



Background

- 1) On 1 November 2012, the Queensland Industrial Relations Commission ("QIRC") certified the *Medical Officers (Queensland Health) Certified Agreement (No.3) 2012* ("MOCA3") which set out the agreement reached between the Queensland Government and the unions representing Medical Officers, including Senior Medical Officers ("SMOs"). MOCA3 was endorsed by SMOs and had a nominal expiry date of 30 June 2015.
- 2) The introduction of the high-income guarantee contract ("SMO Contract"), and associated legislative amendments to the *Industrial Relations Act 1999* ("IR Act") and *Hospital and Health Boards Act 2010* ("HHB Act") was a clear repudiation of the MOCA3 agreement between the Government and its SMO workforce. The breaking of its agreement, less than 12 months after MOCA3 was made¹, combined with a very poor consultation and negotiation process by Queensland Health with SMOs and their representatives, has damaged the morale of Queensland SMOs and undermined SMOs trust in the Government.
- 3) Many SMOs are considering resigning their employment, or reducing their hours, given their outrage at the contract implementation process, the terms of the proposed contract and the punitive and coercive changes made to the IR Act and HHB Act designed to destroy SMOs long standing terms and conditions of employment and force them to accept the SMO Contract.
- 4) SMOs employed by Queensland Health have at mass meetings across the State rejected the SMO contract, calling on the Queensland Government to recommence negotiations with SMOs and their representatives and engage in good faith bargaining to resolve this dispute and avert the significant danger to the public health system the introduction of the SMO contracts has the potential to cause.

Preferred Model for SMO Employment

- 5) The introduction of the SMO Contract, and underpinning legislative framework, was unnecessary. The SMO Contract is just another type of collective agreement; just one that is unilaterally imposed on SMOs.
- 6) SMOs consider the current arrangements by which SMOs conditions of employment are governed have the requisite flexibility to meet the Government's policy objectives in respect of improving the public health system. SMOs would be agreeable to renegotiating the MOCA3 and the Award to achieve these objectives so so far as they are not currently met.
- 7) These renegotiated instruments can operate concomitantly with common law contracts of employment, as has previously been the case.

¹ and 12 months after the QIRC approved the *District Health Services - Senior Medical Officers' and Resident Medical Officers Award - State 2012*



Alternative Models for SMO Employment

- 8) There are a number of alternative models to the proposed SMO Contract Model being implemented by Queensland Health, or the Model proposed above, which include:
 - a) a contract underpinned by a industrial instrument, such as has been adopted in Victoria;
 - b) the VMO Contract Determination model in NSW.
- 9) SMOs would be agreeable to exploring these alternative models in resolving the dispute.

SMOs Require Legislative Changes

- 10) The amendments made to the IR Act and HHB Act are of particular concern to SMOs. These changes are a significant cause of anger and distrust felt by SMOs towards the Government.

IR Act Amendments

- 11) SMOs believe that Chapter 6A of the IR Act should be repealed. What has caused most concern to SMOs is the effect of provisions of Chapter 6A which are punitive and coercive and remove, or have the capacity to override, longstanding employment conditions of SMOs.
- 12) The coercive and punitive elements of Chapter 6A of the IR Act have destroyed SMOs trust in the Government. If the SMO Contract is as beneficial to SMOs as the government has publically asserted, these provision should be unnecessary.
- 13) SMOs request that the following provisions of the IR Act in respect of high-income guarantee contracts be repealed:
 - a) provisions which exclude SMOs from accessing the unfair dismissal jurisdiction (s.194(2)(a));
 - b) provisions which exclude SMOs from accessing the unfair contract jurisdiction (s.194(2)(c));
 - c) provisions which exclude SMOs from seeking declarations in relation to industrial matters under s.274A (s.194(2)(c));
 - d) provisions which exclude SMOs from accessing the QIRC in respect of disputes regarding industrial matters (s.194(2)(b)).



