

# NURSING HOMES, &c., NURSES' (STATE) AWARD

<b>IRC Matter No</b>	<b>Date of Decision</b>	<b>Judicial Member</b>	<b>Effective Date of Variation</b>	<b>Details of Variation</b>	<b>Gazette Reference</b>
No. IRC 3069 and 3870 of 2003	29/03/2005	Full Bench	29/03/2005	Award Review Variation by Industrial Relations Commission	350. IG pg 1180 C3823
No. IRC 3069 and 3870 of 2003	6/07/2005	Justice Wright, President	6/07/2005	Continuing Education Allowance	354 IG pg 854 C3825
No. IRC 4201 of 2005	27/07/2007		19/12/2005	Family Provisions Case	363 IG pg 209 C5538
No. IRC 1214 of 2006	10/03/2006	Commissioner Bishop	10/03/2006	Secure Employment	366 IG pg 1317
No. IRC 2122 of 2007	14/12/2007	Commissioner Murphy	7/12/2007	State Wage Case 2007 - Salaries & Allowances varied	364 IG pg 1384 C6375
No. IRC 691 of 2008	11/09/2008	Commissioner Connor	20/08/2008	Review of Award pursuant to Section 19 of the Industrial Relations Act	366 IG pg. 1320 C6745
No. IRC 2200 of 2008	3/12/2008	Commissioner McLeay	7/12/2008	State Wage Case 2008 - Salaries & Allowances varied	367 IG pg. 398 C6890
No. IRC 1658 of 2009	6/11/2009	Commissioner Bishop	7/12/2009	State Wage Case 2009 - Salaries & Allowances varied	369 IG pg. 953 C7301
No. IRC 796 of 2011	10/06/2011	Commissioner Tabbaa	16/06/2010	State Wage Case 2010 - Salaries & Allowances varied	371 IG pg 807 C7629
	23/12/2011	G M Grimson	16/06/2010	Correction	371 IG pg 1642 C7695
No. IRC 273 of 2012	27/03/2012	Justice Staff	16/10/2010	Award Review	Vol. 373 pg 237 C7916
No. 563 of 2013	16/08/2013	Justice Boland	15/05/2013	State Wage Case 2011 & 2012 Salaries & Allowances varied	Vol. 375 pg. 1040 C8134
No. IRC 972 of 2013	12/02/2014	Acting Justice Boland	14/11/2013	State Wage Case 2013 - Salaries & Allowances varied	376 pg. 86 C8182

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No. IRC 804 of 2014	6/02/2015	Justice Kite	14/11/2014	State Wage Case 2014 – 3% Salaries & Allowances varied	Vol. 377 IG Pg. 317 C8290
No. IRC 479 of 2015	13/11/2015	Commissioner Tabbaa	28/09/2015	State Wage Case 2015 – 2.5% Salaries & Allowances varied	Vol. 380 IG pg. 883 C8606
No. IRC 349189 of 2016	6/12/2016	Commissioner Tabbaa	28/09/2016	State Wage Case 2016 – 2.5% Salaries & Allowances varied	C8667

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## PART A

### 1. Definitions

The following definitions apply in this award, except where otherwise clearly indicated.

- (i) "Assistant in Nursing" means - a person, other than a registered nurse, trainee or enrolled nurse who is employed in nursing duties in a facility.
- (ii) "Assistant Director of Nursing" means:
  - (a) A person appointed as such in any sized facility and includes a person appointed as the nurse in charge during the evening or night in a facility where the adjusted daily average of occupied beds is not less than 150.
  - (b) A person appointed as such to a position approved by the employer including persons appointed to be in charge of a ward or group of wards.
- (iii) "Association" means - the New South Wales Nurses' Association.
- (iv) "Board" means - the Nurses' Registration Board of NSW.
- (v) "Clinical Nurse Consultant" means - a registered nurse appointed as such to the position, who has had at least five years' post registration experience and who has in addition approved post registration nursing qualifications relevant to the field in which they are appointed or such other qualifications or experience deemed appropriate by the employer.
- (vi) "Clinical Nurse Educator" means - a registered nurse with relevant post registration certificate qualifications or experience deemed appropriate by the employer, who is required to implement and evaluate educational programmes at the nursing home.

The Clinical Nurse Educator shall cater for the delivery of clinical nurse education at the nursing home. The Clinical Nurse Educator may also be responsible for new employee orientation at the nursing home.

A nurse will achieve Clinical Nurse Educator status on a personal basis by being required by the nursing home to provide the educational programmes detailed above.

Nothing in this clause shall affect the role carried out by the Clinical Nurse Specialist as a specialist resource and the Clinical Nurse Consultant in the primary role of clinical consulting, researching etc.

- (vii) "Clinical Nurse Specialist":-
  - (a) In facilities of 250 ADA and above, the definition of a Clinical Nurse Specialist is:

"Clinical Nurse Specialist" means - a registered nurse with specific post registration qualifications and twelve months experience working in the clinical area of her/his specified post registration qualification; or a registered nurse with four years post registration experience in a specific clinical area and working in the clinical area of her/his specified post registration experience.

(b) In facilities of less than 250 ADA the definition for Clinical Nurse Specialist is:

"Clinical Nurse Specialist" means - a registered nurse with specific post registration qualifications and twelve months experience working in the clinical areas of her/his specified post registration qualification.

- (viii) "Day Worker" means - a worker who works her/his ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6.00 am and before 10.00 am, otherwise than as part of the shift system.
- (ix) "Deputy Director of Nursing" means - a person appointed to that position or deemed to hold that position pursuant to clause 32, Deputy Director of Nursing and Assistant Director of Nursing, of this award.
- (x) "Director of Nursing" means a registered nurse who is registered by her/his employer with the Health Administration Corporation as the person in charge of the facility. There shall be only one person in each facility entitled to be classified as Director of Nursing or whatever title the senior nursing administrator is known by in the individual facility and shall include "Chief Nurse" as defined by the *Nursing Homes Act 1988*.
- (xi) "Enrolled Nurse" means - a person enrolled by the Board as such.
- (xii) "Experience" in relation to an enrolled nurse or assistant in nursing means experience both before and/or after the commencement of this award whether within New South Wales or elsewhere and in the case of an enrolled nurse or assistant in nursing who was formerly a student nurse includes experience as such student nurse.
- (xiii) "Facility" means - a nursing home or hostel.
- (xiv) "Hostel" means - a Hostel as defined as at 1st September 1993 in the *Aged and Disabled Persons Care Act 1954* (Commonwealth).
- (xv) "Industry of Nursing" means - the industry of persons engaged in New South Wales in the profession of nursing in nursing homes and hostels.
- (xvi) "Nurse" includes Registered Nurses, Enrolled Nurses and Assistants in Nursing.
- (xvii) "Nurse Educator" means - a registered nurse with a post registration certificate, who has relevant experience or other qualifications deemed appropriate by the employer, and who is appointed to a position of Nurse Educator.

A Nurse Educator shall be responsible for the development, implementation and delivery of nursing education programmes within a nursing home or group of nursing homes. Nurse education programmes shall mean courses conducted such as post registration certificates, continuing nurse education, orientation programmes including new graduate programmes, post enrolment courses for enrolled nurses and where applicable general staff development courses.

A person appointed to a position of Nurse Educator who holds relevant tertiary qualifications in education or tertiary postgraduate specialist clinical nursing qualifications shall commence on the 3rd year rate of the salary scale.

A person appointed as the sole nurse educator for a group of nursing homes shall be paid at the 3rd year rate of the salary scale.

Incremental progression for Nurse Educators shall be on completion of 12 months satisfactory full-time equivalent service, provided that progression shall not be beyond the 3rd year rate unless the person possesses the qualifications detailed in the two previous paragraphs. Persons appointed to the 3rd year rate by virtue of paragraphs 3 and 4 above shall progress to the 4th year rate after completion of 12 months satisfactory full time service.

- (xviii) "Nursing Home" means - a Nursing Home as defined as at 1 September 1993 by the *Nursing Homes Act, 1988*.
- (xix) "Registered Nurse" means - a person registered by the Board as such.
- (xx) "Senior Nurse Educator" means - a registered nurse with a post registration certificate or appropriate qualifications, who has, or is working towards, recognised tertiary qualifications in education or equivalent and has demonstrated experience and skills in the field of education, and who is appointed to a position of Senior Nurse Educator.

A Senior Nurse Educator shall be responsible for one or more Nurse Educators in the planning, co-ordination, delivery and evaluation of educational programmes such as post registration certificate courses, continuing nurse education, orientation programmes including new graduate programmes, post enrolment courses for enrolled nurses and where applicable general staff development courses either in a nursing home or in a group of nursing homes.

Incremental progression shall be on completion of 12 months' satisfactory service.

- (xxi) "Service" for the purpose of clause 6, Salaries, of this award, means - service before or after the commencement of this award in New South Wales or elsewhere as a registered nurse, plus any actual periods on and from 1 January 1971, during which a registered nurse undertook a prescribed geriatric, infants', midwifery, mothercraft or psychiatric training course, or attended a post-graduate course recognised by the Board whether in New South Wales or elsewhere; provided that in the case of service elsewhere than in New South Wales where the period of the prescribed course of training is less than the period of the prescribed course of training in New South Wales, the nurses shall serve a period after graduation equal to the difference between the period of the prescribed course elsewhere than in New South Wales and the period of the prescribed course in New South Wales before becoming entitled to be paid as a registered nurse, general nurse, geriatric nurse, infants' nurse, midwifery nurse, mothercraft nurse or psychiatric nurse as the case may be.
- (xxii) "Shift Worker" means - a worker who is not a day worker as defined.
- (xxiii) "Trainee Enrolled Nurse" means - a person who is being trained to become an enrolled nurse in a nursing home recognised by the Board for that purpose.

## **2. Hours of Work and Free Time of Employees Other Than Directors of Nursing**

- (i) The ordinary hours of work for day workers, other than Directors of Nursing, exclusive of meal times, shall be 152 hours per 28 calendar days, to be worked Monday to Friday, inclusive, and to commence on such days at or after 6.00 a.m. and before 10.00 a.m.
- (ii) The ordinary hours of work for shift workers, other than Directors of Nursing, exclusive of meal times, shall not exceed an average of 38 hours per week in each roster cycle.
- (iii)
  - (a) The hours of work prescribed in subclauses (i) and (ii) of this clause shall, where possible, be arranged in such a manner that in each roster cycle of 28 calendar days

each employee shall not work his/her ordinary hours of work on more than 19 days in the cycle.

- (b) Notwithstanding the provision of paragraph (a) of this subclause, employees may, with the agreement of the employer, work shifts of less than eight hours each over 20 days in each cycle of 28 days.
- (c) Provided that on the occasion of an employee's written request, and with the consent of the employer, a 9.5-day fortnight may be worked instead of the 19-day month.

NOTE: This subclause is designed to ensure that rosters achieve increased leisure time for nurses, rather than reduced daily hours. This can be achieved by the working of shifts of longer than eight hours per day, with the result that less than 19 days are worked in 28, but without the accrual of an additional day off, as well as by the working of a 19-day month with an accrued additional day off.

- (iv) Each shift shall consist of no more than ten hours on a day shift or 11 hours on a night shift with not less than eight hours break between each shift; provided that an employee shall not work more than seven consecutive shifts unless the employee so requests and the Director of Nursing agrees. Provided also that an employee shall not work more than two quick shifts in any period of seven days, i.e., an evening shift followed by a morning shift, where the break between ordinary shifts is less than ten hours.
- (v) The employer is to decide when employees take their additional days off prescribed in subclause (iii) of this clause (as a consequence of the implementation of the 38-hour week). Where necessary, the employer must consult with the affected employees to ascertain the employees' preferences and must take any such preferences into account when arriving at a decision. Where practicable, additional days off duty shall be consecutive with the rostered days off duty prescribed in subclause (xiv) of this clause.
- (vi) Once set, the additional day off duty may not be changed, except in accordance with the provisions of clause 5, Rosters.
- (vii) Where the employer's decision (in accordance with subclause (v) of this clause) is that an employee's additional days off be accumulated, no more than six days may be accumulated in any one year of employment. By mutual agreement this may be extended to no more than 12 days at any one time.
- (viii)
  - (a) Except for breaks for meals, the hours of duty each day shall be continuous.
  - (b) "Broken shift" for the purposes of this subclause means a shift worked by a permanent part-time employee that includes a break (other than a meal break) of not more than four hours and where the span of hours is not more than 12 hours.
  - (c) Notwithstanding paragraph (a) above and subclause (iv) of this clause, an employer association representing an employer may apply to the Association for permission to implement broken shifts.
  - (d) Broken shifts may be worked without the permission of the Association, but only where:
    - (1) it is for a period of one month or less; and
    - (2) it is by reason of an emergency in the roster, e.g., absence of another employee due to sick leave, annual leave on short notice or resignation; and
    - (3) the affected employees agree to work the broken shifts.

