

# WELLINGTON SOUTHERN COMMUNITY LABS COLLECTIVE AGREEMENT

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# CONTENTS

<b>PART ONE - COVERAGE AND APPLICATION MATTERS</b> .....	<b>1</b>
1 UNDERLYING PRINCIPLES .....	1
2 NATURE OF AGREEMENT .....	1
3 PARTIES TO THE AGREEMENT .....	2
4 COVERAGE .....	2
5 ROLE OF THE ASSOCIATION.....	2
6 NEW EMPLOYEES.....	2
7 VARIATION.....	2
8 TERM .....	3
9 DEFINITIONS .....	3
<b>PART TWO - REMUNERATION &amp; HOURS OF WORK</b> .....	<b>4</b>
10 SALARIES.....	4
11 HOURS OF WORK.....	5
12 SUPERANNUATION .....	5
13 PAYMENT OF SALARY .....	5
14 WORK-RELATED EXPENSES.....	5
<b>PART THREE - PROVISIONS RELATING TO LEAVE</b> .....	<b>7</b>
15 ANNUAL LEAVE.....	7
16 PUBLIC HOLIDAYS .....	7
17 LEAVE FOR ILLNESS, ACCIDENT & BEREAVEMENT .....	8
18 PARENTAL LEAVE.....	8
19 ATTENDANCE AT PROFESSIONAL MEETINGS. ....	9
20 JURY SERVICE AND WITNESS LEAVE .....	9
<b>PART FOUR - UNION REPRESENTATION</b> .....	<b>10</b>
21 UNION AND BARGAINING FEES.....	10
22 RIGHT OF ENTRY .....	10
23 STOPWORK MEETINGS.....	10
<b>PART FIVE - PROFESSIONAL MATTERS</b> .....	<b>11</b>
24 QUALITY IMPROVEMENT ENVIRONMENT.....	11
25 PROFESSIONAL DEVELOPMENT AND EDUCATION .....	11
<b>PART SIX - GENERAL TERMS</b> .....	<b>12</b>
26 CONSULTATION .....	12
27 TERMINATION OF EMPLOYMENT.....	12
28 ABANDONMENT OF EMPLOYMENT .....	12
29 REDUNDANCY.....	12
30 RIGHTS OF PRIVATE PRACTICE AND CONFLICT OF INTEREST .....	14
31 JOB DESCRIPTIONS .....	14
32 EMPLOYERS' POLICIES, PROCEDURES AND PERSONAL FILES.....	14
33 MEDICAL EXAMINATIONS .....	14
34 APPOINTMENTS.....	14

al

M

PART SEVEN - SETTLEMENT OF DISPUTES AND PERSONAL GRIEVANCES .....	15
35 MEDIATION AND ADJUDICATION.....	15
36 RESOLUTION OF EMPLOYMENT RELATIONSHIP PROBLEMS.....	15

2  
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# PART ONE - **COVERAGE AND APPLICATION MATTERS**

This Agreement applies to members of the Association who fall within the coverage clause of this Agreement.

This collective agreement is the foundation document for this underlying engagement and empowerment relationship between Wellington SCL and pathologists which is integral to the internal culture of Wellington SCL.

## **1 UNDERLYING PRINCIPLES**

- 1.1 Wellington SCL and all its employees aim to provide excellence for patients and requestors. This is embodied in the Healthscope Code of Conduct and Healthscope's Star Values of Service Excellence, Teamwork and Integrity, Aspiration and Responsibility.
- 1.2 Wellington SCL acknowledges the importance of the experience and expertise brought by Pathologists to the organisation and will integrate these attributes into all aspects of the services it provides.
- 1.3 Wellington SCL encourages open discussion between and with employees in a mutually good faith, fair and transparent manner and to ensure a safe, adequately resourced and well-resourced workplace.
- 1.4 At all times Wellington SCL expects its employees to behave in an ethical and professional manner.

