

**WESTERN HEALTH BIOMEDICAL ENGINEERS AGREEMENT 2010-2013**

**1. TITLE**

This Agreement shall be known as the Western Health and Biomedical Engineers Agreement 2010 – 2013 (the “Agreement”).

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### 3. PERIOD OF OPERATION

This Agreement shall operate seven days after the date of approval with Fair Work Australia and expire on 11 August 2013. The Agreement will continue in force after the expiry date until replaced by a further Agreement.

### 4. NO FURTHER CLAIMS

This Agreement is reached in full and final settlement of all matters subject to claims by either party and for the life of the Agreement and no further claims will be made or supported by the parties.

Subject to the employer meeting obligations to consult arising under this Agreement or a contract of employment binding on it, it is not the intent of this provision to inhibit, limit or restrict an employer's right or ability to introduce change at the workplace.

### 5. PARTIES COVERED BY THE AGREEMENT

5.1. This agreement covers:

5.1.1. Western Health; and

5.1.2. All employees employed by Western Health as biomedical engineers as defined in clause 8 of this Agreement; and

5.1.3. The Association of Professional Engineers Scientists and Managers Australia ("APESMA") if it has successfully given notice to Western Health and Fair Work Australia (FWA) in accordance with section 183 of the *Fair Work Act 2009* (Cth) and such coverage is noted in the decision of FWA to approve the Agreement.

### 6. INCIDENCE & APPLICATION

This agreement shall be binding on the parties in relation to all employees employed as biomedical engineers as defined by clause 8 of this Agreement.

## 7. SAVINGS

Nothing in this Agreement will diminish any entitlement (whether accrued or otherwise) of biomedical engineers, other than where expressly varied by this Agreement.

This Agreement will not result in a reduction of an existing entitlement for any biomedical engineer.

## 8. DEFINITIONS

- 8.1. **Act** shall mean the *Fair Work Act 2009*.
- 8.2. **Biomedical Engineer** shall mean an adult person employed as such who is qualified to carry out professional engineering duties as defined and is employed to apply engineering method to the solution of problems in the area of medicine and other life sciences.
- 8.3. **Employer** shall mean Western Health
- 8.4. **Professional engineering duties** shall mean duties carried out by a person in any particular employment the adequate discharge of any portion of which duties requires qualifications of the employee as (or at least equal to those of) a Graduate member of the Institute of Engineers, Australia.
- 8.5. **Qualified Engineer** shall mean a Biomedical Engineer who is or is qualified to become a Graduate member of the Institute of Engineers, Australia.
- 8.6. **Experienced Engineer** shall mean a Biomedical Engineer with the undermentioned qualifications in any particular employment the adequate discharge of any portion of the duties of which employment requires qualifications of the employee as (or at least equal to those of) a Member of the Institute of Engineers, Australia. The aforesaid qualifications are as follows:
- 8.6.1. that he/she is a Member of the said Institution; or
  - 8.6.2. that he/she, having graduated in a four or five year course at a University recognised by the said institution, has had four years experience in professional engineering duties since becoming a qualified engineer.
- 8.7. **Award** shall mean the Biomedical Engineers (Victorian Public Sector) Award 2002.
- 8.8. **Union** shall mean the Association of Professional Engineers, Scientists and Managers Australia.

## **9. ANTI-DISCRIMINATION**

- 9.1.** It is the intention of the respondents to this Agreement to achieve the principle object in section 351 of the Act by respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 9.2.** Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the respondents must make every endeavour to ensure that neither the pre reform award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 9.3.** Nothing in this clause is to be taken to affect:
- 9.3.1.** any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
  - 9.3.2.** an employee, employer or registered organisation, pursuing matters of discrimination in any state or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission; or
  - 9.3.3.** the exemptions in sections 351(2) of the Act.

## **10. INDIVIDUAL FLEXIBILITY ARRANGEMENT**

- 10.1.** An employee and the employer may enter into an individual flexibility arrangement pursuant to this clause in order to meet the genuine needs of the employee and employer. An individual flexibility arrangement must be genuinely agreed to by the employee and employer.
- 10.2.** An individual flexibility arrangement may vary the effect of one or more of the following terms of this enterprise agreement:
- 10.2.1.** overtime rates;
  - 10.2.2.** arrangements for when work is performed
  - 10.2.3.** penalty rates;
  - 10.2.4.** allowances; and
  - 10.2.5.** leave loading;
- 10.3.** An employee may nominate a representative to assist in negotiations for an individual flexibility arrangement.

- 10.4. The employer must ensure that any individual flexibility arrangement will result in the employee being better off overall than the employee would have been if no individual flexibility arrangement were agreed to.
- 10.5. The employer must ensure that an individual flexibility arrangement is in writing and signed by the employee and employer. If the employee is under 18, the arrangement must also be signed by a parent or guardian of the employee.
- 10.6. The employer must give a copy of the individual flexibility arrangement to the employee within 14 days after it is agreed to.
- 10.7. The employer must ensure that any individual flexibility arrangement sets out:
  - 10.7.1. the terms of this enterprise agreement that will be varied by the arrangement;
  - 10.7.2. how the arrangement will vary the effect of the terms;
  - 10.7.3. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - 10.7.4. the day on which the arrangement commences.
  - 10.7.5. The employer must ensure that any individual flexibility arrangement:
    - (a) is about matters that would be permitted matters under section 172 of the *Fair Work Act 2009* if the arrangement were an enterprise agreement;
    - (b) does not include any term that would be an unlawful term under section 194 of the *Fair Work Act 2009* if the arrangement were an enterprise agreement; and
  - 10.7.6. provides for the arrangement to be terminated:
    - (a) by either the employee or employer giving a specified period of written notice, with the specified period being not more than 28 days; and
    - (b) at any time by written agreement between the employee and employer.
- 10.8. An individual flexibility arrangement may be expressed to operate for a specified term or while the employee is performing a specified role (such as acting in a specified higher position). Such an arrangement will terminate on expiry of the specified term or when the employee ceases to perform the specified role, unless terminated earlier on notice or by agreement.

## **11. DISPUTE RESOLUTION PROCEDURE**

### **11.1. Resolution of disputes and grievances**

**11.1.1.** Unless otherwise provided for in this Agreement, a dispute or grievance about a matter arising under this Agreement or the National Employment Standards, other than termination of employment, must be dealt with in accordance with this clause. This includes a dispute or grievance about whether an employer had reasonable grounds to refuse a request for flexible working conditions or an application to extend unpaid parental leave.

**11.1.2.** This clause does not apply to any dispute on a matter or matters arising in the course of bargaining in relation to a proposed workplace agreement.

**11.1.3.** The employer or an employee covered by this agreement may choose to be represented at any stage by a representative, including a union representative or employer's organisation.

### **11.2. Obligations**

**11.2.1.** The parties to the dispute or grievance, and their representatives, must genuinely attempt to resolve the dispute or grievance through the processes set out in this clause and must cooperate to ensure that these processes are carried out expeditiously.

**11.2.2.** Whilst a dispute or grievance is being dealt with in accordance with this clause, work must continue in accordance with usual practice, provided that this does not apply to an employee who has a reasonable concern about an imminent risk to his or her health or safety, has advised the employer of this concern and has not unreasonably failed to comply with a direction by the employer to perform other available work that is safe and appropriate for the Employee to perform.

**11.2.3.** No person covered by the agreement will be prejudiced as to the final settlement of the dispute or grievance by the continuance of work in accordance with this clause.

### **11.3. Agreement and dispute settlement facilitation**

**11.3.1.** For the purposes of compliance with this Agreement (including compliance with this dispute settlement procedure) where the chosen employee representative is another employee of the employer, he/she must be released by his/her employer from normal duties for such periods of time as may be reasonably necessary to enable her/him to represent employees concerning matters pertaining to the employment relationship including but not limited to:

- (a) Investigating the circumstances of a dispute or an alleged breach of this Agreement or the National Employment Standards;
- (b) Endeavouring to resolve a dispute arising out of the operation of the agreement or the National Employment Standards; or,
- (c) Participating in conciliation, arbitration or any other agreed alternative dispute resolution process.

11.3.2. The release from normal duties referred to in this clause is subject to the proviso that it does not unduly affect the operations of the employer.

#### **11.4. Discussion of grievance or dispute**

11.4.1. The dispute or grievance must first be discussed by the aggrieved employee(s) with the immediate supervisor of the employee(s).

11.4.2. If the matter is not settled, the employee(s) can require that the matter be discussed with another representative of the employer appointed for the purposes of this procedure.

#### **11.5. Internal process**

11.5.1. If any party to the dispute or grievance who is covered by the agreement refers the dispute or grievance to an established internal dispute or grievance resolution process, the matter must first be dealt with in accordance with that process, provided that the process is conducted in a timely manner and it is consistent with the following principles:

- (a) The rules of natural justice;
- (b) Provide for mediation or conciliation of the grievance;
- (c) Provide that the employers will take into consideration any views on who should conduct the review; and
- (d) be conducted as quickly, and with as little formality, as a proper consideration of the matter allows.

11.5.2. If the dispute or grievance is not settled through an internal dispute or grievance resolution process, the matter can be dealt with in accordance with the processes set out below.

11.5.3. If the matter is not settled, either Party may refer the matter to Fair Work Australia.

## **11.6. Disputes of a Collective Character**

**11.6.1.** The parties covered by the agreement acknowledge that disputes of a collective character concerning more than one employee may be dealt with more expeditiously by an early reference to FWA.

**11.6.2.** No dispute of a collective character may be referred to FWA directly unless there has been a genuine attempt to resolve the dispute at the workplace level prior to it being referred to FWA.

## **11.7. Conciliation**

**11.7.1.** Where a dispute or grievance is referred, a member of FWA shall do everything that appears to the member to be right and proper to assist the parties to the dispute to agree on terms for the settlement of the dispute or grievance.

**11.7.2.** This may include arranging:

- (a) conferences of the parties to the dispute or their representatives presided over by the member; and
- (b) for the parties to the dispute or their representatives to confer among themselves at conferences at which the member is not present.

**11.7.3.** Conciliation before FWA shall be regarded as completed when:

- (c) the parties to the dispute have reached agreement on the settlement of the grievance or dispute; or
- (d) the member of FWA conducting the conciliation has, either of their own motion or after an application by either party, satisfied themselves that there is no likelihood that within a reasonable period, further conciliation will result in a settlement; or
- (e) the parties to the dispute have informed the FWA member that there is no likelihood of agreement on the settlement of the grievance or dispute and the member does not have substantial reason to refuse to regard the conciliation proceedings as completed.

## **11.8. Arbitration**

**11.8.1.** If the dispute or grievance has not been settled when conciliation has been completed, either party may request that FWA proceed to determine the dispute or grievance by arbitration.



**11.8.2.** Where a member of FWA has exercised conciliation powers in relation to the dispute or grievance, the member shall not exercise, or take part in the exercise of, arbitration powers in relation to the dispute or grievance if a party objects to the member doing so.

**11.8.3.** Subject to sub-clause 11.8.3 below, the determination of FWA is binding upon the persons covered by this agreement.

**11.8.4.** An appeal lies to a Full Bench of FWA, with the leave of the Full Bench, against a determination of a single member of FWA made pursuant to this clause.

## **11.9. Conduct of Matters Before FWA**

**11.9.1.** Subject to any agreement between the parties to the dispute in relation to a particular dispute or grievance and the provisions of this clause, in dealing with a dispute or grievance through conciliation or arbitration, FWA may conduct the matter in accordance with Subdivision B of Division 3 of Part 5-1 of the *Fair Work Act 2009*.

## **12. CONSULTATION IN THE EVENT OF ORGANISATIONAL CHANGE**

**12.1.** Where an employer has made a definite decision to implement major changes in its program, organisation, structure or technology that are likely to have a significant impact on biomedical engineers, the employer shall, as early as practicable, consult with biomedical engineers and their nominated representatives before the introduction of any proposed changes.

**12.2.** The employer shall discuss with the affected biomedical engineers, and their nominated representatives, amongst other things:

**12.2.1.** the introduction of changes that are likely to have significant effect on biomedical engineers;

**12.2.2.** the effects such changes are likely to have on biomedical engineers;

**12.2.3.** the reasons for any proposed redundancies and measures to avert or mitigate adverse effects of such changes on biomedical engineers.

**12.3.** For the purposes of such discussion, the employer shall provide in writing to the affected biomedical engineers and their nominated representatives:

**12.3.1.** all relevant information about the changes, including the nature of the changes proposed;

**12.3.2.** reasons for any proposed redundancies and the number of biomedical engineers and categories likely to be affected; and

**12.3.3.** the expected effects of the changes on biomedical engineers and other matters that may impact on them, provided that the employer is not

required to disclose confidential information, the disclosure of which would be contrary to the employers interests.

### 13. TECHNOLOGICAL CHANGE

#### 13.1. Definitions

For the purpose of this clause:

**13.1.1. *Technological Change*** means the introduction, alteration or replacement of medical devices, or work practices ancillary to the use of such devices, which change, if implemented by an employer, may have material effects in or on the employment of persons to which this Agreement applies.