(ix)

- (a) Each employee shall be allowed a break of not less than 30 minutes and not more than 60 minutes for each meal occurring on duty.
  - (b) Where practicable, employees shall not be required to work more than five hours without a meal break.
- (x) Two separate ten-minute intervals (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of 7.6 hours or more; where less than 7.6 ordinary hours are worked, employees shall be allowed one ten-minute interval in each four-hour period. Subject to agreement between the employer and the employee, such intervals may alternatively be taken as one 20-minute interval, or as one ten-minute interval with the employee allowed to proceed off duty ten minutes before the completion of the normal shift finishing time. Such interval(s) shall count as working time.
- (xi) Subclauses (ix) and (x) of this clause shall not apply to an employee who, before going on night duty, is provided with a meal between 9.00 p.m. and 11.00 p.m. and who is allowed two intervals of 20 minutes each during the period of night duty, but such intervals shall count as working time and shall be paid for as such.
- (xii)
- (a) Except as provided for in paragraph (b) of this subclause, an employee shall not be employed on night duty for a longer period than eight consecutive weeks. After having served a period of night duty, an employee shall not be required to serve a further period on night duty until he or she has been off night duty for a period equivalent to the previous period on night duty.
  - (b) The provisions of paragraph (a) shall not apply to an Assistant Director of Nursing, a Nursing Unit Manager or a registered nurse in charge, as the case may be, who is employed permanently in charge at night, nor to an employee who requests to be employed on night duty and the Director of Nursing consents.
  - (c) Moreover, except in cases of emergency, a trainee enrolled nurse shall not be employed on night duty for more than ten weeks in any one year of training nor shall a trainee enrolled nurse who is sitting for his or her final examination be required to perform night duty during a period of at least two weeks prior to the respective examination or on the two nights following such examination.
- (xiii) An employee changing from night duty to day duty or from day duty to night duty shall be free from duty during the 20 hours immediately preceding the commencement of the changed duty.
- (xiv)
- (a) Each employee shall be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28-day cycle and no duties shall be performed by the employee on any of such free days except for overtime. Where practicable, days off shall be consecutive and shall not be preceded by an evening shift or a night shift unless an additional eight hours are granted as sleeping time. An evening shift shall be one which commences at or after 1.00 p.m. and before 4.00 p.m.
  - (b) An employee, at his or her request, may be given free-from-duty time in one or more periods but no period shall be less than one full day.
  - (c) For the purpose of this subclause, "full day" means - from midnight to midnight or midday to midday.

(xv)



- (a) Employees may be required to remain "on call". Any such time on call shall not be counted as time worked (except insofar as an employee may take up actual duty in response to a call), but shall be paid for in accordance with clause 10, Special Allowances. Provided, however, that no employee shall be required to remain on call whilst on leave or on the day before entering upon leave.
  - (b) No employee shall be required to remain on call while on a rostered day or days off nor on completion of the shift on the day preceding a rostered day off. This provision shall not apply where in special circumstances it is necessary for an employer to place staff on call on rostered days off or on completion of the shift on the day preceding a rostered day off in order to ensure the provision of services.
- (xvi) All rostered time off duty occupied by a trainee enrolled nurse in attendance at lectures and demonstrations given in the course of instruction in the theory and practice of nursing or during the time necessarily occupied in attending at and sitting for prescribed examinations shall be deemed to be time worked.
  - (xvii) The provisions of paragraphs (a) and (b) of subclause (xii) and of subclause (xiii) and of paragraph (a) of subclause (xiv) of this clause, shall not apply if the employee is required to perform duty to enable the nursing service of the employer to be carried on or where another employee is absent from duty on account of illness or in an emergency.

### **3. Hours of Work and Free Time of Directors of Nursing**

- (i) A Director of Nursing shall be free from duty for not less than nine days in each 28 consecutive days and such days free from duty may be taken in one or more periods.
- (ii) If any of the days mentioned in subclause (i) of this clause cannot be taken by reason of emergency, such day or days shall be given and taken within 28 days of becoming due.
- (iii) A Director of Nursing shall, where practicable, inform his/her employer by giving not less than seven days' notice of the days he/she proposes to be free from duty; provided that such days shall be subject to the approval of the employer, and such approval shall not be unreasonably withheld.

### **4. Remuneration Packaging**

- (i) Where an employer intends to offer remuneration packaging generally to employees under this award, the employer shall notify the Association at least 21 days prior to making that general offer that it intends to make a general offer of remuneration packaging to employees under this award.
- (ii) Where the employer offers remuneration packaging to an individual employee, the employer shall allow the employee a period of no less than 21 days to seek independent advice on the terms of the proposed remuneration packaging.
- (iii) Remuneration packaging shall be introduced by agreement between an employer and the employee. Neither the employee nor the employer shall be compelled to enter into a salary packaging arrangement. Employees may exercise their rights to continue to receive their applicable salary.
- (iv) The terms and conditions of a package offered to an employee shall not, when viewed objectively, be less favourable than the entitlements otherwise available under the award and shall be subject to the following provisions:
  - (a) The employer shall ensure that the structure of any package complies with taxation and other relevant laws.

- (b) All award conditions, other than the salary and those conditions as agreed in paragraph (c) below shall continue to apply.
- (c) Where packaging arrangements apply with a Director of Nursing (DON) or a Deputy Director of Nursing (DDON), the employer and employee may by mutual agreement delete the application of certain award clauses, excepting clauses 22 Annual Leave, 24 Sick Leave, 25 Long Service Leave and 27 Personal/Carer's Leave.
- (d)
  - (i) Employees will have the Superannuation Guarantee Contribution (SGC) calculated on their award salary prior to the application of any remuneration packaging arrangements.
  - (ii) Employers shall, by no later than 31 December 2002, renegotiate any remuneration package in operation prior to 13 November 2002, where such package includes a SGC calculated on less than their pre-packaged award salary. The package must provide for future SGC contributions to be based on the pre-packaged award salary.
- (v) A copy of the agreement shall be made available to the employee.
- (vi) The employee shall be entitled to inspect details of the payments made under the terms of this agreement.
- (vii) The configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer.
- (viii) Where at the end of the Fringe Benefit Tax year the full amount allocated to a specific benefit has not been utilised, it will be paid as salary, which will be subject to appropriate taxation requirements. By agreement between the employer and the employee, any unused benefit may be carried forward to the next period on the basis that any FBT obligation is accepted by the employee.
- (ix) In the event that the employer ceases to attract exemption from payment of Fringe Benefit Tax, the employer may terminate all remuneration packaging arrangements and the employee's salary will revert to the applicable award classification rate the employee would have been entitled to receive but for the remuneration packaging agreement.
- (x) One months notice by either party is required for change or termination of a remuneration packaging agreement, unless the change or termination is brought about by legislation or an increase to the award wage.
- (xi) In the event that the employee ceases to be employed by the employer this agreement will cease to apply as at the date of termination. Benefits not paid on or before the date of termination shall be treated as salary and the appropriate tax deducted.
- (xii) Pay increases granted to employees in accordance with this award shall also apply to employees subject to remuneration packaging arrangements.
- (xiii) Any allowance, penalty rate, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any remuneration packaging arrangements.

## **5. Rosters**

- (i) The ordinary hours of work for each employee, other than the Director of Nursing, shall be displayed on a roster in a place conveniently accessible to employees.

- (ii) The roster shall, where practicable, be displayed at least two weeks, and in any event not less than one week, prior to the commencing date of the first working period in the roster.
- (iii) Notwithstanding the foregoing provisions of this clause, a roster may be altered at any time to enable the nursing service of the facility to be carried on where another employee is absent from duty on account of illness or in an emergency; provided that where any such alteration involves an employee working on a day which would otherwise have been such employee's day off, the day off in lieu thereof shall be as mutually arranged.
- (iv) Prior to the date of the changed shift, such change of roster shall be notified verbally or in writing to the employee concerned.
- (v) Where an employee is entitled to an additional day off duty in accordance with clause 2, Hours of Work and Free Time of Employees other than Directors of Nursing, of this award, such day is to be shown on the roster of hours for that employee.
- (vi) All rosters shall be retained for at least six years.

### **6. Salaries**

- (i) The minimum salaries per week shall be as set out in Table 1 - Salaries, of Part B, Monetary Rates.
- (ii) Where an employer appoints an Assistant Director of Nursing, Deputy Director of Nursing or Director of Nursing to be responsible for a hostel, then the following calculation will apply when calculating the adjusted daily average of hostel beds to be included for salary purposes:

Responsibility for Hostel	Nursing Home Bed	Percentage %
(1)	No responsibility	0
(2)	Partial responsibility: Where the assigned responsibility is limited to oversight of the operation of a hostel and liaison with a Hostel Supervisor (who has been appointed to supervise hostel staff in the performance of their duties and to carry out administrative and other tasks relevant to the operation of the hostel and the welfare and care of residents)	25
(3)	Total responsibility: No Hostel Supervisor engaged in the hostel over which responsibility has been assigned	100

Provided that every fraction of a bed resulting from this calculation shall be deemed to equal one nursing home bed.

### **7. Transitional Arrangements - Registered Nurse Incremental Scale**

- (i) For the purposes of this clause "transitional date" means the first pay period commencing on or after 1 March 1996.
- (ii) The year of service for the purpose of the incremental scale for a registered nurse employed at the transitional date shall be determined by locating the registered nurse's current year of service on the incremental scale in Column A of the Transitional Table in subclause (iv). The registered nurse's incremental year of service shall be deemed to be the year of service

appearing opposite in Column B of the Transitional Table. Provided that a registered nurse with eight or more actual years of service shall be placed on the eighth year of service in Column B of the Transitional Table.

- (iii) Registered nurses who commence employment with an employer after the transitional date shall have their year of service determined as if they were employed by the employer at the transitional date. That is, the transitional arrangements shall apply to all periods of employment, under this award, which commence on or after the transitional date.
- (iv) Transitional Table:

Column A (Old incremental scale)	Column B (New incremental scale)
First year of service	First year of service
Second year of service	First year of service
Third year of service	Second year of service
Fourth year of service	Third year of service
Fifth year of service	Fourth year of service
Sixth year of service	Fifth year of service
Seventh year of service	Sixth year of service
Eighth year of service	Seventh year of service
UGI	Eighth year of service
Note: For the purposes of the old incremental scale only, a registered nurse who has obtained an appropriate degree in Nursing or Applied Science (Nursing) or Health Studies(Nursing) (referred to for the purposes of this clause as a "UGI" qualification) shall enter the incremental scale on the second year of service.	

- (v) The year of service determined by this clause shall be year of service only for the purposes of clause 6, Salaries. In particular this clause shall not affect the definition of service for the purposes of clause 22, Annual Leave, clause 24, Sick Leave or clause 25, Long Service Leave.
- (vi) A registered nurse's anniversary date for the purpose of moving to the next year of service is not affected by this clause.

### **8. Recognition of Service and Experience**

- (i) The employer shall notify each nurse, in writing, of the requirements of this clause at the time of the nurse's commencement of employment. If the employer does not so notify the nurse, then the requirements of this clause shall not commence until the employer does so notify the nurse.
- (ii) From the time of commencement of employment the nurse has three months in which to provide documentary evidence to their employer detailing any other 'service' or 'experience', as defined in clause 1, Definitions, not disclosed at the time of commencement. This evidence, in the absence of other documentary evidence may take the form of a statutory declaration.
- (iii) Until such time as the nurse furnishes any such documentation contemplated in subclause (ii) above, the employer shall pay the nurse at the level for which proof has been provided.
- (iv) If within three months of commencing employment a nurse does provide documentary evidence of other previous service or experience not disclosed at the time of commencement, the employer shall pay the nurse at the appropriate rate as and from the date of commencement that would have been paid from that date had the additional evidence been provided at that time.

- (v) If a nurse provides documentary evidence of other previous service or experience not disclosed at the time of commencement after the said three months period, the nurse shall be paid a rate appropriate for the previous service or experience then proved, but only from the date of providing that evidence to the employer.
- (vi) A nurse who is working as a nurse for more than one organisation shall notify each employer under this award within one month of the end of each quarter of their hours worked with those other employers in the last quarter.
- (vii) A nurse who is entitled to progress to the next year of service or experience (by reason of hours worked with other employers) as and from a particular date must provide proof of that entitlement within three months of that entitlement arising. If that proof is so provided, the nurse shall be paid at the higher rate as and from the date they were entitled to progress to the next year of service or experience. If the proof is provided outside that three-month period, the nurse shall be paid at the higher rate only from the date that proof is provided.

### **9. Average Occupied Beds**

The average shall be taken for the 12 months ended 30 June in each and every year and such average shall relate to the salary of the Director of Nursing and Deputy Director of Nursing for the succeeding year. On request, an employer shall furnish to the Association a statement in writing showing the adjusted daily average of occupied beds for the twelve months ending on the preceding 30 June.