## **2 NATURE OF AGREEMENT**

- 2.1 This agreement has been negotiated and ratified in line with the Employment Relations Act 2000
- 2.2 It sets out the core terms and conditions of employment for all pathologists who fall within its coverage clause.
- 2.3 The terms and conditions of this collective agreement replace all terms and conditions of previous employment agreements except those that have been grandparented or carried over from employment with CCDHB or Hutt Valley DHB.
- 2.4 Any other agreement between an employer and one or more employee(s) that provides for terms and conditions of employment that are as favourable or more favourable in respect of that employee or those employees is hereby deemed to be not inconsistent with this Agreement.

### **3 PARTIES TO THE AGREEMENT**

3.1 The parties to this Agreement shall be:

- (a) The Association of Salaried Medical Specialists, referred to in this agreement as “the Association” or “the union”, and
- (b) Wellington SCL

3.2 This Agreement shall be binding on the parties to it and all employees who fall within its coverage clause who are members of the Association.

### **4 COVERAGE**

This Agreement shall apply to Registered Medical Practitioners with a vocational scope of practice being Pathology, who are required to hold an annual practising certificate. It shall not cover pathologists who are employed in roles with significant management responsibility. For clarity at the time of this document coming into effect the excluded positions are – Chief Anatomical Pathologist and Medical Director.

### **5 ROLE OF THE ASSOCIATION**

The employer acknowledges the role of the Association of Salaried Medical Specialists as the representative of employees who are covered by the agreement and who are members of the Association, for all purposes relating to the negotiation, interpretation, application and enforcement of this agreement.

### **6 NEW EMPLOYEES**

6.1 During the term of this Agreement, Wellington SCL shall, at the time of offering employment, advise that person of:

- (a) the existence of this Agreement and their right to be employed under it, subject to their joining the Association;
- (b) the existence and role of the Association in negotiating the Agreement;
- (c) how to contact the Association for advice in respect of the offer of employment.

6.2 The employer will also advise prospective employees of these matters after the agreement has expired for so long as negotiations for its replacement are continuing.

6.3 On request the ASMS will provide a current list of ASMS members employed by the employer and covered by this Collective Agreement.

### **7 VARIATION**

7.1 The parties accept that there may be provisions within this Agreement or that circumstances may arise during its term that warrant the negotiation of a variation to the Agreement prior to its expiry date.

7.2 Any subsequent variation will not take effect until it is recorded in writing and signed by all parties.

## 8 TERM

8.1 This Agreement shall come into effect on 1 October 2017 and shall expire on 30 September 2019.

8.2 Unless otherwise agreed, the parties undertake to begin negotiations for a replacement agreement not later than one month before the expiry date of this agreement

## 9 DEFINITIONS

In this Agreement:

- 9.1 "Medical Specialist" means any medical practitioner who is vocationally registered as a pathologist by the Medical Council under the Health Practitioners Competence Assurance Act 2003. "Full time employee means an employee who is employed in a full-time capacity and who works not less than 40 hours per week and may participate on an 'on call' roster"
- 9.2 Part time employee means an employee, other than a casual employee, who works on a regular basis but less than the full-time hours prescribed in this agreement and may include participating on an on-call roster.
- 9.3 "Ordinary Hourly Rate" means the hourly rate derived by dividing the employee's nominal annual base salary rate by 2086.
- 9.4 "Redundancy" is where the employee's position becomes surplus to the requirements of the employer by reason of the closing down or reorganisation of the whole or part of the employer's operations or through the sale of the operations to another business or person.
- 9.5 "Service" means
- (i) For all existing employees, the aggregate of any individual employee's service that has been recognised for various purposes at the commencement date of this Agreement, and
  - (ii) For employees employed after the commencement date of this agreement, current continuous service with Healthscope.
  - (iii) For the purposes of establishing a remuneration level the employer will consider all relevant experience be this in a non-laboratory health setting (e.g. in General Practice) or a laboratory setting outside of the health sector (e.g. a university laboratory).