**13.1.2. *Medical device*** means

- (a) any instrument, apparatus, material or other article (whether used alone or in combination, and including the software necessary for its proper application) intended, by the person under whose name it is or is to be supplied, to be used for human beings for the purpose of one or more of the following:
  - (i) Diagnosis, prevention, monitoring, treatment or alleviation of disease;
  - (ii) Diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap;
  - (iii) Investigation, replacement or modification of the anatomy or of a physiological process;
  - (iv) Control of conception.

And that does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, but that may be assisted in its function by such means; or

- (b) An accessory to such an instrument, apparatus, appliance, material or other article.

**13.1.3. *Material Effects*** means the termination of employment, the elimination or diminution of job opportunities, promotional opportunities, job tenure or the use of skills, the alteration of hours of work, and the need for retraining or transfer of employees to other work or locations.

**13.1.4. *Employer*** means Western Health as the employing institution and/or the authorised agent of the institution who is responsible for the performance of any act coming within the meaning of this clause.

## **13.2. Notification**

**13.2.1.** When the employer instructs or commissions employees, consultants or suppliers or any other persons to carry out an investigation of the feasibility of technological or organisational change or personally commences such an investigation, the employer shall notify:

- (a) the representatives of the employees which may include APESMA, and
- (b) in any case where the employer is able to identify the employee (s) who may be materially affected in their employment by the change, those employees;

That the investigation is being undertaken and specify the employer's principle objective or objectives of such investigation.

## **13.3. Consultation During Feasibility Investigation**

**13.3.1.** During the course of any feasibility investigation, the employer shall:

- (a) keep the parties who have been notified pursuant to sub-clause 13.2.1 informed; and
- (b) when requested in writing by such employees or their representatives to do so, consult with them about any technological change being considered, any material effect which might ensue and alternative proposals which might eliminate or lessen such effects.

## **13.4. Decision To Implement**

**13.4.1.** If an employer decides to implement technological change, the employees who may be materially affected in their employment by the change, the employee representatives which may include APESMA, will be notified by the employer as soon as possible thereafter.

**13.4.2.** After notifying the decision, the employer will inform the employees who have been notified, and their representatives, which may include APESMA of the nature and extent of likely material effects, will consult with them about the proposed change, the reasons for it and any alternative proposals which, if implemented, might eliminate or lessen likely material effects.

## **13.5. Information**

**13.5.1.** In providing information to the employees and their representatives which may include APESMA, the employer shall indicate the source thereof and provide such technical data as will allow evaluation of the likely material effects of any proposal for technological change. The

information provided pursuant to this subclause shall not be divulged to any other employer nor used for any purpose other than the making of the said evaluation.

### **13.6. Method Of Notification**

**13.6.1.** All notifications and information to APESMA will be addressed in writing to the Director Victoria or to such other official thereof as designated by the said Director.

**13.6.2.** All notifications and information to employees shall be in writing.

### **13.7. Consultations**

**13.7.1.** All consultations between APESMA and the employer will take place at the employer's place of business during the usual office hours or at such time or times and place as are agreed upon, or in the absence of agreement as are specified by the employer.

## **14. NOTIFICATION OF SALARY & CLASSIFICATION**

**14.1.** Biomedical Engineers covered by this Agreement shall on appointment to or employment within any classification be given written notification by the employer of their classification and terms of employment.

**14.2.** Provided that Biomedical Engineers already employed who have not been so notified shall be given notification within one month of the date of operation of this Agreement.

## **15. DISCLOSURE OF QUALIFICATION**

**15.1.** A Biomedical Engineer who is employed in or who is an applicant for employment covered by this Agreement shall if and when required so to do by his/her employer or an employer to whom he/she has applied for employment produce to his/her employer or that employer written evidence that he/she possesses or has acquired the qualifications of qualified engineer or experienced engineer (as the case may be).

**15.2.** Where a Biomedical Engineer has failed to produce to his/her employer or to an employer to whom he/she has applied for employment written evidence that he/she possesses or has acquired the qualifications of Qualified Engineer or Experienced Engineer (as the case may be) and subsequently claims to be entitled to payment at the rate prescribed by this Agreement for his/her employment by that employer in respect of any period during which he/she has failed to produce that evidence it shall be a defence to the employer if the employer establishes that during the said period the employer did not know and had no reason to believe that the Professional Engineer possessed or had acquired the qualifications of Qualified Engineer or Experienced Engineer (as the case may be).

## **16. TERMS OF EMPLOYMENT**

### **16.1. Part-time employment**

**16.1.1.** Biomedical Engineers employed on a part-time basis shall be paid for hours worked, either:

- (a) at an hourly rate equal to 1/38th of the weekly rate appropriate to the Biomedical Engineers classification. Biomedical Engineers employed under this subclause shall receive leave entitlements on a pro rata basis;
- (b) at an hourly rate equal to 1/38th of the appropriate weekly rate plus 25% of such hourly rate for work performed during ordinary hours on weekdays and 75% of such hourly rate for work performed on weekends and public holidays. Biomedical Engineers employed under this subclause shall not be entitled to any benefits prescribed in clause 53 - Public holidays, clause 36 - Annual leave and clause 38 - Personal/Carers leave.

**16.1.2.** The conditions of part-time work shall be agreed upon between employer and Biomedical Engineer and shall be confirmed in writing between the two parties.

### **16.2. Full-time employment**

**16.2.1.** A full-time Biomedical Engineer is one who is employed and who is ready willing and available to work the full week of 38 hours or an average of 38 hours as per clause 26 - Hours of work, as and when required by the employer. Such Biomedical Engineer shall be entitled to the full weekly wage as prescribed by this award irrespective of the number of hours worked not exceeding 38.

### **16.3. Relieving Biomedical Engineer (full-time or part-time)**

**16.3.1.** A relieving Biomedical Engineer is one employed to relieve a full-time or part-time Biomedical Engineer during that engineer's absence from work for any cause.

**16.3.2.** A relieving Biomedical Engineer shall be paid not less than the rate applicable to his or her classification with the addition of 25%, and shall not be entitled to the benefits of sick leave, annual leave and long service leave.

## **17. FIXED TERM CONTRACTS**

**17.1.** Fixed term employment will only be used for true fixed term arrangements, including special projects, post graduate training, graduate year provisions, maternity and long service leave relief.

## **18. TERMINATION OF EMPLOYMENT**

- 18.1.** Except where the conduct of the engineer justifies instant dismissal, at least four weeks notice of termination of employment shall be given by either the institution or the Biomedical Engineer, or four weeks wages paid or forfeited as the case may be in lieu of such notice, except that the period of notice may be reduced by mutual agreement. A Biomedical Engineer who is over 45 years of age and has worked for two years or more shall be entitled to an additional weeks notice.
- 18.2.** Where an employer has given notice to a Biomedical Engineer, the engineer shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the Biomedical Engineer after consultation with the employer.

## **19. SALARY ADJUSTMENTS**

- 19.1.** The wage rates to apply during the life of this Agreement are those set out in clause 20.2 of this Agreement.
- 19.2.** All salary based allowances will be increased by the percentage movement in the rate of pay for Biomedical Engineers on the anniversary of each wage increase as set out in clause 20.2 of this Agreement.
- 19.2.1.** The meal allowance as set out in clause 23 of this Agreement shall be adjusted by the same amount and from the same dates as salaries are adjusted as specified in clause 20.2 of this Agreement.
- 19.3. Classification matters**
- 19.3.1.** The parties agree that all employees will be classified as per the classification descriptors at clause 20.8 of this Agreement and translated into the new structure in accordance with clause 20.1 of this Agreement.
- 19.3.2.** Wording of descriptors for all levels to be reviewed by the parties during the life of the agreement.
- 19.4.** It is a provision of this Agreement that the salaries specified in clause 20.2 of the Agreement may be salary packaged in accordance with the employer's salary packaging program.

## **20. SALARIES PER WEEK OF 38 HOURS**

### **20.1. Translation Arrangements – New 5 Level Structure**

- 20.1.1.** This agreement establishes a new 5 level structure as set out in clause 20.2 of this Agreement, with the translation of existing employees to the new structure set out in the table below:

<b>Existing Classification of Employee</b>	<b>Proposed Classification in New Structure</b>	<b>Translation of Existing Employee</b>
Class 1 Year 1	Class 1 Year 1	Point to Point unless hold 4 year degree
Class 1 Year 2	Class 1 Year 2	Point to Point & Class 1 Year 1 who hold 4 year degree
Class 1 Year 3	Class 1 Year 3	Point to Point
Class 1 Year 4	Class 1 Year 4	Point to Point
Class 1 Year 5	Class 1 Year 5	Point to Point
Class 1 Year 6	Class 2 Year 1	Translate from Class 1 Yr 6 to Class 2 Year 1 where service is < than 12 months. Move to Class 2 Year 2 on anniversary of incremental date
Class 1 Year 6	Class 2 Year 2	Translate from Class 1 Yr 6 to Class 2 Year 1 where service is > than 12 months
Class 2 Year 1(a)	Class 3 Year 1	Translate from Class 2 Year 1(a) to Class 3 Year 1
Class 2 Year 1(b)	Class 3 Year 1	Translate from Class 2 Year 1(b) to Class 3 Year 1
Class 2 Year 2	Class 3 Year 1	Translate from Class 2 Year 2 to Class 3 Year 1
Class 2 Year 3	Class 3 Year 2	Translate from Class 2 Year 3 to Class 3 Year 2
Class 2 Year 4	Class 3 Year 3	Translate from Class 2 Year 4 to Class 3 Year 3
Class 3 Year 1	Class 4 Year 1	Translate from Class 3 Year 1 to Class 4 Year 1
Class 3 Year 2	Class 4 Year 1	Translate from Class 3 Year 2 to Class 4 Year 1
Class 3 Year 3	Class 4 Year 2	Point to Point
Class 3 Year 4	Class 4 Year 3	Point to Point
Class 4 Year 1	Class 5 Year 1	Point to Point
Class 4 Year 2	Class 5 Year 2	Point to Point
Class 4 Year 3	Class 5 Year 3	Point to Point

## 20.2. Wage Rates

20.2.1. The wages rates in the table below are subject to (and payable in accordance with) the provisions of clauses 20.2 through 20.7 of this Agreement.

Classification		Current	FPPOA 11 May 2010 (Includes 1 <sup>st</sup> 2.5%)	FPPOA 11 August 2011 2.5%	FPPOA 11 August 2012 2.5%
Class 1	Year 1	\$879.40	\$926.20	\$949.40	\$973.10
	*Year 2	\$930.70	\$995.60	\$1,020.50	\$1,046.80
	#Year 3	\$995.60	\$1,048.60	\$1,074.80	\$1,101.70
	Year 4	\$1,045.00	\$1,100.50	\$1,128.00	\$1,156.20
	Year 5	\$1,098.30	\$1,156.70	\$1,185.60	\$1,215.20
Class 2	Year 1	\$1,115.00	\$1,177.90	\$1,203.70	\$1,233.80
	Year 2	\$1,177.90	\$1,237.00	\$1,267.90	\$1,299.60
Class 3	Year 1	\$1,237.00	\$1,302.80	\$1,335.40	\$1,368.80
	Year 2	\$1,298.80	\$1,367.90	\$1,402.10	\$1,437.20
	Year 3	\$1,321.70	\$1,392.00	\$1,426.80	\$1,462.50
Class 4	Year 1	\$1,431.40	\$1,507.60	\$1,545.30	\$1,583.90
	Year 2	\$1,469.50	\$1,547.60	\$1,586.30	\$1,626.00
	Year 3	\$1,550.60	\$1,633.00	\$1,673.80	\$1,715.60
Class 5	Year 1	\$1,659.60	\$1,747.80	\$1,791.50	\$1,836.30
	Year 2	\$1,747.70	\$1,840.70	\$1,886.70	\$1,933.90
	Year 3	\$1,870.70	\$1,970.20	\$2,019.50	\$2,070.00

\* Commencement rate for 4 year degree holder

# Commencement rate for masters degree holder

20.2.2. Progression within each level is based on years of service.

### 20.3. Biomedical Engineer – Class 1

20.3.1. Provided that:

- (a) A Biomedical Engineer who holds, or is qualified to hold a degree of Bachelor of Engineering after having undertaken a four or five year full-time course, or the equivalent part-time, recognised by the Institute of Engineers, Australia, shall be entitled to be classified as a Biomedical Engineer – Class 1/2.
- (b) A Biomedical Engineer who holds, or is qualified to hold the degree of Masters of Engineering Science, Master of Engineering, or the equivalent Masters degree, shall be entitled to be classified as a Biomedical Engineer – Class 1/3, provided further that a Biomedical Engineer so classified shall not be entitled to the higher qualification payment prescribed in clause 20.6 for a further period of two years.
- (c) A Biomedical Engineer who holds or is qualified to hold the degree of Doctor of Philosophy or Doctor of Engineering shall be entitled to be classified as a Biomedical Engineer – Class 1/4, provided further that a



Biomedical Engineer so classified shall not be entitled to the higher qualification payment prescribed in clause 20.6 for a further period of two years.

