



Contract Negotiations – What you need to know

a. Representation

- 1) Senior Medical Officers ("SMOs") may have received correspondence from their Health and Hospital Service ("HHS") in relation to the contract. This pro forma correspondence may attach:
 - a) the proposed contract;
 - b) a role description;
 - c) a "*summary of conditions of employment for translating*" SMOs;
- 2) Initial correspondence containing the contract stated that you could be accompanied by a support person who cannot advocate on your behalf. Some SMOs were expressly advised, verbally and by email, that they could not have a union or legal representative attend the contract meeting.
- 3) This is untrue. It is inconsistent with Queensland Health's ("QH") Human Resource Guideline "*Role of a support person, union representative or legal representative in assisting employees to discuss workplace issues*".
- 4) ASMOF filed a dispute in the Queensland Industrial Relations Commission ("QIRC") in this respect and was successful in obtaining QH's agreement to send letters to all SMOs confirming their right to be represented at contract meetings by a union representative or lawyer. You should have received this email by now.
- 5) SMOs are entitled to bring a representative of their choice to contract negotiation meetings. This can be a ASMOF/Together representative, lawyer or another support person.
- 6) A regular support person, like a colleague or family member, cannot advocate for you in contract negotiation meetings.
- 7) ASMOF/Together representatives or lawyers can, however, advocate for you during contract negotiations.
- 8) SMOs should nominate their union to be there support person in negotiations.



- 9) If the HHS refuses to let you bring your chosen representative along, immediately contact ASMOF/Together. ASMOF/Together can file a dispute in the Queensland Industrial Relations Commission ("QIRC") to compel the employer to allow you to be properly represented. Contract discussions could not commence until this dispute was resolved.
- 10) If the HHS is agreeable to you bringing your chosen support person, make sure you schedule the meeting at a time that they can attend.

b. Ensure you have all relevant information before you start negotiations

- 11) The proposed contracts represent a radical change in your employment conditions. Given the gravity of the proposed change, it is reasonable that the HHS provide you with all information you require to be able to understand what is being offered to you in the contract and to assess that offer, both in terms of where it will disadvantage you and what needs to be added to it.
- 12) When you receive the letter from your HHS containing the proposed contract, read it carefully. You will note that many of the conditions of your employment that previously existed under the MOCA3 and the Awards no longer exist.
- 13) Prior to engaging in contract negotiations, do two things. Firstly, you should seek to obtain from the HHS all information relevant to your ability to consider the contract offer so that you can completely understand the contract offer. Secondly, most importantly, you should obtain professional advice from a lawyer, union representative or both.

ASMOF and Together recommend that you seek the following information:

Initial Request

- 14) Send to the HHS the letter developed by ASMOF/Together which is located at <http://keepourdoctors.com.au/resources>. Politely decline to participate in a "contract discussion" until this information has been provided.
- 15) You will likely receive a pro forma response directing you to where some of this information is available on QHEPS. That is fine. Read this information and seek advice on it.





Total Remuneration Calculations

- 16) The draft contract will contain calculations in relation to your Total Remuneration Package ("TRP"). It is reasonable for you to request that the HHS provide the workings used for calculating the TRP, particularly Tier 2 remuneration.
- 17) Ask that your HHS provide to you the calculation for the TRP. **Make this request in writing.**
- 18) For example, Tier 2 remuneration pays overtime and on call either as an annualised component of your remuneration or by exception (as you work it). You should be able to consider both options given what you know of your previous work patterns and future work patterns. To do this, you will need the HHS to demonstrate to you how the annualised option is calculated.
- 19) Advise the HHS that you require this prior to participating in contract negotiations.

