocation of such time will be on a pro rata basis.

A "Clinical Session" is defined as five (5) hours.

As a principle the parties agree that it is intended that through the scheduling of work and its location that individual practitioners will be afforded an even or proportionate distribution of lists and duties across the campuses of Western Health, whilst also giving consideration to the operational requirements of the department, skill mix, individual preferences and agreements with practitioners.

Appropriate administrative time will be available within the Department for the Director, Deputy Director and Supervisor of training (1 session each). Western Health shall also provide a further 600 hours per year to be used to achieve the academic objectives of the Department of Anaesthesia, which will be used at the discretion of the Director. Those hours will be reviewed annually and if they do not result in the attainment of the following academic goals may be reduced or withdrawn.

The Academic goals of the department should include;

- submission of academic papers for publication;
- presentation of papers/posters at national or international academic meetings;
- clinical audit projects including development and implementation of systems for data collection, collation, review, presentation and resultant changes in practice;
- Involvement in Western Health Surgical Audit and Medical Grand Round staff presentation; and
- teaching: students, nursing staff and postgraduate trainees (this already occurs)

**B. ON CALL**

The parties agree that the Practitioner, employed as an Anaesthetist is required, to be On Call for no less than one (1) night per week and one weekend day per month, where it is anticipated that there shall be no less than 50 On Call periods per annum.

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**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

for each Practitioner. Whilst on call the practitioner will be available to provide telephone advice and to attend the designated campus of Western Health as soon as clinically required, usually within thirty minutes for life threatening emergencies.

The anaesthetist in charge at the Williamstown Hospital shall ensure appropriate care for reasonable list over-runs. After hours emergencies at the Williamstown Hospital shall be directed to the Anaesthetist on call for the Western Hospital. Depending on the circumstances and in consultation with surgical and other staff at the Williamstown Hospital, the Anaesthetist on call for Western Hospital will ensure anaesthetic services are available at the most appropriate location.

**DUTIES**

The duties of the Practitioner will include, as appropriate, those described in the Australian and New Zealand College of Anaesthetists Document TE6 'Guidelines on the Duties of an Anaesthetist'. The Director of Anaesthetics Western Health or his/her nominee will determine the allocation of duties.



*Draft 26/03/2008*  
**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)**  
**CERTIFIED AGREEMENT 2006 - 2009**

**SCHEDULE B**

**SPECIALIST REMUNERATION ENTITLEMENTS**

**1. REMUNERATION**

<b>From 1 July 2002</b>			
Years of service	Annual salary	Professional Development Allowance	Total Remuneration
1 -3 years	\$181,583	\$15,000	\$196,583
4 - 7 years	\$202,823	\$15,000	\$217,823
8 + years	\$218,360	\$15,000	\$233,360
<b>From 1 January 2003</b>			
Years of service	Annual salary	Professional Development Allowance	Total Remuneration
1 -3 years	\$187,031	\$15,000	\$202,031
4 - 7 years	\$208,908	\$15,000	\$223,908
8 + years	\$224,911	\$15,000	\$239,911
<b>From 1 January 2004</b>			
Years of service	Annual salary	Professional Development Allowance	Total Remuneration
1 -3 years	\$192,641	\$15,000	\$207,641
4 - 7 years	\$215,175	\$15,000	\$230,175
8 + years	\$231,658	\$15,000	\$246,658
<b>From 1 January 2005</b>			
Years of service	Annual salary	Professional Development Allowance	Total Remuneration
1 -3 years	\$198,421	\$15,000	\$213,421
4 - 7 years	\$221,630	\$15,000	\$236,630
8 + years	\$238,608	\$15,000	\$253,608

**Note.** These rates will be further varied by any subsequent industry wide arrangements agreed between the AMA, ASMOF, VHIA and DHS

The above remuneration includes the annual allowance of \$15,000 for professional development as shown, which is not indexed in the same manner or form as the practitioner's salary. This allowance is taxable and will be paid as a lump sum on 1 July each year

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

**2. RECALL**

When a Practitioner is required to provide clinical services during an on call session the Practitioner is entitled to be paid at the RVG rate set out in this Schedule.

