Visiting Medical Officers – Engagement Options
Human Resources Policy

Effective Date: October 2008

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1 PURPOSE
To outline the options for engagement available to Visiting Medical Officers (VMOs).

2 APPLICATION
This policy applies to VMOs engaged as employees or as independent contractors.

3 GUIDELINES
Guidelines may be developed to facilitate implementation of this policy. The guidelines must be consistent with this policy.

4 DELEGATION
The “delegate” is as listed in the Queensland Health Human Resource Delegations Manual as amended from time to time.

5 REFERENCES
Nil

6 SUPERSEDES
• IRM 3.9-3 Employment Options – Visiting Medical Officers

7 POLICY

7.1 Visiting Medical Officer Engagement Options
VMOs have four options available to hold their appointments:

As an Independent Contractor
a) A Medical Practice Company under a contract.
b) A partnership under a contract.
c) An individual - under a contract.

Or as an Employee
d) An individual employee - under a letter of appointment.

The effect of the Superannuation Guarantee Charge (SGC) legislation is different for each option.

7.2 Options Paper – Superannuation Guarantee Charge and Visiting Medical Officers and Specialists
Queensland Health developed the Superannuation Guarantee Charge and Visiting Medical Officers and Specialists options paper based on advice from the Australian Taxation Office, a firm of financial advisors, the Government Superannuation Office and the Crown Law Office.
The options paper is designed to provide VMOs with the necessary information to make an informed decision about their engagement options. VMOs are to obtain advice from their financial advisor prior to making a decision.

The Superannuation Guarantee Charge and Visiting Medical Officers and Specialists options paper is contained in Attachment One.

7.3 Salary Sacrifice

Salary Sacrifice arrangements are outlined in Attachment Two.

7.4 Standard Contract for Engagement of Visiting Medical Officer as an Independent Contractor

Where VMO services are provided within one of the independent contractor categories, it is essential that the standard contract is used. The standard contract is the document examined by the Australian Taxation Office.

7.5 Rates for Contractor Visiting Medical Officers

Visiting Medical Specialists

<table>
<thead>
<tr>
<th></th>
<th>Base Rate Payable From 1/3/07 (per hour)</th>
<th>Loaded Rate Payable From 1/3/07 (per hour)</th>
<th>Base Rate Payable From 1/3/08 (per hour)</th>
<th>Loaded Rate Payable From 1/3/08 (per hour)</th>
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<tr>
<td>1st Year</td>
<td>96.51</td>
<td>198.97</td>
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<tr>
<td>2nd Year</td>
<td>99.79</td>
<td>205.71</td>
<td>103.78</td>
<td>210.02</td>
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<tr>
<td>3rd Year</td>
<td>102.99</td>
<td>212.33</td>
<td>107.11</td>
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<td>4th Year and thereafter</td>
<td>105.58</td>
<td>217.69</td>
<td>109.80</td>
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Visiting Senior Specialists

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<th>Base Rate Payable From 1/3/07 (per hour)</th>
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<tr>
<td>1st Year and thereafter</td>
<td>114.70</td>
<td>236.45</td>
<td>119.29</td>
<td>241.41</td>
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### Visiting Medical Officers

<table>
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<tr>
<th></th>
<th>Base Rate Payable From 1/3/07 (per hour)</th>
<th>Loaded Rate Payable From 1/3/07 (per hour)</th>
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<tr>
<td>1st Year</td>
<td>83.81</td>
<td>172.77</td>
<td>87.16</td>
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<tr>
<td>2nd Year</td>
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</tr>
<tr>
<td>3rd Year</td>
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<td>Thereafter</td>
<td>86.99</td>
<td>179.34</td>
<td>90.47</td>
<td>183.10</td>
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### Visiting Medical Officers with FRACGP and/or Vocational Registration

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<tr>
<td>1st Year</td>
<td>83.81</td>
<td>172.77</td>
<td>87.16</td>
<td>176.40</td>
</tr>
<tr>
<td>2nd Year</td>
<td>86.99</td>
<td>179.34</td>
<td>90.47</td>
<td>183.10</td>
</tr>
<tr>
<td>3rd Year and thereafter</td>
<td>90.16</td>
<td>185.86</td>
<td>93.77</td>
<td>189.76</td>
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The above rates do not include the Goods and Services Tax (GST).

