



## DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

### **The Trustee for the Barden Lodge Trust T/A Advantaged Care at Barden Lodge** (AG2016/298)

### **ADVANTAGED CARE AT BARDEN LODGE CLINICAL STAFF ENTERPRISE AGREEMENT 2016-2018**

Health and welfare services

COMMISSIONER JOHNS

MELBOURNE, 2 MARCH 2016

*Application for approval of the Advantaged Care at Barden Lodge Clinical Staff Enterprise Agreement 2016-2018.*

[1] On 16 February 2016 The Trustee for the Barden Lodge Trust T/A Advantaged Care at Barden Lodge (**Applicant**) made an application for approval of the *Advantaged Care at Barden Lodge Clinical Staff Enterprise Agreement 2016-2018* (**Agreement**). The application was made pursuant to s 185 of the *Fair Work Act 2009* (Cth) (**Act**). The Agreement is a single-enterprise agreement.

[2] The Agreement was lodged within 14 days after it was made.

[3] The Commission is satisfied that each of the requirements of ss 186, 187 and 188 of the Act, as are relevant to this application for approval, have been met.

[4] The New South Wales Nurses and Midwives' Association and the Australian Nursing and Midwifery Federation being bargaining representatives for the Agreement, have given notice under s 183 of the Act that they want the Agreement to cover them. In accordance with s 201(2), the Commission notes that the Agreement covers these organisations.

[5] The Agreement is approved. In accordance with s 54 of the Act the Agreement will operate from 9 March 2016. The nominal expiry date of the Agreement is 31 December 2018.



COMMISSIONER

Printed by authority of the Commonwealth Government Printer

Price code G, AE418037 PR577524

**Advantaged Care at Barden Lodge Clinical  
Staff Enterprise Agreement 2016 - 2018**



advantaged care



**TABLE OF CONTENTS**

<b>CLAUSE</b>	<b>PAGE</b>
1. TITLE AND COMPLETE AGREEMENT .....	4
2. PARTIES .....	4
3. DURATION AND EXPIRATION OF AGREEMENT .....	4
4. DEFINITIONS .....	5
5. NO EXTRA CLAIMS .....	6
6. ANTI-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY .....	6
7. AGREEMENT FLEXIBILITY .....	6
8. CONSULTATION .....	7
9. WORK HEALTH AND SAFETY .....	9
10. QUALIFYING PERIOD .....	10
11. EMPLOYMENT STATUS .....	10
12. ARRANGEMENT OF HOURS, RDOS AND BREAKS BETWEEN SHIFTS .....	12
13. MEAL AND TEA BREAKS .....	12
14. BROKEN SHIFTS .....	13
15. ROSTERS .....	13
16. RATES OF PAY .....	15
17. PENALTY RATES FOF SHIFTWORK AND WEEKENDS .....	15
18. OVERTIME .....	16
19. ON CALL AND RECALL .....	18
20. ALLOWANCES .....	18
21. HIGHER GRADE DUTIES .....	19
22. SUPERANNUATION .....	19
23. PAYMENT AND PARTICULARS OF WAGES .....	21
24. ANNUAL LEAVE .....	22
25. ANNUAL LEAVE LOADING .....	24
26. PUBLIC HOLIDAYS .....	24
27. LONG SERVICE LEAVE .....	25
28. PERSONAL / CARERS LEAVE .....	26
29. PAID COMPASSIONATE LEAVE .....	29



30. PARENTAL LEAVE .....29

31. COMMUNITY SERVICE LEAVE .....30

32. CEREMONIAL LEAVE .....30

33. OBSERVATION LEAVE.....30

34. TERMINATION OF EMPLOYMENT .....31

35. PROPERTY OF THE EMPLOYER.....32

36. REDUNDANCY .....32

37. STAFF AMENITIES.....35

38. LABOUR FLEXIBILITY .....35

39. ATTENDANCE AT MEETINGS AND FIRE DRILLS.....35

40. RESOLUTION OF DISPUTES.....36

41. ANTI-BULLYING.....37

42. VARIATION .....37

SIGNATORY PAGES:.....38

TABLE 1 – RATES OF PAY .....39

TABLE 2 – ALLOWANCES .....41

TABLE 3 – CLASSIFICATION DESCRIPTIONS .....42

## **PART 1**

### **PRELIMINARIES**

#### **1. TITLE AND COMPLETE AGREEMENT**

This Agreement will be known as and referred to as the Advantaged Care at Barden Lodge Clinical Staff Enterprise Agreement 2016-2018 (hereafter referred to as “the Agreement”).