The RVG value shall be as follows:-

Western Hospital	\$ 26.73 per RVG
Sunshine & Williamstown Hospitals	\$ 28.08 per RVG

'Clinical work performed by the practitioner outside normal hours or during a period when the specialist is rostered on call for the life of this agreement shall attract payment according the Australian Society of Anaesthetists Relative Value Guide 2006 along with the following conditions:

- ASA RVG item numbers will be used
- Modifier M2 may be used for emergency surgery
- Modifier M4 (50% after hours emergency load) will not be used.
- Item numbers CA002, CA004, CA006, CA008 to be used when the specialist performs the preoperative assessment
- Item number CA051 will not be used.
- Item numbers CV009, CV800 and CV805 will not be used
- When directly supervising two theatres time units will be payable for the case in one theatre
- For cases commenced during normal hours which continue beyond normal hours or into a period when the specialist is rostered on call, payment shall be at the rate of 10 RVG's per hour (or 1 RVG per full 6 minute interval)'

**3. On Call**

For each on call session which the practitioner is required to undertake (as specified within Schedule A Part B) they shall be remunerated at the rate of \$317 per session, in addition to the RVG rate payable for recall (and as specified with section 2 immediately above)

This rate will be varied by any subsequent industry wide agreed arrangements agreed between the AMA, ASMOF, VHIA and DHS

**4. Administrative Allowance**

The Director of Anaesthesia will receive an annual administrative allowance of \$15,000.00 in addition to all other remuneration pursuant to this agreement

*Draft 26/03/2008*  
**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)**  
**CERTIFIED AGREEMENT 2006 - 2009**

**SCHEDULE C**

**CONFERENCE LEAVE**

**1. Policy**

- 1.1 Eligibility shall be determined in accordance with this Agreement.
- 1.2 Leave for conferences, scientific meetings, seminars or for visits to interstate or overseas hospitals will be given consideration on an individual basis by the Practitioner's Department Head, who will consider the value to Western Health of the Practitioner being granted leave and the importance of such conference, meeting or visit.

**2. Procedure**

- 2.1 Application must be made on the requisition form 'Application for Leave other than sick, annual or accident'.
- 2.2 Applications for conference leave must be accompanied by a written statement setting out the following information:
  - 2.2.1 the organisers of the conference;
  - 2.2.2 the Conference theme;
  - 2.2.3 the venue;
  - 2.2.4 how Western Health will benefit by the Practitioner's attendance

*Draft 26/03/2008*  
**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)**  
**CERTIFIED AGREEMENT 2006 - 2009**

**SCHEDULE D**

**LONG SERVICE LEAVE**

**1. Entitlement**

- 1.1 A Practitioner shall be entitled to long service leave with pay, in respect of continuous service with Institutions or Statutory Bodies in accordance with the provisions of this clause
- 1.2 The amount of such entitlement will be -
- 1.2.1 upon the completion of fifteen (15) years continuous service – six (6) months prorated long service leave and thereafter an additional two (2) months long service leave on the completion of each additional five (5) years service prorated.
- 1.2.2 Provided that a Practitioner may by agreement with Western Health be granted long service leave before the entitlement to that leave has accrued, provided that such leave shall not be granted before the employee has completed ten (10) years continuous service.
- 1.2.3 In addition, in the case of a Practitioner who has completed more than fifteen years' service and whose employment is terminated otherwise than by the death of the Practitioner, an amount of long service leave equal to one-thirtieth of the period of her/his service since the last accrual of entitlement to long service leave under clause 1.2.1.
- 1.2.4 In the case of a Practitioner who has completed at least ten years' service but less than fifteen years' service and whose employment is terminated for any cause other than serious and wilful misconduct, such amount of long service leave as equals one-thirtieth of the period of service.