## PART TWO - REMUNERATION & HOURS OF WORK

### 10 SALARIES

#### 10.1 Salaries

Upon commencement, the employee and the company will agree on a base rate of remuneration. When setting this rate, the company will consider the following:

- Scope of the vocation of the Pathologist
- Number of years of practice since first vocational registration
- The remuneration level of the peer group employed within Healthscope Pathology.

In addition to the base salary the employer may offer an additional discretionary component to be included in the remuneration, when considering if and what amount the discretionary component will be the following factors will be considered.

- Scarcity of the vocational resource
- Specific commercial value the employee brings to the business
- The level of flexibility the employees is prepared to provide

#### 10.2 Employees shall be entitled to an annual base salary rate drawn from the salary scale below: -

Step	As at Translation	1-Oct-17	1-Jul-18	1-Jul-19
10	255,000	260,100	265,302	270,608
9	250,000	255,000	260,100	265,302
8	245,000	249,900	254,898	259,996
7	240,000	244,800	249,696	254,690
6	230,000	234,600	239,292	244,078
5	220,000	224,400	228,888	233,466
4	210,000	214,200	218,484	222,854
3	200,000	204,000	208,080	212,242
2	190,000	193,800	197,676	201,630
1	180,000	183,600	187,272	191,017

Negotiated salary increases as above apply only to base rates.

#### 10.3 Advancement through Salary Scales

- Advancement through the salary scales shall be annual, subject to satisfactory performance of the employee's agreed duties and responsibilities.
- If the employer begins to develop concerns that an employee's performance may not justify advancement to the next step, those concerns must be raised with the employee in writing at the earliest practical opportunity before the due date of advancement to provide the employee with a reasonable opportunity to address them. An employee who is not notified of any such concerns before their due date shall be entitled to advance to the next step on their due date.
- Employees shall not be denied advancement if their failure to achieve satisfactory performance of agreed duties and responsibilities was due to factors beyond their control.



#### 10.4 Absence due to Approved Unpaid Leave

- (a) When an employee is on approved unpaid leave Wellington SCL will inform them prior to the leave being taken if and how their annual increment will be affected by that leave. When making this decision Wellington SCL will consider the performance of the Pathologist and the reason for and length of the unpaid leave.

### 11 HOURS OF WORK

- 11.1 When offered employment with WSCL the hours of work and other obligations will be discussed and agreed in writing.

### 12 SUPERANNUATION

- 12.1 The conditions of employment relating to superannuation for Wellington SCL employees who transferred from Hutt Valley DHB or CCDHB will be grandparented.
- 12.2 In respect of other employees not covered by Clause 12.1 above, the employer will contribute to the employee's KiwiSaver scheme or complying superannuation fund (as those terms are defined by the KiwiSaver Act 2006).

### 13 PAYMENT OF SALARY

Salaries shall be paid fortnightly, by direct credit to a bank account in New Zealand to a bank account in the name of the employee.

### 14 WORK-RELATED EXPENSES

#### 14.1 Reimbursement of Expenses

The employer shall meet the cost of or reimburse employees for work-related expenses, including those listed in clause 14.2 in accordance with the provisions of Clause 14.3.

#### 14.2

- (a) the annual practising certificate, including disciplinary levies;
- (b) Medical Protection Society membership or an agreed alternative;
- (c) vocational registration fees relevant to duties and responsibilities with Wellington SCL;
- (d) one college membership fee. Other College membership fees may be reimbursed via CME expenses as agreed.
- (e) membership of other approved professional associations relevant to the employee's duties and responsibilities will be refunded by agreement.
- (f) fees for accredited maintenance of professional standards (MOPS) or similar programmes;

#### 14.3 Employees shall be reimbursed on the following basis:

- (a) Full-timers shall be reimbursed the full cost by that employer;
- (b) Part-timers who have no other medical practice shall be reimbursed the full cost;

- (c) Other part-time employees shall be reimbursed pro rata, according to their paid hours of work.

#### 14.4 Use of Personal Motor Vehicle

Employees are to use private motor vehicles in line with the Wellington SCL policy. This requires prior approval.