This Agreement provides minimum terms and conditions of employment for clinical employees covered and is to be read in conjunction with the Fair Work Act including the National Employment Standards. Unless expressly referenced, this Agreement operates to the exclusion of all awards, NAPSA and other employment legislation to the extent permitted by law. Notwithstanding this Agreement does not exclude legislation that deals with the subject matters of Work Health and Safety or Workers’ Compensation.

#### **2. PARTIES**

This Agreement shall cover and as such be binding upon the following parties:

2.1 The Trustee for the Barden Lodge Trust trading as Advantaged Care at Barden Lodge hereafter referred to as Advantaged Care at Barden Lodge, located at 11 Barden Road, Barden Ridge in the State of New South Wales 2034, [ABN 44 045 510 661] (hereafter also referred to as “Advantaged Care” “the Employer”), and

2.2 The New South Wales Nurses and Midwives’ Association (NSWNMA) [ABN 63 398 164 405] and the Australian Nursing and Midwifery Federation NSW Branch (ANMF, NSW) [ABN 85 726 054 782] of 50 O’Dea Ave, Waterloo NSW 2017, (hereafter jointly referred to as “the Association”), and

2.3 Except for management and those who form the executive team, all Clinical employees who are employed by the Employer in those classifications listed in Table 1 – Classifications and Rates of Pay and Table 3 – Classification Descriptions (hereafter referred to as “employees”).

#### **3. DURATION AND EXPIRATION OF AGREEMENT**

The Agreement will commence subject to approval by the Fair Work Commission and in accordance with the Fair Work Act 2009.

The Agreement shall nominally expire on 31<sup>st</sup> December 2018. The terms of this Agreement shall remain in force thereafter unless replaced or repealed as per the Act.

In principle the parties agree to commence negotiations of a new Agreement no less than 6 months prior to the expiration of this Agreement.

#### 4. DEFINITIONS

“**Act**” means the Fair Work Act 2009 (Commonwealth).

“**Advantaged Care**” means The Trustee for the Barden Lodge Trust trading as Advantaged Care at Barden Lodge.

“**Agreement**” means this Enterprise Agreement.

“**Association**” means The New South Wales Nurses and Midwives’ Association (NSWNMA) and/or the Australian Nursing and Midwifery Federation NSW Branch (ANMF, NSW).

“**Award**” means the Nurses Award 2010 MA000034 or any successor.

“**Base Rate of Pay**” means the rate of pay for a period worked that does not include incentive based payments and bonuses, loadings, monetary allowances, penalty rates or any other similar separately identifiable entitlements. The employee’s base rate of pay is as contained within the Wages Schedule to the back of this Agreement, commensurate with the appropriate classification occupied by the employee and expressed as an hourly figure.

“**Board**” means the Nursing and Midwifery Board of Australia and shall also be taken to mean a reference to Australian Health Practitioner Regulation Authority as appropriate/applicable.

“**De-facto partner**” means a person who, although not legally married to the employee, lives with them in a relationship as a couple on a genuine domestic basis (including same sex relationships).

“**Employer**” means The Trustee for the Barden Lodge Trust trading as Advantaged Care at Barden Lodge.

“**Employee**” means a person employed by the Employer in accordance with those classifications listed in Table 1 – Classifications and Rates of Pay and Table 3 – Classification Descriptions.

“**FWC**” means Fair Work Commission.

“**Immediate family**” means a spouse, de facto partner (including same sex relationships), child, parent, grandparent, grandchild or sibling of the employee; or a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner, of the employee.

“**NAPSA**” means the Nursing Homes and C Nurses (State) Award - Notional agreement preserving a State award and has the meaning in the Act.

“**NES**” means National Employment Standards set out under Chapter 2, Part 2-2 of the Act. These are the minimum standards that apply to the employment of employees which cannot be displaced.

“**Ordinary hours**” are the employee’s minimum guaranteed (contracted) weekly or fortnightly hours and any agreed additional hours worked by the employee that are



paid at the ordinary rate of pay. Such hours shall be allocated into shifts to suit the business operations of the Employer. Shifts are subject to change from time to time in accordance with the notice provisions as per Clause 15 Rosters.

**“Ordinary rate of pay”** or **“Ordinary Rate”** means that Base Rate of Pay, determined on an hourly basis, plus the appropriate shift, public holiday or weekend penalty rate, or other allowances that may be appropriate and apply.