- (d) A Biomedical Engineer who is an Experienced Engineer, as defined, shall be entitled to be classified as a Biomedical Engineer – Class 2/1.
- (e) A sole Biomedical Engineer (i.e. one who is the only Biomedical Engineer employed in a Department), shall be paid at the rate of 5% of the Biomedical Engineer – Class 1/1 in addition to the appropriate rate applicable to a Biomedical Engineer – Class 1/1.

**20.4. For the purpose of this clauses:**

**20.4.1.** The “first year of experience after qualification” referred to in clause 20.2 of this Agreement shall be deemed to commence on the 1st day of January in the year following the year during which the Biomedical Engineer presented himself/herself for final examination which, if successful, would entitle the Biomedical Engineer to the Degree of Bachelor of Engineering. Which a Biomedical Engineer was required to attend a supplementary examination, such Biomedical Engineer shall, if successful, be deemed to have passed the final examination in the year during which such final examination was held.

**20.4.2.** Where a Biomedical Engineer – Class 1 – 1<sup>st</sup> year of experience after qualification commences employment during the first year after qualification, such Biomedical Engineer shall be advanced to the classification Biomedical Engineer – Class 1/2 as from the 1<sup>st</sup> day of January in the next succeeding year.

**20.5. Higher Qualifications**

Where a Biomedical Engineer has a higher qualification he/she shall be paid in addition the following:

**20.5.1.** For Master of Engineering or Master of Engineering Science, the sum of 6.5% of the “Biomedical Engineer – Class 1/1”, rate per week.

**20.5.2.** For Doctorate of Philosophy or Doctorate of Engineering, the sum of 10% of the “Biomedical Engineering – Class 1/1” rate per week.

Such allowances shall not be cumulative in the case of multiple higher qualifications.

**20.6. Incremental Progression**

**20.6.1.** Biomedical Engineers shall be eligible for progression from one pay point to the next pay point within each classification if:

- (a) The Biomedical Engineer has given satisfactory performance over the preceding twelve months; and

- (b) The Biomedical Engineer has on assessment acquired and is required by the employer to utilise new and/or enhanced skills within the ambit of the classification definition for the Biomedical Engineers position or other skills as agreed, and this has been certified to in writing following, and as part of, the assessment process.

**20.6.2.** Biomedical Engineers shall, subject to clause 20.5.2, be paid at the next pay point from the anniversary of their appointment to the classification.

**20.6.3.** In cases where the assessment is delayed, the anniversary date shall not be changed and the increase, if any, will be paid retrospectively to the anniversary date.

## **20.7. Classification Definitions**

### **20.7.1. Biomedical Engineers Class 1**

- (a) Positions at level 1 are regarded as entry level health professionals and for initial years of experience.
- (b) Classes 1 & 2 may be the entry level for new graduates who meet the requirement to practise as a health professional (where appropriate in accordance with their professional association's rules and be eligible for membership of their professional association) or such qualification as deemed acceptable by the employer. It is also the level for the early stages of the career of a health professional.
- (c) Progression between level 1 and 2 will be automatic.

### **20.7.2. Biomedical Engineer Class 2**

- (a) A health professional at this level works independently and is required to exercise independent judgement on routine matters. They may require professional supervision from more senior members of the profession or health team when performing novel, complex or critical tasks. They have demonstrated a commitment to continuing professional development and may have contributed to workplace education through provision of seminars, lectures or in-services. At this level the health professional may be actively involved in quality improvement activities or research.
- (b) At this level the health professional contributes to the evaluation and analysis of guidelines, policies and procedures applicable to their clinical/professional work and may be required to contribute to the supervision of discipline specific students.
- (c) Progression between level 1 and 2 will be automatic.

### **20.7.3. Biomedical Engineer Class 3**

- (a)** The Biomedical Engineer Class 3 is capable of carrying out responsibilities and varied professional engineering work, and makes independent studies, analyses, interpretations and conclusions.
- (b)** The Biomedical Engineer Class 3/1 is a biomedical engineer who is appointed and who either:
  - (i)** Is in charge of biomedical engineering staff, but not other professional engineers as a regular or continuous responsibility; or
  - (ii)** Performs without engineering supervision normal professional biomedical engineering tasks and accepts technical responsibility for such work; or
  - (iii)** Under professional engineering supervision undertakes more novel, more complex and/or critical biomedical engineering tasks.
- (c)** The Biomedical Engineering Class 3/1 is also a biomedical engineer who has:
  - (i)** Assisted other biomedical engineering staff with the solution of technical problems; and/or
  - (ii)** Demonstrated skill in the supervision of biomedical engineering staff; and/or
  - (iii)** Demonstrated the ability to provide clinical staff with technical assistance relating to the safety, application, evaluation and/or selection of medical equipment.
- (d)** The Biomedical Engineer Class 3/2 is a biomedical engineer who is appointed or after not more than one year as a class 3/1 Biomedical Engineer has been assessed as competent at that level and who has:
  - (i)** Demonstrated the knowledge and ability to prepare written specifications for medical equipment; and/or
  - (ii)** Demonstrated the knowledge and skill required to develop biomedical technology.
- (e)** The Biomedical Engineer Class 3/3 is a Biomedical Engineer who is appointed or after not more than one year as a Class 3/2 Biomedical Engineer has been assessed as competent at that level and who has:
  - (i)** Demonstrated the knowledge and ability to process medical product recalls, hazard alerts and incident investigations; and/or

- (ii) Demonstrated a good understanding of the international standards and regulatory requirements relating to medical technology; and/or
- (iii) Presented original research or biomedical technology design or development to a relevant professional group.

(f) Progression to level 3 will be by appointment.

#### **20.7.4. Biomedical Engineer Class 4**

- (a) The Biomedical Engineer Class 4 is expected to process mature engineering knowledge and judgement in Biomedical Engineering practice, to continue to develop expertise with advances in the relevant body of engineering knowledge, and, to seek and utilise other specialist advice when required. Such work normally is accepted as technically accurate and feasible.
- (b) The Biomedical Engineer Class 4/1 is a biomedical engineer who is appointed or reclassified from a lower level and who:
  - (i) Is in charge of graduate Biomedical Engineering staff; or
  - (ii) Has had the status of Experienced Engineer, as defined, for at least four years and is engaged upon Biomedical Engineering work of a research or development nature; or
  - (iii) Works under broad policy control and direction on professional Biomedical Engineering work of a novel, complex and/or critical nature; or
  - (iv) Is responsible for the organisation and supervision of the Biomedical Engineering work of a Department where considerations such as size, complexity of the work, or the scope of managerial responsibility do not justify a position of engineer class 5.
- (c) In addition to clause 20.8.4(b) the Biomedical Engineer Class 4/1 is a biomedical engineer and who has:
  - (i) Demonstrated the ability to successfully manage material and financial resources allocated to a Biomedical Engineering department and/or
  - (ii) Developed policies and procedures for the successful operation of a Biomedical Engineering department; and/or
  - (iii) Demonstrated the application of knowledge and skill to the development of specialist biomedical technology.

- (d) The Biomedical Engineer Class 4/2 is a biomedical engineer who is appointed or after not more than one year as a Class 4/1 Biomedical Engineer has been assessed as competent at that level and who has:
  - (i) Demonstrated the skills required for the successful management of the staff of a Biomedical Engineering department; and/or
  - (ii) Developed or arranged for the development of training programs for other Biomedical Engineers or hospital professionals; and/or
  - (iii) Demonstrated initiative in developing and/or managing specialist biomedical technology.
- (e) The Biomedical Engineer Class 4/3 is a biomedical engineer who is appointed or after not more than one year as a class 4/2 Biomedical Engineer has been assessed as competent at that level and who has:
  - (i) Provided the organisation with a medical equipment management service that is in accordance with best Biomedical Engineering practice; and/or
  - (ii) Demonstrated the ability to provide clinical staff with engineering consultation relating to the safety, application, specification, evaluation and selection of medical equipment or systems; and/or
  - (iii) Demonstrated the experience, knowledge and skill required for the development and/or management of specialist biomedical technology.
- (f) Single site managers will be classified at Class 4.
- (g) Progression to level 4 will be by appointment.

#### **20.7.5. Biomedical Engineer Class 5**

- (a) The Biomedical Engineer Class 5 works under broad policy control and direction and undertakes professional engineering work requiring either sustained managerial functions or in-depth engineering knowledge and competence, exercising experienced independent judgement and originality.
- (b) The Biomedical Engineer Class 5/1 is a biomedical engineer who is appointed or reclassified from a lower level and who either:
  - (i) Is responsible for the organisation and supervision of biomedical engineering work of a Department; or
  - (ii) Is a specialist Biomedical Engineer and who undertakes sustained specialist Biomedical Engineering functions beyond that of Biomedical Engineer Class 4.

- (c) The Biomedical Engineer Class 5/2 is a biomedical engineer who is appointed or after not more than two years as a Class 5/1 Biomedical Engineer has been assessed as competent at the leave and who:
  - (i) Has been assessed as a competent manager of the personnel resources of a Biomedical Engineering department; and/or
  - (ii) Assisted in the development of medical technology related policies and procedures for the organisation; and/or
  - (iii) Has demonstrated specialist expertise and experience in the development and/or management of specialist biomedical technology.
- (d) The Biomedical Engineer Class 5/3 is a biomedical engineer who is appointed or after not more than two years as a Class 5/2 Biomedical Engineer has been assessed as competent at that level and who has:
  - (i) Demonstrated good management practices; and/or
  - (ii) Provided a medical equipment management service that is in accordance with best Biomedical Engineering practice; and/or
  - (iii) Provided clinical staff with a high level of engineering consultation relating to the safety, application, specification, evaluation and selection of medical equipment or systems; and/or
  - (iv) Developed and/or managed specialist biomedical technology and who has presented original research or biomedical technology design or development information to a relevant professional group.
- (e) A multi-site manager will be classified as a Class 5.
- (f) Progression to level 5 will be by appointment.

## **21. PAYMENT OF SALARY**

- 21.1. Subject to any individual arrangements between an employer and a Biomedical Engineer salaries shall be paid no later than a Thursday following the end of the pay period.
- 21.2. On or prior to the day the employer shall state to each Biomedical Engineer in writing the amount of wages to which he/she is entitled, the amount of deductions there from, and the net amount being paid to him/her.

## **22. HIGHER DUTIES ALLOWANCE**

- 22.1.** Where a Biomedical Engineer is absent from work for any cause and a Biomedical Engineer in a lower class is appointed to assume all the duties and responsibilities of the Biomedical Engineer who is absent for more than five consecutive working days, such Biomedical Engineer shall be entitled to be paid for the period for which he/she assumed such duties at not less than the minimum rate prescribed for the classification applying to the Biomedical Engineer so relieved.

## **23. MEAL ALLOWANCE**

- 23.1.** An employee shall either be supplied with a meal or be paid an allowance of \$10.70.
- 23.1.1.** When overtime in excess of one hour is worked after the usual time of ceasing work for the day.
- 23.1.2.** When recalled to duty outside of usual working hours for a period in excess of two hours and when the time of such recall coincides with or over-runs normal hospital meal time.

## **24. TRAVELLING ALLOWANCE**

- 24.1.** A Biomedical Engineer who is recalled to work outside the normal working hours and who uses his/her vehicle for transport to a place of work and return shall receive an allowance corresponding with the kilometre rates as determined and updated from time to time by the Australian Taxation Office and published with a minimum payment of 60 cents for each occasion of such use. Such an allowance shall be incorporated into and form part of this Agreement. Any Biomedical Engineer who is recalled who does not use his/her vehicle shall be provided, at the expense of the employer, with a hire car or taxi, for the inward and return journeys.
- 24.2.** Should a Biomedical Engineer be required to use his/her vehicle during normal working hours on institution business, the engineer shall receive such allowance per kilometre as is granted in clause 24.1 of this Agreement.
- 24.3.** A Biomedical Engineer on rostered shifts who is required to use public transport to journey to or from work between 9.00 p.m. and 7.00 a.m, shall be provided with transport (taxi or hire car) if no public transport is available for the inward and/or outward journey. The institution shall be responsible for the payment of such transport.
- 24.4.** When an Employee is involved in travelling on duty, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the Employer on production of receipted account(s) or other evidence acceptable to the Employer.

- 24.5. Provided further that the Employee shall not be entitled to reimbursement for those expenses which exceed the mode of transport, meals or the standard of accommodation agreed for the purpose with the Employer.

## **25. TELEPHONE ALLOWANCE & TELEPHONE RECALL**

- 25.1. Where an employer requires a Biomedical Engineer to install and/or maintain a telephone for the purposes of being on call, the employer shall refund the installation costs and the subsequent six monthly rental charges on production of receipted accounts.
- 25.2. Where recall to duty can be managed without the Employee having to return to their workplace, such as by telephone, such Employee will be paid a minimum of one hour's overtime, provided that multiple recalls within a discrete hour will not attract additional payment.

## **26. HOURS OF WORK**

- 26.1. The hours for an ordinary week's work shall be 38, or be an average of 38 per week, in a two or four week period, or by mutual agreement, a five week period in the case of an employee working ten hour shifts, and shall be worked.
- 26.1.1. in a week of five days in shifts of not more than seven hours and 36 minutes each; or
- 26.1.2. by mutual agreement in a week of four days in shifts of not more than ten hours each; or
- 26.1.3. by mutual agreement, provided that the length of any ordinary shift shall not exceed ten hours.
- 26.2. Subject to the roster provisions 80 hours may be worked in any two consecutive weeks, but not more than 50 ordinary hours may be worked in any of such weeks.
- 26.3. With the exception of time occupied in having meals, the work of each shift shall be continuous.