14) SMOs request that the following provisions of the IR Act in respect of high-income positions be repealed:

- a) the above referred to "excluded provisions" do not apply to SMOs in high-income positions (S.195(2));
- b) provisions which provide that "relevant directives" prevail over industrial instruments such as the MOCA3 or the Awards; s.195(3)(b), s.195(4)(a); s.195(7) - (9).

15) Negotiations in good faith cannot sensibly occur unless the provisions aimed at coercing SMOs to enter into the SMO Contract are repealed. SMOs cannot have any faith in the Governments intentions when the IR Act has provisions the vitiate an SMOs ability to consent to the SMO Contract. Therefore, SMOs request that the following provisions be repealed:

- a) Section 197. This is a most offensive provision. The Government has legislated to allow itself to engage in what was previously unlawful conduct, such as discriminating against an employee or causing an employee an injury or disadvantage;
- b) Section 200 which terminates private practicing arrangements on 30 June 2014. This provision is a threat to cut SMOs remuneration if they do not agree to the SMO Contract. Section 200 is a breach of the MOCA3, and a breach of PPA contracts which operate past this date. SMOs are willing to negotiate new PPA arrangements, but the Government should honour the contracts it makes and engage in good faith negotiation in respect of existing and new PPAs. It was open to the Government to not offer PPA on existing terms, and offer it on the terms presently annexed to the SMO Contract. This provision is coercive, punitive and entirely unnecessary;
- c) Section 201 which removes continuity of service for employees who 'refuse' a high-income guarantee contract. If the contracts will not cause SMOs to be worse off and are as beneficial as the Government contends, this provision is unnecessary.

HHB Act Amendments

16) SMOs request that the following provisions of the HHB Act be repealed:

- a) Section 51C. This provision is of significant concern to SMOs. It allows the Director-General ("DG") to issue Health Employment Directives ("HEDs") which prevail over agreed employment conditions in industrial instruments and contracts. This unilateral power to void agreed conditions of employment is one of the most significant sources of anxiety for SMOs;



- b) Section 75(4)(b) to the extent it applies to senior health service employees. This provision excludes an SMO from accessing statutory judicial review in respect of contracts of employment and decisions made under Part 5 of the HHB Act. SMOs simply request that they be entitled to the same rights under the *Judicial Review Act 1991* as other citizens of Queensland and other public sector employees.

Key Concerns of SMOs regarding the SMO Contract

- 17) In addition to the concerns outlined above, SMOs have a range of concerns regarding the present form of the SMO Contract. They are, inter alia, set out below.

Collective negotiations

- 18) Changes to the contracts and updates to the contract must be undertaken by way of collective negotiation and agreement with SMOs and their representatives.

Collective Renegotiation of Contracts

- 19) See **Preferred Model of SMO Employment and Alternate Models of SMO Employment**, above.

Dispute resolution

- 20) The SMO Contract must have a provision that ensures that disputes between an SMO and the Service and/or Department regarding their employment can be resolved by an independent arbitrator who can making binding orders - the QIRC.

- 21) Such provisions are uncontroversial in almost every type of contract.

- 22) The current Clause 9 of the SMO Contract provides only for mediation "by agreement" with no capacity to bind the parties to a resolution which resolves a dispute.

- 23) SMOs require a clause in the contract which provides for the referral of a dispute to the QIRC, in capacity as a private arbitrator if necessary, and empowers the QIRC to arbitrate the dispute and issue a binding final decision.

- 24) SMOs propose the QIRC as it is an existing government agency with decades of experience in arbitrating employment disputes with no additional cost to the taxpayer.

Power to Unilaterally vary the Contract

- 25) Presently, an SMO cannot be certain that the contract they sign won't be varied, without their consent at any time. This concern is particularly relevant given this is exactly what the Government is doing by dishonouring the MOCA3 agreement and implementing the SMO Contract.



