

SCHEDULE 5 – AMA MODEL CLAUSES

DRAFT MODEL CLAUSES

X. PROFESSIONAL MANAGEMENT OF ALLEGED POOR BEHAVIOUR, BULLYING OR SEXUAL HARASSMENT, POOR CONDUCT OR UNDER PERFORMANCE PROCEDURE

Scope

X.1 Where the hospital holds a concern about a doctor's alleged bullying, discrimination or sexual harassment (prohibited behaviour defined at sub clause X.12.1 - [model clause] Bullying, Discrimination and Sexual Harassment – A Response to Prohibited Behaviour under this Agreement), OR other workplace behaviour (including failure to act according to sub clause X.7 [the Bullying model clause] under this Agreement) OR their conduct or performance, the hospital must act according to this clause.

X.1.1 The hospital may only act on a concern where there is a reasonable apprehension that the concern exists.

X.2 The hospital must at all times maintain confidentiality about a concern, except as where otherwise required by law or where significant health and safety risk to the doctor or other persons would arise if confidentiality is maintained.

X.3 The hospital agrees that the requirements of this clause equally apply to concerns described at sub clause X.1 above that are associated with Learned College accredited appointments, supervision and/or assessment and occur in the course of employment.

X.4 The hospital must not issue or record any adverse finding or statement against the doctor or make decision to terminate or suspend the doctor unless this procedure has first been complied with.

X.4.1 In respect of the hospital deciding to suspend only, compliance with this sub clause X.4 is not required if there is a reasonable apprehension of risk to the health and safety of the doctor or other persons or where allegation/s are of such serious magnitude they have reasonable prospect of warranting summary dismissal.

X.4.2 A doctor may, only in writing, voluntarily waive a specific procedural requirement of this clause.

X.5 In recognition that an adverse finding under this clause or perceived breach of this clause should be settled efficiently, the doctor may refer their concern directly to conciliation and if necessary, then arbitration under this Agreement's dispute resolution clause.

X.5.1 This sub clause X.5 does not apply where the hospital has made decision to terminate the doctor.

X.6 Nothing in this clause interferes with any obligation or right a hospital or doctor has under State or Federal legislation.

Investigation and Procedure

X.7 The hospital must, before acting under sub clause X.8 and X.9 below, conduct an investigation having proper regard to procedural fairness and the requirements set out in sub clauses X.8 and X.9 below.

X.8 The hospital must advise the doctor in writing of its obligations to the doctor; the doctor's rights; and all of the specific concerns as follows:

X.8.1 the alleged fact/s and basis informing each concern;

X.8.2 advising the doctor of their right to representation and independent advice;

X.8.3 advising the doctor they have a reasonable period of time to respond verbally or in writing or both to the concerns;

X.8.4 an assessment of the relative seriousness of each concern and potential hierarchy of realistic consequences the hospital could apply for each;

X.8.5 advising the doctor of their right to require a meeting about the concerns and that the hospital must take information arising from that meeting into account;

X.8.6 provide the doctor with reason/s for meeting/s required by the hospital about the concerns along with reasonable notice provided to the doctor to attend the meeting with their representative.

i) Where the hospital has made decision to suspend the doctor, the hospital is entitled to direct the doctor to attend required meetings;

X.8.7 an outlined of the investigative process to be, or being, applied and who will be, or is, conducting the investigation;

X.8.8 the Award, Registered Agreement, contract, policy, code and/or law each concern is said to have breached (including attachment of a copy of the relevant clause / document); and

X.8.9 the hospital policy (if any) applying to process or deliberation along with this clause;

X.9 Before deciding on whether allegation/s are sustained, the hospital must:

X.9.1 assure itself, and be capable of demonstrating, it has made sufficient enquiry;

**AMA (ACT) Submission to the Independent Review of Workplace Culture in ACT
Healthcare Services**

X.9.2 take reasonable steps to provide the doctor a reasonable time and opportunity to seek advice and representation and respond in writing, verbally or both to any concerns. Any response must be taken into account by the investigation.

i) Where a doctor does not respond, the hospital is not entitled to draw adverse inference; and

X.9.3 If the doctor raises an issue in their response to the concerns, that reasonably warrants further investigation, the hospital must take reasonable steps to further investigate the matter before making decision.