## PART THREE - PROVISIONS RELATING TO LEAVE

### 15 ANNUAL LEAVE

15.1 All employees shall be granted six weeks annual leave (pro rata for part time employees) on full salary. Subject to the provisions below, all annual leave shall be taken in accordance with the provisions of the Holidays Act 2003.

### 16 PUBLIC HOLIDAYS

#### 16.1 Holidays Act

The parties confirm the right of employees covered by this Agreement to be paid in accordance with Section 50 of the Holidays Act 2003 for working on a public holiday.

#### 16.2 Public Holidays

(a) Employees shall be granted paid leave on any of the following public holidays or any days "substituted" by law:

- New Year's Day
- The day after New Year's Day
- Waitangi Day
- Good Friday
- Easter Monday
- ANZAC Day
- Sovereign's Birthday
- Labour Day
- Christmas Day
- Boxing Day
- Wellington Anniversary Day.

(b) An employee may be required to work or to be available (i.e. on call) to work on any of the listed public holidays (or substituted days) provided that such employees will be granted a full day in lieu, without loss of pay, on a later mutually convenient date.

#### 16.3 Public Holidays Falling During Periods of Paid Leave or on a Day Off.

(a) When a public holiday or substituted day falls during any period of annual leave, the public holiday shall not be debited against such leave.

(b) When a public holiday or substituted day falls on a day when the employee is undertaking approved professional development and education, the employee shall be granted a full day in lieu, without loss of pay, on a later mutually convenient date. Such leave will be deducted from the employees CME leave balance.

## **17 LEAVE FOR ILLNESS, ACCIDENT & BEREAVEMENT**

- 17.1 Employees are entitled to reasonable leave on full pay in the event of their personal illness or accident or that of a close family member, and on the bereavement of someone with whom they have had a close association.
- 17.2 This provision includes any statutory entitlement to paid special leave for similar purposes.
- 17.3 An employee who falls ill during a period of approved annual leave may be entitled to paid sick leave for the period of that illness and have those days credited back to their annual leave balance. The employer may require a medical certificate where the period of the illness exceeds three working days. Similarly, an employee who suffers bereavement during a period of annual leave, for which they would otherwise have been entitled to paid bereavement leave under Clause 17.1, shall have that time credited back to their annual leave record.
- 17.4 Where the absence on account of illness or accident exceeds five working days the employer may require the employee to produce a medical certificate for verification. The employer shall have the right to require the employee to undergo an independent medical assessment paid for by the employer.
- 17.5 When a period of leave on account of accident or illness exceeds three months the employer is entitled to seek a review of the employee's condition and likely fitness to return to work. The review will be done by a representative of the employer, a representative of the employee and a mutually agreed medical practitioner, or such other group as the employer and employee may agree.
- 17.6 The reviewers shall advise the employer on the prospects and timing of the employee being fit to return to normal or other duties.
- 17.7 On receipt of that advice, the employer after consulting the employee and taking into account any other relevant information, shall decide whether to extend the period of sick leave (with or without pay) or to terminate the employment. Termination in these circumstances shall be on notice.

## **18 PARENTAL LEAVE**

### **18.1 General Entitlement**

- (a) Employees are entitled to up to twelve months' parental leave without pay for births and adoptions in accordance with the Parental Leave and Employment Protection Act 1987.
- (b) Parental leave of up to six months is to be granted to employees with less than one year's service at the time of commencing leave.
- (c) Employees intending to take parental leave are required to give not less than three months' notice in writing and the application is to be accompanied by a certificate signed by a registered medical practitioner or midwife certifying the expected date of delivery. The provision is waived in the case of adoption or circumstances outside the control of the employee.
- (d) Employees are required to give at least one month's notice of return to work.
- (e) The maximum period of parental leave may be taken by either the employee exclusively or may be shared by the employee and their partner either concurrently or consecutively. This applies whether or not one or both partners are employed by the employer

- (f) An employee returning from parental leave may request the employer to vary the proportion of full-time employment from that which applied before the leave was taken. The granting of such a request shall be at the discretion of the employer.
- (g) An employee on approved parental leave under this Agreement shall receive their annual salary advancement on the due date, when it falls during the period of leave.