### Definitions

<table>
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<th>FRACGP</th>
<th>Fellowship of the Royal Australian College of General Practitioners</th>
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### History

<table>
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<th>Date</th>
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<tr>
<td>October 2008</td>
<td>Amended to publish January 2006 Contractor VMO Agreement.</td>
</tr>
<tr>
<td>August 2008</td>
<td>Developed as a result of the HR Policy Consolidation Project.</td>
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SUPERANNUATION GUARANTEE CHARGE AND VISITING MEDICAL OFFICERS AND SPECIALISTS

The Federal Government has enacted the Superannuation Guarantee Charge legislation which requires every employer to make superannuation contributions for eligible employees including casuals and part time staff.

Queensland Health is required to comply with the above mentioned federal legislation in respect of all its employees including Visiting Medical Officers and Specialists and is aware that it may affect the deductibility of personal superannuation contributions.

A large number of inquiries have been received from VMOs and as a result the Department has obtained expert advice on the matter. Consequently this options package has been produced to enable VMOs to choose according to their individual circumstances. VMOs are to obtain advice from their financial adviser prior to making a decision to ensure their particular individual circumstances are taken into account.

VMOs can hold their appointments under four options. They are:

a) A Medical Practice Company under a contract.

b) A partnership under a contract.

c) An individual - under a contract.

d) An individual employee - under a letter of appointment.

The following explanations look at the superannuation consequences of each form of engagement. This will assist in deciding a course of action appropriate to individual circumstances and enable VMOs to seek their own independent advice.

Upon reaching a decision as to the desired course of action, VMOs are to contact the health facility management to make any required changes.

a) A Medical Practice Company under a Contract

A Medical Practice Company which has contracted to supply the services of an authorised practitioner to Queensland Health is an employer in its own right.

This means that the Health Service District (HSD) contracting with the Company is not the employer of the authorised practitioner and is therefore not required to make superannuation guarantee charge contributions.

Therefore, there is no impediment to the deductibility of superannuation contributions paid by the Medical Practice Company on behalf of its employees who are authorised practitioners in accordance with the contract.

There are, however, some issues which need to be addressed to ensure that the contract does not bring the authorised practitioner within the definition of an employee under the superannuation guarantee legislation.
The contract must be between the Health Service District and the Medical Practice Company and not the individual medical practitioner. All documentation related to the work done must be between the Medical Practice Company and the Hospital and or health facility.

The contract is to provide that the Company can employ more than one person (duly authorised) to perform the duties specified in the contract (i.e. Authorised practitioners).

All such persons must be appropriately authorised by the Health Service District, but this qualification would appear not to have any implication in so far as determining where the employer/employee relationship lies.

A standard contract is available which has been examined by the Australian Taxation Office which has verified that there would not be an employment relationship between the Health Service District and the Medical Practice Company.

In summary, it would appear that a Medical Practice Company will continue to be regarded as the employer of the VMO for superannuation purposes provided the above requirement is met.

b) A Partnership under a Contract

Generally, if a partnership enters into a contract which requires labour to be performed by a particular partner, then the contract for labour is not with the particular partner, but with the partnership. As such, there would be no contract for the labour of a particular person. If a partner enters into a contract on behalf of the partnership, this is done so for each of the partners.

If a contract with a partnership is one:
• which is wholly or principally for labour; and
• expressly or impliedly requires the labour of a particular partner; and
• under which that particular partner actually performs the work
then all partners would be employees of the other party to the contract. Therefore, there cannot be a contract for labour of a particular person.

This means that the Health Service District contracting with the partnership is not the employer and is therefore not required to make superannuation guarantee charge (SGC) contributions.

However, if a partner contracts principally to provide their labour in their own right outside the partnership, then they will be an employee and SGC contributions would have to be made.
c) An Individual under a Contract

Under the articles of Government Officers’ Superannuation, superannuation contributions are required to be made for a VMO when one of the following conditions is satisfied:

- Where a person earns at least $450 in any month.
- Once the person has been paid more than 50 percent of the tax free threshold over six (6) months [refer Commonwealth Superannuation Guarantee (Administration) Act – Section 18].

Employer superannuation contributions are then paid retrospectively from 1 July 1992 or the start of employment where this occurred after that date.

The Superannuation Guarantee Charge legislation extends the ordinary meaning of employee to include a person who works under a contract that is wholly or principally for the labour of the person and therefore requires superannuation contributions to be made.