Disciplinary action

X.10 After concluding the steps required under this clause X. and the hospital reasonably considers the doctor's conduct may warrant disciplinary action, the hospital must, in writing:

X.10.1 describe the sustained allegation specifics (including the matters described at sub clause X.11 below)

X.10.2 nominate a reasonable date and time to meet with the doctor before a final decision about disciplinary action; and

X.10.3 offer the doctor opportunity to be represented at the meeting.

X.11 After the hospital has made its findings of fact, in the process of deciding whether the doctor should be disciplined, the hospital must determine:

X.11.1 whether there is a valid reason related to the conduct of the doctor arising from the investigation justifying disciplinary action;

X.11.2 whether the doctor knew, could have, or should have, known that their conduct was not of an acceptable standard; and

X.11.3 whether any explanation or response made by the doctor related to the conduct affords the doctor mitigation sufficient to reduce the seriousness of the conduct or disciplinary outcome.

Hospital must have a Policy

X.12 Within three (3) months of this Agreement coming into operation, the hospital must implement a policy containing all of the requirements of this clause.

X. BULLYING, DISCRIMINATION and SEXUAL HARASSMENT – A RESPONSE TO PROHIBITED BEHAVIOUR

Commitments

- X.1 The parties agree that bullying, discrimination and/or sexual harassment (“prohibited behaviour” as defined at sub clause X.12.1 below) must not be tolerated and agree to take all practical measures and actions, in accordance with this clause, to prevent their occurrence in the workplace.*
- X.2 The parties agree that bullying, discrimination and/or sexual harassment (prohibited behaviour) has serious negative consequences for the recipient’s health, reputation, career and relationships with their family, friends and colleagues AND has serious negative consequences for the reputation and success of both the hospital and the medical profession AND disrupts the capacity of clinical teams to provide optimum patient care.*
- X.3 This clause equally applies where Learned College accredited: position appointments; supervision; examination; and/or assessment, occurs in the course of employment.*
- X.4 An employee who is alleged to be a perpetrator of prohibited behaviour must be subject to clause X. - [model clause] Professional Management of Alleged Poor Behaviour, Bullying and/or Sexual Harassment, Poor Conduct or Under Performance Procedure under this Agreement.*
- X.5 The hospital agrees that the following are reasonable expectations, will be articulated in policy and will be afforded to doctors:*
- X.5.1 recruitment, selection and performance decisions, will be based on merit and not affected by irrelevant personal characteristics;*
- X.5.2 the right to raise issues or to make an enquiry or complaint in a lawful, reasonable and respectful manner without being subjected to prohibited behaviour; and*
- X.5.3 reasonable flexibility in working arrangements as defined under Agreement, especially where needed to accommodate their family circumstances, disability, religious beliefs or culture.*
- X.6 A doctor who alleges they have been subjected to prohibited behaviour are deemed entitled to allege the hospital has breached its agreement at sub clause X.1 above that it must not tolerate prohibited behaviour.*

X.6.1 Allegations of breach of this clause must be confidential unless subject to arbitration under clause X - Dispute Resolution procedure under this Agreement or subject to other, not in camera, proceedings in a competent jurisdiction.

X.6.2 In recognition that issues about alleged prohibited behaviour should be managed efficiently, a dispute arising under this clause may be referred directly to conciliation and, if necessary, then to arbitration under clause X - Dispute Resolution process of this Agreement.

Managers must act

X.7 The hospital, or a doctor who has delegated or actual executive or managerial responsibility, must:

X.7.1 if aware of a complaint about alleged prohibited behaviour, act according with this clause X; OR

X.7.2 if aware that a doctor may be subject to the prohibited behaviour and a reasonable person could or should apprehend an imminent or actual significant risk to a person's health or safety, act as if there were a formal complaint about alleged prohibited behaviour; OR

X.7.3 if aware that a doctor may be subject to alleged prohibited behaviour but a complaint has not been made, confidentially enquire about the health and wellbeing of the doctor concerned and discuss with that doctor the options available under this clause X; OR

X.7.4 if aware that a doctor's alleged behaviour does not meet the definition of prohibited behaviour but there is reasonable apprehension that the behaviour has similar characteristics or that the behaviour could escalate to become prohibited behaviour, act, at least informally, to counsel the doctor concerned.

