



Class Ruling

Income tax: 100% donation private practice arrangements of full-time dentists, dental specialists and dental prosthetists of Dental Health Services Victoria participating in Commonwealth Medicare Chronic Disease Dental Scheme

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 8-1 of the ITAA 1997; and
- Division 35 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies is the fixed term, full time dentists, dental specialists and dental prosthetists (Dentists) of a Victorian public health service or registered community health centre (the Health Service) who elect to participate in a 100% donation private practice arrangement offered in the Letter of Appointment for such Dentists.
4. The General Dentists' Victorian Public Sector Multi-Enterprise Agreement 2009-2013 (the Agreement) defines such Dentists as a person who has current registration as a Dentist with the Dental Practice Board of Victoria or successor.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 15 of this Ruling.
7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
 - this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
 - this Ruling may be withdrawn or modified.
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Date of effect

9. This Ruling applies from 1 July 2012 to 30 June 2016. The Ruling continues to apply after 30 June 2016 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

10. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- application for Class Ruling dated 29 February 2012 lodged by the Victorian Department of Health;
- sample Letter of Appointment for dentists attached to Class Ruling application;
- sample Private Practice Agreement attached to Class Ruling application;
- a copy of the General Dentists' Victorian Public Sector Multi-Enterprise Agreement 2009-2013; and
- information received on Medicare Chronic Disease Dental Scheme (MCDDS) from the website of Dental Health Services Victoria (DHSV).

Copies of the following documents are attached to this ruling:

- The sample letter of Appointment (Attachment A); and
- The sample Private Practice Agreement (Attachment B).

11. The Dentists are employees of the Health Service. Their employment conditions are contained in the Letter of Appointment for the Dentists. Rights of Private Practice Agreement and General Dentists' Victorian Public Sector Multi-Enterprise Agreement 2009-2013 contain clauses relating to rights of private practice and rates of pay.

12. Each Dentist has the right, under the Letter of Appointment, to elect to participate in a private practice arrangement. If the Dentist elects to exercise the right of private practice, the Dentist is required to sign a copy of the Private Practice Agreement to formalise their participation in the arrangement.

13. Under Clause 7 of the Private Practice Agreement, the Dentist is an independent, self employed person who wishes to provide dental services at the private practice located at the Health Service. For the private practice purposes, the relationship between the Dentist and the Health Service is not of employer and employee. The Health Service acts as an agent for the Dentist so far as the private practice of the Dentist is concerned. The arrangement between the Dentist and the Health Service regarding private practice is as follows:

- the Health Service provides practice management services including administrative and clinical support, and physical consulting room facilities (Practice Management Services) for the Private Practice in return for and subject to payment of the Practice Management Fee;
- all bill is collected by the Health Service as agent for the Dentist from the private practice; and
- the Dentist is entitled to receive the balance remaining, after deduction of the Practice Management Fees owed to the Health Service.

14. The Dentists are required, as stated in the Letter of Appointment, to pay over all the fees collected from the private practice, to the Health Service.

15. MCDDS is an initiative of the Commonwealth Government to provide Medicare dental services to people with chronic conditions and complex care needs. These patients are referred by the General Practitioners (GPs) directly to the Dentists. Eligible patients can access up to \$4,250 in Medicare benefits for dental services over two consecutive calendar years.

16. The Health Service could deliver the MCDDS in accordance with the *Health Insurance Act 1973*, provided the following requirements are met:

- the Dentists are able to exercise their right of private practice as per the General Dentists' Victorian Public Sector Multi-Enterprise Agreement 2009-13; and
- during hours of public employment, the Dentists are not engaging in private practice while providing MCDDS services.

Ruling

Remuneration and private practice component

17. The fees collected and paid by the Health Service to the Dentists for private practice is assessable income of the Dentists under section 6-5 of the ITAA 1997. The private practice component paid to the Dentists by the Health Service under the terms of the Dentists' appointment is remuneration related to the Dentists' employment.

Private practice income

18. The gross fees of the Dentists, billed under the 100% donation private practice arrangement, are derived as ordinary income and are assessable income of the Dentists under section 6-5 of the ITAA 1997.

Deductibility of amounts paid over to the Health Service

19. A deduction is allowable under section 8-1 of the ITAA 1997 to the Dentists for an amount equal to the gross fees paid over to the Health Service as part of the terms of appointment.

Commissioner of Taxation**11 July 2012**

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

Remuneration and private practice component

20. The remuneration including the private practice component paid to the Dentist under the contract of employment is assessable income of the Dentists under section 6-5 of the ITAA 1997.

21. The private practice component is paid to the Dentists under the terms of the Dentists' employment as set out in the Letter of Appointment. It is considered that the private practice component represents a payment related to the Dentists' employment as it is a condition of their employment.

Private practice income

22. Under the private practice arrangement, the Dentists attend to private patients in the Health Service utilising the Health Service's infrastructure and resources. However, the Dentists are providing direct dental services to their private patients in the Dentists' private practice and not in their capacity as an employee of the Health Service. The gross fees of the Dentists are derived as ordinary income and are assessable income of the Dentists under section 6-5 of the ITAA 1997. The Health Service acts as the Dentists' agent in billing and collecting the amounts due by their patients (Clause 2 of the Private Practice Agreement).

23. Fees collected and paid over by the Health Service to Dentists providing MCDDS through private practice is also ordinary income of the Dentists and assessable under section 6-5 of the ITAA 1997.

24. The decision in a Board of Review case reported as Case T44 86 ATC 366 supports the assessability of the fees. In that case, it was held that funds received by a hospital as a result of accounts issued by it to the private patients of a doctor employed by a hospital, were assessable to the individual as ordinary income.