## **19 ATTENDANCE AT PROFESSIONAL MEETINGS.**

- 19.1 An employee who is elected, seconded or otherwise appointed in their professional capacity to a position by or with any of the organisations listed below shall be entitled to leave of up to 5 days per annum on full pay to attend meetings of those bodies:
- The Ministry of Health and other government departments or statutory bodies;
  - The Medical Council of New Zealand;
  - Medico-legal disciplinary bodies e.g. the Health Practitioners Disciplinary Tribunal;
  - Professional medical associations;
  - The New Zealand Medical Association and the Association of Salaried Medical Specialists.
- 19.2 One month's prior notice of such leave must be provided and where the planned leave would interfere with the operational requirements of Wellington SCL the leave can be declined
- 19.3 Employees may also be granted leave on full pay to attend meetings convened by the Ministry of Health and other government departments, agencies or statutory bodies where they have been invited to attend or are doing so in their professional capacity. Applications for leave shall not be unreasonably withheld.
- 19.4 Employees who have been appointed or invited by a College or professional association to teach and examine trainees, or to participate in other clinical training programmes, including advanced life support and resuscitation courses, shall be granted leave on full pay to do so. One month's prior notice of such leave must be provided and where the planned leave would interfere with the operational requirements of Wellington SCL the leave can be declined.

## **20 JURY SERVICE AND WITNESS LEAVE**

Where an employee is required for jury service or is subpoenaed before the Court as a witness the employer will continue to pay the employee's normal salary. Any fees paid to the employee by the Court must be repaid to the employer. The employee may retain any expenses paid by the Court.

## PART FOUR - UNION REPRESENTATION

### 21 UNION AND BARGAINING FEES

- 21.1 On the written authorisation of the employee, the employer shall deduct the union fee fortnightly (or at other authorised intervals) from the employee's remuneration. The employer shall forward these deductions to the union not less frequently than quarterly.

### 22 RIGHT OF ENTRY

With the employer's consent, (which shall not be unreasonably withheld) the Association's authorised representatives may enter the employer's property at all reasonable times to meet union members and prospective union members to discuss the negotiation, re-negotiation, application and enforcement of this Agreement. In exercising this right, the Association's representatives shall not interfere unreasonably with the employer's business.

### 23 STOPWORK MEETINGS

- 23.1 The employer shall allow Association members to attend at least two union meetings, each of up to two hours' duration, on full pay in each calendar year.
- 23.2 The Association shall give the employer at least 14 days' notice of the date and time of a union meeting.
- 23.3 The Association shall make such arrangements with the employer as may be reasonable to ensure the employer's essential activities are maintained during the union meeting.
- 23.4 Normal duties shall resume as soon as practicable after the meeting, but the employer shall not be obliged to pay any Association member for more than two hours in respect of any meeting.
- 23.5 Only Association members who actually attend a union meeting shall be entitled to pay in respect of that meeting and the employer may require the Association to supply a list of members who attended and advice of the time the meeting finished.

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## PART FIVE - PROFESSIONAL MATTERS

### 24 QUALITY IMPROVEMENT ENVIRONMENT

#### 24.1 Quality Improvement

- (a) In recognition of the on-going need to improve the quality of clinical services the employer is committed to providing a quality improvement environment which supports openness, honesty and the freedom to identify and admit mistakes or errors of judgement.
- (b) It is recognised that there is a difference between errors that may be defined as normal variations in performance and those errors resulting from negligence. Within this context there is no place for a punitive reaction to errors that are not the result of negligence.

#### 24.2 Credentialing

Credentialing processes and implementation are matters to be agreed between the employer and affected employees. Credentialing will also consider the resources required for Wellington SCL.