X.8 A doctor who has a delegated or actual executive or managerial responsibility and who has not acted in accordance with sub clause X.7 above must themselves be subject to disciplinary action under clause X - [model clause] Professional Management of Alleged Poor Behaviour, Bullying and/or Sexual Harassment, Poor Conduct or Under Performance Procedure under this Agreement.

Hospital must implement training

X.9 Within 12 months of this Agreement coming into operation, the hospital must implement compulsory training that is designed to:

X.9.1 ensure compliance with this clause; particularly through preventing occurrence of prohibited behaviour;

AMA (ACT) Submission to the Independent Review of Workplace Culture in ACT Healthcare Services

X.9.2 meet the specific needs of doctors and be evidence based;

X.9.3 promote leadership competency and skill amongst all doctors;

X.9.4 encourage best practice management where awareness of prohibited behaviour is informal or where there is formal complaint received; and

X.9.5 ideally, be capable of attracting Continuing Professional Development (CPD) points.

X.10 Selection of the training provider and the implementation process (including appropriate communication to doctors about the requirement, its intentions and objectives) must occur through clause X - Consultation Process under this Agreement.

Hospital must have a policy

X.11 Within three (3) months of this Agreement coming into operation, the hospital must implement a Policy containing all of the elements of this clause.

Definitions

X.12 The following definitions apply:

X.12.1 "Prohibited behaviour" means:

- i) has the same meaning as a definition described in this clause X.12;*
- ii) can occur by verbal, electronic or physical means;*

and may also mean:

- iii) an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications requiring hospital reporting;*

and does not mean:

- iv) reasonable action or decision by the hospital to direct, performance manage or discipline a doctor.*

X.12.2 "Bullying" means: usually, a repeated set of behaviours, but can mean a single incidence where the behaviour is of sufficient magnitude, that has one or more of the following same or similar characteristics:

- i) sarcasm and other forms of demeaning language;*

- ii) *threats, abuse or shouting;*
- iii) *physical contact,*
- iv) *coercion;*
- v) *isolation;*
- vi) *inappropriate blaming;*
- vii) *ganging up;*
- viii) *constant unconstructive criticism;*
- ix) *deliberately withholding information or equipment that a person needs to do their job or access their entitlements; and/or*
- x) *unreasonable refusal of requests for leave, training or other condition arising under this Agreement or policy.*

X.12.3 “Sexual harassment” means: unwelcome behaviour, which could have or should have been understood to be likely to make a person feel offended, humiliated or intimidated, that has one or more of the following same or similar characteristics:

- i) *comments about a person’s private life or the way they look;*
- ii) *sexually suggestive behaviour, such as leering or staring;*
- iii) *brushing up against someone, touching, fondling or hugging;*
- iv) *sexually suggestive comments or jokes;*
- v) *displaying offensive screen savers, photos, calendars or objects;*
- vi) *repeated unwanted requests to go out;*
- vii) *requests for sex;*
- viii) *sexually explicit posts on social networking sites;*
- ix) *insults or taunts of a sexual nature;*
- x) *intrusive questions or statements about a person’s private life;*
- xi) *sending sexually explicit emails or text messages; and/or*
- xii) *inappropriate advances on social networking sites.*

X.12.4 “Discrimination” means: treating, or proposing to treat, someone unfavourably because of a protected personal characteristic (refer sub clause X.12.7 below).

X.12.5 “Direct Discrimination” means: when a person or group is treated less favourably than another person or group in a similar situation because of a protected personal characteristic.

X.12.6 “Indirect Discrimination” means: when an unreasonable requirement, condition or practice is imposed that has, or is likely to have, the effect (often unintentionally) of disadvantaging people with a protected personal characteristic.

X.12.7 “Protected personal characteristic” means:

- i) *a disability, disease or injury, including work-related injury*
- ii) *parental status or status as a carer, for example, because they are responsible for caring for children or other family members*
- iii) *race, colour, descent, national origin, or ethnic background age, whether young or old, or because of age in general sex*
- iv) *industrial activity, including being a member of an industrial organisation like AMA or ASMOF or taking part in industrial activity, or deciding not to join an industrial organisation*
- v) *religion*
- vi) *pregnancy and breastfeeding*
- vii) *sexual orientation, intersex status or gender identity, including gay, lesbian, bisexual, transsexual, transgender, queer and heterosexual*
- viii) *marital status, whether married, divorced, unmarried or in a de facto relationship or same sex relationship*
- xi) *political opinion*
- xii) *social origin*
- xiii) *medical record; and/or*
- xiv) *an association with someone who has, or is assumed to have, one of these protected personal characteristics.*