## **27. ACCRUED DAYS OFF**

- 27.1. A full-time Employee rostered to work on shifts of eight hours duration will work 152 hours in each four week roster cycle to be worked as 19 days each of eight hours with an accrued day off in each four week roster cycle.
- 27.2. An accrued day off may be deferred for a maximum one month and only in exceptional circumstances and only with agreement between the employer and biomedical engineer.



## **28. MEAL INTERVAL**

- 28.1.** A meal interval of not less than 30 minutes and not more than 60 minutes shall be allowed during each shift in excess of five hours and shall not be counted as time worked.

## **29. REST PERIOD**

- 29.1.** At a time suitable to the employer, two rest periods each of ten minutes shall be given to each Biomedical Engineer during each ordinary hours period of duty and shall be counted as time worked.

## **30. ROSTERS**

- 30.1.** A roster setting out a Biomedical Engineer's normal working hours, times of commencing duty, time off duty, times of ending duty and times "on call" shall be kept posted or affixed in some conspicuous and readily accessible place. Except in the case of sickness or other emergency, the roster shall not be altered without at least three days' notice being given to the Biomedical Engineer affected by such alteration.

## **31. OVERTIME**

- 31.1.** An employer may require a Biomedical Engineer to work reasonable overtime and such Biomedical Engineer shall work overtime in accordance with such requirement.
- 31.2.** Only authorised overtime shall be paid for and the following rates of overtime shall apply:
- 31.2.1.** in excess of the ordinary hours, work on any one day - time and a half for the first two hours and double time thereafter;
  - 31.2.2.** outside a spread of twelve hours from the commencement of the last rostered period of ordinary duty - double time;
  - 31.2.3.** except as provided for in 31.2.4 overtime shall be paid for and a Biomedical Engineer shall not be allowed to take time off in lieu thereof;
  - 31.2.4.** a Biomedical Engineer - Class 4 and 5, may elect in lieu of payment of overtime, to take time off equivalent to the time worked at a time mutually agreed between the employer and the Biomedical Engineer.

## **32. SHIFT ALLOWANCE**

- 32.1.** In addition to any rates prescribed elsewhere in this Agreement a Biomedical Engineer whose rostered hours of ordinary duty finish between 6.00 p.m. and 8.00 a.m. or commence between 6.00 p.m. and 6.30 a.m. shall be paid an

amount equal to 2.5% of the rate applicable to first year of experience, Biomedical Engineer - Class 1 per rostered period of duty.

- 32.2.** Provided that in the case of a Biomedical Engineer working on any rostered hours of ordinary duty finishing on the day after commencing duty or commencing after midnight and before 5.00 a.m. he/she shall be paid for any such period of duty an amount equal to 4% of the rate applicable to the first year of experience Biomedical Engineer - Class 1 and provided further that in the case of a Biomedical Engineer permanently working on any such rostered hours of ordinary duty he/she shall be paid for any such period of duty an amount equal to 5% of the rate applicable to first year of experience Biomedical Engineer - Class I. Permanently working shall mean working for any period in excess of four consecutive weeks.
- 32.3.** Provided further that in the case of a Biomedical Engineer who changes from working on one shift to working on another shift the time of commencement of which differs by four hours or more from that of the first he/she shall be paid an amount equal to 4% of the rate applicable to first year of experience Biomedical Engineer - Class I on the occasion of each such change in addition to any amount payable under the preceding provisions of this clause.
- 32.4.** The allowances payable pursuant to this clause shall be calculated to the nearest five cents, portions of a cent being disregarded.

### **33. SPECIAL RATES (SATURDAY & SUNDAY)**

- 33.1.** Where Saturday or Sunday duties are required to be carried out in excess of the ordinary week's work, such duties shall be paid for at the rate of double time.
- 33.2.** All rostered time of ordinary duty performed on a Saturday or on a Sunday shall be paid for at the rate of time and a half.
- 33.3.** If the Saturday or Sunday duty involves duty in excess of the prescribed rostered hours, the excess period shall be paid for at the rate of double time for Saturday and Sunday.

### **34. STAFF APPRAISALS**

- 34.1.** Where a system of staff appraisal does not currently exist at a workplace, the employer may implement and the biomedical engineers will participate in a performance appraisal process provided:
- 34.1.1.** The employer first consults at the local level with Biomedical Engineers and/or their union representatives over a framework for staff appraisal process it is seeking to introduce;
- 34.1.2.** The staff appraisal process is not used as a disciplinary tool;

34.1.3. The staff appraisal process is intended to allow genuine feedback by both employer and biomedical engineer;

34.1.4. The outcomes of the review are documented and confirmed and a written copy of the outcomes is given to the biomedical engineers.

### **35. SUPERANNUATION**

35.1. A biomedical engineer employed by an employer prior to the commencement of this Agreement may remain a member of his/her current superannuation fund, but will be offered the option of becoming a member of the Health Employees Superannuation Trust of Australia superannuation fund ("HESTA") or the Health Super superannuation fund.

35.2. A biomedical engineer who begins employment with an employer after the commencement of this Agreement will have access to either HESTA or Health Super superannuation funds.

35.3. The default fund on commencement of the Agreement will be the Health Super superannuation fund.

35.4. At 12 monthly intervals throughout the life of this agreement the parties will have regard to the member's numbers in each of the HESTA and Health Super superannuation funds. The default fund, at each 12 month interval, will be the fund with the most biomedical engineers as members at each health service.

### **36. ANNUAL LEAVE**

#### **36.1. Period of leave**

36.1.1. A Biomedical Engineer who has been in the service of the same employer for a period of not less than twelve months shall be granted 152 hours leave on ordinary pay. An employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work.

#### **36.2. Annual leave - exclusive of public holidays**

36.2.1. The annual leave prescribed in 36.1.1 shall be exclusive of any of the holidays prescribed by clause 53 - Public holidays, and if any such holiday falls within a Biomedical Engineers period of annual leave and is observed on a day which in the case of that Biomedical Engineer would have been an ordinary working day there shall be added to the period of annual leave time equivalent to the ordinary time which the Biomedical Engineer would have worked if such day had not been a holiday.

**36.3. Leave to be taken**

**36.3.1.** The annual leave provided for by this clause shall be allowed and shall be taken and except as provided by clause 36.7 or 37 payment shall not be made or accepted in lieu of annual leave.

**36.4. Time of taking leave**

**36.4.1.** To assist biomedical engineers in balancing their work and family responsibilities by agreement between the employer and biomedical engineer annual leave may be taken at any time within a period of 24 months from the date at which it falls due.

**36.4.2.** To assist biomedical engineers in balancing their work and family responsibilities, a biomedical engineer may elect, with the consent of the employer, to take annual leave in single periods not exceeding ten days in any calendar year at a time or times agreed between them.

**36.5. Leave allowed before due date**

**36.5.1.** An employer may allow annual leave to a Biomedical Engineer before the right thereto has accrued due, but where leave is taken in such case a further period of annual leave shall not commence to accrue until after the expiration of the twelve months in respect of which annual leave had been taken before it accrued. Where leave has been granted to a Biomedical Engineer pursuant to this subclause before the right thereto has accrued due and the Biomedical Engineer subsequently leaves or is discharged from the service of the employer before completing the twelve months continuous service in respect of which the leave was granted and the sum paid by the employer to the Biomedical Engineer as ordinary pay for the annual leave or part so taken in advance exceeds the sum which the employer is required to pay under clause 36.7 the employer shall not be liable to make any payment to the Biomedical Engineer under clause 36.7 and shall be entitled to deduct the amount of such excess from remuneration payable to the Biomedical Engineer upon termination of the employment.

**36.6. Payment for period of annual leave**

**36.6.1.** Each Biomedical Engineer before going on leave shall be paid for the period of such leave provided the period is not less than one week.

**36.7. Proportionate leave**

**36.7.1.** Where the employment of a Biomedical Engineer is terminated at the end of the period of employment of less than twelve months, the employer shall forthwith pay to the Biomedical Engineer, in addition to all other amounts due to him, an amount equal to 1/12th of his/her ordinary pay for that period.

**36.7.2.** Where the employment of a Biomedical Engineer who has become entitled to one or more periods of annual leave provided by this award is terminated, the employer shall be deemed to have given all of such leave (except so much, if any, as has already been taken) to the Biomedical Engineer as from the date of the termination of the employment, and shall forthwith pay to the Biomedical Engineer, in addition to all other amounts due to the Biomedical Engineer, the Biomedical Engineers ordinary pay for the period of that leave.

**36.7.3.** Paragraph 36.7.1 applies to and in respect of any annual leave (except so much, if any, as has already been taken) whether or not the Biomedical Engineer concerned continues to be entitled (apart from this clause) to take it, and so applies as if the Biomedical Engineer's rights to take it had accrued immediately before the date of the termination of the Biomedical Engineer's employment.

**36.7.4.** Nothing in clauses 36.7.2 or 36.7.3 affects the obligation of an employer to give or a Biomedical Engineer to take annual leave in accordance with this Agreement.

**36.8. Weekend worker**

**36.8.1.** A Biomedical Engineer who is a shiftworker for the purposes of the National Employment Standards, as defined or described in the *Health Professionals and Support Services Award 2010*, shall be entitled to one additional week's annual leave, in accordance with the Act.

**36.8.2. Additional leave (full-time)**

- (a) For all purposes of this clause in addition to the leave herein prescribed a full-time Biomedical Engineer as defined required to work and who worked ordinary hours as prescribed under clause 26.1 on week days and on weekends throughout the qualifying twelve-month period of service shall be allowed 38 working hours leave.
- (b) A full-time Biomedical Engineer with twelve months continuous service so engaged for part of the qualifying twelve-month period shall have the leave prescribed in clause 36.1 increased by 3 hours 48 minutes for each month during which engaged as aforesaid.
- (c) A full-time Biomedical Engineer so engaged for part of the qualifying twelve-month period whose employment is terminated shall receive in addition to other amounts due in lieu of annual leave a pro rata payment based on the amount payable under this subclause for the full qualifying twelve month period and the period so engaged.

- (d) This subclause shall not apply to any weekend on which the Biomedical Engineer works four hours or less.

**36.8.3. Part-time Biomedical Engineers only - Sunday worker**

- (a) For the purposes of this Agreement Sunday worker shall mean any Biomedical Engineer who in any one year of employment works portion of his/her ordinary hours on a Sunday.
- (b) A Sunday worker who works on ten or more Sundays during the yearly period of which his/her leave accrues shall be allowed 38 working hours' leave additional to the leave herein before prescribed. This subclause shall not apply to any Sunday on which the biomedical engineer works four hours or less.

**36.8.4. No duplication of entitlements**

- (a) For the avoidance of doubt, a shiftwork (as described in clause 36.8.1) who is also an employee as defined in either of clauses 36.8.2(a) or 36.8.3(b), will not be entitled to additional leave under clause 36.8.2 or 36.8.3.

**36.9. Other periods of leave during annual leave**

**36.9.1.** If a period during which a Biomedical Engineer takes paid annual leave includes a period of any other leave (other than unpaid parental leave) under Part 2-2 of the Act (the National Employment Standards), or a period of absence from employment under Division 8 of Part 2-2 of the Act (which deals with community service leave), the Biomedical Engineer is taken not to be on paid annual leave for the period of that other leave or absence.

**36.9.2.** If the Employer so requires, the Biomedical Engineer must give his or her Employer evidence that would satisfy a reasonable person that the leave taken is for a reason specified in clause 38.4.1 or clause 39.1.1 of this Agreement, as the case may be. A Biomedical Engineer is not entitled to take leave under clauses 38 or 39 unless he or she complies with any such requirement. Where a Biomedical Engineer complies with this provision the number of days specified in the required evidence shall be deducted from any personal/carer's leave entitlement standing to the Biomedical Engineer's credit, and shall be re-credited to his/her annual leave entitlement.

**36.9.3.** The amount of annual leave loading received for any period of annual leave converted to any other form of leave in accordance with clause 36.9.1 shall be deducted from any future entitlement to annual leave loading, or if the Biomedical Engineer resigns, from termination pay.

### **36.10. Annual leave loading**

**36.10.1.** A loading of 17.5% shall be paid at the time leave is taken provided always that such loading shall in no case be payable when the Biomedical Engineer is in receipt of a weekly wage in excess of the rate for a Biomedical Engineer - Class 4 – 1st year; and further provided that where the wage of a Biomedical Engineer is in excess of the rate for a Biomedical Engineer - Class 4 – 1st year per week the 17.5% loading shall be replaced by and payable by an amount equal to 17.5% of the rate for a Biomedical Engineer - Class 4 – 1st year.

**36.10.2.** The loading calculated according to clause 36.10.1 shall be payable on proportionate leave paid on termination and calculated according to 36.7.1.