### **10. Special Allowances**

- (i)
  - (a) A registered nurse in charge during the day, evening or night of a facility having a daily average of occupied beds of less than 150 shall be paid, in addition to his or her appropriate salary, whilst so in charge, the relevant sum set out in Item 1 of Table 2, Other Rates and Allowances, of Part B Monetary Rates, per shift.
  - (b) A registered nurse who is designated to be in charge of a shift in a ward shall be paid, in addition to his or her appropriate salary, the sum set out in Item 2 of the said Table 2, per shift.
  - (c) This subclause shall not apply to registered nurses holding classified positions of a higher grade than a registered nurse.
  - (d) An enrolled nurse shall not be required to be in charge of a facility, shift, ward or unit.
- (ii)
  - (a) An employee required by her or his employer to be on call otherwise than as provided for in paragraph (b) of this subclause shall be paid the sum set out in Item 3 of Table 2 for each period of 24 hours or part thereof, provided that only one allowance shall be payable in any period of 24 hours.
  - (b) An employee required to be on call on rostered days off in accordance with paragraph (b) of subclause (xv) of clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, shall be paid the sum set out in Item 4 of Table 2 for each period of 24 hours or part thereof, provided that only one allowance shall be payable in any period of 24 hours.
  - (c) An employee who is directed to remain on call during a meal break shall be paid the sum set out in Item 5 of Table 2, provided that no allowance shall be paid if, during a

period of 24 hours, including such period of on call, the employee is entitled to receive the allowance prescribed in paragraph (a) of subclause (ii) of this clause.

- (d) Where an employee on remote call leaves the facility and is recalled to duty, she or he shall be reimbursed all reasonable fares and expenses actually incurred, provided that where an employee uses a motor car in those circumstances the allowance payable shall be calculated utilising the rate per kilometre in Item 6 of Table 2.
  - (e) This subclause shall not apply to a Director of Nursing, subsidiary nursing home Director of Nursing, Deputy Director of Nursing or Assistant Director of Nursing.
- (iii) Where an employee is called upon and agrees to use his or her own private vehicle for official business, payment of an allowance shall be made by utilising the rate per kilometre in Item 6 of Table 2. This subclause shall apply to all employees.

#### **10A. Continuing Education Allowance**

- (i) A registered nurse or enrolled nurse who holds a continuing education qualification in a clinical field, in addition to the qualification leading to registration or enrolment, shall be paid an allowance subject to the conditions set out in this clause.
- (ii) The qualification must be accepted by the employer to be directly relevant to the competency and skills used by the employee in the duties of the position.
- (iii) The allowance is not payable to Deputy Directors of Nursing or Directors of Nursing unless it can be demonstrated to the satisfaction of the employer that more than fifty per cent of the employee's time is spent doing clinical work.
- (iv) The allowance is not payable to Clinical Nurse Specialists, Clinical Nurse Consultants or Clinical Nurse Educators.
- (v) An RN or EN holding more than one relevant qualification is only entitled to the payment of one allowance, being the allowance of the highest monetary value.
- (vi) The employee claiming entitlement to a continuing education allowance must provide evidence to the employer that they hold that qualification.
- (vii) An RN who holds a relevant postgraduate certificate in a clinical field (not including a hospital certificate) that is accepted by the employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of the position shall be paid a weekly allowance as set out in Item 1 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (viii) An RN who holds a relevant postgraduate diploma or degree in a clinical field (other than a nursing undergraduate degree) that is accepted by the employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of the position shall be paid a weekly allowance as set out in Item 2 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (ix) An RN who holds a relevant master's degree or doctorate in a clinical field that is accepted by the employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of the position shall be paid a weekly allowance as set out in Item 3 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.
- (x) An EN who holds a relevant certificate IV qualification in a clinical field (not including a certificate IV qualification which has the effect of upgrading the qualification leading to enrolment) that is accepted by the employer to be directly relevant to the competency and

skills used by the EN in carrying out the duties of the position shall be paid a weekly allowance as set out in Item 4 of Table 3, Continuing Education Allowances of Part B, Monetary Rates.

- (xi) The allowances set out in sub-clauses (vii), (viii), (ix) and (x) hereof are not included in the employee's ordinary rate of pay and will not constitute part of the all-purpose rate.
- (xii) A registered nurse or enrolled nurse who is employed on a part-time or casual basis shall be paid these allowances on a pro rata basis.
- (xiii) The rates for these allowances shall be adjusted in accordance with increases in other wage-related allowances contained in this award.
- (xiv) Where a disagreement or dispute arises concerning the eligibility of an employee for payment of a continuing education allowance, and such disagreement or dispute is not resolved by the process set out in sub-clauses (i) and (ii) of clause 44, Resolution of Disputes, negotiations between the employer and the Association must occur prior to referral to the Industrial Relations Commission for determination.

### **11. Climatic and Isolation Allowance**

- (i) Subject to subclause (ii) of this clause, persons employed in facilities in places situated upon or to the west of a line drawn as herein specified shall be paid the sum per week as set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to the salary to which they are otherwise entitled. The line shall be drawn as follows:

Commencing at Tocumwal and thence to the following towns in the order stated, namely, Lockhart, Narrandera, Leeton, Peak Hill, Gilgandra, Dunedoo, Coolah, Boggabri, Inverell and Bonshaw.

- (ii) Persons employed in facilities in places situated upon or to the west of a line drawn as herein specified shall be paid the sum per week as set out in Item 8 of the said Table 2 in addition to the salary to which they are otherwise entitled. The line shall be drawn as follows:

Commencing at a point on the right bank of the Murray River opposite Swan Hill (Victoria), and thence to the following towns in the order stated, namely, Hay, Hillston, Nyngan, Walgett, Collarenebri and Mungindi.

- (iii) Except for the computation of overtime, the allowances prescribed by this clause shall be regarded as part of the salary for the purposes of this award.
- (iv) The allowances prescribed by this clause are not cumulative.
- (v) An employee who works less than 38 hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 hours.

### **12. Penalty Rates for Shift Work and Weekend Work**

- (i) Employees working afternoon or night shift shall be paid the following percentages in addition to the ordinary rate for such shift. Provided that employees who work less than 38 hours per week shall only be entitled to the additional rates where their shifts commence prior to 6.00 a.m. or finish subsequent to 6.00 p.m.

Afternoon shift commencing at 10.00 a.m. and before 1.00 pm	10 per cent.
Afternoon shift commencing at 1.00 p.m. and before 4.00 pm	12.5 per cent.

Night shift commencing at 4.00 p.m. and before 4.00 am	15 per cent.
Night shift commencing at 4.00 a.m. and before 6.00 am	10 per cent.

- (ii) "Ordinary rate" and "ordinary time" shall not include any percentages addition by reason of the fact that an employee works less than 38 hours per week, but shall include amounts payable under clause 6, Salaries, subclauses (i) and (ii) of clause 10, Special Allowances, and subclauses (i) and (ii) of clause 11, Climatic and Isolation Allowance.
- (iii) For the purposes of this clause, day, afternoon and night shifts shall be defined as follows:  

"Day shift" means - a shift which commences at or after 6.00 a.m. and before 10.00 a.m.

"Afternoon shift" - means a shift which commences at or after 10.00 a.m. and before 4.00 p.m.

"Night shift" means - a shift which commences at or after 4.00 p.m. and before 6.00 a.m. on the day following.
- (iv) Employees whose ordinary working hours include work on a Saturday and/or Sunday, shall be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and one-half and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three-quarters. These extra rates shall be in substitution for and not cumulative upon the shift premiums prescribed in subclause (i) of this clause.  
  

The foregoing paragraph shall apply to employees who work less than 38 hours per week, but such employees shall not be entitled to be paid in addition any allowance prescribed by clause 21, Part-time, Casual and Temporary Employees, in respect of their employment between midnight on Friday and midnight on Sunday.
- (v) The additional payments prescribed by this clause shall not form part of the employee's ordinary pay for the purposes of this award, except as provided in clause 22, Annual Leave.

### **13. Expense Allowance for Directors of Nursing**

- (i) The Director of Nursing shall be paid the appropriate sum as set out in Item 9 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, according to the adjusted daily average of the facility.  
  

Payment equal to one quarter of the annual amount is to be made at the end of each three month period subsequent to appointment as Director of Nursing or Subsidiary Nursing Home Director of Nursing in a particular nursing home.
- (ii) Provided that this clause shall only apply to persons employed as at 12 December 1994 in nursing homes conducted by members of the Aged & Community Services Association of NSW & ACT Incorporated.

### **14. Telephone Allowance**

- (i) If an employee is required, for the purpose of his/her employment, to be on call on a regular basis or where an employee is required by his/her employer to have a telephone installed for the purpose of his/her employment, the employer shall be responsible for the following payments:
  - (a) Where the employee already has a telephone installed:
    - (i) three-quarters of the cost of rental of the telephone;
    - (ii) the cost of all official trunk line calls.



- (b) Where the employee does not have the telephone installed:
  - (i) the cost of installation of the telephone;
  - (ii) three-quarters of the cost of rental of the telephone;
  - (iii) the cost of all official trunk line calls.
- (ii) Provided that this clause shall not apply to persons employed in facilities conducted by members of the Aged & Community Services Association of NSW. & ACT Incorporated.

### **15. Public Holidays**

- (i) The following days shall be public holidays, viz: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, and any other day or part thereof proclaimed and observed as a public holiday within the area in which the facility is situated. All five-day workers shall be allowed every public holiday prescribed by this subclause without loss of pay.
- (ii) In addition to those public holidays prescribed in subclause (i) of this clause, employees are entitled to an extra public holiday each year. Such public holiday will occur on a day between Christmas Day and New Year's Day as determined by the employer following consultation with the Association. This subclause shall apply in substitution for any additional local public holiday or half public holiday proclaimed in a local government area.
- (iii)
  - (a) A full time employee who is covered by paragraph (b) of subclause (i) of clause 22, Annual Leave, and who is required to and does work on a public holiday prescribed by subclauses (i) and (ii) of this clause shall have one day or one half day, as appropriate, added to his/her period of annual leave and shall be paid at the rate of time and one-half for the time actually worked.
 

Such payment is in lieu of any additional rate for work or weekend work which would otherwise be payable had the day shift not been a public holiday. In lieu of adding to annual leave under this paragraph, an employee may elect to be paid for the time actually worked at the rate of time and one-half in addition to his/her ordinary weekly rate. Such election shall be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of the time worked on a public holiday, payment shall be made for a minimum of four hours' work, and any balance of the day or shift not worked shall be paid at ordinary rates.
  - (b) Where a public holiday falls on a rostered day off of a full-time shift worker as defined in clause 1, Definitions, who receives four weeks annual leave in accordance with paragraph (b) of subclause (i) of clause 22, Annual Leave, such shift worker shall be paid one day's pay in addition to the weekly rate or, if the employee so elects, shall have one day added to the period of annual leave prescribed by the said paragraph (b) of subclause (i) of the said clause 22.
  - (c) For the purposes of this subclause, the hourly rate of pay shall be calculated on the basis of one thirty-eighth of the appropriate ordinary weekly rate of pay prescribed in clause 6, Salaries.
- (iv) Employees engaged upon a seven-day shift roster and who are required to work on any public holiday prescribed by subclause (i) of this clause shall be paid, in addition to their ordinary pay

for that day, an allowance of 50 per cent of their ordinary day's pay for work performed within ordinary hours and double time and a half for all time worked outside ordinary hours.

#### **16. Uniform and Laundry Allowance**

- (i) Subject to subclause (iii) of this clause, sufficient suitable and serviceable uniforms, including one pair of shoes per annum which shall be of a recognised acceptable standard for the performance of nursing duties, and one cardigan or jacket, shall be supplied free of cost to each employee required to wear a uniform or part of a uniform. An employee to whom a new uniform or part of a uniform has been issued who, without good reason, fails to return the corresponding article last supplied shall not be entitled to have such article replaced without payment therefore at a reasonable price.
- (ii) An employee, on leaving the service of an employer, shall return any uniform or part thereof supplied by that employer which is still in use immediately prior to leaving.
- (iii)
  - (a) In lieu of supplying uniforms and shoes to an employee, an employer shall pay the said employee the sum per week set in Item 10 of Table 2 - Other Rates and Allowances of Part B, Monetary Rates for uniforms and the sum per week set out in Item 11 of the said Table 2 for shoes.
  - (b) In lieu of supplying a cardigan or jacket to an employee, an employer shall pay the said employee the sum per week set out in Item 12 of Table 2.
  - (c) In lieu of supplying stockings to a female employee, an employer shall pay the said employee the sum per week set out in Item 13 of Table 2.
  - (d) In lieu of supplying socks to an employee, the employer shall pay the said employee the sum per week set out in Item 14 of Table 2.
- (iv) If, in any facility, the uniforms of an employee are not laundered at the expense of the facility, the sum per week set out in Item 15 of Table 2 shall be paid to the said employee. Provided that the payment of such laundry allowance shall not be made to any employee on absences exceeding one week.
- (v) Where the employer requires any employee to wear headwear, the facility shall provide headwear free of charge to the employee.
- (vi) The allowances referred to in subclause (iii) are also payable during any period of paid leave.