END

X. FAMILY OR DOMESTIC VIOLENCE LEAVE

Purpose

X.1 The parties to this Agreement agree it is a duty to encourage respectful relationships and to ensure doctors who are experiencing domestic and family violence will be provided with safe, useful support and assistance in a non-judgmental and confidential environment under this clause X. The parties recognises such behaviour may impact on the doctor's work performance, ability to attend work and ability to provide their usual standard of care and support for their children or other family members.

Confidentiality

X.2 When a doctor seeks leave under this clause (refer sub clause X.4 below), because they are the recipient of a perpetrator's conduct as defined below, the hospital must maintain and guarantee to the doctor strict confidentiality and privacy except where exceptional circumstances exist such as where disclosure may prevent risks to dependents, is required by law or is to prevent imminent or actual risk to the doctor's

or other person's health and safety. Any information about family or domestic violence must not be included in the doctor's employment record.

Definitions

X.3 "Family or Domestic Violence" means:

X.3.1 *"emotional abuse": blaming the recipient for all problems in the relationship, undermining the recipient's self-esteem and self-worth through comparisons with others, withdrawing interest and engagement and emotional blackmail;*

X.3.2 *"verbal abuse": swearing and humiliation in private and public, focusing on intelligence, sexuality, body image or the recipient's capacity as a parent or spouse;*

X.3.3 *"social abuse": systematic isolation from family and friends, instigating and controlling relocations to a place where the recipient has no social circle or employment opportunities and preventing the recipient from going out to meet people;*

X.3.4 *"economic and financial abuse": controlling all money, forbidding access to bank accounts, providing an inadequate 'allowance', preventing the recipient seeking or holding employment and taking wages earned by the recipient;*

X.3.5 *"psychological abuse": making threats regarding custody of children, asserting the justice system will not believe or support the recipient, destroying property, abusing pets and driving dangerously;*

X.3.6 *"spiritual abuse": denial and/or misuse of religious beliefs or practices to force recipients into subordinate roles and misusing religious or spiritual traditions to justify physical violence or other abuse;*

X.3.7 *"physical abuse": direct assaults on the body, use of weapons (including objects), assault of children, locking the recipient out of the house, sleep and food deprivation;*

X.3.8 *"sexual abuse": including any form of non-consensual activity;*

X.3.9 *"technology facilitated abuse": using information technology to stalk or gain private information;*

X.3.10 *harassment, stalking, intimidation, coercion, kidnapping or deprivation of liberty; and/or*

X.3.11 causing injury or death to an animal irrespective of whether the recipient owns the animal

X.4 For the purposes of sub clause X.10 below:

X.4.1 “Affected doctors” means: the Australian Medical Association, Senior Medical Staff Association, Resident’s Society and individual doctors.

X.4.2 “Consultation” means: a process consistent with that described in this Agreement’s Consultation Process (refer clause X).

Basic entitlement

X.5 A doctor is entitled up to 20 days paid leave each year to allow them to be absent from the workplace to attend counselling appointments, legal proceedings and other activities related to, and as a consequence of, family or domestic violence (refer also Annual Leave, Compressed Hours and Flexible Work Arrangements) - [model clauses] and Personal Leave under this Agreement.

X.5.1 A doctor is entitled to leave under this clause whether experiencing the violence themselves or providing care or support to a family member or member of their household who is experiencing violence.

X.6 A doctor, having exhausted other available leave entitlements is entitled to unpaid leave for an agreed period (refer also sub clause X, Personal / Carers Leave). The agreed period must not be of an unreasonable length when all of the circumstances are considered.*

[*Insertion note: as an amendment to existing PERSONAL / CAREERS LEAVE entitlements – the following:

X.1 A doctor may convert their personal / careers leave for the purpose of family or domestic Violence leave whether experiencing the violence themselves or providing care or support to a family member or member of their household who is experiencing violence.

X.1.1 In the case of sub clause X.2 above applying, the confidentiality and privacy requirements, defined at clause X.2 - Family and Domestic Violence of this Agreement apply.”]