**“Resident”** means that person or persons residing within Advantaged Care.

## 5. NO EXTRA CLAIMS

The parties bound by this Agreement agree that they will not pursue any extra claims relating to wages or other terms and conditions of employment covering the Employees under this Agreement, during the nominal term of this Agreement. Notwithstanding, this Agreement shall remain in force under its current terms until such time that the parties agree to vary it or come to a new Agreement.

## 6. ANTI-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

The parties to this Agreement agree that:

- (a) it is their intention to respect and value the diversity of the work force by helping to prevent and eliminate discrimination at their enterprise on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
- (b) any dispute concerning (a) above will be progressed initially under the dispute resolution procedure in this Agreement; and
- (c) nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, State or Territory legislation; and
- (d) nothing in these provisions prohibits any discriminatory conduct (or conduct having a discriminatory effect) that is based on the inherent requirements of a particular position

## 7. AGREEMENT FLEXIBILITY

7.1 An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

- (a) the agreement deals with 1 or more of the following matters:
  - (i) arrangements about when work is performed;
  - (ii) overtime rates;
  - (iii) penalty rates;
  - (iv) allowances;
  - (v) leave loading; and



- (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
- 7.2 The employer must ensure that the terms of the individual flexibility arrangement:
  - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- 7.3 The employer must ensure that the individual flexibility arrangement:
  - (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:
    - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (e) states the day on which the arrangement commences.
- 7.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 7.5 The employer or employee may terminate the individual flexibility arrangement:
  - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
  - (b) if the employer and employee agree in writing—at any time.

## **8. CONSULTATION**

### **8.1 CONSULTATION REGARDING MAJOR WORKPLACE CHANGE**

#### **(a) Employer to notify**

Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify



the employees who may be affected by the proposed changes and their representatives, if any.

**Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this Agreement makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

**(b) Employer to discuss change**

The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 8.1 (a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.

The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 8.1 (a).

For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

**8.2 CONSULTATION ABOUT CHANGES TO ROSTERS OR HOURS OF WORK**

Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.

The employer must:

- (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
- (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and



- (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.

The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.

These provisions are to be read in conjunction with other Agreement provisions concerning the scheduling of work and notice requirements.

## **9. WORK HEALTH AND SAFETY**

The parties to this Agreement agree that a safe workplace is important and that they will comply with relevant Work Health and Safety laws. The organisation's safety procedures are to be followed at all times. The Employer and Employees are to take all practicable steps to ensure their own safety and the safety of others while at work. Employees are to use the safety and protective equipment and/or clothing provided and follow all lawful and reasonable instructions as issued from time to time.

## PART 2

### COMMENCING THE EMPLOYMENT RELATIONSHIP EMPLOYEE APPOINTMENT AND WORK ARRANGEMENT

#### 10. QUALIFYING PERIOD

Employees will be on a qualifying period for the first six (6) months of their employment for the purpose of determining the employee's suitability for ongoing employment. At any time during the first six months of employment the Employer or the employee can terminate the employment relationship by giving one week's notice (pro rata for part time employees) or payment in lieu of such notice where notice is not worked.

#### 11. EMPLOYMENT STATUS

Employees employed by Advantaged Care will be employed in one of the following categories. At the time of engagement the Employer will inform each employee in writing whether they are employed on a full time, part time or casual basis. An Employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the employee's classification.

##### 11.1 EMPLOYEES

###### (a) Full – Time Employees

A full time employee is one who is contracted for 38 ordinary hours per week on a permanent basis, which may be averaged over a week, a fortnight, or a four week period. Although the actual hours of work may vary from week to week, with some weeks greater than 38 hours and other weeks less, the employee will not work in excess of 76 ordinary hours per fortnight or 152 ordinary hours in any four week period.

###### (b) Part – Time employees

(i) A part-time employee is an employee who is contracted to work less than an average of 38 ordinary hours per week and whose hours of work are reasonably predictable. A part time employee is entitled to the same terms and conditions as a full time employee, on a pro rata basis in accordance with their ordinary hours worked per week.

(ii) Before commencing part-time employment, the employer and employee will agree in writing the guaranteed minimum number of hours (which are their contracted hours) to be worked per week or fortnight and the rostering arrangements which will apply to those hours.

(iii) The terms of the agreement in (ii) may be varied by agreement and recorded in writing.

(iv) By mutual agreement between the Employer and the Employee, a part time employee may work in excess of their contracted hours on a daily, weekly or fortnightly basis and be paid at the ordinary rate for such extra hours. This arrangement may occur so long as on a



daily basis, the shift worked is no more than 10 hours, or the hours worked are no more than 76 hours per fortnight,. All hours outside of these limits must be paid at the applicable overtime rate.