Checking a TRP amount

- 20) We all know how diabolical the QH payroll system is. We have all suffered under payments and overpayments. Therefore, it would be reasonable for you to hold serious concerns regarding the accuracy of the calculations used for establishing your TRP.
- 21) Request a copy of all the 'time and wages' records used by the HHS for calculating your TRP so that you can review these documents to ensure that the calculations are accurate. **Make this request in writing.**
- 22) It would of course be reasonable to delay the "contract discussion" until this has been provided, or you are otherwise satisfied that the TRP has been correctly calculated.
- 23) You are entitled to this information. Section 366(2) of the IR Act provides that an employer must ensure the time and wages records are kept at, or can be accessed from, a workplace of the employer in Queensland. The failure to do so is an offence. Ask for copies of, or access to, these time and wages records.
- 24) If the HHS refuses, politely point out that their refusal is an offence and request that they provide you with access to your time and wages records. **Make this request, again, in writing.**



- 25) If they persist in refusing, notify ASMOF/Together. ASMOF/Together can file a dispute in the QIRC to obtain the records and commence proceedings to prosecute Queensland Health for failing to give you access to you time and wages records.
- 26) Of course, contract negotiations could not continue in circumstances where the employer was committing such an offence and a dispute was on foot in the QIRC.

Differences with MOCA 3 and Award

- 27) Given the radical nature of these forced changes to your employment conditions, and the speed with which they have been implemented, many SMOs have not had the time to assess the differences between the proposed contract and the MOCA 3 and Awards.
- 28) Given that, if you chose to refuse the contract, your employment would remain covered by the MOCA 3 and Award, it is reasonable for you to be clear as to the differences between the MOCA3, Award and the propose contract.
- 29) Ask the HHS to identify to you in writing all the provisions of the MOCA3 and Awards which are not incorporated in your contract and/or which may now be incorporated in directives or policy and/or will not apply to your employment if you agree to a contract. **Make this request in writing.**
- 30) Again, it would be reasonable for you to delay participating in a contract negotiation until this information has been provided to you, and you have had an opportunity to consider the differences between your current and proposed conditions of employment.

Future changes?

- 31) Write to the HHS and ask that they advise you whether QH has any present intention to issue further Health Employment Directives which will affect the terms and conditions in the contract.

c. Contract "discussions"

Option 1

- 32) You can approach contract "discussions" in two ways. Firstly, you can advise the HHS that you are considering their offer. If you are still considering the offer, and the 30 April deadline passes, the HHS will withdraw the contract offer.

- 33) Do not refuse the contract.





Option 2

- 34) In the material received by SMOs to date, it is clear that Queensland Health has no intention in engaging in genuine negotiations in any true sense. The pro forma letters to SMOs attaching the contract refer to the proposed meetings as a "contract discussion".
- 35) The HHS will tell you that it is a template contract and you can only negotiate:
- remuneration (to a limited degree);
 - KPIs (to a limited degree);
 - hours;
 - duties;
 - PPA (to a limited degree).
- 36) The HHS will tell you that the Health Employment Directive means you cannot negotiate changes to the template contract or seek additional benefits or conditions not provided for in the template contract. The Health Employment Directive prevents the HHS from making such changes; however, **the Director General can approve such changes.**
- 37) You should consider each term of the contract that you would like to be changed and any additional terms you want included. You can either:
- ask the HHS to convey to the DG that legislative changes need to be made to fix the contract, for example to remove any prospect that the contract can be unilaterally varied by a health employment directive and to give you unfair dismissal rights;
 - ask the HHS to request that the DG consider agreeing to changes being made to your contract to address SMO concerns. **Make this request in writing and make it clear you are just asking the HHS to ask the DG to consider different terms, not rejecting the offer;**
 - write directly to the DG yourself and ask that he consider making changes to the contract to address SMO concerns. **Make this request in writing and make it clear you are just asking the DG to consider different terms, not rejecting the offer;**
 - if the HHS/DG rejects your suggestions, ask them to provide written reasons for their refusal. This will allow you to consider the response and perhaps make further proposals which may be agreeable to Queensland Health.
- 38) You should wait for a response to your requests before continuing negotiations.



39) If you require advice on proposals to put to the HHS/DG, contact ASMOF/Together.

d. Do not refuse the contract

40) As you would be aware, QH has set a "*deadline*" for SMOs to sign the contract by 5:00pm on 30 April 2014. This is an arbitrary deadline set by QH in order to deal with administrative and payroll matters related to the contracts implementation.

