



Australian Salaried Medical Officers' Federation  
(New South Wales)

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ASMOF:AHRC  
31 January 2014

Ms Elizabeth Broderick  
Federal Sex Discrimination Commissioner  
Australian Human Rights Commission  
Level 3, 175 Pitt Street, SYDNEY NSW 2000

**By website:** <http://www.humanrights.gov.au/pregnancy-discrimination>

Dear Ms Broderick

### **Pregnancy and Return to Work National Review**

The Australian Salaried Medical Officers' Federation NSW ('ASMOF') is a registered industrial organisation of employees under the *Industrial Relations Act 1996* (NSW). In NSW it represents the industrial interests of Staff Specialists, Clinical Academics, Career Medical Officers, Registrars, Residents and Interns, with most of these medical practitioners working in the NSW Health Service.

ASMOF would seek to provide some feedback to the National Review you are conducting on the prevalence, nature, and consequences of discrimination relating to pregnancy at work and return to work after parental leave. I note that as part of this process, ASMOF was represented in the Unions NSW delegation at a meeting conducted in your Sydney Office on 7 November 2013.

At that time we provided de-identified examples of difficulties encountered by some of our medical practitioner members at the beginning or during their clinical training/career. The following attachment sets out a couple of such indicative examples that demonstrates the problems encountered and how the current practice and approach affects women in being able to exercise both their rights as a parent and employee.

Currently we are in discussions with the NSW Ministry of Health and hope to be able to resolve this situation and circumvent what ASMOF and its members believe is the disadvantage that currently befalls those who find themselves in such a situation.

If any further assistance is required, please contact Mr Dennis Ravlich from ASMOF via email on [dennisr@asmof.org.au](mailto:dennisr@asmof.org.au) or on telephone number (02) 9212 6900.

Yours sincerely

for  
**Dr Tom Karplus**

Secretary  
ASMOF NSW

Attachment

cc Ms Lisa Pusey (via [lisa.pusey@humanrights.gov.au](mailto:lisa.pusey@humanrights.gov.au))

## **Submission to the Pregnancy and Return to Work National Review being conducted by the Australian Human Rights Commission**

### **Background**

In NSW, the contractual arrangements applied by public health organisations when engaging Medical Officers under the *Public Hospital (Medical Officers) Award* ('the Award') are set out in an ancillary document issued by the Ministry of Health entitled '*Medical Officers - Employment Arrangements in the NSW Public Health System*' [[PD2010\\_074](#)] ('Policy Directive').

The Policy Directive sets out the following arrangements to be entered into with those Medical Officers entering into a training program following their progression from tertiary studies or when recruited to a training program in order to achieve specialist qualifications:

### ***"3.2.1 Pre-vocational Training Programs and Australian Medical Council (AMC) Graduates***

*Medical officers recruited into the networked pre-vocational training program are to be offered two year contracts.*

*Medical officers in post graduate year 1 and AMC graduates in their first year are engaged as Interns under the Public Hospital (Medical Officer) Award. Subject to satisfactory performance and obtaining unconditional registration, the medical officers will progress to, and be classified as, Resident Medical Officers, Year 1 as specified under the Public Hospital (Medical Officer) Award after 12 months." [pp 2]*

### ***"3.2.2 Vocational Training Programs***

*Medical officers recruited to a vocational training program are to be engaged under one contract for the minimum potential period for completion of the training program. The contract length may vary dependent on the training program, including whether the training program is divided into basic and advanced training components, and any previous training the medical officer may have undertaken, although it is anticipated in most circumstances the length of the contract will not be less than 2 years. Continuation of the contract is dependent on progression through the program at the expected rate and is subject to satisfactory annual performance review." [pp 3]*

The Policy Directive also notes as follows:

### ***"9 MATERNITY, ADOPTION AND PARENTAL LEAVE***

*Under the Public Hospital (Medical Officer) Award, medical officers are entitled to paid maternity, adoption or parental leave if they have completed 40 weeks continuous service prior to the anticipated date of birth or prior to taking custody of the child.*