**(c) Casual Employees**

Casual employees are engaged on an hourly basis only and do not occupy permanent hours or shifts. Casual hours and shifts shall be made available on an ad hoc, non-permanent basis only, dependent upon the needs of the facility and the availability of the person to work them

**11.2 ANNUAL REVIEW OF PART TIME HOURS**

- a) At the request of a part-time employee, the hours he or she works will be reviewed by the Employer, at no more than an annual basis.
- b) Where an employee who requests a review is regularly working more than their specified contracted hours, the employee has the right to request the contracted hours be adjusted by the employer to reflect the hours regularly worked, having regard to the provisions of (c) and (d) immediately below.
- c) The hours worked in the following circumstances will not be incorporated into any adjustment:
  - (i) if the increase in hours is as a result of an employee being absent on any leave and is expected to return. Examples include but are not limited to periods of annual leave, long service leave, maternity leave, workers' compensation, or other leave associated with prolonged illness or injury.
  - (ii) If the increase in hours is due to a temporary increase in resident needs.
- d) The employer has the right to decline the incorporation of additional hours, however generally, agreement of the employer shall be given so long as reasonably practicable and operationally sound for the current and foreseen future running of the facility.
- e) Any adjustment of contracted hours resulting from the review identified in this Clause should, however be such as to reflect roster cycles and shift configurations utilised in the workplace.

**11.3 CASUAL CONVERSION**

- (a) Where a casual employee has been rostered on a regular and systematic basis for a period in excess of 26 weeks, the employee has the right to request conversion to permanent employment:
  - (i) on a full-time basis where the employee has worked 38 hours per week or an average of 38 hours per week (excluding overtime) throughout the period of casual employment; or
  - (ii) on a permanent part-time basis where the employee has worked a regular number of hours each week or fortnight (depending upon the roster) throughout the period of casual employment. Such part-time engagement may be on the basis of the same number of hours



as previously worked; however the hours must be capable of fitting within the existing shift and rostering arrangements. Other arrangements may be offered by the employer and accepted by the employee.

- (b) The employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request.
- (c) Casual conversion will not apply where a casual has covered absences of permanent staff that are expected to return to work, or where the conversion of such casual hours does not fit in with the Employer's plans for operational efficiency or sustainability.
- (d) Where a casual employee is refused conversion, they may apply for and be considered in the first instance, for any permanent position that becomes available in future.

## **12. ARRANGEMENT OF HOURS, RDOs AND BREAKS BETWEEN SHIFTS**

- (i) Shifts for each full time and part time employee shall be arranged on a fortnightly basis to suit the business operational needs of Advantaged Care. This includes taking into consideration business fluctuations and resident needs.
- (ii) Hours for casual employees will be determined on a shift by shift basis dependent upon the needs of the Employer.
- (iii) For permanent and casual employees, each shift shall consist of no more than 10 ordinary hours worked, with a minimum payment of 4 hours per shift.
- (iv) A minimum break of 8 hours shall apply between each shift. A longer break may be provided to enable the employee time for adequate rest between shifts. Consideration shall be given to Work Health and Safety requirements at all times.
- (v) Hours must be arranged so that each employee shall be entitled to no less than eight full days free from duty in each 28-day cycle or four full days in each fortnight, or two full days in each week. These free days shall be deemed rostered days off or RDOs. Where possible such RDOs will be consecutive.
- (vi) At all times, the Employer shall give due consideration to Work Health and Safety requirements where requests or requirements to work on an RDO are made. If in any doubt about the Employee's health or levels of fatigue, the Employer may rightfully decline any requests for extra work on RDOs.
- (vii) The hours of work on any day will be continuous except for meal breaks and in the case of broken shifts.

## **13. MEAL AND TEA BREAKS**

### **13.1 MEAL BREAKS**

- a) An employee who works in excess of five hours will be entitled to an unpaid meal break of 30 minutes.



- b) If an employee is recalled to work during the meal break, then overtime will be paid for all time worked during such meal break. Where the employee chooses to take the equivalent time either elsewhere within the shift, or with the agreement of the employer by leaving the shift early, overtime will not be paid.

### **13.2 TEA BREAKS**

- a) Every employee will be entitled to a paid 10 minute tea break in each four hours worked at a time to be agreed between the employee and employer.
- b) Subject to agreement between the employer and employee, such breaks may alternatively be taken as one 20 minute tea break.
- c) Tea breaks will count as time worked.