41) What you should be concerned about is trying to negotiate a contract which is better than what is on the table presently.

42) One of the more offensive changes to the IR Act introduced by the Government is s.201 of the IR Act which provides that if you refuse a contract, you will lose continuity of service for all separation benefits, however described. Therefore, don't refuse the contract - keep negotiating.

43) **Make sure that you communicate all matters regarding the contract negotiations in writing and ensure that you expressly state, in each communication, that you are not refusing the HHS's offer of a contract, are still considering it, and wish the HHS to consider your proposals which address SMO concerns.**

44) If you have not signed the contract by 30 April 2014, and QH withdraws the contract, this will not constitute a refusal by you. In this situation, s.201 of the IR Act does not apply.

45) You are entitled to continue to propose changes to the contracts and should continue to do so until QH withdraws the offer or you reach agreement with QH regarding the contract. If the HHS terminates negotiations, that is the HHS' decision.

46) You should always remain open to continued negotiations until the contract is withdrawn.

e. Collective meetings

47) The Government is trying to destroy the collective strength of Queensland Doctors. These contracts are the mechanism by which they seek to divide and weaken the profession. They have excluded SMOs from negotiating collective, or certified, agreements under the *Industrial Relations Act 1999* ("IR Act").



48) This does not mean that SMOs cannot approach HHSs collectively in respect of contract negotiations. The proposed contracts affect all SMOs and you will have many of the same concerns in relation to the proposed contract's deficiencies as your colleagues. Therefore is it appropriate that you raise these concerns as a group.

49) When you receive the proposed contract and are notified by a HHS of a "*contract discussion*" meeting, organise with your colleagues to attend the first meeting as a group. Raise your concerns with the contract as a group and ask that the contracts be amended to meet your collective concerns.

f. What happens if the contract is withdrawn?

50) If you cannot reach agreement with the HHS by 30 April 2014 and the contract is withdrawn your conditions of employment will continue to be those provided for in the MOCA3 and the Awards.

51) QH cannot terminate you if you cannot reach agreement in respect of the proposed contract. That would be unlawful.

52) Section 200 of the IR Act provides that all Private Practice Arrangements ("PPA") will terminate on 1 July 2014. PPA is only available to SMOs who have entered into a contract. Therefore, your current PPA will cease from 1 July 2014.

53) Remember, when you PPA terminates, so does your HHSs ability to derive income from your private practice work. This offensive provision cuts both ways.

54) Aside from the termination of PPAs, your terms and conditions will remain the same. The MOCA3 has a nominal expiry date of 30 June 2015, however, unless it is terminated (which is unlikely if SMOs remain employed under it), it will continue in force until 30 June 2018. This would only change if the Government issued a HED which expressly regulated your conditions of employment to the exclusion of the MOCA3.

g. Current negotiations

55) As you may be aware, discussions with Government have started. At the present time these negotiations are ongoing. You will be regularly updated on these negotiations.



56) These negotiations may result in changes to the current contract and legislation although at this time the Government has expressly refused to do this. However, the Government may decide to unilaterally create or make changes to policy in an attempt to be seen to be addressing our demands. In either situation, it would be reasonable to see what, if any, changes may be achieved through these negotiations.

57) It would be difficult to commit to a contract when there is uncertainty regarding the terms and conditions of your employment given the present contract negotiations.

i. What else can I do?

58) Get involved in the ASMOF and Together Campaign against these unfair and draconian contracts.

59) Tell your friends, family and community about how bad the contracts are for you and for the public health system.

60) Contact your local MP and raise your concerns and ask them to change the IR Act and the contracts so SMOs have fair employment conditions and are not forced to leave the public health system. Get your friends, family and community to do the same.

61) Stay up-to-date and participate in campaign activities by following this webpage: <http://keepourdoctors.com.au/category/upcoming-events/>.

62) Like our Facebook page (<https://www.facebook.com/keepourdoctors>) and follow us on Twitter (<https://twitter.com/KeepOurDoctors>),