### **37. CASHING OUT ANNUAL LEAVE**

**37.1.** Where a biomedical engineer has accrued annual leave in excess of eight (8) weeks then by mutual written agreement the employer may pay the annual leave (and annual leave loading as applicable) in excess of eight weeks to the biomedical engineer as a one-off cash payment. Superannuation contributions will be paid by the employer in respect of the period of annual leave to be paid out.

**37.2.** Cashing out of accrued annual leave in accordance with clause 37.1 is subject to:

**37.2.1.** Paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and

**37.2.2.** Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and

**37.2.3.** The employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

### **38. PERSONAL/CARER'S LEAVE**

**38.1.** Biomedical Engineers will advise the employer of their intention to take sick leave prior to the commencement of their rostered shift, unless it is impractical to do so.

**38.2.** The entitlement to personal/carer's leave for a full time employee is set out in clause 38.4.2 of this Agreement.

**38.3.** Where a biomedical engineer is required to attend prenatal appointments or where parenting classes are only available or can only be attended during the ordinary rostered shift of the biomedical engineer, then the biomedical engineer shall access their carer's leave credit for such purpose on production of satisfactory evidence to this effect.

**38.4. Amount of paid personal/carer's leave**

**38.4.1.** Paid personal/carer's leave will be available to an employee when they are absent because of:

- (a) personal illness or injury; or
- (b) personal illness or injury of an immediate family or household member who requires the employee's care or support; or
- (c) an unexpected emergency affecting an immediate family or household member; or
- (d) the requirement to provide ongoing care and attention to another person who is wholly or substantially dependent on the employee, provided that the care and attention is not wholly or substantially on a commercial basis.

**38.4.2.** The amount of leave a Biomedical Engineer is entitled to depends on how long the Biomedical Engineer has worked for the employer and accrues as follows:

- (a) During the first year of service, 7.6 hours for each month of service up to 91.2 hours;
- (b) During the second, third & fourth years of service, 106.4 hours will be available;
- (c) In the fifth and subsequent years of service, 159.6 hours will be available.

**38.4.3.** An employee's entitlement accrues progressively during a year of service according to the employee's ordinary hours of work, and unused personal/carer's leave accumulates from year to year.

**38.4.4.** The entitlement for part-time employees accrues on a pro-rata basis.

**38.5. Immediate family or household**

**38.5.1.** The term immediate family includes:

- (a) a spouse, de facto partner, child, parent, grandparent, grandchild, or sibling of the Biomedical Engineer; or



- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Biomedical Engineer.

38.5.2. The term *de facto partner* means:

- (a) A person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
- (b) Includes a former de facto partner of the employee.

### 38.6. Use of accumulated personal/carer's leave

38.6.1. An employee is entitled to use accumulated personal/carer's leave for the purposes of this clause where the current year's personal/carer's leave entitlement has been exhausted.

#### 38.6.2. Biomedical Engineer must give notice

- (a) The biomedical engineer must, as soon as reasonably practicable and during the ordinary hours of the first duty as far as practicable state the nature of the injury, illness or emergency and the estimated duration of the absence. If it is not reasonably practicable to inform the employer during the ordinary hours of the first day or shift of such absence, the Biomedical Engineer will inform the employer within 24 hours of such absence.
- (b) When taking leave to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, the notice must include:
  - (i) The name of the person requiring care and support and their relationship to the Biomedical Engineer;
  - (ii) The reasons for taking such leave; and
  - (iii) The estimated length of absence.

#### 38.6.3. Evidence supporting claim

- (a) When taking leave for personal illness or injury, the Biomedical Engineer must, if required by the employer, establish by production of evidence that would satisfy a reasonable person that the leave taken is for a reason specified in clause 38.4.1 of this Agreement and that the Biomedical Engineer was unable to work because of injury or personal illness.

- (b) When taking leave to care for members of their immediate family or household who are sick and require care and support, the Biomedical Engineer must, if required by the employer, establish by production of evidence that would satisfy a reasonable person that the leave taken is for a reason specified in clause 38.4.1 of this Agreement, and that such a reason requires care by the Biomedical Engineer.
- (c) When taking leave to care for members of their immediate family or household who are sick and require care due to an unexpected emergency, the Biomedical Engineer must, if required by the employer, establish by production of evidence that would satisfy a reasonable person, that the leave taken is for a reason specified in clause 38.4.1 of this Agreement and that the nature of the emergency was such that it resulted in the person concerned requiring care by the Biomedical Engineer.

#### **38.6.4. Single Day Absences**

- (a) A Biomedical Engineer may be absent through sickness for one day, without furnishing evidence of such sickness, on not more than three occasions in any one year of service, provided that where a Biomedical Engineer is rostered to work on a public holiday and fails to do so through sickness, they shall not be entitled to sick leave unless they furnish evidence of such sickness within three days of their return to work.

#### **38.7. Absence on public holidays**

- 38.7.1. If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.

#### **38.8. Unpaid personal leave**

- 38.8.1. Where an Employee has exhausted all paid personal/carer's leave entitlements, he/she is entitled to take unpaid carer's leave to provide care or support in the circumstances outlined in clauses 38.4.1(b), 38.4.1(c) and 38.4.1(d). The organisation and the Employee will agree on the period. In the absence of agreement, the Employee is entitled to take up to two (2) days' unpaid carer's leave per occasion.

#### **38.9. Casual employees – Caring responsibilities**

- 38.9.1. Casual employees are entitled to be unavailable to attend work or to leave work:

- (c) If they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
- (d) upon the death in Australia of an immediate family or household member.

**38.9.2.** The organisation and the employee will agree on the period for which the employee will be entitled to be unavailable to attend work. In the absence of agreement, the employee is entitled to not be unavailable to attend work for up to two (2) days per occasion. The casual Employee is not entitled to any payment for the period of non-attendance.

**38.9.3.** The organisation will require the casual employee to provide evidence that would satisfy a reasonable person that the leave taken is for a reason specified in clause 38.4.1 of this Agreement to support the taking of this leave.

### **38.10. Transfer Between Hospitals**

Where a Biomedical Engineer transfers to another hospital under this Agreement, accumulated sick leave to their credit up to a maximum of 2128 hours shall be credited to them in their new employment as accumulated sick leave. The hospital may require a Biomedical Engineer to produce a written statement from their previous employer specifying the amount of accumulate sick leave credit at the time of leaving that previous employment.

## **39. COMPASSIONATE LEAVE**

### **39.1. Amount of compassionate leave**

**39.1.1.** Employees are entitled to two days compassionate leave on each occasion, when a member of the employee's immediate family or a member of the employee's household:

- (a) contracts or develops a personal illness that poses a serious threat to his or her life;
- (b) sustains a personal injury that poses a serious threat to his/her life; or
- (c) dies.

Where such leave is taken:

- (d) to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness or sustained the injury referred to above; or

- (e) after the death of the member of the employee's immediate family or household.
- 39.1.2. For the purpose of this clause immediate family has the same meaning as per clause 38.5 of this Agreement.
- 39.1.3. Any unused portion of compassionate leave will not accrue from year to year and will not be paid out on termination.
- 39.1.4. Such leave does not have to be taken consecutively.
- 39.1.5. An employee may take unpaid compassionate leave by agreement with the employer.
- 39.1.6. The organisation will require the employee to provide evidence that would satisfy a reasonable person that the leave taken is for a reason specified in clause 39.1.1 of this Agreement to support the taking of compassionate leave.

#### **40. LONG SERVICE LEAVE**

##### **40.1. Entitlements**

- 40.1.1. A Biomedical Engineer shall be entitled to long service leave with pay, in respect of continuous service with one and the same employer, or service with Institutions or Statutory Bodies, in accordance with the provisions of this clause.
- 40.1.2. Subject to 40.1.2(d), the amount of such entitlement shall be:
  - (a) On the completion by the Biomedical Engineer of fifteen years continuous service - six months long service leave and thereafter an additional two months long service leave on the completion of each additional five years service.
  - (b) In addition, in the case of a Biomedical Engineer who has completed more than fifteen years service and whose employment is terminated otherwise than by the death of the Biomedical Engineer an amount of long service leave equal to 1/30th of the period of his/her service since the last accrual of entitlement to long service leave under 40.1.2(a).
  - (c) In the case of a Biomedical Engineer 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 1/30th of the period of service.

- (d) For the purpose of determining the entitlement of any Biomedical Engineer under any provision of this clause in respect of a period of employment beginning before 31st December, 1964, and ending after the said date, so much of that service as was completed before said date shall be reduced by one quarter.

#### **40.2. Service entitling to leave**

- 40.2.1.** Subject to this subclause the service of a Biomedical Engineer of an Institution or Statutory Body 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 Institution or Institutions for the periods required by clause 40.1 of this Agreement.
- 40.2.2.** Subject to this subclause service shall also include all periods during which a Biomedical Engineer was serving in Her Majesty's Forces or was made available by the employer for National Duty.
- 40.2.3.** When calculating the aggregate of service entitling to leave any period of employment with any one of the said Institutions or Statutory Bodies of less than six months duration shall be disregarded.
- 40.2.4.** Where the business is transmitted from one employer (the transmitter) to another employer (the transmitted) a Biomedical Engineer who worked with the transmitter and who continues in the service of the transmitted shall be entitled to count his/her service with the transmitter as service with the transmitted for the purposes of this clause.
- 40.2.5.** For the purposes of this clause service shall be deemed to be continuous notwithstanding:
  - (a) the taking of any annual leave or long service leave;
  - (b) any absence from work of not more than fourteen days in any year on account of injury or illness or if applicable such longer period as provided in clause 38 – Personal leave;
  - (c) 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;
  - (d) any absence on account of injury arising out of or in the course of the employment of the Biomedical Engineer for a period during which payment is made under clause 54 - Accident pay;

- (e) any leave of absence of the Biomedical Engineer where the absence is authorised in advance in writing by the employer to be counted as service;
- (f) an interruption arising directly or indirectly from an industrial dispute;
- (g) 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 Biomedical Engineers allowable period of absence from employment. A Biomedical Engineers allowable period of absence from employment shall be five weeks in addition to the total period of paid annual and/or sick leave which the Biomedical Engineer actually receives on termination or for which he/she is paid in lieu;
- (h) the dismissal of a Biomedical Engineer if the Biomedical Engineer is re-employed within a period not exceeding two months from the date of such dismissal;
- (i) any absence from work of a Biomedical Engineer for a period not exceeding twenty four months in respect of an entitlement under clause 41 – Parental Leave;
- (j) any other absence of a Biomedical Engineer by leave of the employer, or on account of injury arising out of or in the course of his/her employment not covered by clause 40.2.5(d) of this Agreement.

40.2.6. In calculating the period of continuous service of any Biomedical Engineer; any interruption or absence of a kind mentioned in 40.2.5(a) to 40.2.5(e) of the last preceding subclause shall be counted as part of the period of his/her service, but any interruption or absence of a kind mentioned in 40.2.5(f) to 40.2.5(j) of the said subclause shall not be counted as part of the period of service unless it is authorised in writing by the employer.

40.2.7. The onus of providing a sufficient aggregate of service to support a claim for any long service leave entitlement shall at all times rest upon the Biomedical Engineer concerned. A certificate in the following form shall constitute acceptable proof.

**Certificate of Service**

.....

.....  
(Name of Institution)

(Date)

This is to certify  
that.....  
(Name of Biomedical Engineer)

has been employed by this Institution/Society/Board, for a  
period

of.....(Years/Months/etc.)

from.....to.....(Dates).

Specify hereunder full details of paid or unpaid leave or absences  
including periods represented by payment made in lieu of leave on  
termination:-

.....  
.....  
.....  
.....

Specify hereunder full details of long service leave granted during  
service or on termination:-

.....  
.....  
.....  
.....

Signed

.....  
.....

(Stamp of Institution)

.....

- 40.2.8.** Every employer shall keep or cause to be kept a long service leave record for each Biomedical Engineer containing particulars of service, leave taken and payments made.

**40.3. Payment in lieu of long service leave on the death of a Biomedical Engineer**

**40.3.1.** Where a Biomedical Engineer who has completed at least ten years service dies while still in the employ of the employer, the employer shall pay to such Biomedical Engineers personal representative a sum equal to the pay of such Biomedical Engineer for 1/30th of the period of the Biomedical Engineers continuous service in respect of which leave has not been allowed or payment made immediately prior to the death of the Biomedical Engineer.

**40.4. Payment for period of leave**

**40.4.1.** Payment to a Biomedical Engineer in respect of long service leave shall be made in one of the following ways:

- (a) in full in advance when the Biomedical Engineer commenced his leave; or
- (b) at the same time as payment would have been made if the Biomedical Engineer has remained on duty; in which case payment shall, if the Biomedical Engineer in writing so requires, be made by cheque posted to a specified address; or
- (c) in any other way agreed between the employer and the Biomedical Engineer.

**40.4.2.** Where the employment of a Biomedical Engineer is for any reason terminated before he/she takes any long service leave to which he/she is entitled or where any long service leave accrues to a Biomedical Engineer pursuant to 40.1.2(b) the Biomedical Engineer shall subject to the provisions of 40.4.3 be entitled to pay in respect of such leave as at the date of termination of employment.