## **14. BROKEN SHIFTS**

- (i) By mutual agreement, an employee may be rostered to work a broken shift depending upon the needs of the Employer.
- (ii) A broken shift shall consist of no more than two short shifts arranged within a twelve hour span and rostered as such. For any given broken shift a minimum of 4 hours will be paid.
- (iii) There shall be no obligation upon the Employer to provide an eight (8) hour break between the two short shifts, so long as both short shifts fall within the twelve hour span. However a ten (10) hour break must precede and follow the twelve hour span referred to in subclause (ii) above.
- (iv) Notwithstanding, the breaks may be reduced to eight (8) hours by mutual agreement between the Employer and the employee.

## **15. ROSTERS**

### **15.1**

- a) Shifts for full-time and part-time employees, shall be displayed on a fortnightly roster in a place conveniently accessible to employees. The roster shall be displayed where practicable at least two weeks prior to the first shift in any roster and in any event no less than one week prior to first shift in the roster.
- b) Notwithstanding, sub-clause (a), an employee's roster may be changed at any time by mutual agreement to enable the service of the employer to be carried on where another employee's absence is unplanned, or unforeseen circumstances arise, or in an emergency. The employer shall undertake in such circumstances to provide the employee with as much notice as possible and communicate the changed roster.
- c) Subclause 15.1(b) above, shall not apply where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours in accordance with Clause 11.1(b) (iv) to be worked such that the part-time employee still has two rostered days off in that week or four rostered days off in that fortnight, or eight days off in each 28 day cycle as the case may be.



**15.2**

Changes made to rosters under Subclauses 15(b) and 15(c) that are irregular, sporadic or unpredictable shall not invoke obligations under 8.2 Consultation about changes to rosters and hours of work.

**15.3**

Sub-clause 15.1 (a) shall not make it obligatory for the employer to display any roster for casual staff.



## PART 3

### PAY ENTITLEMENTS WAGES AND ALLOWANCES

#### 16. RATES OF PAY

The minimum Rates of Pay for each classification are set out in Table 1 to this Agreement.

Allowances shall be as contained in Table 2 to this Agreement.

#### 17. PENALTY RATES FOR SHIFTWORK AND WEEKENDS

- (i) For ordinary hours completed, all employees shall be paid the Base Rate of Pay relevant to their classification and increment, in accordance with Table 1, plus where relevant a penalty rate as below:
  - a) Where an employee works a rostered afternoon shift between Monday and Friday, the employee will be paid a loading of 12.5% of their base rate of pay.
  - b) Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of 15% of their base rate of pay
  - c) The provisions of this clause do not apply where an employee commences their ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.
- (ii) For the purposes of this clause:
  - a) **Afternoon shift** means any shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on the same day; and
  - b) **Night shift** means any shift commencing on or after 6.00 pm and finishing before 8.30 am on the following day.
- (iii) The shift penalties prescribed in this clause will not apply to shift work performed by an employee on Saturday, Sunday or public holiday.
- (iv) In addition to the provisions of subclause (ii) and (iii) above, for ordinary hours completed Monday to Friday, a casual employee shall receive a 25 percent casual loading calculated against the Base Rate of Pay.
- (v) For all ordinary hours completed on a Saturday or Sunday, in addition to the Base Rate of Pay, all employees shall be paid as follows:
  - All hours completed on a Saturday – 50% penalty rate
  - All hours completed on a Sunday – 75% penalty rate



The additional rates for Saturdays and Sundays are not cumulative upon any casual loading or the shift penalties referred to in the subclauses above.

## 18. OVERTIME

- (i) Employees are entitled to payment of overtime where the employer requires reasonable overtime to be worked.
- (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.

For the purposes of subclause (ii) what is unreasonable or otherwise, will be determined having regard to:

- (a) the risk to the employee's 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.

### **Payment**

- (iii) An employee who is required to and does work overtime, shall be paid in lieu of all other shift allowances, loadings and weekend penalties, as follows:
  - a) Monday to Saturday (inclusive)–time and a half for the first two hours and double time thereafter;
  - b) Sunday–double time;
  - c) Public holidays–double time and a half.