### 25 PROFESSIONAL DEVELOPMENT AND EDUCATION

25.1 The development and education of employees is recognised as important to both the employee and the employer. Employee's ongoing development and education must be relevant to their role and the operations of the employer.

25.2 The employer shall provide \$20,000.00 per annum and an allowance of 10 paid days plus the agreed reasonable travelling time for each employee covered by this document to undertake ongoing professional development and further education. Both may be accumulated for two years entitlement. The nature of the education or development is to be approved by the Chief Anatomical Pathologist or the medical director in advance of the employee incurring costs or these may not be refunded.

25.3 An employee may use CME funds for the purchase of electronic equipment which may assist with their development. Any such equipment will remain the property of the employee and shall not be connected to the Healthscope network.

#### 25.4 Continuing Medical Education

- (a) Employees who are enrolled in two or more maintenance of professional standards (MOPS) programmes shall be reimbursed up to an additional \$1000 per annum (i.e., \$21,000).
- (b) Time-in-lieu will be provided for any approved continuing medical education or professional development activities including travel time that are undertaken during weekends or New Zealand public holidays. The relevant number of lieu days will be deducted from the employees CME leave balance
- (c) Time in lieu will be provided for employees who undertake approved CME activities or professional development on days when they do not usually work for Wellington SCL. The relevant number of lieu days will be deducted from the employees CME leave balance

#### 25.5 Sabbatical and Secondment

Employees previously employed by Hutt Valley or CCDHB's will have their previous conditions relating to secondment and sabbatical leave grandparented.

## PART SIX - GENERAL TERMS

### 26 CONSULTATION

- 26.1 The parties to this Agreement recognise that change will occur within Wellington SCL over time. The parties will meet from time to time to discuss the ongoing relationship and changes within the business. Meetings will occur approximately at 6 months intervals to discuss the nature of the business and any matters which may concern the Association. This does not preclude either party seeking to meet regarding a specific issue of interest to the parties.
- 26.2 In accordance with clause 26, when WSCL proposes any review that might result in significant changes to either the structure, staffing or work practices affecting employees the employer shall invite the employees concerned to participate in the review at the earliest practical opportunity. When the implementation of decisions arising from any such review might result in redundancy, the procedures in Clause 29 shall be adopted.
- 26.3 The employer will advise the Association and affected employees of the recommendations of any concluded review in order to ascertain whether there are any serious professional or clinical concerns. In the event of such concerns the employer will either endeavour to satisfactorily resolve them with the Association and affected employees or reach agreement over a process for resolution.

### 27 TERMINATION OF EMPLOYMENT

Employees shall be given three months' notice of termination of employment and shall give three months' notice of resignation or retirement. This period of notice may be reduced or extended by agreement between the employer and employee. The employer may summarily terminate the employee's employment for serious misconduct.

### 28 ABANDONMENT OF EMPLOYMENT

When an employee is absent from work for a continuous period of three days without notification to the employer, given they could have reasonably provided such notification, the employee shall be deemed to have terminated their employment.

### 29 REDUNDANCY

- 29.1 Redundancy conditions for employees previously employed at Hutt Valley or CCDHB are grandparented.
- 29.2 Otherwise Redundancy is where the employee's position becomes surplus to the requirements of the employer by reason of the closing down or reorganisation of the whole or part of the employer's operations or through the sale of the operations to another business or person.

In the event of redundancy, that is a full-time or part-time employee's position becoming surplus to the needs of the employer, notice of 4 weeks shall be given or payment in lieu of notice. Redundancy compensation of 8 weeks base salary shall apply for employees with 12 months or more service. Redundancy compensation shall not apply to casual employees. If redundancy occurs within the first year of service, the redundancy calculation shall be pro rata for each completed month of service.

Where the employee is offered an alternative position on substantially similar terms and conditions no entitlement to redundancy compensation shall arise.