Application and evidence requirements

X.7 To assist confidentiality described at sub clause X.2 above, application and approval for family and domestic violence leave must be attributed as “other approved leave”.

- X.8 *A doctor is be entitled to retrospective approval for leave under this clause if circumstances required the doctor to be absent form work without prior approval.*
- X.9 *A doctor may be required to produce evidence in support of approval of their application under this clause that would satisfy a reasonable person. In some circumstances, reasonable evidence may include medical care / counselling, police or court documents.*
- X.10 *In recognition that a concern about a hospital refusal to approve leave under this clause may have a time imperative and therefore should be settled efficiently, a dispute arising under this clause may be referred directly to conciliation and, if necessary, then to arbitration under clause X - Dispute Resolution process under this Agreement.*

The hospital must have a Policy and take action

- X.11 *Within six (6) months of this Agreement coming into operation, the hospital must implement the below in consultation with affected doctors:*

X.11.1 *a Domestic and Family Violence hotline staffed by designated and appropriately trained contact officers within the hospital's People and Culture / Human Resources Department*

X.11.2 *a Policy with at least the following features:*

- i) access to appropriate advice and services for implementing work related safety plans (for example: Security for an escort to and from car park, setting up new telephone numbers, screening/blocking calls and emails)*
- ii) availability of long term or ongoing and emergency hospital support options including:*
 - a) streamlined approval for leave and related entitlements (including clauses contained in this Agreement related to family and domestic violence leave, annual leave, long service leave, compressed hours, flexible work arrangements, family room)*
 - b) access to loaned mobile phones*
 - c) access to advance payment of salary*
 - d) facilitation where possible of short-term or long-term relocation to an alternative work location*
 - e) confirmation of confidentiality, privacy, sensitivity, empathy and active assistance from Managers or colleagues or contact officers.*
 - f) reference to the hotline described at sub clause X.10.1 above.*

END

X. CHILD CARE FACILITIES – HOSPITAL PROVIDED

Hospital must conduct a feasibility study

- X.1 The hospital acknowledges that doctors should have access to 24-hour high quality child-care facilities at, or in the immediate vicinity, of the hospital.*
- X.2 Where the support described as sub clause X.1 above is not available, the hospital must, within 18 months of this Agreement coming into operation, conclude a feasibility study that reports on options and time frames to introduce free, or subsidised, child care facilities, in house, or otherwise, that are available for all employees.*
- X.1.1 Affected doctors must be provided with opportunity to be consulted and have reasonable time to comment on the feasibility study's terms of reference and on a draft of the report prior to its finalisation and release to all employees.*

Provision of family room

- X.3 The hospital must make available a dedicated "family" room to enable doctors to care and attend to the needs of their children. The doctor is entitled to use the room while carrying out their regular duties where no other reasonable alternative arrangements can be made. The family room must include:*
- X.3.1 a bed, a cot, TV, a hospital networked computer, facility for light refreshments and work desk and chair; AND*
- X.3.2 a private space dedicated and useable for breast feeding with appropriate storage for the mother's expressed milk.*

Hospital must have a Policy

- X.4 The hospital must, within 12 months of this Agreement coming into operation, introduce a Policy and necessary practical supports to facilitate the sharing of child care amongst employees when they are at work on site ('nanny sharing'). The hospital must consult with affected doctors prior to implementing the Policy.*
- X.5 For the purposes of this clause:*
- X.5.1 "Affected doctors" means: the Australian Medical Association, Senior Medical Staff Association, Resident's Society and individual doctors.*
- X.5.2 "Consultation" means: a process consistent with that described in this Agreement's Consultation Process (refer clause X).*

END

X. CHILD CARE COST REIMBURSEMENT

X.1 Where the hospital's roster posting obligations have not been met (refer clause X [model clause] - Roster Design and Management under this Agreement) or where the doctor is required to perform reasonable additional hours in excess of their ordinary or on call roster with less than 48 hours' notice; the doctor must be reimbursed for the full cost of child care subject to this clause as follows:

X.1.1 the doctor usually uses, and did use, a professional provider of child care services;

X.1.2 the doctor, if requested, will provide receipt/s for the cost of the child care;

X.1.3 the doctor must claim the reimbursement as soon as practicable and not later than 60 days from the date the cost was incurred;

X.1.4 the hospital must reimburse to the doctor the full amount claimed within 21 days of claim receipt.

END