### **Limits**

- (iv) Overtime will apply in the following circumstances:
  - a) For full time employees, on a daily basis for all time worked in excess of 10 hours per shift.
  - b) For part time employees, on a daily basis where additional hours in excess of their rostered shift are worked at the direction of the employer. Notwithstanding, where both the employer and employee agree, additional hours may be worked and paid at the ordinary rate until a maximum of 10 hours is reached. Any additional hours over 10, must be paid at overtime rates.
  - c) For all employees including casual employees, on a fortnightly basis where the Employee works in excess of 76 hours.
  - d) Where an Employee fails to have an eight hour break between ordinary rostered shifts
  - e) Where an employee, works overtime 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, and they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

- f) If on the instructions of the employer, such an employee resumes or continues work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until they are released from duty for such rest period and they will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.
- g) Notwithstanding, by mutual agreement, the 10 hour break referred to in (e) and (f) may be reduced to 8 hours.
- h) Where the Employer requires an Employee to forego a meal break and does not allow time off as compensation in accordance with Clause 13, Meal and Tea Breaks
- i) Where an Employee fails to have 8 RDOs per 28 day cycle, unless otherwise mutually agreed with the Employer in accordance with Clause 12 (v), Arrangement of Hours. Where the Employer requires the Employee to work on an RDO, the Employee may either request payment for such shift at overtime rates, or request time off in lieu of overtime, to be taken by the Employee at a later date as approved by the Employer, and paid on a time-for-time basis at the Basic Rate of Pay.
- (v) In lieu of receiving payment for overtime, an Employee may request compensation for time worked by way of time off in lieu of overtime on a time-for-time basis. An Employee cannot be compelled to take time off in lieu of overtime payment.
- (vi) Where an employee works in excess of 10 consecutive hours per shift, the Employer shall make available to that Employee a meal. This clause will not apply when an employee could reasonably return home for a meal within the meal break.
- (vii) An Employee required to work more than four (4) hours of overtime following the completion of their shift, shall be allowed twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hours overtime. All such time shall be counted as time worked.
- (viii) 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 twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hour's overtime; all such time shall be counted as time worked.



## 19. ON CALL AND RECALL

- (i) Employees may be required to remain on call by the employer. 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 compensated by means of the appropriate “on call” allowance in accordance with Table 2, Allowances, of this Agreement. No employee shall be required to remain on call whilst on leave.
- (ii) No employee shall be required to remain “on call” whilst on a RDO nor on completion of the shift on the day preceding a RDO. This provision shall not apply where in circumstances it is necessary for Advantaged Care to place staff on call on a RDO or on completion of the shift on the day preceding a RDO in order to ensure the provision of services.
- (iii) Where an employee on call leaves Advantaged Care and is recalled to duty, they shall be reimbursed all reasonable fares and expenses actually incurred provided that where an employee uses a motor car in these circumstances the allowance payable shall be the rate set out in Table 2. The provisions of this paragraph shall apply to all employees.
- (iv) 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 twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hour's overtime; all such time shall be counted as time worked.
- (v) An employee recalled to work will be paid a minimum of three hours work at the appropriate overtime rate.

## 20. ALLOWANCES

### 20.1 IN CHARGE ON CALL DURING MEAL BREAK ALLOWANCE

A registered nurse in charge during the day, evening or night of the facility, in addition to her or his appropriate salary, whilst so in charge, shall be paid the sum set out in Table 2, Allowances. This sum is in consideration of such employee being required to remain available during their meal break.

### 20.2 UNIFORM AND LAUNDRY ALLOWANCE

- (i) Employees required by the employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost to employees. Such items are to remain the property of the employer and be laundered and maintained by such employer free of cost to the employee.
- (ii) Instead of the provision of such uniforms, the employer may pay such employee a uniform allowance at the rate contained within Table 2, Allowances. Where such employee's uniforms are not laundered by or at the expense of the employer, the employee will be paid a laundry allowance at the rate contained within Table 2, Allowances.
- (iii) The uniform allowance, but not the laundry allowance, will be paid during all absences on paid leave.

## 20.3 TRAVELLING, TRANSPORT AND FARES ALLOWANCE

- (i) An employee required and authorised to use their own motor vehicle in the course of their duties shall be paid an allowance of an amount set out in Table 2, Allowances.
- (ii) When an employee is involved in travelling on duty, if the employer cannot provide the appropriate transport, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the employer on production of receipted account(s) or other evidence acceptable to the employer.
- (iii) Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 21.3(ii) which exceed the mode of transport, meals or the standard of accommodation agreed with the employer for these purposes.

## 20.4 REGISTERED NURSE SERVICE ALLOWANCE

Where a Registered Nurse has worked for the organisation for longer than 1 year continuous service, is categorised as a RN 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> or 7<sup>th</sup> year, is permanent and works 60 or more hours in that fortnight not including meal breaks, the relevant Registered Nurse Service Allowance as contained within Table 2, Allowances shall be paid.