**2 Service entitling to leave**

- 2.1 The service of a Practitioner shall include service for which long service leave or payment in lieu has not been received in one or more Institutions including Statutory Bodies directly associated with such Institutions or Institution for the period required by clause 1.2.1.
- 2.2 Service also includes all periods during which a Practitioner was serving in Her Majesty's Forces or was made available by the employer for National Duty.
- 2.3 Where a business is transmitted from one employer (the transmittor) to another employer (the transmittee) a Practitioner who worked with the transmittor and who continued in the service of the transmittee shall be entitled to count her/his service with the transmittor as service with the transmittee for the purposes of this clause.
- 2.4 For the purposes of this clause service shall be deemed to be continuous notwithstanding -

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

- 2.4.1 the taking of any annual leave or Long Service Leave or other paid leave approved in writing by the hospital and not covered by clauses 2.4.2 and 2.4.4;
  - 2.4.2 any absence from work of not more than fourteen days in any year on account of illness or injury or if applicable such longer period as provided in clause 14.1.2 – Sick Leave.
  - 2.4.3 any interruption or ending of the employment by the employer if such interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
  - 2.4.4 any leave of absence on account of injury arising out of or in the course of the employment of the Practitioner for a period during which payment is made under clause 14.1.2 - Sick Leave;
  - 2.4.5 any leave of absence of the Practitioner where the absence is authorised in advance in writing by the employer to be counted as service;
  - 2.4.6 any interruption arising directly or indirectly from an industrial dispute;
  - 2.4.7 any period of absence from employment between the engagement with one of the said Institutions or Statutory Bodies and another provided it is less than the Practitioner's allowable period of absence from employment. A Practitioner's allowable period of absence from employment shall be five weeks in addition to the total period of paid annual leave and/or sick leave, which the Practitioner actually receives on termination or for which the Practitioner is paid in lieu;
  - 2.4.8 the dismissal of a Practitioner if the Practitioner is re-employed within a period not exceeding two months from the date of such dismissal;
  - 2.4.9 any absence from work of a female Practitioner for a period not exceeding twelve months in respect of any pregnancy;
  - 2.4.10 any other absence of a Practitioner by leave of the employer, or on account of injury arising out of or in the course of his employment not covered by clause 2.4.4.
- 2.5 In calculating the period of continuous service of any Practitioner, any interruption or absence of a kind mentioned in clauses 2.4.1 to 2.4.4 will be counted as part of the period of his service, but any interruption or absence of a kind mentioned in clauses 2.4.5 to 2.4.10 will not be counted as part of the period of service unless it is so authorised in writing by the employer.
- 2.6 The onus of proving a sufficient aggregate of service to support a claim for any long service leave entitlement shall at all times rest upon the Practitioner concerned.
- 3 Payment in lieu of long service leave on the death of a Practitioner**

Where a Practitioner who has completed at least ten years' service dies while still in the employ of the employer, the employer shall pay to such Practitioner's personal representative, a sum equal to the pay of such Practitioner for one-thirtieth of the period of the Practitioner's continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the Practitioner.

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

**4 Payment for period of leave**

4.1 Payment to a Practitioner in respect of long service leave will be made in one of the following ways:

4.1.1 in full in advance when the Practitioner commences leave; or

4.1.2 at the same time as payment would have been made if the Practitioner had remained on duty; or

4.1.3 in any other way agreed between Western Health and the Practitioner.

4.2 Where the employment of the Practitioner is for any reason terminated before taking long service leave to which the Practitioner is entitled or where any long service leave accrues to a Practitioner pursuant to clause 1.2.3, the Practitioner will, subject to the provisions of clause 4.3, be entitled to pay in respect of such leave as at the date of termination of employment.

4.3 Where any long service leave accrues to a Practitioner pursuant to clause 1.2.1, the Practitioner will be entitled to pay in respect of such leave as at the date of termination of employment.

4.4 Provided in the case of a Practitioner who accrues entitlement pursuant clause 1.2(a), and who intends to be re-employed by another Institution or Statutory Body:

4.4.1 such a Practitioner may in writing request payment in respect of such leave to be deferred until after the expiry of the Practitioner's allowable period of absence from employment provided in clause 2.4.7.