Deductibility of amounts paid over to the Health Service

25. Under subsection 8-1(1) of the ITAA 1997, a Dentist in a 100% donation private practice arrangement is entitled to claim a deduction for an amount equal to the gross fees paid over to the Health Service.

26. The Dentists are required, as a condition of employment, to pay over all fees charged or to be charged from the private practice under the 100% donation arrangement. In these circumstances, the payment over to the Health Service of the fees derived from private practice is an expense that the Dentists incur in gaining assessable income. This view is supported by the decision in the Full Federal Court case of *Service v. FC of T* (2000) 97 FCR 265; 2000 ATC 4176; (2000) 44 ATR 71.

27. Similarly, deduction is also allowed in relation to fees derived under MCDDS and paid over to the Health Service as it is the condition of employment to pay over all fees generated from private practice conducted at the Health Service.

28. The fees generated from private practice are paid over as a condition of employment and this creates the connection with the activities which more directly gain or produce the assessable income. Therefore, the deduction for the amount paid over is a 'work related expense'.

Non-commercial loss provisions

29. Depending on the particular circumstances of the Dentists conducting a private practice under the 100% donation arrangement, Division 35 of the ITAA 1997 – Deferral of loss from non-commercial business activities – may have application. If the Dentists make a 'loss' from this business activity and does not meet one of the tests set out in sections 35-30, 35-35, 35-40, or 35-45 of the ITAA 1997, or the Commissioner has not exercised the discretion set out in section 35-55 of the ITAA 1997, then the loss deferral rule in subsections 35-10(2) of the ITAA 1997 will apply.

Appendix 2 – Detailed contents list

30. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; CR 2005/26;
CR 2001/1; CR 2003/34;
CR 2009/40

Subject references:

- business income
- health professionals
- Medicare practitioners
- work related expenses

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 8-1

- ITAA 1997 8-1(1)
- ITAA 1997 35
- ITAA 1997 35-10(2)
- ITAA 1997 35-30
- ITAA 1997 35-40
- ITAA 1997 35-45
- ITAA 1997 35-55
- TAA 1953
- Copyright Act 1968

Case references:

- Board of Review Case T44 86
ATC 366
- Service v. FC of T (2000) 97
FCR 265; 2000 ATC 4176;
(2000) 44 ATR 71

ATO references:

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ATOLaw Topic: Income Tax ~~ Deductions ~~ other employment related
expenses
Income Tax ~~ Losses ~~ non commercial

Attachment A

Sample letter of appointment

Insert Date

Name

Address

Address

Dear Insert First Name

RE: Offer of Fixed Term, Full-Time Employment, Dentist, Level < >, The Royal Dental Hospital of Melbourne (RDHM), Dental Health Services Victoria (DHSV)

I am pleased to offer you employment on a fixed term, full-time basis for a period of one (1) year as a Dentist, Level < > with Dental Health Services Victoria. This position involves a rotation through a number of clinics within the RDHM. In this role, you will report to Insert Managers Name, Insert Managers Title. Please note, you have been appointed to this position on four (4) months' probation.

Your appointment includes an entitlement to limited rights of private practice and to participate in the Private Practice Agreement applicable to your profession. You will be required to sign a copy of the Private Practice Agreement and the Special Purpose Fund Agreement to formalise your participation upon your commencement. Accounts for all private practice performed by you will be raised and collected on your behalf by The Health Service and be accounted for in accord with the Private Practice Agreement. You will, after deriving the fees, pay over to The Health Service all fees arising from the private practice performed by you. You will have access to entitlements and support for professional development as set out in the terms and conditions of the Private Practice Agreement and the associated Special Purpose Fund Agreement.

Any person employed with DHSV is required to provide satisfactory evidence of a positive police/criminal records check within their first three (3) months of employment. This will be a requirement to successfully complete the probationary period. Forms and information can be accessed from http://www.police.vic.gov.au/content.asp?Document_ID=274.

This position is offered on 76.0 hours per fortnight and is effective from Insert Date until Insert Date. Your Total Remuneration Package for this position will be \$Insert Amount gross per annum, consisting of salary \$Insert Salary gross per annum and superannuation \$Insert Super gross per annum.

DHSV offers you the opportunity to salary package which will increase your net fortnightly income. We encourage you to carefully consider your salary packaging options in order to maximise your net remuneration. This total remuneration package allows for salary packaging benefits of the Fringe Benefits Tax (FBT) exempt amount of \$9,095. An additional amount may be sacrificed for substantiated meals and entertainment. DHSV's policy allows for packaging of up to 100% of your pay. If, however, you wish to package more than 50% of your pay, evidence of appropriate independent financial advice is necessary. A written statement from your accountant or financial advisor would be required.

This offer of employment is conditional upon:

- **Provide DHSV with evidence of your current dental qualification;**
- **Provision of evidence of registration with the Australian Health Practitioner Regulation Agency to practice dentistry in the State of Victoria;**
- **Disclosure of correct information about any adverse findings made against you by any professional registration body.**

Disclosure of adverse findings will not automatically result in a withdrawal of the employment offer. The Employee Services Division will communicate any disclosures of adverse findings to the Recruiting Manager who, in consultation with Employee Services Division, will consider whether the offer of employment should remain, in light of the information provided.

- **Being granted clinical privileges by DHSV's Clinical Privileges Committee.**

Clinical privileges are granted on an interim basis pending your application for clinical privileges. DHSV's Clinical Privileges Committee will consider the application and will advise the clinical privileges to be granted to you. Failure to be granted clinical privileges sufficient to enable you to conduct the full scope of clinical duties outlined in your Position Description may necessitate the termination of your employment.

Your terms and conditions of employment, salary and job classification are as detailed in the General Dentists' Victorian Public Sector Multi Enterprise Agreement 2009-2013.

In the event that the area in which you are employed/rostered has a compulsory 'close down' period, usually over the Christmas/New Year period, you will be expected to take this period as part of your accrued annual leave. If you have insufficient annual leave credits, you will be required to take leave without pay.