*Where a medical officer's contract is due to expire and there is a reasonable expectation that the medical officer will be immediately re-engaged under another fixed term contract, for example where a prevocational trainee completes their training and moves to a vocational training program or a vocational trainee completes the basic training program and moves into an advanced training program, the fact that the medical officer may proceed on maternity, adoption or parental leave for part of the new contract is not a relevant factor when the medical officer is being assessed for suitability to the position and no adverse inference should be drawn against a medical officer's application in these circumstances.*

*Medical officers under this scenario are to be advised that they are entitled to apply for a position in the following year in the normal way so that they will retain eligibility to any paid entitlement under the Award.*

*The financial responsibility for paid leave rests with the public health organisation in which the medical officer is engaged when the paid leave is taken.” [pp 8-9]*

The rights to maternity, adoption and parental leave are set out in Clause 17 of the Award, which specifically sets out the following entitlements in relation to the return to work after having taken, for example, maternity leave under the clause:

**“Clause 17 A (xiv) Right to return to previous position:**

*In accordance with the obligations set out in Section 66 of the Industrial Relations Act 1996, an employee returning from maternity leave has a right to resume her former position.*

*Where this position no longer exists, the employee is entitled to be placed in a position nearest in status and salary to that of her former position and to which the employee is capable or qualified.”*

and

**“Clause 17 D Right to Request**

- (i) *An employee entitled to maternity, adoption or parental leave may request the employer to allow the employee:*
  - (a) *to extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of eight weeks;*
  - (b) *to extend the period of unpaid maternity, adoption or extended parental leave for a further continuous period of leave not exceeding 12 months;*
  - (c) *to return from a period of maternity, adoption or parental leave on a part time basis until the child reaches school age; to assist the employee in reconciling work and parental responsibilities.*

- (ii) *The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.*
- (iii) *The employee's request and the employer's decision made under subclauses (i)(b) and (c) must be recorded in writing.*
- (iv) *Where an employee wishes to make a request under subclause (i)(c):*
  - (a) *the employee is to make an application for leave without pay to reduce their full time weekly hours of work*
  - (b) *such application must be made as early as possible to enable the employer to make suitable staffing arrangements. At least four weeks notice must be given;*
  - (c) *salary and other conditions of employment are to be adjusted on a basis proportionate to the employee's full time hours of work ie for long service leave the period of service is to be converted to the full time equivalent and credited accordingly.*
  - (d) *employees who return from leave under this arrangement remain full time employees. Therefore the payment of any part time allowance to such employees does not arise."*

Also of some relevance to this subject matter is an industrial dispute determined by the Industrial Relations Commission of NSW [*NSW Nurses Association v North Coast Area Health Service* [2008] NSWIRComm 1072]. This decision, in effect, determined that once a fixed term contract (temporary) employee had met the test to become an eligible employee under the relevant award for the purposes of maternity leave (ie "... must have also completed at least 40 weeks continuous service prior to the expected date of birth") then the entitlements to at least paid maternity leave should be made available, whether a contract was under foot or not.

### **Current Situation**

It is anticipated that Medical Officers will complete their prevocational training within the two calendar years that constitutes the initial contract/engagement. This allows the obtaining of unconditional registration as a medical practitioner, which in turn permits them to make application to training positions in vocational training programs (ie a program undertaken, for example, to achieve specialist qualifications).

Generally the experiences of ASMOF and its members are that when a Medical Officer is unable to complete all the requisite components of their training in the initial 2 year contract period (due, for example, to exercising rights under the maternity, adoption and parental leave provisions of the Award), public health organisations in the NSW Health Service are reluctant to give a comparable extension of the contract in order for the Medical Officer to complete their training.

In other words, the contract is date/calendar based and not based on the completion of the requisite number of terms/rotations. There is no automaticity in extending the contract in such circumstances to facilitate completion of prevocational training.

This then bears the Medical Officer who becomes pregnant some significant prejudice, due to taking maternity leave, in not being able to complete this episode of prevocational training on their return to work and therefore they are unable to progress and obtain unconditional registration and/or then further apply for positions in vocational training programs.