## 21. HIGHER GRADE DUTIES

- (i) 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 they act the minimum payment for such higher classification.
- (ii) The provisions of subclause (i) shall not apply where the employee being relieved is absent from duty for a period of three consecutive working days or less which have been rostered in advance.

## 22. SUPERANNUATION

**22.1** The employer will make compulsory superannuation contributions into a Superannuation Fund nominated by the employee in accordance with the Superannuation Guarantee (SG) legislation as varied from time to time.

**22.2** Should an employee fail to nominate a fund, the employer will choose one of the following funds as the default fund into which contributions shall be paid under this Agreement:

- a) Health Employees' Superannuation Trust Australia (HESTA), or
- b) First State Super, or
- c) Care Super, or
- d) Sun Super, or
- e) Any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12<sup>th</sup> September 2008, which offers a MySuper product, is a defined benefit fund

or a Self-Managed Superannuation Fund or is an exempt public sector scheme consistent with s.194 (h) of the Fair Work Act.

### **22.3 Contributions:**

The employer shall make compulsory superannuation contributions in accordance with the relevant legislation.

### **22.4 Salary Sacrifice to Superannuation:**

- a) Salary Sacrifice to Superannuation means the employee's option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre-tax dollars). This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- b) Salary sacrifice to superannuation shall be offered to employees by mutual agreement between the employee and employer.
- c) Two changes of a sacrificed arrangement will be permitted in an employee's anniversary year, which is 12 months from the date of commencement of employment, without incurring an administration charge (\$50). Changing from full-time to part-time or part-time to full-time employment will not be classified as a change for administration charge purposes.
- d) The amount sacrificed must not exceed any relevant superannuation guarantee contribution limit.
- e) The sacrificed portion of salary reduces the salary subject to PAYG Taxation deductions.
- f) 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 salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post salary sacrificed amount.
- g) Salary sacrifice arrangements can be cancelled by either the employer or employee at any time provided either party gives one month's notice. The employer has the right to withdraw from offering salary sacrifice to employees without notice if there is any alteration to relevant Australian Taxation legislation.
- h) Contributions payable by the employer in relation to the Superannuation Guarantee Legislation shall be calculated by reference to the salary which would have applied to the employee under this Agreement in the absence of any salary sacrifice.
- i) Employers will not use any amount that is salary sacrificed by an employee to negate contributions payable under the Superannuation Guarantee Legislation.



- j) The employee shall have the portion of payable salary that is sacrificed paid as additional employer superannuation contributions into the same superannuation fund that receives the employer's SGC contributions.

**23. PAYMENT AND PARTICULARS OF WAGES**

The frequency of the payment of wages, the matter of record-keeping and information contained on each employee's payslip shall be in accordance with the requirements of the Fair Work Act 2009 and all related Regulations.

## **PART 4**

### **LEAVE ENTITLEMENTS**

#### **24. ANNUAL LEAVE**

##### **24.1 QUANTUM AND ACCRUAL**

- i) Annual leave on full pay shall accrue throughout the year and accumulate from anniversary to anniversary.
- ii) Employees are entitled to annual leave in accordance with the provisions of the NES and as follows:
  - a) Full time shift workers – five weeks annual leave
  - b) Part time shift workers – five weeks annual leave on a pro rata basis
  - c) Full time employees other than shift workers – four weeks annual leave
  - d) Part time employees other than shift workers – four weeks annual leave on a pro rata basis
  - e) Casual employees have no entitlement to annual leave.
- iii) For the purpose of this Clause, a shift worker is defined as:
  - 1) an employee who is regularly rostered to work their hours outside that of a day worker as defined and /or
  - 2) who regularly works weekends. For clarity a weekend means work in ordinary time on a Saturday and/or a Sunday in any one calendar week.
- iv) A Day Worker is an employee who works regular shifts from Monday to Friday commencing any time from 7am and finishing any time before or at 7pm.

##### **24.2 PAYMENT OF ANNUAL LEAVE**

- i) Annual leave shall be paid at the employee's Base Rate of Pay that applies immediately before the period of leave begins.
- ii) Where an employee who has not taken an amount of accrued annual leave, ceases to be employed, the untaken leave balance shall be paid out at the employee's Base Rate of Pay plus leave loading or penalties for untaken leave as per Clause 25, Annual Leave Loading.