You will find a number of forms in the front pocket of your Employment Pack. Please ensure that these forms are completed and returned in a timely manner to ensure no delay with your pay. Forms include:

- Direct Banking Authority form.
- Australian Tax File Number Declaration form.
- A salary packaging manual and application form. Salary packaging will not commence until you complete and return the forms to Hospitals, Remunerator (Aust) Pty Ltd, PO Box 7296, Melbourne 3004. Please contact Remunerator on 9882 5000 if you have any queries concerning completion of this document.
- Disclosure of Adverse Findings Form.
- Next of Kin/Emergency Contact form.
- Declaration of Pre-existing Injuries form.
- Confidentiality Statement/Policy which forms a term of this Agreement.
- Information Technology Compliance Statement.
- Summary Statement – Infectivity Status of Healthcare Workers. This form is to be returned to your manager/supervisor. The full copy of DHSV's Infection Control Policy is available from your supervisor. We strongly encourage you to obtain a copy of this policy upon commencement of your employment.
- Working with Children Check, Application Guide and Form – The Guide contains important information about the Working With Children Check (WWCC) and your obligations under the Working With Children Act 2005 (the act). The Working With Children Application is attached, please read the Application guide before completing your application.

To discharge obligations as to identity, you are required to produce a copy of a current driver's licence or Australian/New Zealand birth certificate or Australian/New Zealand passport. If you were not born in Australia, then you must provide DHSV with evidence of current resident/visa status or have Australian Citizenship. A marriage certificate or other relevant documentation should be provided where your name differs from the above documentation.

It is a condition of employment that employees comply with all lawful directions of the organisation in relation to workplace practices. Employees are also required to adhere to the organisation's approved policies, practices and procedures, including DHSV's Delegation of Authority and Code of Conduct, as amended from time to time. These policies are available for perusal on the DHSV website. Such policies, practices and procedures are deemed to be incorporated into and form part of the employment agreement.

We look forward to your acceptance of this offer by signing the original copy and returning it, together with the other completed documents to:

Employee Services Division
DHSV
GPO Box 1273L
Melbourne Vic 3001

as soon as practicable.

Please retain the copy for your records. Commencement of employment will only be permitted once all the relevant documentation has been completed and signed off.

I congratulate you on this appointment and look forward to your participation with DHSV in providing quality dental care to our community.

Yours sincerely

Employee Services Officer

Dentist to read and sign:

I accept this offer of employment. I understand the following:

- I have been offered the fixed term, full-time position of Dentist, Level < > with Dental Health Services Victoria commencing on Insert Date until Insert Date.
- My Total Remuneration Package upon acceptance of this offer will be \$Insert Amount gross per annum.

Name: Insert Name

Signature: _____ Date: ____/____/2012

Attachment B

Sample Private Practice Agreement

<Date>

Rights of Private Practice Agreement

between

<Agency>

and

[name of Dental Practitioner]

This Agreement is made on the day of 2010

PARTIES

<Agency> of ,<address>, Victoria, a Public Health Service duly incorporated under the *Health Services Act 1988* (Vic) ('**<Agency>**')
and

the Dental Practitioner whose name and details are set out in Item 1 of Schedule 1 ('**Dental Practitioner**')

RECITALS

A **<Agency>**:

- (i) regards good health as being social, emotional and physical well-being, and considers this to be the right of everyone.
- (ii) aims to provide a community-based, multi-disciplinary team approach to identified health needs which promote the well-being of the communities of the City of <insert city> and the Shire of <insert shire>.
- (iii) comprises the following sites and facilities: <insert campuses>

- (iv) places a high priority on improving the quality of consumers' lives through health education and health promotion, and the integration of dental care with the range of other programs and services available at the health service.
 - (v) wishes to provide programs and services that are responsive to the needs of its communities.
- B In the context of recital A, <Agency> agrees to permit the Dental Practitioner to provide dental services to patients from a private practice operated independently by the Dental Practitioner, located at the premises of <Agency> (**'Private Clinic'**).
- C The Dental Practitioner has been granted clinical privileges by <Agency> to operate the Private Practice .
- D The nature and extent of the dental services to be provided independently by the Dental Practitioner to patients attending the Private practice is set out in Item 3 of Schedule 1 (**'Dental Services'**).
- E The Dental Practitioner has requested <Agency> to provide practice management services including administrative and clinical support, and physical consulting room facilities (**'Practice Management Services'**) for the Private Practice.
- F <Agency> has agreed to provide the Practice Management Services to the Dental Practitioner in return for payment of a Practice Management Fee, on the terms set out in this Agreement.

THE PARTIES NOW AGREE AS FOLLOWS:

Commencement, Period of Agreement and Annual Review

- 1.1 This Agreement commences on the Commencement Date set out in Schedule 1.
- 1.2 This Agreement will be subject to a 6 month review in the first instance to ensure the arrangements are mutually satisfactory and to test the legitimacy of the financial model so that no party is unduly disadvantaged.
- 1.3 Subject to written and mutual agreement following the 6 month review, this Agreement automatically ends either 3 years after the Commencement Date or when the clinical privileges granted to the Dental Practitioner by <Agency> expire, whichever occurs sooner.
- 1.4 Nothing in this Agreement requires <Agency> to offer the Dental Practitioner a new Agreement after termination or expiry of this Agreement.

1.5 The operation of this Agreement will be reviewed each year by the parties prior to the anniversary of the Commencement Date (**'Annual Review'**). For the purposes of the Annual Review the parties will meet at least 30 days before, but not more than 90 days before, the anniversary of the Commencement Date.