**40.4.3.** Where any long service leave accrues to a Biomedical Engineer pursuant to 40.1.2(c) the Biomedical Engineer shall be entitled to pay in respect of such leave as at the date of termination of employment.

- (k) Provided in the case of a Biomedical Engineer of an Institution or Statutory Body who accrues entitlement pursuant to 40.1.2(c) and who intends to be re-employed by another Institution or Statutory Body.
  - (i) Such a Biomedical Engineer may in writing request payment in respect of such leave to be deferred until after the expiry of the Biomedical Engineer's allowable period of absence from employment provided in 40.2.5(i).



- (ii) Except where the Biomedical Engineer gives the employer notice in writing that the Biomedical Engineer has been employed by another Institution or Statutory Body the employer shall make payment in respect of such leave at the expiry of the Biomedical Engineer's allowable period of absence from employment.
- (iii) Where the Biomedical Engineer gives the employer notice in writing that the Biomedical Engineer has been employed by another Institution or Statutory Body the employer is no longer required to make payment to the Biomedical Engineer in respect of such leave.

**40.4.4.** Where an increase occurs in the ordinary time rate of pay during any period of long service leave taken by the Biomedical Engineer, the Biomedical Engineer shall be entitled to receive payment of the amount of any increase in pay at the completion of such leave.

#### **40.5. Taking of leave**

**40.5.1.** Where a Biomedical Engineer becomes entitled to long service leave such leave shall be granted by the employer 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, or in default of agreement as is determined by Fair Work Australia; provided that no such determination shall require such leave to commence before the expiry of six months from the date of such determination.

**40.5.2.** Any long service leave shall be inclusive of any public holiday occurring during the period when the leave is taken.

**40.5.3.** If the employer and a Biomedical Engineer so agree:

- (a) the first six months long service leave to which a Biomedical Engineer becomes entitled under this determination may be taken in two or three separate periods; and
- (b) any subsequent period of long service leave to which the Biomedical Engineer becomes entitled may be taken in two separate periods,

But save as aforesaid long service shall be taken in one period.

**40.5.4.** An employer may by agreement with a Biomedical Engineer grant long service leave to the Biomedical Engineer before the entitlement to that leave has accrued, provided that such leave shall not be granted before the Biomedical Engineer has completed ten years service.

40.5.5. Where the employment of a Biomedical Engineer 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 worker upon termination, deduct and withhold an amount equivalent to the amount paid to the Biomedical Engineer in respect of the leave in advance.

#### 40.6. Definitions

For the purpose of this clause, the following definitions apply:

40.6.1. *Pay* means remuneration for a Biomedical Engineer's normal weekly hours of work calculated at the Biomedical Engineer's ordinary time rate of pay provided in clause 20 of this Agreement, at the time the leave is taken or (if he/she dies before the completion of leave so taken) as at the time of his/her death; and shall include the amount of any increase to the Biomedical Engineer's ordinary time rate of pay which occurred during the period of leave as from the date such increase operates.

40.6.2. *Month* shall mean a calendar month.

40.6.3. *Institution* shall mean any hospital or benevolent home, community health centre, Society, or Association registered and subsidised pursuant to the Health Services Act, the Cancer Institute constituted under the Cancer Act or the Fairfield Hospital Board or the Bush Nursing Association (Inc.).

40.6.4. *Statutory body* means the former Hospitals and Charities Commission (Vic) and its successors, the Department of Human Services and its predecessors, and/or the Nurses Board of Victoria.

40.6.5. *Transmission* includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and transmitted has a corresponding interpretation.

40.7. Where a biomedical engineer is entitled to a period of long service leave, the employer shall, at the request of the biomedical engineer and subject to the approval of the employer (such approval shall not be unreasonably withheld) allow the biomedical engineer to take the whole or any part of the long service leave at double the quantum of leave at half pay or half the quantum of leave at double pay (as the case may be).

#### 41. PARENTAL LEAVE

41.1. Subject to the terms of this clause employees are entitled to paid and unpaid maternity, paternity/partner and adoption leave and to work part-time in

connection with the birth or adoption of a child in respect of whom the employee will have care responsibilities.

- 41.2.** The provisions of this clause apply to full-time, part-time and eligible casual employees, but do not apply to other casual employees.
- 41.3.** An **eligible casual employee** means a casual employee:
- 41.3.1.** employed by an employer on a regular and systematic basis for a sequence of periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
  - 41.3.2.** who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.
- 41.4.** For the purposes of this clause, continuous service is work for an employer on a regular and systematic basis (including any period of authorised leave or absence).
- 41.5.** An employer must not fail to re-engage a casual employee because:
- 41.5.1.** the employee or employee's spouse is pregnant; or
  - 41.5.2.** the employee is or has been immediately absent on parental leave.
- 41.6.** The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.
- 41.7. Definitions**
- 41.7.1.** For the purpose of this clause child means a child of the employee under school age except for adoption of an eligible child where 'eligible child' means a person under the age of 16 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.
  - 41.7.2.** For the purposes of this clause, spouse includes a de facto spouse, former spouse or former de facto spouse. The employee's "de facto spouse" means a person who lives with the employee as husband, wife or same sex partner on a bona fide domestic basis, although not legally married to the employee.
- 41.8. Basic entitlement**
- 41.8.1.** Employees who have, or will have, completed at least twelve months continuous service, are entitled, subject to any extended leave granted under the NES, to a combined total of 52 weeks paid and

unpaid parental leave on a shared basis in relation to the birth or adoption of their child, which must be taken by an employee in a single continuous period. An employee who does not satisfy the qualifying service requirement for the paid components of leave, or an employee who is an eligible casual employee, shall be entitled to leave without pay for a period not exceeding 52 weeks.

**41.8.2.** Effective from 11 May 2010 eligible employees shall be entitled to parental leave in accordance with the following table:

Type of Leave	Paid Leave	Unpaid Leave	Combined Total
Maternity Leave	9 weeks	43 weeks if primary caregiver	52 weeks
Paternity/Partner	1 week	51 weeks if primary caregiver	52 weeks
Adoption Leave – Primary Caregiver	9 weeks	43 weeks	52 weeks
Adoption Leave – Secondary Caregiver	1 week	2 weeks	3 weeks

**41.8.3.** Effective from 11 May 2011 eligible employees shall be entitled to parental leave in accordance with the following table:

Type of Leave	Paid Leave	Unpaid Leave	Combined Total
Maternity Leave	10 weeks	42 weeks if primary caregiver	52 weeks
Paternity/Partner	1 week	51 weeks if primary caregiver	52 weeks
Adoption Leave – Primary Caregiver	10 weeks	42 weeks	52 weeks
Adoption Leave – Secondary Caregiver	1 week	2 weeks	3 weeks

**41.9. Employee Couple – Concurrent Leave**

**41.9.1.** In the case of employee couples, parental leave is to be available to only one parent at a time, in a single unbroken period. However, both parents may simultaneously take up to three weeks' leave (including any paid leave), in accordance with the Act.

**41.9.2.** Unless the employer agrees the concurrent leave must not start before, and must not end more than three weeks after the date of the birth of the child or the day of the placement of the child.

**41.9.3.** The total concurrent leave must be for a period of three weeks or less. If the employer agrees, the concurrent leave may start earlier or end up to three weeks later than is permitted by clause 41.9.2.

#### 41.10. Maternity leave

**41.10.1.** Subject to clause 41.8.1 and unless agreed otherwise between the employer and employee, an employee may begin maternity leave at any time within six weeks immediately prior to the expected date of birth. Otherwise the period of parental leave must start on the date of birth or placement of the child, as relevant, except where taken by spouses or de facto partners in accordance with the Act.

**41.10.2.** Where an employee continues to work within the six week period immediately prior to the expected date of birth of the child or is on paid leave under 41.17.2, an employer may require the employee to provide a medical certificate containing the following statements (as applicable):

- (a) A statement of whether the employee is fit for work;
- (b) If the employee is fit for work – a statement of whether it is inadvisable for the Biomedical Engineer to continue in her present position during a stated period because of:
  - (i) Illness or risks, arising out of the employee's pregnancy; or
  - (ii) Hazards connected with the position.
- (c) Appropriate documentation for the purpose of clause 41.10.2 may also be provided by a midwife.

**41.10.3.** The employer may require the employee to take a period of unpaid parental leave as soon as practicable if:

- (a) The employee does not give the employer the certificate requested under clause 41.10.2 within 7 days after the request; or
- (b) Within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is not fit for work; or
- (c) The following sub-paragraphs are satisfied:
  - (i) Within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is fit for work, but that is inadvisable for the employee to continue in her present position for a stated period for a reason referred to in clause 41.10.2(b) (i) or (ii); and

- (ii) Clause 41.17 (transfer to a safe job) does not apply to the employee.

**41.10.4.** The period of leave under clause 41.10.3 must not end later than the earlier of the following:

- (a) The end of the pregnancy;
- (b) If the employee has given the employer notice of taking a period of leave connected with the birth of a child (whether it is unpaid parental leave or some other kind of leave) – the start date of that leave.

**41.10.5.** The period of leave under clause 41.10.3:

- (a) Is an exception to the rule that the employee must take her unpaid parental leave in a single continuous period;
- (b) Is an exception to the rules about when the Biomedical Engineer's period of unpaid parental leave must start;

**41.10.6.** The employee is not required to comply with the evidentiary requirements in clause 41.12 of this Agreement in relation to the period of leave.

**41.10.7.** Where leave is granted under 41.11.1, 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.

#### **41.11. Personal illness leave and special maternity leave**

**41.11.1.** Where the pregnancy of an employee not then on maternity leave terminates other than by the birth of a living child, the employee must as soon as practicable give notice to the employer of the taking of leave advising the employer of the period, or expected period, of the leave (the employer may require the employee to provide evidence that would satisfy a reasonable person that the leave is taken for a reason below, including without limitation a medical certificate as a precondition to taking the leave, in accordance with the following:

- (a) Where the pregnancy terminates during the first 20 weeks, during the notified period/s the employee is entitled to access any paid and/or unpaid personal illness leave entitlements in accordance with the relevant personal leave provisions and any unpaid special maternity leave that may apply under the Act;
- (b) Where the pregnancy terminates after the completion of 20 weeks, during the notified period/s the employee is entitled to

paid special maternity leave not exceeding the amount of paid maternity leave available under clause 41.8, and thereafter, to unpaid special maternity leave in accordance with the Act.

- 41.11.2. Where an employee not then on maternity leave is suffering from a pregnancy related illness she may take any paid personal illness leave to which she is entitled and/or unpaid personal illness leave in accordance with the relevant personal illness leave provisions under this Agreement or the Act (including in relation to unpaid special maternity leave).

**41.12. Notice and evidentiary requirements**

- 41.12.1. A Biomedical Engineer must provide notice to the employer in advance of the expected date of confinement of parental leave as outlined by the clause.
- 41.12.2. The Biomedical Engineer must give written notice of the taking of parental leave (including the intended start and end dates of the leave) at least 10 weeks before commencing leave.
- 41.12.3. Where this is not practicable (for example, if such failure results from confinement occurring earlier than the expected date, or from a requirement of an adoption agency to accept earlier or later placement of a child), the Biomedical Engineer will provide such notice as soon as reasonably practicable.
- 41.12.4. At least four weeks before the intended start date, as notified under clause 41.12.2 of this Agreement, the Biomedical Engineer must in writing confirm the intended start and end dates of the leave, or advise the employer of any changes to these dates, unless it is not practicable to do so.
- 41.12.5. In the case of maternity or paternity leave, the employer may require the Biomedical Engineer to provide such evidence as would satisfy a reasonable person of the date of birth, including without limitation, a medical certificate stating the date of birth or expected date of birth of the child.
- 41.12.6. In the case of adoption leave the employer may require the Biomedical Engineer to provide such evidence as would satisfy a reasonable person of the day of placement or expected day of placement of the child and that the child is or will be under 16 as at the day of placement or expected day of placement.
- 41.12.7. When the Biomedical Engineer gives notice under clause 41.12.2 the Biomedical Engineer must also provide a statutory declaration stating particulars of any period of partner leave sought or taken by the Biomedical Engineer's spouse and that for the period of parental

leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

**41.12.8.** A Biomedical Engineer is not entitled to take paid parental leave unless he or she has complied with clause 41.12.1 to 41.12.7 as relevant.

**41.12.9.** A Biomedical Engineer is not entitled to take unpaid parental leave unless he or she has complied with clause 41.12.1 to 41.12.6 as relevant.

**41.13. Unpaid pre-adoption leave**

**41.13.1.** A Biomedical Engineer seeking to adopt a child is, on the production of satisfactory evidence if required, entitled to unpaid leave for the purpose of attending any interviews or examinations necessary to the adoption procedure. The Biomedical Engineer and the employer should agree on the length of the unpaid leave.

**41.13.2.** Where agreement cannot be reached the employee is entitled to take up to two days unpaid leave. Where paid leave is available the employee may require the employer to take such leave instead

**41.14. Right to request extended parental leave**

**41.14.1.** A Biomedical Engineer may request an extension of the period of unpaid parental leave provided for in clause 41.8 of this Agreement under and in accordance with the National Employment Standards.