If the employee is made redundant, the employee will be entitled to:

- Reasonable time off without loss of pay to attend interviews for alternative employment.
- Upon termination of employment and upon request the employer shall provide the employee with a certificate of service stating dates and capacity of employment

29.3 The four-week notice period in this redundancy clause shall be in substitution for, and not in addition to, the notice set out in this document

#### 29.4 Employee Protection

- (i) If the employer is proposing a sale, transfer or restructuring of its business so that the employees work may be performed for a new employer, the employer shall negotiate with the new employer about the sale, transfer or restructuring to the extent that it relates to the affected employees.
- (ii) The employees covered by this collective employment agreement hereby consent to the employer disclosing personal information to the new employer regarding their employment for the purposes of complying with the employer's obligations under this clause
- (iii) The employer will adhere to the following process when negotiating with the new employer about the sale, transfer or restructure to the extent that it relates to affected employees:
  - (a) The employer will consult with affected employees regarding the sale, transfer or restructuring
  - (b) The employer will negotiate with the new employer regarding the possible transfer of affected employees
  - (c) The employer will explain the terms and conditions of each employee's employment to the new employer
  - (d) The employer will explain how many employees work in the business and what role each one occupies
  - (e) The employer will discuss whether the affected employees will transfer to the new employer on the same terms and conditions of employment, whether the new employer can offer alternative positions to employees
  - (f) An employee shall not be entitled to any compensation when the employment is being terminated by the employer by reason of the sale or transfer by the employer or a purchaser of the whole or part of the business and the new employer acquiring the business or part thereof has:
    - Offered the employee continued employment on the same as, or no less favourable than terms and conditions, and;
    - Agreed to treat service with the new employer acquiring the business as current continuous service.
- (iv) In the event an employee is not offered employment with the new employer as per above the employer will consider whether there are any redeployment opportunities for the employee. In the event the employer is unable to redeploy the employee on the same as, or no less favourable than terms and conditions the employee will be entitled to redundancy compensation in accordance with the redundancy provisions of this collective agreement.

### **30 RIGHTS OF PRIVATE PRACTICE AND CONFLICT OF INTEREST**

- 30.1 The employer recognises the right of employees to engage in private practice but not in such a way that would give rise to a conflict of interest.
- 30.2 Employees exercising this right shall not allow it to affect adversely the performance of their contractual obligations with the employer. The employee must advise the employer of their intention to commence private practice so that a discussion may take place between employer and employee with respect to any possible conflicts of interest.
- 30.3 The parties accept that in the absence of their reaching an agreement in respect of any possible conflict of interest, legal remedies are available to them, including the option of termination of employment.

### **31 JOB DESCRIPTIONS**

- 31.1 All employees are entitled to a mutually agreed job description that summarises the requirements of the job. Each Pathologist employed by Wellington SCL shall be provided with a job description specific to their role. The job description will identify, the purpose of the job, the dimensions of the job and the nature and scope of the job. It will also include the principal accountabilities of the job.
- 31.2 Job descriptions may be reviewed from time to time to ensure they remain a true reflection of the job the individual Pathologist is undertaking.

### **32 EMPLOYERS' POLICIES, PROCEDURES AND PERSONAL FILES**

- 32.1 The parties acknowledge the right of an employer to develop its own internal policies and procedures. However, such policies and procedures are not incorporated within this agreement and to the extent that there is any inconsistency between an employer's policies or procedures and a provision of this agreement, the provision of this agreement will prevail.
- 32.2 Employees are entitled to have reasonable access to their personal file held by the employer who will advise them of any significant amendments.

### **33 MEDICAL EXAMINATIONS**

Where the employer has good reason to be concerned that an employee's performance of their duties and responsibilities may be affected by their health, the employer is entitled to require the employee to undergo a medical examination by a mutually agreed medical practitioner(s) who may, where necessary and subject to the provisions of the Privacy Act, report to the Medical Council.

### **34 APPOINTMENTS**

- 34.1 The parties agree that the appointment of senior medical officers, including clinicians appointed to leadership roles, whether to permanent or temporary positions and whether as employees or contractors shall be impartial, fair and transparent.