26) Unilateral changes to the contract can occur, presently, in a number of ways:

- a) the issuing of a "relevant directive" such as a HED;
- b) by changes to policies containing conditions of employment;
- c) by operation of contract for example:
 - i) clauses 10(2) - remuneration;
 - ii) clause 10(3) - regarding Tier 2 and Tier 4 remuneration.

27) Further, the SMO Contract is littered with clauses that allow the Service to make significant changes to key aspects of the relationship following consultation with the SMO. There is no obligation to reach agreement with the SMO in relation to these changes. This creates the risk that unfair directions will be issued by Services without any concomitant obligation to negotiate in good faith with the SMO. Examples of such terms are:

- a) Clause 5(1) - Location;
- b) Clause 15(2) & (3) - Hours of work;
- c) Clause 17 - meal breaks;
- d) clause 18 – Fatigue.

28) These concerns could be resolved by:

- a) a commitment to consultation and negotiation between the Service and the SMO, and the SMOs' representatives;
- b) a robust dispute resolution clause which provides for binding independent arbitration by the QIRC.

29) Such changes would ensure that negotiations between a Service and an SMO would be more likely to be conducted in good faith and provide a resolution to disputes that cannot be resolved at a local level.

KPIs

30) Delink Tier 3 remuneration from meeting KPIs.

31) Sensible KPIs need to be developed in consultation with SMOs which do not have the capacity to damage patient care or clinical autonomy of SMOs. KPIs should be arrived at by genuine mutual agreement.



No deterioration in conditions or remuneration, now or ever

32) The SMO Contract does not have any provisions that ensure that SMOs will not be disadvantaged either financially or by working conditions under the contract compared to their current arrangements. This appears to be the Government's position. If this is correct, it should be confirmed in the SMO Contract.

Unfair dismissal protection

33) SMOs require access to the unfair dismissal jurisdiction of the QIRC.

34) This may be achieved contractually by a term which provides that terminations under clause 25 cannot be "harsh, unjust and/or unreasonable" with such arguments being ventilated under the robust dispute provisions referred to above, or by amending the IR Act to return SMOs previous right to unfair dismissal protection.

35) Contrary to the Departments assertion, SMOs do not have access to "*unlimited damages in the Supreme Court*" under the present SMO Contract.

36) SMOs also propose that the Clause 25(5)(d) be amended to the extent it relates to restrictions on registration. If a SMO has conditions placed upon their registration in respect of an impairment, or while the Board investigates a notification against them, they should not be liable for termination.

37) Delete clause 25(5)(e)(ii) from the contract which provides that an SMO can be terminated for reasons including affecting the profitability of the Service

Notice

38) SMOs seek the retention of the present notice provisions in the *District Health Services - Senior Medical Officers' and Resident Medical Officers Award - State 2012* ("Award") for three months.

Guarantee yearly pay rise

39) SMOs should be entitled to at least the minimum pay rise afforded to public sector workers pursuant to the Governments wage policy from time to time.

Intellectual property

40) Clause 24(5), (6) and (8) of the contract should be deleted or amended. SMOs are agreeable to the common law position applying in respect of inventions created by them during the course of their employment.

Overtime and on call

41) The option of being paid an annualised amount or by exception should be the choice of the SMO.



Other Matters

42) SMOs want the following provisions in the MOCA3 and Award contained in the contract:

- a) recall, on-call and overtime provisions where an SMO elects to be paid by exception in respect of these conditions;
- b) meal break provision in Clause 4.9 of the Award;
- c) Progression to senior Medical Superintendent with PPA in Clause 2.5 of the Award;
- d) Extended Span of Ordinary hours in Clause 4.3 of the Award;
- e) minimum clinical support time as provided in Clause 4.5 of the Award;
- f) fatigue related matters in Part 5 of the Award;
- g) progression through MOCA3 classification structure;
- h) Annual leave and leave loading.