1.6 Matters to be discussed at the Annual Review include:

- 1.1.1 The financial viability of the arrangement.
- 1.1.2 the number of patients seen by the Dental Practitioner in the Private Clinic.
- 1.1.3 the contribution of the Dental Practitioner towards KPIs of the <Agency> Community Health Service.

1.7 Following the Annual Review, either party may terminate this Agreement by giving the other party three (3) months' written notice. The Agreement will terminate at the end of the notice period. The party terminating the Agreement has no liability to compensate the other party as a result of the termination.

Obligations of <Agency>

2.1 <Agency> must:

- 2.1.1 provide the Practice Management Services to the Dental Practitioner in return for and subject to payment of the Practice Management Fee.
- 2.1.2 subject to receiving all necessary information from the Dental Practitioner about Dental Services provided at the Private Practice , bill and collect all fees owing to the Dental Practitioner and provide regular financial statements to the Dental Practitioner relating to fees collected no less frequently than quarterly, plus an annual summary at the end of each financial year.
- 2.1.3 provide suitable premises at <Agency> to allow the Dental Practitioner to conduct the Private Practice, including office supplies and dental instruments reasonably necessary to provide Dental Services.
- 2.1.4 provide staff as agreed to assist the Dental Practitioner in the conduct of the practice , including receptionist services reasonably necessary to receive and book patients, and clerical staff to process Medicare payments.
- 2.1.5 provide and maintain so far as is practicable a working environment for the Dental Practitioner that is safe and without risks to health.
- 2.1.6 store patients' dental records, make patients' dental records available to the Dental Practitioner as reasonably required, and provide other reasonable dental records support.

- 2.1.7 provide the Dental Practitioner with a tax invoice for the Practice Management Fee within 10 Business Days after the end of each month.
- 2.1.8 provide the Dental Practitioner with copies of any relevant policies and procedures of <Agency> with which he/she is expected to comply.
- 2.1.9 seek accreditation for <Agency> Community Dental Services (a business unit within <Agency>) with the appropriate accreditation body.

Obligations of the Dental Practitioner

3.1 The Dental Practitioner must:

- 3.1.1 provide Dental Services in the Private Practice in accordance with the highest standards of dental practice.
- 3.1.2 hold current, specific clinical privileges granted by <Agency>'s Senior Medical & Dental Staff Appointments Committee to participate in a Private Practice in accordance with this Agreement.
- 3.1.3 ensure that he/she remains registered to practise dentistry in Victoria and provide <Agency>'s Representative prior to the Commencement Date and annually thereafter with evidence of each renewal of registration. Nothing in this Agreement shall require <Agency> to pay the cost of such registration.
- 3.1.4 maintain status as a Dental Practitioner for the purposes of the Commonwealth Medicare Benefits Schedule.
- 3.1.5 comply with standards published by the Dental Board of Australia
- 3.1.6 comply with any requirements that will assist <Agency> to obtain and maintain accreditation for <Agency> Community Dental Program with the appropriate accrediting body.
- 3.1.7 provide Dental Services personally except when:
 - (a) the Dental Practitioner delegates performance of specific tasks to a person who is not a Dental Practitioner (eg dental Assistant) in accordance with legislation, accepted customs and practices, and <Agency>'s policies and procedures.
- 3.1.8 to procure and maintain the insurance cover set out in clause 5.

- 3.1.9 pay the Practice Management Fee on a monthly basis to <Agency> upon receipt of a valid tax invoice from <Agency>.
- 3.1.10 provide sufficient information to <Agency> about patients attending the Private Practice to enable <Agency> to collect fees for all relevant Dental Services as agent for the Dental Practitioner (including those services bulk-billed to Medicare).
- 3.1.11 ensure that patients have no out of pocket expenses for their dental consultation and associated diagnostic investigations at the Private Practice without the prior agreement of <Agency>.
- 3.1.12 whenever prescribing drugs which are not included on the Public Benefit Schedule or in section 100, inform the patient that these drugs must be obtained from a private pharmacy and provide the patient with an estimate of the cost of these drugs.
- 3.1.13 order prescribed drugs for patients using the Dental Practitioner's own PBS/RPBS prescription forms.
- 3.1.14 use letterhead, stationery and brochures, where applicable, that identify that the Dental Practitioner operates from a Private Practice .
- 3.1.15 provide <Agency> with his/her:
 - (a) GST number
 - (b) business name and ABN number (if applicable)
 - (c) Medicare provider number (site-specific)
- 3.1.16 maintain full, accurate and legible dental records for all patients.
- 3.1.17 adhere to all relevant policies and procedures of <Agency> while providing Dental Services at the Private Practice including occupational health and safety requirements, standards of care, dental record keeping, and other matters relating to the provision of dental services.
- 3.1.18 supervise and provide training and mentoring at the Private Practice for <Agency>'s staff and students if requested, in accordance with the Dental Practitioner's experience, skills and knowledge.
- 3.1.19 co-operate with nursing and other allied health staff in the development and delivery of multi-disciplinary treatment and case management plans for patients where relevant.