Even if an extension is made available, it often is associated with debate or dispute and/or following representations from ASMOF for example - all of which is of course stressful to the Medical Officer and their family.

### **Case Study 1 <sup>1</sup>**

Dr AB was a Medical Officer who was part way through a Contract of Temporary Employment with a Network JMO Unit. The contract stated they were employed for their *“second clinical year (52 weeks) from 17th June 2013 to the end of your period of appointment on 15th June 2014”*.

Dr AB was due to take approximately 10 months maternity leave to have her second child, with the leave to begin on 30th December 2013. It was her intention to return to work for the final term of 2014 to complete resident training, thus making them eligible to apply for Post Graduate Year 3 positions in 2015. Without successful completion of at least four resident (PGY2) terms, it was Dr AB’s understanding that they would not be eligible for jobs in the next stage of their career at Senior Resident Medical Officer level.

When Dr AB submitted her application for maternity leave to the Network JMO Unit they were advised that *“there is a question currently with the Ministry of Health regarding extending temporary contracts to cover a period of maternity leave”*. The JMO Unit was not able to advise as to what employment options would be open to Dr AB if their contract was to expire while on maternity leave. They further were unable to provide any surety as to how Dr AB may be able to complete the final resident training term if the contract were to expire before the completion of the mandatory number of terms.

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<sup>1</sup> Case studies have been de-identified. They reflect actual cases that ASMOF is aware of and have been selected to reflect ‘typical’ scenarios.

Dr AB considered that such actions would be deleterious to their career and was discriminatory. *“I believe that it would be an act of discrimination if I were not able to return to my former position after a period of maternity leave. It would have ongoing negative implications for my career in terms of training posts available to me, it would place undue financial burden on my family. I believe that in any other workplace it would be considered discriminatory not to be able to return to one’s former position when on leave for maternity purposes. I believe I have been treated differently to my colleagues with respect to the end of the period of appointment.”* [Dr AB]

### **Case Study 2**

Dr CD was on a (spousal) visa and had taken maternity leave during the two year training program. Her husband was an Australian Citizen. Dr CD is a PGY 2 in her second year of training. Due to taking the maternity leave, it essentially left Dr CD two (2) terms short of completing her second 12 months of training. Due to not being able to complete the second year of training, Dr CD would not then be able to apply for General Practice Training the following year with a private practice, something she had been enrolled in since 2012.

Dr CD sought an extension of contract, which was originally denied by the public health organisation. ASMOF made representations on behalf of Dr CD, including the Ministry of Health who was sympathetic to the situation. Discretion was ultimately exercised in her favour and an extension of the contract was offered so that the two (2) remaining terms could be completed.

### **Case Study 3**

Dr JK entered into a two year contract of employment for a vocational training program from January 2012. This was as a full time equivalent (‘FTE’) employee. Dr JK subsequently went on a period of maternity leave during her second year of employment. Due to their carer responsibilities, she requested a return to work at reduced hours.

This will require an extension to the original contract that was predicated on working 1 FTE. In this instance, while the public health organisation was prepared to facilitate a reduced hours return, it was predicated on an escalation of hours worked over the contract extension, which required a completion of training requirements by the end of 2014.

This offer from the public health organisation unfortunately will require a return to full time hours in the later part of the extension to meet the date imposed for the completion of training requirements. ASMOF is continuing representations on behalf of Dr JK as it would appear that whilst not saying no, the public health organisation has nonetheless imposed conditions on the return to work that does not adequately account for the carer responsibilities of Dr JK.

### **Comment**

It does not seem unreasonable that a Medical Officer's training not be compromised through the taking of maternity, adoption or parental leave. Wherever possible, the length of the contract, for example, should be extended to cover the period of the leave taken, with approval from the relevant College also not being unreasonably withheld.

The inability to complete the prevocational training program, for example, via an orderly and flexible manner if maternity leave is taken bears a significant and disproportionate impact upon a Medical Officer as it prevents the obtaining of unconditional registration and access to vocational training programs.

Similar problems also arise with Vocational Training programs designed to lead to the attainment of specialist qualifications.