#### **17. Higher Grade Duty**

- (i) Subject to subclauses (ii), (iii) and (iv) of this clause, an employee who is called upon to relieve an employee in a higher classification or is called upon to act in a vacant position of a higher classification, shall be entitled to receive for the period of relief or the period during which he/she so acts the minimum payment for such higher classification.
- (ii) The provisions of subclause (i) of this clause shall not apply where the employee of the higher classification is off duty pursuant to clause 3, Hours of Work and Free Time of Directors of Nursing, except insofar as a Director of Nursing accumulates days off for a continuous period of one week or more; nor when an employee in a higher grade is absent from duty by reason of his/her additional day off duty as a consequence of working a 38 hour week.
- (iii) Further, the provisions of subclause (i) of this clause shall not apply where a Director of Nursing is absent from duty for a period of three working days or less for any reason other than pursuant to the said clause 3.

- (iv) Subject to subclauses (ii) and (iii) above, the provisions of subclause (i) shall not apply where a day worker is being relieved and is absent from duty for a period of three consecutive working days or less

### **18. Overtime**

- (i) Employees shall work reasonable overtime when required by the employer.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (iii) For the purposes of subclause (ii) what is unreasonable or otherwise will be determined having regard to:
  - (a) any risk to employee health and safety;
  - (b) the employee's personal circumstances including any family and carer responsibilities;
  - (c) the needs of the facility;
  - (d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) any other relevant matter.
- (iv) This subclause is subject to subclause (x) below.
  - (a) Subject to paragraph (b) of this subclause, all time worked by employees other than Directors of Nursing in excess of the rostered daily ordinary hours of work shall be overtime and shall be paid for at the rate of time and one-half for the first two hours and double time thereafter in respect of each overtime shift worked or in respect of overtime worked prior to or at the conclusion of a normal shift. Provided that overtime worked on Sundays shall be paid for at the rate of double time and on public holidays at the rate of double time and one-half.
  - (b) All time worked by employees pursuant to Part I of clause 21, Part-time, Casual and Temporary Employees, in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the ward or section concerned shall be paid for at the rate of time and one-half for the first two hours and double time thereafter, except that on Sundays such overtime shall be paid for at the rate of double time and on public holidays at the rate of double time and one-half.

Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift in the ward or section concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.
- (v) The ordinary hours of work for Directors of Nursing shall be 38 per week and shall not, without payment of overtime at the rate of time and one-half, exceed:
  - (a) 43 hours in any week; or
  - (b) 86 hours in any fortnight; or
  - (c) 129 hours in any 21 consecutive days; or
  - (d) 172 hours in any 28 consecutive days.

- (vi) An employee required to work overtime following on the completion of his or her normal shift for more than two hours shall be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours overtime; all such time shall be counted as time worked, provided that the benefits of this subclause shall not apply to an employee employed pursuant to Part I of clause 21, Part-time, Casual and Temporary Employees, until the expiration of the normal shift for a majority of the full-time employees employed on that shift in the ward or section concerned.
- (vii) An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours shall be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours' overtime; all such time shall be counted as time worked.
- (viii) The meals referred to in subclauses (vi) and (vii) of this clause shall be allowed to the employee free of charge. Where the facility is unable to provide such meals, the sum per meal set out Item 16 of Table 2 shall be paid to the employee concerned.
- (ix) Where an employee is required to work an overtime shift on his or her rostered day off, the appropriate meal breaks for that shift, as prescribed by clause 2, Hours of Work and Free Time of Employees other than Directors of Nursing, shall apply.
- (x) Employees who work so much overtime:
  - (a) between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times; or
  - (b) on a Saturday, a Sunday or a public holiday, not being ordinary working days, or on a rostered day off without having had eight consecutive hours off duty in the 24 hours preceding the ordinary commencing time on the next ordinary day or shift,

shall, subject to this subclause, be released after completion of such overtime until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues to work without having such eight consecutive hours off duty, they shall be paid at double time of the appropriate rate applicable on such day until they are released from duty for such period and they then shall be entitled to be absent until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (xi) An employee recalled to work overtime after leaving the employer's premises shall be paid for a minimum of four hours work at the appropriate rate for each time so recalled. If the work required is completed in less than four hours, the employee shall be released from duty; provided that this subclause does not apply to a Director of Nursing.
- (xii) By agreement between the employee and employer, an employee may be compensated by way of time off in lieu of payment of overtime on the following basis:
  - (a) Time off in lieu of overtime must be taken at ordinary rates within three months of it being accrued.
  - (b) Where it is not possible for a nurse to take the time off in lieu of overtime within the three-month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
  - (c) Nurses cannot be compelled to take time off in lieu of overtime.
  - (d) Time off in lieu of overtime should only be considered as an option in those circumstances where the employer is able to provide adequate replacement staff to ensure that the level of the quality of service that would otherwise have been provided had the overtime been worked, is in fact provided.

- (e) Records of all time off in lieu of overtime owing to nurses and taken by nurses must be maintained by the employer.

### **19. Payment and Particulars of Salaries**

- (i) All salaries and other payments shall be paid weekly or fortnightly, provided that payment for any overtime worked may be deferred to the pay day next following the completion of the working cycle within which such overtime is worked, but for no longer; provided further that the payment of shift and weekend penalties relating to work performed in the second week of a fortnightly roster period may be deferred to the pay day next following the completion of the working cycle within which such shifts were worked, but for no longer. Provided further that, for the purpose of adjustments of wages related to variations in the basic wage, the pay period shall be deemed to be weekly.
- (ii) Employees shall have their salary paid into one account with a bank or other financial institution in New South Wales as nominated by the employee. Salaries shall be deposited by facilities in sufficient time to ensure that wages are available for withdrawal by employees by no later than pay day, provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions; but in such cases facilities shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.
- (iii) Notwithstanding the provisions of subclause (ii) of this clause, an employee who has given or has been given the required notice of termination of employment, in accordance with clause 36, Termination of Employment, shall be paid all moneys due to him/her prior to ceasing duty on the last day of employment.

Where an employee is summarily dismissed or his/her services are terminated without due notice, any moneys due to him/her shall be paid as soon as possible after such dismissal or termination, but in any case not more than three days thereafter.

- (iv) On each pay day an employee, in respect of the payment then due, shall be furnished with a written statement containing the following particulars, namely: name, the amount of ordinary salary, the total number of hours or overtime worked, if any, the amount of any overtime payment, the amount of any other moneys paid and the purpose for which they are paid, the amount of the deductions made from the total earnings and the nature thereof.

### **20. Proportion**

Except in cases of emergency, not more than four enrolled nurses and/or assistants in nursing to each registered nurse shall be employed in a facility and for this purpose a Director of Nursing who is a registered nurse shall count; provided that the proportions specified by this clause may be altered in respect of any particular facility by agreement between the facility concerned and the New South Wales Nurses' Association.

### **21. Part-Time, Casual and Temporary Employees**

#### **PART I - PERMANENT PART-TIME EMPLOYEES**

- (i) A permanent part-time employee is one who is permanently appointed by a facility to work a specified number of hours which are less than those prescribed for a full-time employee. By agreement between employer and employee, the specified number of hours may be balanced over a week and/or a fortnightly period, provided that the average weekly hours shall be deemed to be the specified number of hours for the purposes of accrual of annual leave, long service leave and sick leave. Provided further that there shall be no interruption to the

continuity of employment merely by reason of an employee working on a "week on, week off" basis in accordance with this subclause.

- (ii) Employees engaged under Part I of this clause shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by clause 6, Salaries, and where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by clause 10, Special Allowances, with a minimum payment of two hours for each start, and one thirty-eighth of the appropriate allowances prescribed by clause 16, Uniform and Laundry Allowance, but shall not be entitled to an additional day off or part thereof as prescribed by subclauses (iii) and (v) of clause 2, Hours of Work and Free Time of Employees Other than Directors of Nursing.
- (iii) Four weeks annual leave on ordinary pay is to be granted on completion of each 12 months' service. The provisions of subclauses (iii) to (ix) of clause 22, Annual Leave, and clause 23, Annual Leave Loading, shall apply to employees engaged under this Part of this clause. The remaining provisions of the said clause 22 shall not apply.

Where an employee has any period of permanent part-time employment during any 12 month qualifying period for annual leave, payment for such annual leave shall be calculated on the basis of the proportion that the average number of hours worked each week bears to 38.

- (iv) A public holiday occurring on an ordinary working day shall be allowed to employees without loss of pay; provided that an employee who is required to and does work on a public holiday shall have one day or one half day, as appropriate, added to his/her period of annual leave and be paid at the rate of one half time extra for the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday. In lieu of adding to annual leave under this paragraph, an employee may elect to be paid for the time actually worked at the rate of time and one-half in addition to his/her ordinary weekly rate. Such election shall be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of time worked on a public holiday, payment shall be made for a minimum of four hours work, and any balance of the day or shift not worked shall be paid at ordinary rates.
- (v) To the leave prescribed by subclause (iii) of this Part of this clause there shall be added one working day for each public holiday or one half working day for each half public holiday which occurs on what would have been an ordinary working day during a period of annual leave.
- (vi) For the purpose of this Part of this clause, the following are to be public holidays, namely: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, local Labour Day, Christmas Day, Boxing Day and any other day duly proclaimed and observed as a public holiday within the area in which the facility is situated.
- (vii) In addition to those public holidays prescribed in subclause (vi) of this Part I of this clause, there shall be an extra public holiday each year. Such public holiday will occur on the August Bank Holiday or a date which is agreed upon by the Association and the Aged & Community Services Association of NSW & ACT Incorporated and the Australian Nursing Homes and Extended Care Association (New South Wales). The foregoing does not apply in areas where, in each year:
  - (a) a day in addition to the ten named public holidays specified in subclause (vi) of this Part of this clause are proclaimed and observed as a public holiday; or
  - (b) two half days in addition to the ten named public holidays specified in the said subclause (vi) are proclaimed and observed as half public holidays.
- (viii) In areas where in each year one half day in addition to the ten named public holidays specified in the said subclause (vi) is proclaimed and observed as a half public holiday, for the purposes

of this award the whole day is to be regarded and observed as a public holiday, and no additional public holiday which would otherwise apply as a result of this subclause will be observed.

- (ix) Employees engaged under this Part of this clause shall be entitled to all other benefits of this award not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.

## **PART II - CASUAL EMPLOYEES**

- (i) A casual employee is one engaged on an hourly basis otherwise than as a permanent part-time or full-time employee.
- (ii) A casual employee shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by clause 6, Salaries, and, where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by clause 10, Special Allowances, plus ten per cent thereof, with a minimum payment of two hours for each start, and one thirty-eighth of the appropriate allowances prescribed by clause 16, Uniform and Laundry Allowance.
- (iii) With respect to a casual employee, the provisions of clause 3, Hours of Work and Free Time of Directors of Nursing; clause 5, Rosters; clause 13, Expense Allowance for Directors of Nursing; clause 18, Overtime; clause 22, Annual Leave; clause 23, Annual Leave Loading; clause 24, Sick Leave; clause 25, Long Service Leave; clause 26, Compassionate Leave; clause 32, Deputy Director of Nursing and Assistant Director of Nursing; clause 34, Fares and Expenses, shall not apply. Further, casual employees shall not be entitled to an additional day off or part thereof as prescribed by subclauses (iii) and (v) of clause 2, Hours of Work and Free Time of Employees Other than Directors of Nursing.
- (iv) For the entitlement to payment in respect of annual leave, see *Annual Holidays Act 1944*.
- (v) For the entitlement to payment in respect of long service leave, see *Long Service Leave Act 1955*.
- (vi) A casual employee who is required to and does work on a public holiday as defined in subclauses (i) and (ii) of clause 15, Public Holidays, shall be paid for the time actually worked at the rate of double time and one-half, such payment being in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday; provided that a casual employee shall not be entitled to be paid, in addition, the allowance of ten per cent prescribed in subclause (ii) of this Part in respect of such work.

## **PART III - TEMPORARY EMPLOYEES**

- (i) A temporary employee is one engaged for a set period not exceeding 13 weeks, provided that fixed term contracts of employment, whether for periods greater or lesser than 13 weeks, must not be offered in preference to ongoing contracts unless they are necessary to meet the genuine operational requirements of the employer, which may include but not be limited to parental leave, limited term funding arrangements, long term leave relief, forthcoming service reductions, and anticipated peak demand times
- (ii) A temporary employee shall be paid, in addition to all rates and allowances to which the said employee is entitled under this award, an allowance equal to ten per cent of the rates prescribed for his or her classification by clause 6, Salaries, provided that this subclause shall cease to apply upon:
  - (a) the said period of engagement being extended after the said period of 13 weeks;
  - (b) the employer and the employee agreeing during the said period of 13 weeks that the employee shall be employed on a permanent part-time or full-time basis.

- (iii) For entitlement to payment in respect of annual leave, see *Annual Holidays Act 1944*.