4.4.2 except where the Practitioner gives notice in writing that another Institution or Statutory Body has employed the Practitioner, payment will be made in respect of such leave at the expiry of the Practitioner's allowable period of absence from employment.

4.4.3 where a Practitioner gives notice in writing that the Practitioner has been employed by another Institution or Statutory Body, Western Health is no longer required to make payment to the Practitioner in respect of such leave.

4.5 Where an increase occurs in the ordinary time rate of pay during any period of long service leave taken by the Practitioner, the Practitioner will be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

**5 Taking of leave**

5.1 When a Practitioner becomes entitled to long service leave, such leave will be granted by the hospital within six months from the date of the entitlement but the taking of such leave may be postponed to such date as is mutually agreed.

5.2 Provided that a Practitioner may by agreement with Western Health be granted long service leave before the entitlement to that leave has accrued, provided that such leave shall not be granted before the employee has completed ten (10) years continuous service.

5.3 Any long service leave will be inclusive of any public holiday occurring during the period when the leave is taken.

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

- 5.4 If the hospital and a Practitioner so agree -
- 5.4.1 the Practitioner who is entitled to long service leave may take the whole or part of that leave at:
- 5.4.1(a) half the Rate of Remuneration for a period equal to twice the period to which the Practitioner would otherwise be entitled subject to appropriate rostering within the Practitioner's department; or
- 5.4.1(b) twice the Rate of Remuneration for a period equal to half the period to which the Practitioner would otherwise be entitled; and
- 5.4.2 Long service leave and prorated long service leave may be taken by mutual agreement or upon 12 weeks notice in writing, in instalments of not less than one week prorated.
- 5.5 Where the employment of a Practitioner who has taken long service leave in advance is subsequently terminated for serious and wilful misconduct before entitlement to long service leave has accrued, the employer may, from whatever remuneration is payable to the Practitioner upon termination, deduct and withhold an amount in respect of the leave in advance.

**6 Definitions**

For the purposes of this clause the following definitions apply:

- 6.1 **"Pay"** means remuneration for a Practitioner's normal weekly hours of work calculated at the Practitioner's ordinary time rate of pay at the time leave is taken or (if the Practitioner dies before the completion of leave so taken) as at the time of death; and shall include the amount of any increase to the Practitioner's ordinary time rate of pay which occurred during the period of leave as from the date such increase operates.
- 6.2 **"Month"** means a calendar month. For example:
- 6.2.1 a month commencing on 15 April will end at the close of business on 14 May; and
- 6.2.2 a month commencing on 31 October will end at the close of business on 30 November.
- 6.3 **"Institution"** shall mean any hospital or benevolent home, community health centre, Society or Association registered pursuant to the *Health Services Act 1988*. (Victoria)
- 6.4 **"Statutory Body"** means the Department of Human Services Victoria.
- 6.5 **"Transmission"** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding interpretation.

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**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)**  
**CERTIFIED AGREEMENT 2006 - 2009**

**SCHEDULE E**

**SABBATICAL LEAVE**

**1. Policy**

- 1.1 Eligibility for Sabbatical Leave shall be determined in accordance with this Agreement.
- 1.2 It is expected that a Practitioner granted Sabbatical Leave shall return to duty with Western Health after the completion of leave, for a period of at least two (2) years.
- 1.3 As the purpose of Sabbatical Leave is to enable a Practitioner to update his/her teaching, research or professional skills, it is not appropriate that it should be taken when retirement is a prospect. Approval will not be granted for such leave on the two (2) years preceding a staff member's date of retirement.
- 1.4 Normal salary entitlements shall be paid by the Western Health during the period of approved Sabbatical Leave.
- 1.5 All travel, living and other expenses associated with the leave shall be the responsibility of the Practitioner.
- 1.6 The Practitioner shall submit evidence to his/her Department and to Western Health of benefits gained within two (2) months return from leave.
- 1.7 Under normal circumstances, it would be expected that sabbatical leave would be taken outside this State or City. However, Western Health may approve applications for Sabbatical Leave within the State or City in which the Practitioner is employed, dependent upon the circumstances of the application and the Practitioner.
- 1.8 To the extent that there are any inconsistencies between this Schedule and the Agreement the Agreement shall have precedence.