Two scenarios arise in Queensland Health namely:

Scenario (i) the supplier, under the contract, is a natural person (usually a practising doctor), who supplies other doctors employed by the supplier; and

Scenario (ii) the supplier, under the contract, is a practising doctor, who supplies the supplier and/or other doctors.

The Commissioner of Taxation has expressed certain views in relation to whether Health Service Districts are "employers" of certain VMOs for the purposes of the Superannuation Guarantee (Administration) Act.

The Commissioner, in forming such views, has taken into account the contents of the standard Supply Agreement which is routinely executed in such cases (i.e. the standard contract).

Scenario (i) the supplier, under the contract, is a natural person (usually a practising doctor), who supplies other doctors employed by the supplier.

The Commissioner considers that in scenario (i) there would be an employment relationship between the District and the doctors supplied to it if the supplier in fact acted as an "employment agency". This concept, which is explained in the Commissioner’s Draft Ruling SGR 92/D5, envisages a situation in which the supplier acts merely as an agent for either the District or each doctor for the purpose of introducing them to each other, with an employment agreement then being entered into between the District and the doctor. In the present context, this event might be said to occur on each occasion when a doctor actually performed services for the District.

It would seem clear from the contents of Clause 3 of the standard supply agreement that this is not the case in the present situation, and various other provisions of the Agreement
would appear to add weight to this view. **Clause 3**, of course, expressly provides that the
doctors supplied are not employees of the District.

On this basis, there would appear to be no real distinction between contracts with a
medical practice company and this scenario. In one case the supplier is a company and in
the other a natural person. Legal opinion indicates that this is a matter which is of no
significance.

Accordingly, in scenario (i), the District would not appear to be an employer of the doctors
supplied, and this is consistent with the views expressed by the Commissioner of Taxation.

The Commissioner does not suggest that in scenario (i) the District is an employer of the
supplier either under common law or by virtue of Section 12(3) of the Superannuation
Guarantee (Administration) Act. The contents of the Supply Agreement would indicate that
no such relationship exists at common law, and in light of Neale *v* Atlas Products (1955)
10 ATD 460, the statutory definition also does not appear to be satisfied. In this regard
also, the situation seems indistinguishable from contracts with a medical practice
company.

In summary, this means that the Health Service District contracting in this situation is not
the employer of the authorised practitioners and is therefore not required to make
superannuation guarantee charge contributions.

**Scenario (ii)** the supplier, under the contract, is a Practising Doctor, who supplies the
supplier and/or other doctors.

The Commissioner of Taxation is of the view that in this scenario both the supplier doctor
and any other doctors supplied, are employees of the District. It is necessary to deal with
the two cases separately.

**Supplier Doctor** Legal opinion indicates that the supplier Doctor would be considered
as an employee and SGC contributions would have to be made.

**Other Supplied Doctors** The Commissioner of Taxation considers that ‘other supplied doctors’
are to be treated as identical to the ‘supplier doctor’.

However, legal opinion disagrees with this view and suggests that they are more akin to
those outlined in scenario (i). This would appear to be of academic interest only as medical
services under scenario (ii) are invariably provided exclusively by the supplier doctor.
Therefore, there would appear little to be gained by challenging this ruling at this time.

This means that a VMO employed under scenario (ii) will not be able to claim as a
deduction, personal superannuation contributions made unless income from employment
that included superannuation support is less than 10 percent of the person's assessable
income.
For some VMOs this does not create a difficulty. Payment of the seven (7) percent occupational superannuation contributions will be made by the Health Service District on their behalf to the QSuper - Accumulation Plan.

The options currently available to those VMOs who wish to maintain deductible contributions are to either contract with Queensland Health through the practice company, a partnership or enter into a salary sacrifice arrangement (as outlined in Attachment Two).

d) An Individual Employee – under a Letter of Appointment

Under the articles of Government Officers' Superannuation, superannuation contributions are required to be made for a VMO when one of the following conditions is satisfied:
- Where a person earns at least $450 in any month.
- Once the person has been paid more than 50 percent of the tax free threshold over six (6) months [refer Commonwealth Superannuation Guarantee (Administration) Act – Section 18].

Employer superannuation contributions are then paid retrospectively from 1 July 1992 or the start of employment where this occurred after that date.

This means that a VMO will not be able to claim as a deduction, personal superannuation contributions made unless income from employment that included superannuation support is less than 10 percent of the person's assessable income.