- 3.1.20 ensure that any research that is conducted at the Private Practice is approved by <Agency> Human Research and Ethics Committee and is within the relevant policies and procedures of <Agency>.
- 3.1.21 provide <Agency> with a minimum of 6 weeks notice in advance of planned leave.
- 3.1.22 provide <Agency> with 24 hours notice where the Dental Practitioner will be unavailable to attend the Private Practice to ensure that appropriate administrative arrangements (eg rebooking) can be made by <Agency> for patients with appointments.
- 3.1.23 attend meetings with <Agency> staff as reasonably requested.
- 3.1.24 participate in or undertake, as appropriate, mutually agreed tasks including the consideration, development, implementation and evaluation of strategies in relation to all aspects of multidisciplinary teamwork, clinical best practice, client case management, clinical risk management, dental information, resource utilisation, business performance and ethical standards.
- 3.1.25 participate at the request of <Agency> in quality assurance and accreditation programs to the extent reasonably required to ensure that <Agency> meets the requirements of the accreditation program.
- 3.1.26 immediately notify <Agency>'s Representative if the Dental Practitioner becomes aware of:
 - (a) any matter involving the Dental Practitioner that is under consideration or investigation by the Dental Board of Australia.
 - (b) his/her clinical privileges have been restricted or cancelled at any dental facility or practice.
 - (c) any claim, writ, summons, proceedings, impending prosecution or inquest in respect of a patient who was the responsibility of the Dental Practitioner at the Private Practice .
 - (d) any adverse event or incident, including a delay in diagnosis or treatment or a misdiagnosis, in respect of a patient who was the responsibility of the Dental Practitioner at the Private Practice.
 - (e) any other matter, situation or potential situation that may place the Dental Practitioner, a patient, a staff member or <Agency> at risk.

Clause 3.1.27 survives the expiry or termination of this Agreement.

- 3.2 The Dental Practitioner must not:
- 3.2.1 provide dental services at the premises of <Agency> other than as set out in Item 3 of Schedule 1, unless specifically agreed in writing.
 - 3.2.2 direct staff at <Agency> to perform tasks other than:
 - (a) clinical tasks directly related to providing the Dental Services.
 - (b) clerical, reception or administrative tasks directly related to the Practice Management Services.
 - 3.2.3 allow any member of <Agency>'s dental staff undergoing training or observation at the Private Clinic to bill for their services.
 - 3.2.4 use <Agency> letterhead or other stationery that might give the impression that the Dental Practitioner is providing Dental Services as an employee of <Agency> or otherwise on behalf of <Agency>.

Dental Patient Records

- 4.1 <Agency> does not provide separate record-keeping facilities for patients attending the Private Practice to see the Dental Practitioner.
- 4.2 The Dental Practitioner is permitted and encouraged to use <Agency>'s dental record keeping facilities to record entries about patients attending the Private Practice. All such records are the property of <Agency>.
- 4.3 On termination or expiry of this Agreement the Dental Practitioner is entitled to photocopy the current parts of <Agency>'s dental records that have been recorded by him/her.
- 4.4 If the Dental Practitioner wishes to keep private electronic records of patients then he/she is entitled to do so within the space provided at the Private Practice .
- 4.5 If the Dental Practitioner provides services to a patient who is also receiving services from <Agency> outside the Private Practice (eg in a community dental chair), the Dental Practitioner should not write in <Agency>'s dental records other than those used in the Private Practice unless specifically asked to do so.

Insurance

- 5.1 The Dental Practitioner acknowledges that no dental indemnity insurance will be provided by <Agency> for Dental Services provided by the Dental Practitioner at the Private Practice .
- 5.2 Prior to providing any Dental Services at the Private Practice , the Dental Practitioner must take out and maintain for the duration of this Agreement, to the satisfaction of <Agency>:
 - (a) adequate private professional indemnity insurance.
 - (b) adequate public liability insurance (if applicable).
- 5.3 The Dental Practitioner must provide <Agency>'s Representative with certificates of currency for all insurance policies required under this Agreement, prior to the Commencement Date and thereafter annually at the time of each insurance policy renewal. Upon provision of such certificates of currency, the Dental Practitioner can assume that his/her insurance cover is adequate unless <Agency> indicates that it is not.
- 5.4 Nothing in this Agreement shall require <Agency> to pay the cost of any of the Dental Practitioner's insurances.

Complaints

- 6.1 If the Dental Practitioner receives a complaint about the provision of Dental Services at the Private Practice, he/she must inform <Agency>'s Representative of the substance of the complaint and the way in which he or she has responded to the complaint.
- 6.2 If <Agency> receives a complaint about the Dental Practitioner or Dental Services provided by him/her, <Agency> must inform the Dental Practitioner of the substance of the complaint. The Dental Practitioner will cooperate with <Agency> in responding to the complaint within a reasonable time.

Nature of Relationship

- 7.1 The Dental Practitioner and <Agency> acknowledge that the Dental Practitioner is an independent, self-employed person who wishes to provide Dental Services at a Private Practice located at <Agency>, pursuant to this Agreement.
- 7.2 The relationship between <Agency> and the Dental Practitioner is not one of employer and employee.
- 7.3 No party is liable for an act or omission of another party, except to the extent set out in this Agreement. The Dental Practitioner has no authority to enter into any agreement or incur any liability on behalf of <Agency>, and must not represent to any person that he/she has any such authority.
- 7.4 The Dental Practitioner agrees that <Agency> has no liability to meet all or any legal obligations, liabilities, and expenses in respect of sick leave, annual leave, long service leave, superannuation, and WorkCover relevant to the Dental Practitioner.
- 7.5 The Dental Practitioner agrees to act in a professional manner and to conduct himself/herself appropriately so as not to have any negative effect on <Agency>'s reputation.
- 7.6 The Dental Practitioner agrees to comply with the reasonable directions of <Agency> in so far as such directions relate to:
 - 7.6.1 conduct or behaviour on the part of the Dental Practitioner that could potentially affect <Agency>'s reputation.
 - 7.6.2 the understanding or impression that patients may be given about the role of the Private Practice and/or the Dental Practitioner in relation to <Agency>, and the nature of the services provided by the Dental Practitioner from the Private Practice
 - 7.6.3 the manner in which the Dental Practitioner provides services to patients who are also receiving services from <Agency> outside the Private Practice, to the extent that the Dental Practitioner should defer to the clinicians who are treating the patient in relation to their primary condition.