**2. Procedure**

- 2.1 At least nine (9) months before the proposed leave, the Practitioner should confirm his/her entitlement to Sabbatical Leave and should submit a program outline to his/her Department on the prescribed form.
- 2.2 The application should be discussed by the Department and forwarded with a recommendation, to the Practitioner's Department Head for consideration.
- 2.3 The Practitioner's Department Head shall consider the application and forward it to Western Health with a recommendation for final decision.
- 2.4 In the event of Western Health not recommending/approving the program, the Practitioner may appeal to the next meeting of the Medical Appointment Advisory Committee who shall determine the matter either by approving the original application, requesting amendments or rejecting it outright.



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**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

- 2.5 After approval has been obtained, full details of the study program including itinerary (if relevant), agreement of other agencies, supervisors etc. should be submitted to the Practitioner's Department Head.
- 2.6 The approved program may not be subsequently varied without the approval of Western Health.

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**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)**  
**CERTIFIED AGREEMENT 2006 - 2009**

**SCHEDULE F**

**PARENTAL LEAVE**

**1 Definitions**

- 1.1 For the purpose of this clause **child** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- 1.2 Subject to 1.3, in this clause, **spouse** includes a de facto or former spouse.
- 1.3 In relation to 5, **spouse** includes a de facto spouse but does not include a former spouse.

**2 Basic entitlement**

- 2.1 After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken.

Parental leave is unpaid except that six (6) weeks of maternity leave will be on full pay and one (1) paternity leave will be on full pay. Adoption leave may be taken in the case of adoption and the practitioner shall have the same entitlement to be paid, on the same basis, as any other practitioner subject to this agreement whom takes maternity leave.

- 2.2 Subject to 3.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
- 2.2.1 for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
- 2.2.2 for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

**3 Maternity leave**

- 3.1 An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
- 3.1.1 of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least ten weeks;
- 3.1.2 of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.
- 3.2 When the employee gives notice under 3.1.1 the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

- 3.3 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.
- 3.4 Subject to 2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.
- 3.5 Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- 3.6 **Special maternity leave**
- 3.6.1 Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical officer certifies as necessary.
- 3.6.2 Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- 3.6.3 Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical officer certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.
- 3.7 Where leave is granted under 3.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

**4 Paternity leave**

- 4.1 An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:
- 4.1.1 a certificate from a registered medical officer which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- 4.1.2 written notification of the dates on which he proposes to start and finish the period of paternity leave; and
- 4.1.3 a statutory declaration stating:
- 4.1.3(i) he will take that period of paternity leave to become the primary care-giver of a child;

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

4.1.3(ii) particulars of any period of maternity leave sought or taken by his spouse; and

4.1.3(iii) that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

4.2 The employee will not be in breach of 4.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

**5 Adoption leave**

5.1 The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

5.2 Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:

5.2.1 the employee is seeking adoption leave to become the primary caregiver of the child;

5.2.2 particulars of any period of adoption leave sought or taken by the employee's spouse; and

5.2.3 that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.

5.3 An employer may require an employee to provide confirmation from the appropriate government authority of the placement.

5.4 Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

5.5 An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.

5.6 An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

**6 Variation of period of parental leave**

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least four weeks prior to the commencement of the changed arrangements.

**WESTERN HEALTH - (STAFF SPECIALIST ANAESTHETISTS)  
CERTIFIED AGREEMENT 2006 - 2009**

**7 Parental leave and other entitlements**

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements, which they have accrued subject to the total amount of leave not exceeding 52 weeks.

**8 Transfer to a safe job**

8.1 Where an employee is pregnant and, in the opinion of a registered medical officer, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

8.2 If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical officer.

**9 Returning to work after a period of parental leave**

9.1 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

9.2 An employee will be entitled to the position, which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 8, the employee will be entitled to return to the position they held immediately before such transfer.

9.3 Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

**10 Replacement employees**

10.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

10.2 Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.