For some VMOs this does not create a difficulty. Payment of the seven (7) percent occupational superannuation contributions will be made by the Health Service District on their behalf to the QSuper - Accumulation Plan.
SALARY SACRIFICE

The term simply means that the gross earnings under the hospital appointment can be apportioned between superannuation and salary prior to entry in the payroll system. The gross pay is thus altered to reduce the amount on which tax is calculated.

The amount apportioned to superannuation is then no longer treated as assessable income in the hands of the VMO, but becomes an employer funded superannuation contribution which is fully vested. This will meet the superannuation guarantee charge.

Queensland Health proposes making this option available to VMOs who are authorised practitioners holding appointment to a hospital in their own names.

All VMOs earning in excess of $450 per month are provided with employer superannuation support by Health Service Districts.

In order to bring the level of total tax advantaged superannuation contributions to a level which is more in line with superannuation savings of recent years, the superannuation guarantee amount may be augmented by the salary sacrifice option as follows:

a. The amount to be allocated to Superannuation can be selected once only in each financial year as it is not possible to provide for variable contributions in the payroll system.

b. On the fortnightly pay system, it is possible that the gross earnings are less than the fortnightly superannuation allocation. In this event, the whole of the gross earnings will be allocated to superannuation. The shortfall cannot be made up in a subsequent pay period because of the administration costs of handling adjustments. This is unlikely to be a frequent problem.

c. Employers must ensure that contribution levels meet the Government's criteria.

Salary sacrifice arrangements can be a viable option to ensure that VMOs delivering health care throughout the State are not unduly disadvantaged by being providers to the public health system.

Under taxation legislation, generally, superannuation contributions are deductible for income tax purposes in the year in which they occur, up to certain limits.

Deduction limits, which are indexed annually, apply to employees and their associates claiming deductions for contributions made for the benefit of an employee, and for individuals claiming a deduction for personal superannuation contributions.
The deduction limits for the preceding triennium are:

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<tr>
<th>Income Year</th>
<th>Under Age 35</th>
<th>Age 35 to 49</th>
<th>Age 50 and Over</th>
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<tbody>
<tr>
<td>2007/8</td>
<td>$15,260</td>
<td>$42,385</td>
<td>$105,113</td>
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<td>2006/7</td>
<td>$14,603</td>
<td>$40,560</td>
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<td>2005/6</td>
<td>$13,934</td>
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<td>$11,912</td>
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<td>$11,388</td>
<td>$31,631</td>
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</table>

Legislative changes in 2007 have resulted in the new limits of:
Under 50 years of age - $50,000
Aged 50 and over - $100,000

Concise information regarding contribution limits and tax deductibility of superannuation contributions is available from the Australian Taxation Office (ATO) on telephone 131 120 and the ATO website at [http://www.ato.gov.au/super/content.asp?doc=/content/itl01.htm](http://www.ato.gov.au/super/content.asp?doc=/content/itl01.htm)

**Superannuation Funds**

While Queensland Health recognises that VMOs will wish ultimately to place contributions in funds of their own choice, it is not possible to make available a full range of fund options.

In those circumstances where the payroll can accommodate it, payments can be made to a selection of private schemes. In addition, for those employees who operate self-managed funds which have bank accounts, direct payment from the payroll may be possible. Approaches are to be made to the Payroll Section to discuss the options available at particular health facilities.

Where this can not be accommodated, health facilities can arrange to have all contributions deposited to a holding scheme operated by a life office (Suncorp or other) with minimal entry and exit costs.

This fund will be responsible for paying the annual contributions tax, and it is envisaged that on an annual basis a VMOs own fund manager can arrange transfer to the superannuation investment of the VMOs choice, provided an appropriate Trust Deed is in place.
The arrangement will work as follows:

Gross earnings - Amount allocated to private Superannuation
equals - Taxable Income per pay period

In addition, Queensland Health will make contributions to GoSuper on the salary before sacrifice. The contribution level is 7% prior to 1 July 2000, 8% from 1 July 2000 until 30 June 2002, and 9% from 1 July 2002. This will not adversely affect the benefits of the salary sacrifice scheme.

Queensland Health is concerned to ensure that the people delivering health care throughout the state system are not unduly disadvantaged by being providers to the system. There will be some anomalies which cannot be solved. There has also got to be a degree of uniformity in the application of the salary package concept for a variety of reasons.

If difficulties arise in the implementation of the package, inquiries are to be directed to -

The Senior Director
Human Resources Branch
Queensland Health
GPO Box 48
BRISBANE Q 4001

Please set out the problem in writing so that it can receive full consideration.