## **22. Annual Leave**

- (i) Annual leave on full pay is to be granted on completion of each 12 months service as follows:
- (a) Employees required to work on a seven-day basis - six weeks annual leave.
  - (b) All other employees - four weeks annual leave.
- (ii)
- (a) An employee to whom paragraph (a) of subclause (i) of this clause applies and who is required to and does work on a public holiday shall be paid, in addition to the appropriate ordinary weekly rate of pay, at the rate of one half time extra for the time actually worked on such holiday. Such payment shall be in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday.
  - (b) To the leave prescribed by paragraph (a) of subclause (i) there shall be added one working day or one half working day for each special public holiday or half public holiday, not being one of the ten specifically named public holidays prescribed by subclause (i) of clause 15, Public Holidays (or a special day proclaimed in lieu of any of them) which may occur during the qualifying period for annual leave or during the period of annual leave.
  - (c) To the leave prescribed by paragraph (b) of subclause (i) of this clause there shall be added one working day or one half working day for each public holiday or half public holiday which occurs on what would have been an ordinary working day during a period of annual leave; provided that in the case of a full-time shift worker the provisions of this paragraph shall apply to any public holiday falling during the period of annual leave.
- (iii)
- (a) An employee shall be eligible for annual leave when 12 months have elapsed since the date on which the first annual leave would have begun if taken immediately it had become due or, if the employee has not previously had annual leave, since the commencement of employment.
  - (b) Credit of time towards an allocated day off duty shall not accrue when an employee is absent in accordance with subclause (i) of this clause. Employees entitled to allocated days off duty in accordance with clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, shall accrue credit towards an allocated day off duty in respect of each day those employees are absent on additional annual leave in accordance with paragraph (b) of subclause (ii) of this clause and paragraph (a) of subclause (iii) of clause 15, Public Holidays.
- (iv) Annual leave shall be given and taken either in one consecutive period or two periods or, if the employer and employee so agree, in either three or four separate periods but not otherwise. Provided that no employee shall be compelled to take annual leave in periods of less than one week in place of any other leave provided for by this award.
- (v)
- (a) Annual leave shall be given and shall be taken within a period of six months after the date when the right to annual leave accrued; provided that the giving and taking of such



leave may be postponed by mutual agreement between the parties for a further period not exceeding six months.

- (b) Nothing in this subclause shall prevent an employer by agreement with the employee from allowing annual leave to an employee before the right thereto has accrued, but where leave is taken in such a case a further period of annual leave will not commence to accrue until the expiration of the 12 months in respect of which annual leave was taken before it accrued.
- (c) The employer shall give each employee, where practicable, three months notice of the date upon which he or she shall enter upon leave and, in any event, such notice shall not be less than 28 days.

(vi)

- (a) Each employee before going on leave shall be paid for the period of the leave at the ordinary rate of salary to which he or she is entitled under this award. Where an employee has any period of permanent part-time employment during any 12-month qualifying period for annual leave, payment for such annual leave shall be calculated on the basis of the proportion that the average number of hours worked each week bears to 38.
- (b) An employee to whom paragraph (a) of subclause (i) applies shall be paid during the first 28 consecutive days while on annual leave his or her ordinary rate of salary plus shift allowances and weekend penalties relating to ordinary time the employee would have worked if he or she had not been on annual leave. Additional annual leave accrued under subclause (ix) attracts shift allowances and weekend penalties relating to ordinary time the employee would have worked if he or she had not been on annual leave. Provided that the provisions of the preceding paragraphs of this subclause shall not apply to public holidays which occur during a period of annual leave or days which have been added to annual leave in accordance with paragraph (b) of subclause (ii) of this clause and subclause (ii) of clause 15, Public Holidays.

(vii) Except as provided in subclauses (viii) and (ix) of this clause, payment for annual leave shall not be made or accepted in lieu of annual leave.

(viii) Where the employment of an employee is terminated, the employee shall be entitled to receive, in addition to all other amounts due, in respect of service of less than one year an amount equal to one-twelfth (6/46 in respect of employees rostered to work on a seven-day basis) of his or her ordinary pay for that period of employment, together with payment for any days added to annual leave in accordance with subclause (iii) of the said clause 15.

(ix)

- (a) In addition to the leave prescribed by subclause (i) of this clause, employees who work their ordinary hours on Sundays and/or public holidays prescribed by clause 15 are entitled to receive additional annual leave as follows:

Number of ordinary shifts worked on Sundays and/or public holidays during a qualifying period of employment for annual leave purposes -

4 to 10	1 day's additional annual leave
11 to 17	2 days additional annual leave
18 to 24	3 days additional annual leave
25 to 31	4 days additional annual leave
32 or more	5 days additional annual leave

Provided that an employee may elect to be paid when proceeding on annual leave an amount equivalent to the value of his or her additional leave entitlement in lieu of taking the additional

leave. Such election is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during the currency of that year of employment.

- (b) On termination of employment, employees are to be paid for any untaken annual leave due under this subclause, together with payment for any leave in respect of an uncompleted year of employment calculated in accordance with this subclause, together with payment for any untaken annual leave due in accordance with subclause (viii) of this clause.
- (c) Permanent part-time employees shall be entitled to the benefits of this subclause in the same proportion as their average weekly hours of work bear to full-time hours.

### **23. Annual Leave Loading**

- (i) Before an employee is given and takes his or her annual holiday or where, by agreement between the employer and the employee, the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay the employee a loading determined in accordance with this clause.
- (ii) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under paragraph (b) of subclause (i) and paragraph (c) of subclause (ii) of clause 22, Annual Leave, or in the case of permanent part-time employees, for the period of holiday given and taken and due to the employee in accordance with the provisions of the *Annual Holidays Act, 1944*.
- (iii) The loading is the amount payable for the period or the separate periods, as the case may be, at the rate per week of 17½ per cent of the appropriate ordinary weekly time rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing his/her annual holiday, together with any allowances prescribed by subclauses (i) and (ii) of clause 10, Special Allowances.
- (iv) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when the employee would have become entitled under the said clause 22 to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (iii) of this clause, applying the award rates and wages payable on that day.
- (v)
  - (a) When the employment of an employee is terminated by the employer for a cause other than misconduct, and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which the employee became entitled, he/she shall be paid a loading calculated in accordance with subclause (iii) of this clause for the period not taken.
  - (b) Except as provided by paragraph (a) of this subclause, no loading is payable on the termination of an employee's employment.
- (vi) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if she/he had not been on holidays; provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.

### **24. Sick Leave**

- (i) Subject to the following limitations and conditions, an employee shall be entitled to sick leave on full pay calculated by allowing 76 rostered ordinary hours of work for each year of continuous service, less any sick leave on full pay already taken.
  - (a) An employee during his/her first year of employment with an employer shall be entitled to sick leave at the rate of 7.6 hours at the end of each of the first five months continuous service. Upon completion of six months continuous service the employee shall be entitled to a further 38 hours sick leave. For the purpose of this subclause, where service is continuous, each new entitlement will accrue at the monthly anniversary date of the commencement of employment, i.e., a person starting on 6 March would be entitled to their first 7.6 hours on 6 April.
  - (b) An employee shall not be entitled to sick leave on full pay for any period in respect of which such employee is entitled to workers' compensation; provided, however, that an employer shall pay to an employee who has sick leave entitlement under this clause, the difference between the amount received as workers' compensation and full pay. The employee's sick leave entitlement under this clause shall, for each week during which such difference is paid, be reduced by that proportion of 38 hours which the difference paid bears to full pay.
  - (c) All periods of sickness shall be certified to by the Director of Nursing of the facility or by the employee's own legally qualified medical practitioner. The employer may dispense with the requirements of a medical certificate when the absence does not exceed two consecutive days or where, in the employer's opinion, the circumstances are such as not to warrant such requirement.
  - (d) Each employee shall notify her/his employer of an absence from work due to illness or injury prior to the commencement of her/his rostered shift or as soon as practicable thereafter and shall, as far as possible, inform the employer of the estimated duration of the absence.
  - (e) For the purpose of determining a full-time employee's sick leave credit as at 19 September 1986, sick leave entitlement shall be proportioned on the basis of 76:80.
- (ii) The employer shall not change the rostered hours of work of an employee fixed by the roster or rosters applicable to the 14 days immediately following the commencement of sick leave merely by reason of the fact that she or he is on sick leave.
- (iii) For the purpose of this clause, "service" means - service in the employment of an employer.
- (iv) For the purpose of this clause, continuity of service in the employment shall not be broken by:
  - (a) absences from such employment on account of illness;
  - (b) absences from such employment for the purposes of pursuing a post-graduate course in nursing (i.e. a course which results in obtaining a certificate, diploma or qualifications whether in Australia or elsewhere) and where the course is pursued outside Australia an employee shall be deemed to be absent for the purpose of pursuing the course throughout the time reasonably occupied travelling to the place of study and return to Australia, the actual duration of the course, a period of three months after completion of the course before returning to Australia and a period of one month after returning to Australia, provided that subclauses (iii) and (iv) shall only apply to persons employed in facilities conducted by members of the Aged & Community Services Association of NSW & ACT Incorporated.
- (v) Permanent Part-time Employees - A permanent part-time employee shall be entitled to sick leave in the same proportion of 76 hours as the average weekly hours worked over the preceding 12 months or from the time of commencement of employment, whichever is the lesser, bears to 38 ordinary hours. Such entitlements shall be subject to all the above conditions applying to full-time employees.

- (vi) With respect to an employee who is eligible for sick leave and who produces a satisfactory medical certificate to the effect that he/she has been incapacitated for a period of at least one week's duration while on annual leave, the employer may re-credit such employee with an equivalent period of annual leave, provided that no such re-crediting shall be granted to an employee on leave prior to retirement, resignation or termination of services and provided further the employer is satisfied on the circumstances and the nature of the incapacity.
- (vii) Subject to the provision of a satisfactory medical certificate and sick leave being due, extended or long service leave shall be re-credited where an illness of at least one week's duration occurs during the period of extended or long service leave; provided that the period of leave does not occur prior to retirement, resignation or termination of services.

## **25. Long Service Leave**

- (i) For long service leave falling due prior to 20 February 1981, see *Long Service Leave Act 1955*.
- (ii) For long service leave falling due after 20 February 1981, the following provisions shall apply:
  - (a)

- (1) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after 15 years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one-half months' long service leave on full pay.

Such leave shall be taken at a time to be mutually arranged between the employer and the employee as soon as practicable after each period of leave falls due, having regard to the reasonable preferences of each party. Where required by the employer, the term "as soon as practicable" shall mean that leave is taken by the employee within 12 months of the date that the leave falls due. The leave is to be taken in one continuous period unless the employer and employee agree otherwise.

Notwithstanding anything contained elsewhere in this clause, an employer and an employee may mutually agree that the taking of the leave be deferred beyond the initial twelve months referred to above. In such a case the employer and employee may agree that the employee shall be paid for that leave at the rate of pay applicable at the time of the agreement to further postpone the leave, and not at the rate of pay applicable at the time that the leave is taken. For any such agreement to be valid, it must be in writing and be signed by both the employer and the employee.

- (2) Where the service of an employee with at least five years' service is terminated, the employee shall be entitled to long service leave as follows:

For the first five years' service - one month.

For the next ten years' service - a proportionate amount calculated on the basis of one month for each additional five years. For the purpose of calculation, each completed whole month of continuous service gives an entitlement equal to 0.0722 weeks' pay.

For all subsequent service - a proportionate amount calculated on the basis of 1.5 months for each additional five years. For the purpose of calculation, each completed whole year of continuous service gives an entitlement equal to 1.2996 weeks' pay.

- (b) Subject to subclause (a) of this clause, where an employee has acquired a right to long service leave, then:
- (1) If, before such leave has been entered upon, the employment of such employee has been terminated, such employee shall be entitled to receive the monetary value of the leave to which such employee has become entitled, computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment.
  - (2) If such employee dies before entering upon such extended leave, or if, after having entered upon the same, dies before its termination, his/her widow/widower or, in the case of a widow/widower leaving children, his/her children or their guardians or other dependent relatives or their legal representatives, shall be entitled to receive the monetary value of the leave not taken or not completed, as the case may be, and computed at the rate of salary which the employee had been receiving at the time of death.
- (c) For the purpose of this clause:
- (1) Continuous service in the same facility prior to the coming into force of this award shall be taken into account.
  - (2) One month equals four and one-third weeks.
  - (3) Continuous service shall be deemed not to have been broken by:
    - (A) absence of an employee from the facility while a member of the Defence Forces of the Commonwealth in time of war;
    - (B) any period of absence on leave without pay not exceeding six months.
- (d) Where any employee has been granted a period of long service leave prior to the coming into force of this award, the amount of such leave shall be debited against the amount of leave due under this award.
- (e) Except where the total actual service is less than five years -
- (1) all service in facilities to which subclause (i) of clause 11, Climatic and Isolation Allowance, applies shall be counted as one and one-half times the actual time served;
  - (2) all service in a facility to which subclause (ii) of the said clause 11 applies shall be counted as twice the actual time served.
- (f) Any period(s) of part-time employment with the same employer shall count towards long service leave as provided for in paragraphs (a) and (e) of this subclause. Such long service leave shall be paid for on the basis of the proportion that the average number of hours worked per week bears to 38.
- (g) Where an employee has accrued a right to an allocated day off duty on pay prior to entering a period of long service leave, such day shall be taken on the next working day immediately following the period of long service leave.