**41.15. Variation of period of parental leave**

**41.15.1.** Unless agreed otherwise between the employer and the Biomedical Engineer, where a Biomedical Engineer takes leave under clause 41.8 for less than the available period, the Biomedical Engineer may apply to their employer to extend the period of parental leave, within the available period, on one occasion.

**41.15.2.** Any such change must be notified in writing at least four weeks prior to the commencement of the changed arrangements. The notice must specify the new end date of the parental leave.

**41.16. Parental leave and other entitlements**

**41.16.1.** A Biomedical Engineer 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 or a longer period as agreed in accordance with the National Employment Standards.



**41.16.2.** Where a public holiday occurs during a period of paid parental leave, the public holiday is not to be regarded as part of the paid parental leave and the employer will grant the employee a day off in lieu, to be taken by the Biomedical Engineer immediately following the period of paid parental leave.

**41.17. Transfer to a safe job**

**41.17.1.** Where a Biomedical Engineer is pregnant and provides evidence that would satisfy a reasonable person (including, without limitation, a medical certificate) that she is fit for work but it is inadvisable for her to continue in her present position during a stated period (the risk period) because of illness or risks arising out of the pregnancy or hazards connected with the work assigned to the Biomedical Engineer, the employer will, transfer the Biomedical Engineer to an appropriate safe job (as defined by the Act), provided one exists, with no other change to the employee's terms and conditions of employment (by reference to the hours actually worked) during the risk period.

**41.17.2.** Where no appropriate safe job exists, the Biomedical Engineer may take paid no safe job leave, at the employee's base rate of ordinary hours of work for the risk period.

**41.17.3.** If the Biomedical Engineer's pregnancy ends before the end of the risk period, the risk period ends when the pregnancy ends.

**41.17.4.** If a Biomedical Engineer is on paid no safe job leave during the six week period before the expected date of birth of the child, and the Biomedical Engineer has failed to comply with a request by the employer for a medical certificate stating whether the employee is fit for work, the employer may require the Biomedical Engineer to take unpaid parental leave, in accordance with the Act.

**41.17.5.** The entitlement to no safe job leave is in addition to any other leave entitlement the employee has.

**41.17.6.** The provisions of clauses 41.10.4, 41.10.5 & 41.10.6 of this Agreement apply to the period of leave.

**41.18. Returning to work after a period of parental leave**

**41.18.1.** 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.

**41.18.2.** Subject to clause 41.18.3, 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 clause

41.17 hereof, the employee will be entitled to return to the position they held immediately before such transfer.

41.18.3. 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.

**41.19. Replacement employees**

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

41.19.2. 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.

**41.20. Consultation and Communication during Parental leave**

41.20.1. Where a Biomedical Engineer is on parental leave and a definite decision has been made that will have a significant effect on the status, pay or location of the employee's pre-parental leave position, the employer shall take reasonable steps to give the employee information about and an opportunity to discuss, the effect of the decision on that position.

41.20.2. The Biomedical Engineer shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the Biomedical Engineer intends to return to work and whether the employee intends to request to return to work on a part-time basis.

41.20.3. The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with 41.20.1.

**41.21. Right to request flexible working arrangements**

41.21.1. A Biomedical Engineer who is a parent or has responsibilities for the care of a child may ask the employer for a change in working arrangements under and in accordance with the National Employment Standards.

**41.22. Additional matters**

41.22.1. Previous service within the public health sector is to be regarded for the purposes of accessing the entitlement to paid maternity leave or maternity leave or adoption save for biomedical engineers with less than 12 months service with an employer.

41.22.2. Payment shall be made at the commencement of leave or, if requested by the biomedical engineer, by 4 salary payments over 8 weeks.

41.22.3. Biomedical engineers who already receive maternity/parental leave payments in excess of those above shall not suffer any disadvantage.

## 42. DONORS LEAVE

Upon the request of a biomedical engineer, the employer shall release biomedical engineers to donate blood where a collection unit is on site or by arrangement at local level.

## 43. PUBLIC HOLIDAYS PAY FOR PART TIME STAFF ROSTERED OFF

43.1. To determine the entitlement to public holidays for part-timers rostered off on a public holiday the following shall apply:

43.1.1. Where a public holiday occurs on a day a part-time biomedical engineer normally works, but the biomedical engineer is not required to work, the biomedical engineer is entitled to receive the public holiday benefit as outlined in clause 53 of this Agreement.

43.1.2. Where a review of the roster pattern of the biomedical engineer over the preceding six months shows that the biomedical engineer has worked 50% or more on the days which a particular public holiday falls, the biomedical engineer shall be entitled to receive payment according to the following formula based on the prescription of clause 53 of this Agreement.

43.1.3. Average weekly hours over the previous six months are to be determined and a pro-rate payment made.

### Example:

Average Hours	Shift Length	Base Payment	Penalty	Payment
<u>24 hours</u> 38hours	x 8 Hours	5.05 hours	T 1.5	7.575

## 44. ON-CALL/RECALL ALLOWANCE

### 44.1. Recall - Overtime

44.1.1. An Employee who is recalled to work during an off duty period where that work is not continuous with the next succeeding rostered period of duty will be paid overtime for a minimum of three hours pay at the overtime rate as defined in clause 31 of this Agreement.

- 44.1.2. An Employee recalled to work will not be required to work the full three hours if the work to be performed is completed in a shorter period.
- 44.1.3. Clause 44.1.2 will not apply when overtime is continuous with completion or commencement of ordinary working time.
- 44.2. In lieu of receiving payment for overtime worked in accordance with this clause, Employees may, with the consent of the Employer, be allowed to take time off, for a period of time equivalent to the period worked in excess of ordinary rostered hours of duty, plus a period of time equivalent to the overtime penalty incurred. Such time in lieu shall be taken as mutually agreed between the Employer and the Employee, provided that the accrual of such leave shall not extend beyond a 28 day period. Where the leave is not taken within 28 days, such time shall be paid in accordance with this clause at the rate of pay which applied on the day the overtime was worked.
- 44.3. An Employer may require an Employee to work reasonable overtime at overtime rates and such an Employee will work overtime in accordance with such a requirement.
- 44.4. **Rest Period after Recall - Overtime (including Saturday and Sunday)**
  - 44.4.1. When overtime work including recall work (but excluding telephone recall work) is necessary it should be arranged so that Employees have at least 10 consecutive hours off duty between that work and the next successive shift.
  - 44.4.2. An Employee who works so much overtime or recall work (excluding telephone recall work) between the termination of her/his last previous rostered ordinary hours of duty and the commencement of her/his next succeeding rostered period of duty that she/he would not have had at least 10 consecutive hours off duty between the completion of overtime/recall and the commencement of the next rostered shifts, then subject to this clause, she/he shall be released after completion of such overtime or recall work until she/he has had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.
  - 44.4.3. If an Employee is required by the Employer to resume or to continue to work without having had 10 consecutive hours off duty she or he will be paid at the rate of double time until they have been released from duty for such rest period and she/he shall then be entitled to 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.
- 44.5. **Transport following overtime**
  - 44.5.1. In the event of any Employee finishing any period of overtime at a time when reasonable means of transport are not available for the

Employee to return to her/his place of residence the Employer shall provide adequate transport free of cost to the Employee.

**44.6. Oncall/Recall**

- 44.6.1. An Employee may be rostered to be "on call" (that is to be available to be recalled to duty in that period of time beyond the Employee's rostered hours of duty).
- 44.6.2. An Employee rostered to be on-call shall be paid the "on-call allowance" equal to 2.5% of the weekly rate for Biomedical Engineer – Class 1 Year 2, per 12 hour period or part thereof.
- 44.6.3. An Employee is entitled to four clear days in each fortnight of a four week roster cycle free of duty, including on-call/recall **work**.

**44.7. Alternate On Call Allowance (Four Clear Days).**

- 44.7.1. A Party may propose that all Employees at a particular campus be covered by an alternate arrangement to that in clause 44.6.3. The proposal may be implemented where the Employer, APESMA and the majority of affected biomedical engineering staff genuinely agree.
- 44.7.2. Any arrangements adopted in accordance with this clause shall be recorded in writing and copies shall be provided to Employees to whom the arrangements apply.

**44.8. Recall - Telephone Allowance**

- 44.8.1. Where recall to duty can be managed without the Employee having to return to their workplace, such as by telephone, such Employee will be paid a minimum of one hour's overtime, provided that multiple recalls within a discrete hour will not attract additional payment.

**45. STUDY/CONFERENCE LEAVE**

- 45.1. Paid study leave will be available to all full-time and part-time Employees at the Employer's discretion. The Employer will not unreasonably refuse a request for study leave.
  - 45.1.1. Paid study leave may be taken as mutually agreed by, for example, four hours per week, eight hours per fortnight or blocks of 38 hours at a residential school.
  - 45.1.2. A part-time Employee will be entitled to paid study leave on a pro-rata basis.

**45.1.3.** An Employee wishing to take study leave in accordance with paragraph (b) must apply in writing to the Employer as early as possible prior to the proposed leave date. The Employee's request should include:

- (a) details of the course and institution in which the Employee is enrolled or proposes to enrol; and
- (b) details of the relevance of the course to the Employee's employment.

**45.1.4.** The Employer must, within seven days of the application being made, notify the Employee of whether her or his request for study leave has been approved.

**45.1.5.** Leave pursuant to this clause does not accumulate from year to year.

**45.2. Study/Conference/Seminar Leave**

**45.2.1.** All full-time and part-time Employees are entitled to two days' paid study/conference/seminar leave per annum. The two days' paid study/conference/seminar leave will be based on the individual Employee's usual shift length.

**45.2.2.** Leave pursuant to this clause does not accumulate from year to year.

**45.2.3.** Study/conference/seminar leave may be taken:

- (a) to attend a biomedical engineering or health related conference or seminar; or
- (b) for undertaking study.

**45.2.4.** An Employee seeking leave in accordance with this clause can be requested to provide details of the conference/seminar name, venue and date/time. An Employee is not required to report back in any way or provide in-services following conference/seminar attendance.

**45.2.5.** Where possible the leave should be requested in writing six weeks in advance of the proposed leave date.

**45.2.6.** The Employer will not unreasonably withhold approval of the leave.

**45.2.7.** The Employer must, wherever possible, notify the Employee whether leave will be granted within seven days of the application being made.

#### **46. LEAVE TO ENGAGE IN EMERGENCY RELIEF ACTIVITIES**

- 46.1.** Local Health Services may, by agreement between the parties, develop a policy that facilitates the release of an employee from duty without loss of pay where such employee is a member of a recognised voluntary emergency relief organisation and where there is a local emergency situation, provided that such leave can be facilitated without unreasonably affecting the operations of the health service.
- 46.2.** A Biomedical Engineer will be entitled to take unpaid leave in relation to an eligible community service activity subject to and in accordance with the National Employment Standards (Division 8 (Community Service) of Part 2-2 of the Act.

#### **47. FORTY EIGHT/FIFTY-TWO WEEK RULE**

To facilitate a greater work life balance for an employee and notwithstanding any other provision of this Agreement, an Employee may, with the agreement of the Employer, work between 48 and 51 weeks per year.

#### **48. SUBSTITUTION OF RELIGIOUS PUBLIC HOLIDAYS**

Subject to the ongoing operational needs of the employer an employee may, with the prior agreement of the employer, substitute a gazetted public holiday with a nominated religious holiday. Where a religious holiday is nominated to be a substitute and the employee works on the gazetted holiday he or she will be paid at ordinary time. Applications are to be made at least one month in advance of the date on which the public holiday occurs.

#### **49. TRAINING**

- 49.1.** The parties agree that during the life of the Agreement, they will jointly examine the extent and nature of any training that is desirable that would ensure that biomedical engineering services are fully capable of responding to and keeping abreast of technological developments relevant to the work of biomedical engineers in Victorian public hospitals. The parties to this agreement will establish a joint Working Party which will develop its own Terms of Reference and have the capacity to invite relevant experts to contribute to the deliberations of the Working Party.
- 49.2.** If there are moves to a registration model, the parties will develop, or seek the assistance of Fair Work Australia to develop a training model to meet any mandatory registration requirements.

#### **50. PRODUCTIVITY/SERVICE IMPROVEMENT MATTERS**

- 50.1.** Each employer, in consultation with biomedical engineers, will undertake a review of the use of overtime in the workplace with the aim of achieving a targeted reduction in the use of non-essential overtime over the life of the Agreement.

- 50.2. Local Health Services will undertake negotiations with their Employees to develop Positive Attendance Programs to address these problems should they exist in the workforce. Positive Attendance Programs may be developed on a financial or non-financial basis at the Employer's complete discretion.
- 50.3. Continued co-operation and support of biomedical engineers for the implementation of the development and implementation of a standardised/high cost equipment asset database for medical devices across Victorian hospitals.
- 50.4. The Parties agree to review existing on-call/re-call arrangements. The Parties agree to consider the appropriateness of a cost-neutral replacement of all or some of the current on-call/re-call allowances with a Remote Technology Allowance. The costs of the technology are to be borne by the employer.