- 7.7 <Agency> may make the Dental Practitioner aware of <Agency> Community Health Community Dental Program's KPIs that are relevant to the operation of the Private Practice. While both parties acknowledge that the Dental Practitioner is an independent, self-employed person and not an employee, <Agency> requests the Dental Practitioner's cooperation in respect of any <Agency> Community Health Community Dental Program's KPIs that are relevant.
- 7.8 The parties acknowledge that mutual goodwill should exist for the benefit of both the Dental Practitioner and <Agency>. The parties agree that they will make reasonable efforts to work together in a spirit of trust and cooperation.
- 7.9 Both parties agree that it is preferable for issues to be raised and discussed as they arise, rather than in the Annual Review.

Compliance with applicable laws

- 8.1 The Dental Practitioner must observe and comply with the provisions of any statute, regulation, by-law, code or guideline that he/she is required to observe or perform in the operation of the Private Practice.
- 8.2 Without limiting the generality of subclause 8.1, the Dental Practitioner must comply with legislated policy and other applicable laws as are relevant to the manner in which the Dental Practitioner operates the Private Practice, including, without limitation, the following:
- 8.2.1 *Health Records Act 2001* (Vic);
 - 8.2.2 *Privacy Act 1988* (Cth);
 - 8.2.3 *Health Services Act 1988* (Vic);
 - 8.2.4 *Mental Health Act 1986* (Vic); and
 - 8.2.5 *Health Insurance Act 1973* (Cth).

Fees and Payment

- 9.1 The Dental Practitioner is entitled to receive the balance remaining, after deduction of the Practice Management Fee owed to <Agency>, of patient fees for Dental Services earned at the Private Practice, collected by <Agency> as agent of the Dental Practitioner.
- 9.2 The usual method of collection of the Practice Management Fee by <Agency> from the Dental Practitioner will be by deduction. Where this does not occur for some reason, the Dental Practitioner is obliged to pay <Agency> for any amount invoiced within 30 days of the date of the invoice.
- 9.3 The Dental Practitioner is not entitled to any other payment from <Agency> for performing his/her obligations under this Agreement, or for providing Dental Services at the Private Clinic, other than that described in clause 9.1.
- 9.4 The fees for Dental Services earned by the Dental Practitioner at the Private Practice are acknowledged to be income derived in the hands of the Dental Practitioner. It is the Dental Practitioner's responsibility to declare this income in his/her ATO tax return.
- 9.5 The Dental Practitioner may determine the fees to be charged for providing Dental Services to individual patients who attend at the Private Practice, provided that they do not exceed the Commonwealth Dental Benefits Schedule fee without the prior agreement of <Agency>.
- 9.6 The Dental Practitioner agrees that <Agency> can carry out audits of fees charged by the Dental Practitioner in respect of Dental Services provided in the Private Practice. The Dental Practitioner undertakes to assist <Agency> in the event of such an audit.
- 9.7 In accordance with clause 2.1.7, <Agency> will provide the Dental Practitioner with a tax invoice for the Practice Management Fee within 10 Business Days after the end of each month.
- 9.8 <Agency> may increase the Practice Management Fee from time to time but no more than once per year. The Practice Management Fee may be increased by <Agency> giving the Dental Practitioner 30 days' written notice of the new fee.
- 9.9 Each party to this Agreement must do everything reasonable to assist each other party to comply with its GST obligations in relation to this agreement. Specifically:
 - 9.9.1 <Agency> will issue a tax invoice in the format required by the law to the Dental Practitioner for the supply. The tax invoice will set out the amount of the GST payable by the Dental Practitioner. The tax invoice will be issued at the same time as the consideration for the supply is due from the Dental Practitioner; and

9.9.2 The Dental Practitioner must pay to <Agency> any amount of GST that the Dental Practitioner is required to pay at the same time and in the same manner as the Dental Practitioner is required to pay the consideration for the supply to which the GST relates.

9.10 Terms used in this clause have the same meaning as those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Indemnity and Limitation on Liability

10.1 The Dental Practitioner indemnifies <Agency>, its officers, servants, employees and agents and shall at all times keep <Agency>, its officers, servants, employees and agents indemnified against any liability, loss, claim or proceedings whatsoever (including legal costs) arising directly from:

10.1.1 any breach of this agreement by the Dental Practitioner;

10.1.2 any breach of statute, breach of statutory duty or any unlawful or criminal act or omission by the Dental Practitioner, its officers, servants, employees or any other person for whose acts or omissions the Dental Practitioner is vicariously liable; and

10.1.3 any infringement of <Agency>'s or any third party's Intellectual Property Rights.

10.2 The indemnity contained in this clause shall be continuous and shall survive the expiry or termination of this Agreement.

Confidentiality

11.1 Except where required by law or by mutual agreement, the parties shall not divulge the terms and conditions of this Agreement to any person except his or her legal and financial advisers.

11.2 It is a condition of this Agreement that any information acquired by the Dental Practitioner in or in connection with the provision of Dental Services at the Private Practice concerning <Agency>, its staff or procedures, the identity of any patient of <Agency> or the dental condition of or the treatment received by any patient of <Agency> (**'the Confidential Information'**) be kept confidential both during and after the Dental Practitioner's engagement with <Agency>. This sub-clause does not apply if

11.2.1 <Agency> permits the disclosure of the Confidential Information.

- 11.2.2 it is necessary, on reasonable grounds, for the Dental Practitioner to divulge the Confidential Information in the course of providing Dental Services.
- 11.2.3 the Confidential Information is required or permitted by law to be divulged.
- 11.3 The Dental Practitioner agrees that all patents, computer software, management systems and commercial processes developed by him/her or under his control in the period of this Agreement, which are relevant to the operations of <Agency>, shall remain at all times the property of <Agency>, and where relevant shall be physically returned to <Agency> immediately upon expiry or termination of this Agreement.
- 11.4 The obligations imposed by this clause shall survive the expiry or termination of this Agreement.