An employee returning to duty from long service leave shall be given the next allocated day off duty in sequence, irrespective of whether sufficient credits have been accumulated or not.

## **26. Compassionate Leave**

- (i) In general, compassionate leave with pay should be granted only in extraordinary or emergent circumstances where a member of the staff of a facility is forced to absent himself/herself from duty because of urgent pressing necessity, and such leave as is granted should be limited to the time necessary to cover the immediate emergency.
- (ii) Any absence occasioned by personal exigencies which might fairly be regarded as an obligation on the employee rather than the employer to make good, should be covered by the grant of leave without pay or, if the employee so desires, charged against his/her annual leave credit.
- (iii) The following basic principles should be kept in mind when dealing with applications:
  - (a)
    - (i) An employee, other than a casual employee, shall be entitled to a maximum of two days compassionate leave without deduction of pay, on each occasion of the death of a person as prescribed in subparagraph (iii) of this paragraph. Provided that, where the employee is involved in funeral arrangements, travelling, etc., leave may be allowed for up to three days.
    - (ii) The employee must notify the employer as soon as practicable of the intention to take compassionate leave and will, if required by the employer, provide, to the satisfaction of the employer, proof of death.
    - (iii) Compassionate leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (1) of clause 27, Personal/Carer's Leave, provided that, for the purpose of compassionate leave, the employee need not have been responsible for the care of the person concerned.
    - (iv) An employee shall not be entitled to compassionate leave under this clause during any period in respect of which the employee has been granted other leave.
    - (v) Compassionate leave may be taken in conjunction with other leave available under subclauses (2), (3), (4), (5) and (6) of the said clause 27. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
  - (b) Illnesses in the family - Except in very special circumstances, leave with pay should be limited to one day which, as a general rule, would prove sufficient time to meet the immediate emergency and allow the employee to make any other arrangements necessary. It would be expected that no one but the employee would be available to care for the sick member of the family.
- (iv) The above principles are not intended to codify completely purposes for which compassionate leave with pay may be allowed. The element of unforeseen emergency could be present in other situations, e.g., floods and bushfires, which clearly prevent attendance for duty.
- (v) In view of the purpose for which compassionate leave is intended, it is not possible to prescribe a precise limitation of the amount of leave to be granted in a given period. It is suggested, however, that only under the most exceptional circumstances should leave exceeding a total of three days be granted to an employee in any year.
- (vi) Bereavement entitlements for casual employees
  - (a) Subject to the evidentiary and notice requirements in 26(iii)(a)(ii) casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 27(1)(c)(ii) of clause 27, Personal/Carer's Leave.

- (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
  - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
- (vii) The provisions of this clause will have no application to employees of bodies established by the Catholic Church to propagate religion.

#### **26A. Parental Leave**

- (1) Refer to the *Industrial Relations Act 1996 (NSW)*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996 (NSW)*.
- (2) An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:
  - (a) the employee or employee's spouse is pregnant; or
  - (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

- (3) Right to request
  - (a) An employee entitled to parental leave may request the employer to allow the employee:
    - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
    - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
    - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.
  - (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
  - (c) Employee's request and the employer's decision to be in writing
 

The employee's request and the employer's decision made under 3(a)(ii) and 3(a)(iii) must be recorded in writing.
  - (d) Request to return to work part-time
 

Where an employee wishes to make a request under 3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(4) Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
  - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
  - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

**27. Personal/Carer's Leave**

(1) Use of Sick Leave

- (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 27(1)(c)(ii) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at clause 24, Sick Leave of the award, for absences to provide care and support for such persons when they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- (b) The employee shall, if required,
  - (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
  - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (i) the employee being responsible for the care and support of the person concerned; and
  - (ii) the person concerned being:
    - (A) a spouse of the employee; or
    - (B) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or



- (C) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- (D) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- (E) a relative of the employee who is a member of the same household where, for the purposes of this subparagraph:
  - (1) "relative" means - a person related by blood, marriage or affinity;
  - (2) "affinity" means - a relationship that one spouse because of marriage has to blood relatives of the other; and
  - (3) "household" means - a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice, prior to the absence, of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at clause 44, Resolution of Disputes, should be followed.

(2) Unpaid Leave for Family Purpose

- (a) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a class of person set out in 27(1)(c)(ii) above who is ill or who requires care due to an unexpected emergency.

(3) Annual Leave

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

(4) Time Off in Lieu of Payment for Overtime

- (a) For the purpose only of providing care and support for a person in accordance with subclause (1) of this clause, and despite the provisions of subclause (xii) of clause 18, Overtime, the following provisions shall apply.
  - (b) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
  - (c) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is, an hour for each hour worked.
  - (d) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
  - (e) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up Time
- (a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.
- (6) Additional Rostered Days Off
- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
  - (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
  - (d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.
- (7) Personal Carers Entitlement for casual employees -
- (1) Subject to the evidentiary and notice requirements in 27(1)(b) and 27(1)(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 27(1)(c)(ii) of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
  - (2) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days)

per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (3) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.
- (8) The provisions of this clause will have no application to employees of bodies established by the Catholic Church to propagate religion.

## **28. Staff Amenities**

- (i)
  - (a) The employer shall provide for the use of employees:
    - (1) toilet facilities; provided that this provision shall not apply to a facility the registered number of beds of which is less than nine;
    - (2) a full-length locker fitted with lock and key or other suitable place for the safe keeping of clothing and personal effects of such employee.
  - (b) An employer shall provide for employees morning and afternoon tea, supper and early morning tea (which shall include tea or coffee, together with milk and sugar).
  - (c) Where an employee requests, the employer shall provide an employee with meals of a reasonable standard. The employer may make a charge, provided that the charge for breakfast shall be the sum set out in Item 17 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, and the sum set out in Item 18 of the said Table 2 for other meals.
- (ii) The charges referred to in subclause (i) of this clause are to be adjusted in accordance with the movement in wage rates following State Wage Case decisions. The employers are entitled to set prices for meals at a level to cover labour and ingredient costs (not indirect costs).

## **29. Labour Flexibility**

- (i) Nurses shall not be required to perform as a matter of routine duties: washing, sweeping, polishing and/or dusting of floors, walls, windows, corridors, annexes, bathrooms or verandas, except in an emergency.
- (ii) Nothing in subclause (i) of this clause shall preclude the employment of nurses in the washing of beds, bedspreads, mattresses, bedside tables or the like, following the discharge of a patient suffering a notifiable infectious disease.
- (iii) Nothing in subclause (i) of this clause shall preclude any nurse from being required to perform all or any of the specified duties, at any time when domestic staff is not available to perform them; provided that the employer has made all reasonable efforts to obtain domestic staff.
- (iv) Subject to subclause (i) of this clause, an employer may direct a nurse to carry out such duties as are within the limits of the nurse's skill, competence and training. Such duties may include work which is incidental or peripheral to the nurse's main tasks, provided that such duties are not designed to promote deskilling.

Any employer may direct a nurse to carry out duties and use such equipment as may be required, provided that the nurse has been properly trained or has otherwise acquired the necessary skills in the use of such equipment. Any such direction issued by the employer shall

be consistent with the employer's responsibility to provide a safe and healthy working environment for nurses and the employer's duty of care to residents.

- (v) Assistants in Nursing may be employed under this award to perform mixed functions, provided that:
  - (a) The primary duties performed by the Assistant in Nursing, being the delivery of direct care to residents, occupy no less than the majority of the hours for which they are employed in any 28 day cycle.
  - (b) The Assistant in Nursing shall be paid at the appropriate rate for an Assistant in Nursing for all work performed for their employer in that classification.
  - (c) An Assistant in Nursing shall not be required to perform mixed functions where the employer does not provide adequate staff to ensure that the level of the quality of the service that would have otherwise been provided if the Assistant in Nursing did not perform mixed functions, is in fact provided.
  - (d) Subject to paragraph (a) of this subclause, an Assistant in Nursing may perform duties associated with a resident's well being and comfort, including functions of a laundry, kitchen or other personal support nature.

### **30. Medical Examination of Nurses**

On commencement of employment the employee shall be notified of the availability of the following provisions, which the employer shall provide at the request of the employee:

- (i) For protection against tuberculosis:
  - (a) Before a nurse commences duty, a PA chest x-ray examination of the nurse, unless a radiologist's report of a normal chest x-ray taken within the previous six months is available.
  - (b) As soon as practicable after the nurse commences duty, a Mantoux test on the nurse, then -
    - (i) where the Mantoux test is negative, immunisation with BCG vaccine;
    - (ii) where the Mantoux test is positive (otherwise than as a result of BCG vaccination), referral to a chest clinic for assessment.
  - (c) A Mantoux test annually to -
    - (i) previously Mantoux-negative nursing staff;
    - (ii) nursing staff whose Mantoux reaction has been converted by BCG vaccination.
  - (d) A chest x-ray annually to nursing staff whose Mantoux reaction is positive (otherwise than as a result of BCG vaccination).
  - (e) Where a nurse has been caring for open tuberculosis cases, a PA chest x-ray examination of the nurse one year after completion of employment.
- (ii) For protection against other communicable diseases:
  - (a) where a nurse has not had a complete course of immunisation against diphtheria, tetanus, poliomyelitis, measles, mumps and hepatitis, immunisation against those diseases;

- (b) booster immunisation against tetanus at ten-year intervals;
  - (c) a rubella antibody test and, where a nurse has a negative result, rubella immunisation.
- (iii) For protection against radiation exposure, nurses required to work in close proximity to a source of ionising radiation should be provided with a film badge or personal radiation dosimeter, and a record should be maintained of the radiation exposure measured by such film badge or dosimeter.
  - (iv) The costs involved in the various screening and protection procedures should be borne by the employer.

### **31. Escort Duty**

- (i) Periods during which an employee, other than a Director of Nursing, is engaged in nursing duties, viz., in attendance on a patient, shall be paid as working time under this award. Where applicable, overtime shall be payable.
- (ii) All reasonable out-of-pocket expenses shall be reimbursed.
- (iii) Rostered time shall be paid as such, even though an employee may be travelling, in hotel/motel accommodation or waiting for transport.
- (iv) In respect of non-rostered time not spent in nursing duties -
  - (a) Periods in hotel/motel accommodation or waiting for transport shall not be counted as working time.
  - (b) Periods in travelling shall count as working time.

### **32. Deputy Director of Nursing and Assistant Director of Nursing**

- (i) Subject to subclause (ii) of this clause, the following appointments shall be made in nursing homes with daily averages of occupied beds as specified hereunder:
 

Less than 150 beds - a Deputy Director of Nursing.

150 beds and over - a Deputy Director of Nursing and Assistant Director of Nursing.
- (ii) There is no requirement to appoint a Deputy Director of Nursing in nursing homes of 40 beds and under in the following circumstances:
  - (a) the registered nurses at the nursing home are all given the same duties and no registered nurse is delegated Deputy Director of Nursing duties; and
  - (b) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.

Provided that no Deputy Director of Nursing employed as at 16 December 1994 shall be dismissed or demoted from that position as a result of the implementation of this subclause.

- (iii) Where a decision is made, pursuant to subclause (ii) of this clause, not to appoint a Deputy Director of Nursing, the employer shall notify the Association in writing of that decision within 14 days and must certify that the requirements of paragraphs (a) and (b) of subclause (ii) have been met.
- (iv) In the event of a dispute arising as to the operation of this clause, the procedures set out in clause 44, Resolution of Disputes, shall be followed.

- (v) Appointments under subclause (i) of this clause shall be made within two calendar months of the date this award becomes operative and thereafter within two calendar months of the occurrence of a vacancy. In default of appointment within the said period of two calendar months, the registered nurse employed as such or in a higher classification who has customarily relieved in the vacant position, or if no one has so customarily relieved, the general nurse employed in the same or the next senior classification below the vacant position with the longest service in such classification at the nursing home shall be deemed to be appointed until such time as another appointment is made by the nursing home.
- (vi) This clause shall not apply to a nursing home using members, novices or aspirants of religious orders where a member of an order carries out the duties under this clause of an Assistant Director of Nursing or Deputy Director of Nursing.
- (vii) This clause shall not apply to a nursing home which is owned by two or more registered nurses who are actively engaged as Directors of Nursing in the running of the nursing home.

### **33. Nursing Unit Managers**

No person appointed to any level of the former classification of Nursing Unit Manager as at 1 March 1999 shall be dismissed or demoted as a result of the deletion of that classification from this award. Provided that the salary rates appearing under that classification in Table 1 - Salaries, of Part B, Monetary Rates, are to be payable, on a strictly personal basis, only to those persons appointed to such positions as at 1 March 1999.