## **51. EXAMINATION LEAVE**

- 51.1. A Biomedical Engineer shall be granted leave with full wages in order to attend examinations necessary to obtain a qualification as specified in clause 20.6 of this Agreement, provided that such examinations are held within the Commonwealth of Australia.
- 51.2. The amount of such leave shall be sufficient to allow the Biomedical Engineer:
  - 51.2.1. to proceed to and from the place of examination; and
  - 51.2.2. in addition, allow three clear days prior to the oral examination and either three clear days or three single days prior to the written papers with a maximum of six days pre-examination study leave in any calendar year;
  - 51.2.3. any leave granted under the provision of this clause shall be in addition to the provisions of clause 36 - Annual leave.

## **52. JURY SERVICE**

- 52.1. A Biomedical Engineer required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of salary he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on jury service.
- 52.2. A Biomedical Engineer shall notify his/her employer as soon as possible of the date upon which he/she is required to attend for jury service.
- 52.3. The employer may require the employee to give the employer evidence that would satisfy a reasonable person:



- 52.3.1. that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
- 52.3.2. of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the employee for the period.
- 52.4. If, in accordance with subsection 52.3, the employer requires the employee to give the employer the evidence referred to in that subsection:
  - 52.4.1. the employee is not entitled to payment under subsection 52.1 unless the employee provides the evidence; and
  - 52.4.2. if the employee provides the evidence – the amount payable to the employee under clause 52.1 is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.

### **53. PUBLIC HOLIDAYS**

- 53.1. A Biomedical Engineer shall be entitled to holidays on the following days:
  - 53.1.1. New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and
  - 53.1.2. The following days, as prescribed in the relevant States, Territories and localities: Australia Day, Anzac Day, Queen's Birthday and Eight Hours' Day or Labour Day; and
  - 53.1.3. Melbourne Cup Day or in lieu of Melbourne Cup Day, some other day as determined in a particular locality;
  - 53.1.4. When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December;
  - 53.1.5. When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December;
  - 53.1.6. When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.
- 53.2. Where in a State, Territory or locality, public holidays are declared or prescribed on days other than those set out in clause 53.1, those days shall constitute additional holidays for the purpose of this Agreement.
- 53.3. An employer and his or her employees may agree to substitute another day for any prescribed in this clause. For this purpose, the consent of the majority of affected Biomedical Engineers shall constitute agreement.
- 53.4. An agreement pursuant to clause 53.3 shall be recorded in writing and be available to every affected Biomedical Engineer.

- 53.5.** The union which is party to this award shall be informed of an agreement pursuant to clause 53.3 provided agreement is made with a union member.
- 53.6.** A Biomedical Engineer who works (excepting on recall) on any day specified in clause 53.1 shall:
- 53.6.1.** be paid for the time so worked with a minimum of four hours wages at the rate of time and a half in addition to the weekly wage prescribed herein; or
  - 53.6.2.** be entitled to time off amounting to one and a half times the hours worked with a minimum of six hours time off without loss of pay; such time off shall be taken at a time mutually convenient to the hospital and the Biomedical Engineer within one month of the day on which the Biomedical Engineer worked - provided that where a Biomedical Engineer is entitled to a full working day off, such time off may be added to the Biomedical Engineers annual leave by mutual consent.
- 53.7.** A Biomedical Engineer who is recalled to duty and works on any day specified in 53.1 shall be paid from the time of receiving the recall until the time of finishing such recall duty with a minimum of three hours' payment for each such recall at the rate of time and a half in addition to the weekly wage prescribed herein.
- 53.8.** Where such holiday occurs on his or her rostered day off, the Biomedical Engineer shall be entitled to receive one and a half day's pay in addition to the weekly wage or one and a half days off at a time convenient to the hospital without loss of pay in lieu thereof.
- 53.8.1.** Where a Biomedical Engineer is rostered to work on a public holiday and fails to do so, such Biomedical Engineer shall not be entitled to holiday pay for the holiday.
  - 53.8.2.** Where a Biomedical Engineer who is rostered to work on a public holiday, requests and is granted the day off such Biomedical Engineer shall not be entitled to holiday pay for the holiday unless the request was made by the Biomedical Engineer at least three clear working days prior to the date of such holiday.
- 53.9.** In respect of Easter Saturday, a Biomedical Engineer who ordinarily works Monday to Friday only and who does not work on Easter Saturday, shall be entitled to one days pay in respect of Easter Saturday, or where there is mutual consent within four weeks following the date on which such holiday occurred the Biomedical Engineer may take one day off in lieu or have one day added to his/her annual leave.

## 54. ACCIDENT PAY

### 54.1. Definitions

The words hereunder shall bear the respective definitions set out herein.

#### 54.1.1. Accident pay

- (a) **Total incapacity** - In the case of a Biomedical Engineer who is deemed to be totally incapacitated within the meaning of the Workers' Compensation Act (hereinafter referred to as the Act) and arising from an injury covered by this clause means a weekly payment of an amount representing the difference between the total amount of compensation paid under Section 9.1(b)(i) of the Act for the week in question and the total weekly award rate, as varied from time to time, and any other over award payment being paid to the Biomedical Engineer at the date of injury and which would have been payable for the Biomedical Engineer's normal classification of work for the week in question if he/she had been performing his/her normal duties provided that such latter rate shall exclude additional remuneration by way of overtime payments, shift premiums, special rates or other similar payments.
- (b) **Partial incapacity** - In the case of a Biomedical Engineer who is or is deemed to be partially incapacitated within the meaning of the Workers' Compensation Act and arising from an injury covered by this clause means a weekly payment of an amount representing the difference between the total amount of compensation paid under Section 9.1(b)(ii) of the Act for the period in question together with the average weekly amount the Biomedical Engineer is earning or is able to earn in some suitable employment or business (as determined expressly or by implication by the Workers' Compensation Board or as agreed between the parties) and the total weekly award rate, as varied from time to time, and any weekly over award payment being paid to the Biomedical Engineer at the date of injury and which would have been payable for the Biomedical Engineer's classification for the week in question if he/she had been performing his/her normal duties provided that such latter rate shall exclude additional remuneration by way of overtime payments, shift premiums, special rates or other similar payments.

The payment abovementioned shall be the same as that applying for a total incapacity provided that where a Biomedical Engineer receives a weekly payment under this section and subsequent such payment is reduced pursuant to Section 9.6(1) of the Act, such reduction will not increase the

liability of the employer to increase the amount of accident pay in respect of that injury.

**(c) Payment for part of a week**

Where a Biomedical Engineer receives accident pay and such pay is payable for incapacity for part of a week the amount shall be a direct pro rata.

**54.1.2. Injury**

- (a)** Injury shall be given the same meaning and application as applying under the Workers' Compensation Act, and no injury shall result in the application of accident pay unless an entitlement exists under the Act.

**54.1.3. Workers Compensation Act**

- (a)** Means the Workers' Compensation Act 1958, as amended from time to time of the State of Victoria.
- (b)** Where an entitlement to Accident Make-up Pay arises under this Award any reference to the Workers Compensation Act 1958 shall be deemed to include a reference to the Accident Compensation Act 1985 and any reference to the Accident Compensation Act 1985 shall be deemed to include a reference to the Workers Compensation Act 1958.

**54.2. Qualification for payment**

**54.2.1.** Always subject to the terms of this clause, a Biomedical Engineer covered by this Agreement shall upon receiving payment of compensation and continuing to receive such payment in respect of a weekly incapacity within the meaning of the Act be paid accident pay by his/her employer who is liable to pay compensation under the Act, which said liability by the employer for accident pay may be discharged by another person on his/her behalf, provided that:

**54.2.2.** Accident pay shall only be payable to a Biomedical Engineer whilst such Biomedical Engineer remains in the employment of the employer by whom he/she was employed at the time of the incapacity and then only for such period as he/she receives a weekly payment under the Act. Provided that if a Biomedical Engineer on partial incapacity cannot obtain suitable employment from the employer but such alternative employment is available with another employer then the relevant amount of accident pay shall still be payable.

- (a)** Provided further that in the case of the termination of employment by the employer of a Biomedical Engineer who is

incapacitated and who except for such termination would be entitled to accident pay, accident pay shall continue to apply subject to the provisions of this clause except in those cases where the termination is due to serious and/or wilful misconduct on the part of the Biomedical Engineer.

- (b) In order to qualify for the continuance of accident pay on termination a Biomedical Engineer shall, if required, provide evidence to the employer for the continuing payment of weekly workers compensation payments.
- (c) Accident pay shall not apply to any incapacity occurring during the first two weeks of employment unless such incapacity continues beyond the first two weeks and then, subject to clause 54.2.2(e) and to the maximum period of payment prescribed elsewhere herein, accident pay shall apply only to the period of incapacity after the first two weeks.
- (d) Provided that as to industrial diseases contracted by a gradual process or injuries subject to recurrence, aggravation or acceleration (as provided in Section 3 of the Act) such injuries or diseases shall not be subject to accident pay unless the employee has been employed with the employer at the time of the incapacity for a minimum period of one month.
- (e) Accident pay shall not apply in respect of any injury during the first five normal working days of incapacity. Provided however that in the case of a Biomedical Engineer who contracts an infectious disease in the course of duty and is entitled to receive Workers' Compensation therefore shall receive accident pay from the first day of the incapacity.
- (f) A Biomedical Engineer on engagement may be required to declare all workers' compensation claims made in the previous five years and in the event of false or inaccurate information being deliberately and knowingly declared the employer may require the Biomedical Engineer to forfeit his/her entitlement to accident pay under this clause.

#### **54.3. Maximum period of payment**

The maximum period or aggregate of periods of accident pay to be made by an employer shall be a total of 39 weeks for any one injury as defined in clause 54.1.2 of this Agreement.

#### **54.4. Absences on other paid leave**

A Biomedical Engineer shall not be entitled to payment of accident pay in respect of any period of other paid leave of absence.

**54.5. Notice of injury**

**54.5.1.** A Biomedical Engineer upon receiving an injury for which he/she claims to be entitled to receive accident pay shall give notice in writing of the said injury to the employer as soon as reasonably practicable after the occurrence thereof: provided that such notice may be given by a representative of the Biomedical Engineer.

**54.6. Medical examination**

**54.6.1.** In order to receive entitlement to accident pay a Biomedical Engineer shall conform to the requirements of the Act as to medical examination.

**54.6.2.** Where in accordance with the Act a medical referee gives a certificate as to the condition of the Biomedical Engineer and his/her fitness for work or specifies work for which the Biomedical Engineer is fit and such work is made available by the employer and refused by the Biomedical Engineer or the Biomedical Engineer fails to commence the work, accident pay shall cease from the date of such refusal or failure to commence the work.

**54.7. Cessation of weekly payments**

Where there is a cessation or redemption of weekly compensation payments under the Act the employer's liability to pay accident pay shall cease as from the date of such cessation or redemption.

**54.8. Civil damages claims**

**54.8.1.** A Biomedical Engineer receiving or who has received accident pay shall advise the employer of any action he/she may institute or any claim he/she may make for damages. Further the Biomedical Engineer shall, if requested, provide an authority to the employer entitling the employer to a charge upon any money payable pursuant to any judgement or settlement on that injury.

**54.8.2.** Where a Biomedical Engineer obtains a judgement or settlement for damages in respect of an injury for which he/she has received accident pay the employer's liability to pay accident pay shall cease from the date of such judgement or settlement: provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the Biomedical Engineer shall pay to the employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.

**54.8.3.** Where a Biomedical Engineer obtains a judgement or settlement for damages against a person other than the employer in respect of an injury for which he/she has received accident pay the employer's

liability to pay accident pay shall cease from the date of such judgement or settlement; provided that if the judgement or settlement for damages is not reduced either in whole or part by the amount of accident pay made by the employer the Biomedical Engineer shall pay to the employer any amount of accident pay already received in respect of that injury by which the judgement or settlement has not been so reduced.

**54.9. Insurance against liability**

Nothing in this award shall require the employer to insure against its liability for accident pay.

**54.10. Variations in compensation rates**

Any changes in compensation rates under the Act shall not increase the amount of accident pay above the amount that would have been payable had the rates of compensation remained unchanged.

**54.11. Death of a Biomedical Engineer**

All rights to accident pay shall cease on the death of a Biomedical Engineer.

**55. UNIFORM ALLOWANCE**

Where the employer requires a Biomedical Engineer to wear a uniform or protective clothing or where such uniform or protective clothing is necessary to protect the clothing or person of a Biomedical Engineer, the employer must reimburse the employee the cost of purchasing such uniform. The provisions of this clause do not apply where the uniform is paid for by the employer.

**56. DAMAGED CLOTHING ALLOWANCE**

Where a Biomedical Engineer in the course of his or her employment suffers any damage to or soiling of clothing or other personal effects the employer must reimburse the Biomedical Engineer the cost of the replacement, repair or cleaning of such clothing or personal effects provided immediate notification is given of such damage or soiling. This clause shall not apply in the case where the damage or soiling is occasioned by the negligence of the Biomedical Engineer.

**57. SIGNATORIES**

**For and on behalf of Western Health:**

.....  
Chief Executive Officer

Date:.....

**For and on behalf of the Association of Professional Engineers Scientists and  
Managers Australia ("APESMA"):**

.....  
Chief Executive Officer

Date:.....