Conflicts of Interest

- 12.1 The Dental Practitioner must not undertake work or perform services for anyone else which conflicts with his/her obligations under this Agreement.
- 12.2 The Dental Practitioner warrants that at the Commencement Date, there are no conflicts of interest actual or foreseen.
- 12.3 The Dental Practitioner must immediately notify <Agency> if a conflict arises or is foreseeable. He/she must also notify <Agency> of his/her plan for resolving or minimising that conflict.
- 12.4 The Dental Practitioner agrees that he/she will not without <Agency>'s prior authorisation, divulge to any other person, business or corporation any information concerning the affairs of <Agency> which might reduce the effectiveness or competitiveness of <Agency>.
- 12.5 The Dental Practitioner agrees that he will not make use of information concerning the affairs of <Agency> for his/her own benefit or the benefit of others outside <Agency>.

Warranties by the Dental Practitioner

- 13.1 The Dental Practitioner represents and warrants that he/she:
- 13.1.1 is registered for GST.
- 13.1.2 has the time, resources and skills to provide the Dental Services to patients at the Private Clinic, in accordance with any limitations described in Item 3 of Schedule 1.

- 13.1.3 understands all risks, difficulties, contingencies and other matters relating to providing Dental Services at the Private Practice and is able to manage such matters.
- 13.2 The Dental Practitioner acknowledges and agrees that at the time of entering into this Agreement he/she has satisfied himself/herself regarding:
 - 13.2.1 <Agency>'s ability to provide the Practice Management Services.
 - 13.2.2 the amount of the Practice Management Fee and what it will cover.

Termination

- 14.1 <Agency> may in its sole discretion decide to terminate this Agreement immediately by notice to the Dental Practitioner if any of the following occur:
 - 14.1.1 the Dental Practitioner is in breach of his/her obligations under this Agreement and does not remedy the breach (to the extent that it can be remedied) within 5 Business Days after receiving a written notice from <Agency> specifying the breach and requiring it to be remedied.
 - 14.1.2 the Dental Practitioner is in breach of a term of this Agreement which cannot be remedied.
 - 14.1.3 the Dental Board of Australia has suspended or made conditional the registration of the Dental Practitioner or removed the Practitioner's name from the register.
 - 14.1.4 the Dental Practitioner fails to meet the professional development requirements of the Dental Board of Australia
 - 14.1.5 the Dental Practitioner fails to cooperate with <Agency> in a significant respect relating to a complaint or adverse event.
 - 14.1.6 if the Dental Practitioner breaches the *Health Insurance Act 1973* (Cth).
 - 14.1.7 without limiting the generality of the foregoing, if the Dental Practitioner engages in serious or wilful misconduct.

- 14.2 Either party may terminate this Agreement at any time without reason by giving not less than three (3) months written notice of its wish to terminate, not limited to the circumstances in clause 1.6. The Agreement will terminate at the end of the notice period. The party terminating the Agreement has no liability to compensate the other party as a result of the termination.
- 14.3 When this Agreement expires or terminates, the Dental Practitioner must immediately return all of <Agency>'s equipment, information, documents, records and other property located at the Private Practice or otherwise in the Dental Practitioner's possession or control.
- 14.4 <Agency> shall not terminate the Dental Practitioner's engagement in an unlawful manner and shall ensure that the Dental Practitioner has been accorded natural justice in connection with any termination for cause.

Right to Suspend

- 15.1 <Agency> may suspend the operation of this agreement for a period of up to 10 Business Days. During any period of suspension, <Agency> may investigate any matter affecting the Dental Practitioner and decide whether to:
- (a) continue this Agreement in accordance with its terms and conditions.
 - (b) require the Dental Practitioner to agree to additional provisions in or amendments to the Agreement before it continues.
 - (c) terminate the Agreement immediately by notice in writing to the Dental Practitioner, in accordance with clause 14.

Dispute Resolution

- 16.1 If any dispute or grievance arises in relation to this Agreement the parties agree to deal with it in the following manner:
- 16.1.1 the matter must first be discussed by the Dental Practitioner with <Agency>'s Representative within 7 days of dispute or grievance arising.
 - 16.1.2 if the matter is not able to be settled within 7 days of first discussing it with <Agency>'s Representative, the Dental Practitioner may request a representative to be present and the matter must again be discussed in the presence of <Agency>'s Representative within a further 7 days.

16.1.3 if the matter is not then resolved, it shall be referred to the Chief Executive Officer of <Agency> for prompt resolution.

16.2 Until the matter is determined, the Dental Practitioner may continue to provide Dental Services in the Private Practice unless in the sole discretion of <Agency> the dispute relates to a matter of patient safety.

16.3 These Dispute Resolution procedures shall not be used by either party to seek to alter the Practice Management Fee.

16.4 The Parties shall co-operate to ensure that these dispute resolution procedures are carried out expeditiously.

Force Majeure

17.1 Where a party is unable, wholly or in part, by reason of force majeure, to carry out any obligations under this Agreement and that party:

17.1.1 gives the other party hereto prompt notice of that force majeure with reasonable full particulars thereof and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation, and

17.1.2 uses all possible diligence to remove that force majeure as quickly as possible,

that obligation is suspended so far as it is affected by force majeure during the continuance thereof.

17.2 An obligation to pay money is not excused by force majeure.

Notices

18.1 Address for service

All notices, requests, consents and other documents authorised or required to be given by or pursuant to this agreement must be given in writing and either personally served or sent by facsimile transmission ('fax') addressed as follows:

To <Agency>:

Address:

Telephone:

Facsimile:

To the Dental Practitioner:

Address: The address set out in Schedule 1.

Telephone: The telephone number set out in Schedule 1

Facsimile: The facsimile number set out in Schedule 1.

Attention: The Dental Practitioner.