### **34. Fares and Expenses**

- (i) An employee required to travel in the performance of duty shall be reimbursed first class fares (including sleeper accommodation) and all reasonable out-of-pocket expenses.
- (ii)
  - (a) An employee who is engaged for an indefinite period and who remains in the employment for at least six months shall be reimbursed forward fares from the place of engagement; provided that the distance of normal travel there from to the employment exceeds 40 kilometres.
  - (b) An employee who is engaged for an indefinite period, and who is dismissed within six months for any reason other than misconduct or inefficiency, shall be reimbursed forward fares from the place of engagement, provided that the distance of normal travel there from to the employment exceeds 40 kilometres, and shall also be reimbursed return fares to such place of engagement or the employee's immediate destination, whichever is the cheaper.
- (iii) An employee who is engaged for a definite period and who completes the period of engagement or who is dismissed before completing such period for any reason other than misconduct or inefficiency, shall be reimbursed forward fares from the place of engagement, provided that the distance of normal travel there from to the employment exceeds 40 kilometres, and shall also be reimbursed return fares to such place of engagement or to the employee's immediate destination, whichever is the cheaper.
- (iv) Fares within the meaning of this clause shall include only fares incurred in respect of travel within New South Wales.
- (v) An employee who claims reimbursement of fares pursuant to this clause shall furnish to the employer, if so required, satisfactory proof that he or she has not received from another employer reimbursement in respect of those fares.

### **35. Registration Or Enrolment Pending**

- (i) A registered nurse or enrolled nurse who has trained outside New South Wales shall be paid as a registered nurse or enrolled nurse as from the date she or he is notified that she or he is eligible for registration or enrolment as a registered nurse or enrolled nurse; provided that she or he makes application for registration within seven days after being so notified.
- (ii) He or she shall notify the employer as soon as possible after he or she has applied.

### **36. Termination of Employment**

- (i) Except for misconduct justifying summary dismissal, the services of an employee shall be terminated only by notice as prescribed by the *Australian Workplace Relations Act 1996* (Commonwealth) or by the payment of salary in lieu thereof in the case of an employee other than a Director of Nursing and by 28 days notice or as prescribed by the *Australian Workplace Relations Act 1996* (Commonwealth), whichever is the greater, or by the payment of salary in lieu thereof in the case of a Director of Nursing, except that where the employment of a Director of Nursing is terminated within 13 weeks of her/his engagement, there shall be given 14 days notice or the payment of 14 days salary in lieu thereof.
- (ii) No employee shall, without the consent of the employer, resign without having given seven days' notice (or, in the case of a Director of Nursing, 28 days' notice) of the intention so to do or forfeiting salary earned during the pay period current at the time of resignation; provided that in no circumstances shall the employee other than the Director of Nursing forfeit more than seven days' pay and the Director of Nursing more than 28 days' pay at the rates prescribed for his or her classification by clause 6, Salaries.
- (iii) Upon the termination of the services of an employee, the employer shall furnish the employee with a written statement, duly signed by or on behalf of the employer, setting out the period of the employment and the capacity in which the employee was employed. In addition, an employer shall provide to Assistants in Nursing a statement of in-service training and/or education which the employee has undertaken.
- (iv) Employees who have accrued additional days off duty pursuant to subclause (vii) of clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, shall be paid for such accrued time as ordinary rate of pay upon termination.

### **37. Award Benefits to be Continuous**

- (i) In the event of any change of ownership, licensee or management of any facility covered by this award, all employee rights and benefits provided by this award shall continue as if no such change in ownership, licensee or management had taken place, and no employee shall be dismissed for the reason of such change.

Where such changes do occur, no employee shall be paid out for accrued annual leave, long service leave or any other benefits, but such benefits shall be continuous.

- (ii) No employee, full-time or part-time, shall have their employment terminated or be required to take leave without pay where such termination or leave is used to avoid the requirements of any Act or to avoid payment of any rights or benefits provided by this award.

### **38. Special Provisions Relating to Trainee Enrolled Nurses**

- (i) Where a trainee enrolled nurse has transferred from one training school to another, the time allowed by the Board in the first training school shall be counted in computing salary.
- (ii) A trainee enrolled nurse, who is absent from training for not more than two weeks, exclusive of annual leave, in any period of 12 months training shall, for the purpose of annual increase in salary under clause 6, Salaries, be deemed to have completed the particular year of training 12 calendar months after the commencement thereof notwithstanding such absence, but if absent for more than the aforesaid time in any such period, the particular year of training shall

not be deemed to have been completed until the employee has served the actual period of excess of such time.

### 39. Trainee Enrolled Nurse

(a) Objective:

The objective of this clause is to assist with the establishment of a system of traineeships for Trainee Enrolled Nurses, which provides approved training in conjunction with employment and which is to be at the same AQF level as the existing Certificate IV course.

(b) Application:

- (i) This clause applies only to the employment of Trainee Enrolled Nurses undertaking Certificate IV in Nursing whilst performing the duties of a Trainee Enrolled Nurse.
- (ii) The system is neither designed nor intended for those who are already trained and job ready.

(c) Definitions:

"Structured Training" means - training which is specified in the Training Plan, which is part of the Training Contract registered with the relevant NSW Training Authority. It includes training undertaken both on and off-the-job in a Traineeship and involves formal instruction, both theoretical and practical, and supervised practice. The training reflects the requirements of a Traineeship approved by the relevant NSW Training Authority.

"Trainee" is an individual who is signatory to a Training Contract registered with the relevant NSW Training Authority and is involved in paid work and structured training both on and off the job. A trainee can be full time, part time or school-based.

"Traineeship" means - a system of training, which has been approved by the relevant NSW Training Authority, and includes full time traineeships and part time traineeships including school-based traineeships.

"Training Contract" means - a contract entered into for the purposes of establishing a Traineeship under the *Apprenticeship and Traineeship Act 2001* (NSW).

"Training Plan" means - a programme of training which forms part of a Training Contract registered with the relevant NSW Training Authority.

"Relevant NSW Training Authority" means - the Department of Education, or successor organisation.

"School Based Trainee Enrolled Nurse" is a student enrolled in the Higher School Certificate, or equivalent qualification, who is undertaking a Traineeship which forms part of a recognised component of their HSC curriculum, and is endorsed by the relevant NSW Training Authority, NSW Board of Studies and NSW Nurses Registration Board as such.

(d) Training Conditions

- (i) The employer shall provide a level of registered nurse supervision during the traineeship period in accordance with the training contract.
- (ii) Trainee Enrolled Nurses will not be required to perform the duties of registered or enrolled nurses in the event of absenteeism. In the event that a registered or enrolled nurse needs to be replaced, existing staff including casuals will be offered the shift, or agency staff will be used.



(iii) The employer agrees that the overall training programme will be monitored by officers of the relevant NSW Training Authority. Training records or work books may be utilised as part of this monitoring process.

(iv) A Traineeship shall not commence until the relevant Training Contract has been signed by the employer and the trainee and lodged for registration with the relevant NSW Training Authority.

(e) Full Time, Part Time Traineeships

A full time Trainee Enrolled Nurse shall be engaged as a full-time employee for a maximum of one year's duration.

A part time Trainee Enrolled Nurse shall be engaged as a part time employee for a maximum of two years' duration.

A Trainee Enrolled Nurse who undertakes a Traineeship on a part-time basis works less than full-time ordinary hours, and shall undertake the approved training at the same or lesser training time than a full-time trainee.

(f) Employment Conditions

(i) A Trainee Enrolled Nurse shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer.

(ii) By agreement in writing, and with the consent of the relevant NSW Training Authority, the relevant employer and the Trainee may vary the duration of the Traineeship and the extent of approved training. Any agreement to vary shall be in accordance with the relevant Traineeship.

(iii) Where the trainee completes the qualification in the Training Contract earlier than the time specified in the Training Contract then the Traineeship may be concluded by mutual agreement.

(iv) A traineeship shall not be terminated before its conclusion except in accordance with the *Apprenticeship and Traineeship Act 2001*(NSW) or by mutual agreement.

(v) An employer who chooses not to continue the employment of a Trainee upon the completion of the Traineeship shall notify, in writing, the relevant NSW Training Authority of their decision.

(vi) The Trainee will be permitted to be absent from work without loss of continuity of employment and/or wages to attend training in accordance with the Traineeship Agreement.

(vii) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such employment period shall be counted as service for the purposes of this Award or any other legislative entitlement.

(viii) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training programme is successfully completed.

A. No Trainee Enrolled Nurses shall work overtime or shiftwork unless under the direct supervision of a registered nurse.

B. No Trainee Enrolled Nurse shall work shiftwork unless the parties to a Traineeship agree that such shiftwork makes satisfactory provision for structured training.

- C. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non-shiftwork Trainee Enrolled Nurses.
- D. No Trainee Enrolled Nurse shall be rostered to work a shift any less than 8 hours prior to attending off the job training requirements, or any less than 8 hours after having completed off the job training requirements.
- (ix) The Trainee Enrolled Nurse wages shall be in accordance with Table 1 - Salaries, of Part B, Monetary Rates and shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by this award.
- (x) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payments
- (xi) All the terms and conditions of this award or former industrial agreements that are applicable to the Trainee Enrolled Nurse shall apply unless specifically varied by this clause.

#### **40. Right of Entry**

See Part 7 of Chapter 5 of the *Industrial Relations Act 1996*.

#### **41. Lifting Weights**

Where a weight of 57 kilograms or more is to be lifted or carried, no person shall be allowed or required to lift or carry the weight on his or her own and the weight shall be lifted or carried by two or more persons or a machine.

Provided that this clause shall only apply to persons employed in facilities conducted by members of the Aged & Community Services Association of NSW. & ACT Incorporated.

#### **42. Attendance at Meetings and Fire Drills**

- (i) Any employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety practices (e.g., fire drill and evacuation procedures), contained from time to time within the *Nursing Homes Act 1988* and the regulations made there under, shall be entitled to be paid the "ordinary rate" for the actual time spent in attendance at such practices. Such time spent in attendance shall not be viewed as overtime for the purposes of this award.
- (ii) Any employee required to attend Occupational Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, if such meetings are held outside the ordinary hours of work, be entitled to receive payment at the "ordinary rate" for the actual time spent in attendance at such meetings. Such time spent in attendance shall not be viewed as overtime for the purposes of this award.
- (iii) For the purposes of this clause, "ordinary rate" shall include amounts payable under clause 6, Salaries, subclauses (i) and (ii) of clause 10, Special Allowances, and clause 11, Climatic and Isolation Allowance, plus, where appropriate, the ten per cent loading prescribed in clause 21, Part-time, Casual and Temporary Employees, for employees engaged otherwise than as a full-time or permanent part-time employee.

#### **43. Training for Nurses**

- (i) Each employer shall provide a minimum of 12 hours of in-service training per annum to Assistants in Nursing.

- (ii) Each employer may make training available to nurses other than Assistants in Nursing.
- (iii) Each employee shall provide to their employer details of their attendance at in-service training and the employer shall keep a record of this attendance.
- (iv) Upon termination of the employee's employment the employer shall provide to the employee a written statement of the hours of in-service training attended by the employee.
- (v) Where practicable, such training shall be provided to employees during the normal rostered hours of work. Where it is not practicable to provide such training during the normal rostered hours of work then:
  - (a) Employees shall attend in-service training outside their normal rostered working hours when required to do so by the employer.
  - (b) An employer shall provide employees with two weeks notice of the requirement to attend training outside of their normal rostered working hours.
  - (c) Notwithstanding clause 18, Overtime, attendance at such training shall be paid at ordinary rates.
  - (d) Notwithstanding subclause (iv) of clause 2, Hours of Work and Free Time of Employees Other Than Directors of Nursing, attendance at such in-service training outside the normal rostered working time of an employee shall not affect the ordinary rate paid to the employee during normal rostered working time.

#### **44. Resolution of Disputes**

- (i) With a view to an amicable and speedy settlement of all disputes which cannot be resolved between the employees or their representatives and the supervising staff, such dispute shall be referred to the management of the facility, who will arrange for the matter to be discussed with the employee concerned and a representative or representatives of the Association.
- (ii) Failing settlement of the issue at this level, the matter shall be submitted to a committee consisting of not more than four members, two of whom shall be appointed by the facility concerned (and for the purpose of this subclause the facility may ask their employer organisation to assist) and two by the Association.
- (iii) Whilst these procedures are continuing, no stoppage of work or any form of ban or limitation of work shall be applied.
- (iv) The Association reserves the right to vary this procedure where it is considered a safety factor is involved.
- (v) This clause shall not interfere with the right of either party to institute proceedings for the determination of any matter in accordance with the *Industrial Relations Act 1996*.

#### **45. Anti-Discrimination**

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make

application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.

- (3) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (4) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

#### NOTES -

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in this Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".