The employer also agrees to adopt appointment processes that will ensure only suitably qualified persons are employed or otherwise engaged to provide or manage clinical services.

Accordingly, before reaching a decision to engage the services of a senior medical or dental officer the employer shall consult other affected employees, (i.e. those in the same service or on the same roster) as to the need for such an engagement; the nature of the role; the level of skills, qualities and experience appropriate for the role or appointment. Following this consultation, a new or revised job description, if required, shall be prepared.

## PART SEVEN - SETTLEMENT OF DISPUTES AND PERSONAL GRIEVANCES

### 35 MEDIATION AND ADJUDICATION

- 35.1 The parties are committed to negotiated outcomes. If a negotiated settlement for a claim for a collective agreement has not been arrived at, the parties agree that either party may refer disputed matters to the Mediation Services for mediation and that the parties agree to participate in the mediation process in a genuine attempt to reach a settlement.
- 35.2 If a dispute still remains which cannot be resolved by either negotiation or mediation, before considering strike or lock-out action, as applicable, the parties will meet to consider a possible adjudication process to resolve outstanding issues.

### 36 RESOLUTION OF EMPLOYMENT RELATIONSHIP PROBLEMS

This clause sets out how employment relationship problems are to be resolved.

#### 36.1 Definitions

- (a) An "employment relationship problem" includes:
- a personal grievance
  - a dispute
  - any other problem relating to or arising out of the employment relationship but does not include any problem with the determination of new terms and conditions of employment.
- (b) A "personal grievance" means a claim that an employee: -
- has been unjustifiably dismissed; or
  - has had their employment, or their conditions of employment, affected to their disadvantage by some unjustifiable action by the employer; or
  - has been discriminated against; or
  - has been sexually harassed in their employment; or
  - has been racially harassed in their employment; or
  - has been subjected to duress in relation to membership or non-membership of a union
- (c) A "dispute" is a disagreement over the interpretation, application or operation of an employment agreement.

#### 36.2 Notice Period

If an employee wishes to raise a personal grievance they must raise the grievance with their employer within 90 days of the date of the action alleged to amount to a personal grievance occurring or coming to the notice of the employee whichever is the later.

### 36.3 Raising Employment Relationship Problems

- (a) Any employment relationship problem, should in the first instance be raised by the employer with the employee or the employee with the employer as soon as possible.
- (b) The employee and/or the employer are entitled to seek advice and assistance from their chosen representative in raising and/or discussing the problem.
- (c) If the employee wishes to raise the employment relationship problem with the employer in writing or the matter is not resolved when the employee raises the problem with the employer, the employee should submit to the employer written notice of the personal grievance, dispute or problem, covering the following points:
  - details of their grievance, dispute or problem; and
  - why he/she feels aggrieved
  - what solution he/she seeks to resolve the grievance, dispute or problem.
- (d) The employee and the employer shall meet to discuss and attempt in good faith, to resolve the employment relationship problem.

### 36.4 Mediation

- (a) Where the employment relationship problem is not resolved by the parties in discussions, the employer or the employee may, without undue delay, seek the assistance of the mediation service division of the Department of Labour.
- (b) Both parties must co-operate in good faith with the mediation service in a further effort to resolve the problem.
- (c) The employee and employer acknowledge that the service provided by the mediation service is confidential and if it does not resolve the problem is without prejudice to the parties' positions.
- (d) Any settlement of the problem agreed to by the parties and signed by the mediator will be final and binding.

### 36.5 Employment Relations Authority


If the problem is not resolved by mediation, either party may refer the problem to the Employment Relations Authority for investigation and determination.

### 36.6 Employment Court

If either party is dissatisfied with the determination of the Employment Relations Authority it may appeal the Employment Relations Authority's determination to the Employment Court.

Dated this 16 day of February 2018

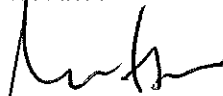
Authorised Representative of  
The UNION PARTY



Lloyd Woods  
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Authorised Representative of  
The EMPLOYER PARTY



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