18.2 Time of service

Notices, requests, consents and other documents ('Notices') will be taken to be served or given:

18.2.1 personally served by being left at the address of the party to whom the Notice is given between the hours of 9:00 am and 5:00 pm on any Business Day, then in such case at the time the Notice is so delivered; and

18.2.2 if sent by fax, then in such case when successfully transmitted between the hours of 9:00 am and 5:00 pm on any Business Day, when received and when successfully transmitted outside these hours, then at 9:00 am on the next Business Day.

Miscellaneous**19.1 Governing Law**

This Agreement is governed and construed in accordance with the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts entitled to hear appeals from those courts.

19.2 Entire Agreement

This Agreement constitutes the sole and entire Agreement between the parties with respect to Dental Services at the Private Practice, and supersedes all previous agreements, contracts and representations between the parties. Any previous contracts are deemed to have been terminated by mutual consent effective on the Commencement Date.

19.3 Variation

This Agreement may be varied only in writing by mutual agreement.

19.4 Severability

If any clause or part of a clause of this document is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

19.5 **Accrued Rights**

The ending of this Agreement does not affect any accrued rights.

19.6 **Set Off**

<Agency> is entitled to set off any amount that the Dental Practitioner owes to <Agency> under this Agreement, against any amount that <Agency> owes to the Dental Practitioner.

Definitions and Interpretation

'Adverse Event' means an incident in which unintended harm results to a person receiving services.

'Business Day' means any weekday that is not gazetted as a public holiday in Melbourne, Victoria.

'Commencement Date' means the date set out Schedule 1 or such other date as is agreed by the parties.

'<Agency> – Community Health' means the part of <Agency> that delivers the services of a community health service.

'Dental Services' means the dental services to be provided independently by the Dental Practitioner to patients attending the Private Practice , as set out in Schedule 1.

'<Agency>'s Representative' means <name> at <Agency> or such other person as may be appointed by <Agency> to be the contact point for the Dental Practitioner under this Agreement.

'Practice Management Fee' means the fee for practice management services including administrative and clerical support, and physical consulting room facilities, payable by the Dental Practitioner to <Agency> for the Practice Management Services, set out in Schedule1.

'Practice Management Services' means the practice management services including administrative and clerical support, and physical consulting room facilities, that the Dental Practitioner has requested <Agency> to provide for the Private Practice.

'Private Practice' means the Private Practice to be operated independently by the Dental Practitioner to provide dental services to patients, located at the premises of <Agency>.

Executed as an Agreement

Signed on [date])

for and on behalf of)

<Agency> in the presence of:)

<Name>

<Title>

Signature of witness

(name printed in full)

Signed on [date])

by the Dental Practitioner)

in the presence of:)

[Dental Practitioner's signature]

Signature of witness

(name printed in full)

Schedule 1

Item 1: **Full name of Dental Practitioner**

Contacts for Dental Practitioner

[postal address] _____

[telephone] _____

[fax] _____

[email] _____

Item 2: **Commencement Date**

Item 3: **Nature and extent of dental services that the Dental Practitioner is permitted to provide, as determined by <Agency>'s Senior Dental Staff Appointments Committee, including any areas of specialisation, and any limitations**

Item 4: **Sessions per week:**

Agreed Session times:

	AM	PM
Monday		
Tuesday		
Wednesday		
Thursday		
Friday		
Saturday		

Item 5: <Agency>'s Representative

<name>, <title> – Community Health

Contacts for <Agency>'s Representative

[postal address]

[telephone]

[fax]

[email]

Item 6: Practice Management Fee

<Agency> will invoice the General Practitioner for the Practice Management Fee on a monthly basis.

The Practice Management Fee is calculated at **60%** of patient fees earned in the Private Practice by the Dental Practitioner, plus GST.

Schedule 2

Practice Management Services provided by <Agency> to the Dental Practitioner under this Agreement

1. General

Access to Clinical Rooms will be provided on application when available. The Clinical Rooms are equipped in accordance with the relevant standards for accreditation.

Application for regular use of a clinic area should be made through <Agency>'s Representative.

2. Staffing

<Agency> will provide staff as agreed for the Clinic.

Provision has been made for a Dental Assistant and Reception support.

3. Practice Management Services

Practice Management Services will be provided by <Agency>.

Included in the Practice Management Fee is administrative and clinical support, including the cost of providing equipment and consumables related to performing Practice Management Services. This includes access to office equipment, photocopying, telephone, fax and printing on a reasonable use basis. Functions of the staff include:

1. Reception:

- Undertake duties relevant to skills and experiences as per <Agency> position description, e.g.
- Provide professional and caring support to dental clients;
- collect fees and issue receipts;
- Undertake banking duties as directed;
- Typing;
- General administrative support; and
- to maintain the productivity of the dental practitioner by effective and efficient appointment scheduling.

2. Dental Assistant:

- Undertake duties relevant to skills and experiences as per <Agency> position description, e.g.:
 - 1 Chair side assistance;
 - 2 Patient chair side oral health education;
 - 3 Infection Control procedures, clean and sterilise instruments, set up and pack up of surgery attend to X-rays correct disposal of infectious waste;
 - 4 Identification and notification of ordering of clinical supplies;
 - 5 Identification and notification of any equipment problems; and
 - 6 Ensure adequate stocking of surgery at the end of the session.

When <Agency> staff perform the above functions on behalf of the Dental Practitioner operating the Private Practice , they must identify themselves as being from the Private Practice of the Dental Practitioner (not from <Agency>), and they must not use <Agency> uniforms or letterhead.

4. Computers and information technology

The Dental Practitioner will be entitled to use existing IT facilities at <Agency> within the Practice Management Fee.

5. Taxation Arrangements

- (a) The Dental Practitioner must be registered for GST purposes; and
- (b) The Dental Practitioner is responsible for preparation of his/her own Business Activity Statements.