### **46. Enterprise Arrangements**

#### **PART 1 - PARTIES**

- (i) As part of the Structural Efficiency exercise and as an ongoing process for improvements in productivity and efficiency, discussion should take place at an enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction, and positive assistance in the restructuring process and to encourage consultation mechanisms across the workplace to all employees in an enterprise and consideration of a single bargaining unit in all multi-union/union award workplaces. Union delegates at the place of work may be involved in such discussions.
- (ii) The terms of any proposed genuine arrangement reached between an employer and employee(s) in any enterprise shall, after due processing, substitute for the provisions of this award to the extent that they are contrary, provided that:
  - (a) A majority of employees affected genuinely agree.
  - (b) Such arrangement is consistent with the current State Wage Case principles.
- (iii)
  - (a) Before any arrangement requiring variation to the award is signed and processed in accordance with Part 2 of this clause, details of such arrangements shall be forwarded in writing to the union or unions with members in that enterprise affected by the changes and the employer association, if any, of which the employer is a member. A union or an

employer association may, within 14 days thereof, notify the employer in writing of any objection to the proposed arrangements, including the reasons for such objection.

- (b) When an objection is raised, the parties are to confer in an effort to resolve the issue.

## **PART 2 - PROCEDURES TO BE FOLLOWED - SUCH ENTERPRISE ARRANGEMENTS SHALL BE PROCESSED AS FOLLOWS**

- (i) All employees will be provided with the current prescriptions (e.g., award, industrial agreement, enterprise agreement or enterprise arrangement) that apply at the place of work.
- (ii)
- (a) Where an arrangement is agreed between the employer and the employees or their authorised representative at an enterprise, such arrangement shall be committed to writing.
- Where the arrangement is agreed between the employer and an absolute majority of permanent employees under this award at an enterprise, such arrangement shall be committed to writing.
- (b) The authorised representative of employees at an enterprise may include a delegate, organiser or official of the relevant union if requested to be involved by the majority of employees at the establishment.
- (iii) The arrangement shall be signed by the employer, or the employer's duly authorised representative, and the employees, or their authorised representative with whom agreement was reached.
- (iv) Where an arrangement is objected to in accordance with paragraph (a) of subclause (iii) of Part 1 of this clause and the objection is not resolved, an employer may make application to the Industrial Relations Commission of New South Wales to vary the award to give effect to the arrangement.
- (v) The union and/or the employer association shall not unreasonably withhold consent to the arrangements agreed upon by the parties.
- (vi) If no party objects to the arrangement, then a consent application shall be made to the Industrial Relations Commission to have the arrangement approved and the award varied in the manner specified in subclause (vii). Such applications are to be processed in accordance with the appropriate State Wage Case principles.
- (vii) Where an arrangement is approved by the Industrial Relations Commission and the arrangement is contrary to any provisions of the award, then the name of the enterprise to which the arrangement applies, the date of operation of the arrangement, the award provisions from which the said enterprise is exempt, and the alternative provisions which are to apply in lieu of such award provisions (or reference to such alternative provisions), shall be set out in a schedule to the award.
- (viii) Such arrangement when approved shall be displayed on a notice board at each enterprise affected.
- (ix) No existing employee shall suffer a reduction in entitlement to earnings, award or over award, for working ordinary hours of work as the result of any award changes made as part of the implementation of the arrangement.

### **47. Exemptions**

This award shall not apply to members, novices or aspirants of religious orders in any facility.

#### **48. Leave Reserved**

- (i) Leave is reserved to the Association to apply with respect to:
  - (a) senior nurse management restructure;
  - (b) three per cent salary increase to apply from the beginning of the first pay period to commence on or after 1 February 1999, subject to satisfactory resolution of the issue set out in subclause (i)(a) of this clause;
  - (c) paid maternity, paternity and adoption leave;
  - (d) entitlements for Association Branch officers;
  - (e) continuing education allowance for Assistants in Nursing; and
  - (f) reasonable workloads.
- (ii) Leave is reserved to the Aged & Community Services Association of NSW. & ACT Inc., the Australian Nursing Homes & Extended Care Association (NSW), Australian Business Industrial and the Catholic Commission for Employment Relations to apply with respect to:
  - (a) definition of a seven day shift worker;
  - (b) definition of ordinary pay;
  - (c) span of hours; and
  - (d) leave without pay.

#### **49. Secure Employment**

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall

consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
  - (1) whether the employee will convert to full-time or part-time employment; and
  - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the Industrial Relations Act 1996 (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.

(c) Occupational Health and Safety

- (i) For the purposes of this subclause, the following definitions shall apply:
  - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
  - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that

other employer which might otherwise have been carried out by that other employer's own employees.

- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
  - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
  - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
  - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
  - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.

(d) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

## 50. Area, Incidence and Duration

- (i) This award is made following a review under section 19 of the *Industrial Relations Act 1996* and rescinds and replaces the Nursing Homes, &c., Nurses' (State) Award published 21 October 2005 (354 I.G. 759), as varied.

The changes made to the award pursuant to the Award Review pursuant to section 19(6) of the *Industrial Relations Act 1996* and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 28 April 1999 (310 I.G. 359) take effect on and from 20 August 2008.

This award remains in force until varied or rescinded, the period for which it was made having already expired.

- (ii) It shall apply to persons engaged in the industry of nursing as defined herein within the State of New South Wales, within the jurisdiction of the Private Hospital, Day Procedure Centre, Nursing Home, &c., Nurses' (State) Industrial Committee, which includes as part of its coverage the following:



Trained nurses, trainees and Assistants in Nursing and all persons employed as nurses in the industry and calling of nursing and employed in or in connection with:

- (a) Nursing Homes as defined as at 1 September 1993 in the Nursing Homes Act 1988.
  - (b) Hostels as defined as at 1 September 1993 in the Aged or Disabled Persons Care Act 1954 (Commonwealth).
- (iii) It shall also apply to persons engaged in the industry of nursing as defined herein who are employed by:
- (a) The Hall of Children, 54 Hall Parade, Hazelbrook New South Wales
  - (b) The Mannix Children's Centre, 144 Memorial Avenue, Liverpool New South Wales
  - (c) Whitehall Children's Home, 75B Marco Avenue, Revesby New South Wales
- (iv) The rates of pay in this award include the adjustments payable under the State Wage Case 2015. These adjustments may be offset against:
- (a) any equivalent overaward payments, and/or
  - (b) award wage increases since 29 May 1991 other than the safety net, State Wage Case, and minimum rates adjustments.

The rates of pay and allowances in Part B, Monetary Rates take effect from the first pay period on or after 28 September 2015.

## PART B

### MONETARY RATES

**Table 1 – Salaries**

Classification		Existing Rate \$	Increase 2.5%	SWC 2015 First Pay Period \$
Assistant in Nursing/ Trainee Enrolled Nurse				
Under 18:	1st year	615.30	2.5%	630.70
	2nd year	642.50	2.5%	658.60
	Thereafter	668.10	2.5%	684.80
Over 18:	1st year	723.10	2.5%	741.20
	2nd year	745.40	2.5%	764.00
	3rd year	768.00	2.5%	787.20
	Thereafter	791.20	2.5%	811.00
Enrolled Nurse :	1st year	882.30	2.5%	904.40
	2nd year	900.40	2.5%	922.90
	3rd year	919.60	2.5%	942.60
	4th year	938.50	2.5%	962.00
	Thereafter	957.50	2.5%	981.40
Registered Nurse General, M.R. Psych, Infants, Geriatric, Midwifery	1st year	996.60	2.5%	1021.50
	2nd year	1049.60	2.5%	1075.80
	3rd year	1102.30	2.5%	1129.90
	4th year	1158.80	2.5%	1187.80
	5th year	1215.00	2.5%	1245.40
	6th year	1271.20	2.5%	1303.00
	7th year	1335.40	2.5%	1368.80
	8th year	1389.20	2.5%	1423.90

Nursing Unit Manager (personal to current occupants as at 01.03.99)				
Level I	1st year	1538.10	2.5%	1576.60
	2nd year	1580.80	2.5%	1620.30
Level II		1622.00	2.5%	1662.60
Level III		1661.20	2.5%	1702.70
Nurse undergoing pre registration assessment		862.60	2.5%	884.20
Clinical Nurse Specialist		1445.20	2.5%	1481.30
Clinical Nurse Consultant		1702.40	2.5%	1745.00
Clinical Nurse Educator		1445.20	2.5%	1481.30
Nurse Educator	1st year	1538.00	2.5%	1576.50
	2nd year	1580.80	2.5%	1620.30
	3rd year	1618.90	2.5%	1659.40
	4th year	1702.40	2.5%	1745.00
Senior Nurse Educator	1st year	1743.00	2.5%	1786.60
	2nd year	1778.20	2.5%	1822.70
	3rd year	1836.70	2.5%	1882.60
Assistant Director of Nursing				
<150 beds		1580.80	2.5%	1620.30
150-250 beds		1702.40	2.5%	1745.00
250 beds		1743.00	2.5%	1786.60
Deputy Director of Nursing				
Less than 20 beds		1612.40	2.5%	1652.70
20-75 beds		1653.30	2.5%	1694.60
75-100 beds		1691.00	2.5%	1733.30
100-150 beds		1726.40	2.5%	1769.60
150-200 beds		1778.10	2.5%	1822.60
200-250 beds		1836.70	2.5%	1882.60
250-350 beds		1904.50	2.5%	1952.10
350-450 beds		1971.50	2.5%	2020.80
450-750 beds		2043.90	2.5%	2095.00
750+ beds		2122.00	2.5%	2175.10
Director of Nursing				
Less than 25 beds		1800.00	2.5%	1845.00
25- 50 beds		1904.50	2.5%	1952.10
50-75 beds		1944.80	2.5%	1993.40
75-100 beds		1984.80	2.5%	2034.40
100-150 beds		2041.20	2.5%	2092.20
150-200 beds		2108.70	2.5%	2161.40
200-250 beds		2175.70	2.5%	2230.10
250-350 beds		2256.60	2.5%	2313.00
350-450 beds		2391.40	2.5%	2451.20
450-750 beds		2528.70	2.5%	2591.90
750+ beds		2685.80	2.5%	2753.00

**Table 2 - Other Rates and Allowances**

Brief Description	Clause No	Existing Rate \$	Increase	SWC 2015 First Pay Period \$
In charge of nursing home less than 100 beds	10 (i)(a)	24.70 per shift	2.50%	\$25.32 per shift
In charge of nursing home 100 beds & <150 beds	10 (i)(a)	39.77 per shift	2.50%	\$40.76 per shift
In charge of ward/unit	10 (i)(b)	24.70 per shift	2.50%	\$25.32 per shift
On call	10 (ii)(a)	22.01 per 24 hrs or part thereof	2.50%	\$22.56 per 24 hrs or part thereof
On call on rostered days off	10 (ii)(b)	44.03 per 24 hrs or part thereof	2.50%	\$45.13 per 24 hrs Or part thereof
On call during meal break	10 (ii)(c)	11.92 per period	2.50%	\$12.22 per period
Travelling Allowance	10 (ii)(d) & (iii)	73.38 cents per Kilometre	1.50%	74.48 cents per Kilometre
Climatic Allowance	11(i)	4.57 per week	2.50%	\$4.68 per week
Isolation Allowance	11(ii)	8.82 per week	2.50%	\$9.04 per week
Expense allowance for DONs	13			
Less than 100 beds		265.60 pa	1.50%	\$269.58 pa
100-299		530.08 pa	1.50%	\$538.03 pa
300-499		795.68 pa	1.50%	\$807.62 pa
Over 500 beds		1061.65 pa	1.50%	\$1,077.57 pa
Uniform	16(iii)(a)	7.12 per week	1.50%	\$7.23 per week
Shoes	16(iii)(a)	2.21 per week	1.50%	\$2.24 per week
Cardigan or Jacket	16(iii)(b)	2.14 per week	1.50%	\$2.17 per week
Stockings	16(iii)(c)	3.71 per week	1.50%	\$3.77 per week
Socks	16(iii)(d)	0.74 per week	1.50%	\$0.75 per week
Laundry	16(iv)	5.95 per week	1.50%	\$6.04 per week
Meal on overtime	18(viii)	10.49 per meal	1.50%	\$10.65 per meal
Breakfast	28(i)(c)	3.92 per meal	1.50%	\$3.98 per meal
Other Meals*	28(i)(c)	7.11 per meal	1.50%	\$7.22 per meal

**Table 3, Continuing Education Allowances**

Item No.	Brief Description	Clause No.	Existing Rate \$	Increase	SWC 2015 First Pay Period \$
1	Continuing education allowance: Registered Nurse	10A (vii)	20.72 per week	2.5%	21.24 per week
2	Continuing education allowance: Registered Nurse	10A (viii)	34.54 per week	2.5%	35.40 per week
3	Continuing education allowance: Registered Nurse	10A(ix)	41.44 per week	2.5%	42.48 per week
4	Continuing education allowance: Enrolled Nurse	10A(x)	13.81 per week	2.5%	14.16 per week