### 24.3 TAKING OF ANNUAL LEAVE

- i) An employee is entitled to take an amount of annual leave where:
  - a) at least that amount of annual leave is credited to the employee; and
  - b) the Employer has authorised the employee to take the annual leave during that period.
- ii) In order to take some or all of their annual leave accrual, the employee shall make written application to the Employer, providing at least six full weeks of notice and advising of the desired period of leave. Subject to the needs of the facility, the employer shall not unreasonably refuse applications for annual leave that are submitted in this manner. Nor once approved may the Employer revoke such approval.
- iii) Where an employee has in excess of 8 weeks annual leave accrued, subject to the provision of eight weeks' notice, the Employer may direct and enforce the employee to take an amount of annual leave, so that the balance accrued remains no more than 6 weeks.

### 24.4 CASHING OUT OF ANNUAL LEAVE

The purpose of Annual Leave is for employees to have a period of leave from the workplace so that they may return to the workplace refreshed. Whilst this Agreement allows the cashing out of annual leave, each occurrence shall be dealt with on a case by case basis. Where the Employer believes an employee should be taking annual leave rather than cashing out their entitlement, so as not to offend the obligations of the Work Health and Safety Act, nor to offend the spirit and intentions of annual leave entitlement, the Employer reserves the right to refuse. Notwithstanding, the Employer undertakes not to unreasonably refuse pending circumstances at the time.

Where the Employer and the Employee agree to cashing out of annual leave, it may occur subject to the following conditions:

- (i) an employee may cash out, subject to mutual agreement with the Employer, an amount of up to two (2) weeks annual leave per anniversary year, but no less than one week of annual leave at a time, so long as not less than 4 weeks annual leave balance is maintained.
- (ii) leave that is cashed out shall be paid at the Base Rate of Pay and include leave loading or penalties calculated in accordance with clause 25.
- (iii) all requests to cash out annual leave shall be placed in writing to the Employer
- (iv) upon cashing out a period of annual leave, the gross amount shall be immediately subject to appropriate PAYG tax treatment.

## 25. ANNUAL LEAVE LOADING

- (a) In addition to their ordinary pay, an employee, other than a shift worker, will be paid an annual leave loading of 17.5% of their ordinary pay on a maximum of 152 hours/four weeks annual leave per annum.
- (b) Shift workers, in addition to their ordinary pay, will be paid the higher of:
  - (i) an annual leave loading of 17.5% of ordinary pay; or
  - (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.
- (c) Upon termination employees are entitled to be paid leave loading or penalties (calculated in accordance with (a) or (b) above) for any accrued but untaken annual leave).

## 26. PUBLIC HOLIDAYS

- (i) For full time and part time employees, where a public holiday falls on a day that the employee would have ordinarily been rostered to work, that employee shall be allowed such Public Holiday without loss of Base Rate of Pay, for the time they would have worked, had it not been a Public Holiday.
- (ii) The following days shall be public holidays, New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour 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.
- (iii) In each calendar year, where no additional public holiday (or part thereof) in accordance with subclause (i) above is proclaimed and observed, the Employer shall grant an extra public holiday, to be observed on the August Bank Holiday, or on a day between Christmas Day and New Year's Day.
- (iv) The Employer may request an employee to work on a public holiday.
- (v) The employee may refuse the request (and instead have a Public Holiday off without loss of Base Rate of Pay) if the employee has reasonable grounds for doing so. In determining whether an employee has reasonable grounds for refusing a request to work on a public holiday, regard must be had to the matters set out in Section 114 of the Act.
- (vi) This Agreement expressly contemplates that the Employer will require work on public holidays and the parties acknowledge that the nature of the work performed by the employee, the type of employment of the employee (for example, whether full-time, part-time, casual or shift work) and the nature of the Employer's business, will require work on public holidays, from time to time.
- (vii) An employee who is required to and does work on any public holiday prescribed in this clause shall be paid in lieu of all other shift allowances and weekend penalties as follows:

- a) Full-time Employees and Part time employees: In addition to the Base Rate of Pay of Pay, time and one half (150%) for all nominal hours worked. Alternatively, if the employee elects, in addition to the Base Rate of Pay of Pay, half-time extra (50%), plus the time of in lieu on a time-for-time basis. Such time shall be taken as mutually agreed between the employer and employee and in any case no more than 9 months after the accrual. Where the leave is not taken it shall be paid out.
- b) Casual Employees: In addition to the Base Rate of Pay, time and a half (150%) for all time worked. This rate is inclusive of any casual loading the employee would have otherwise been entitled to.
- viii) All full-time employees will receive a day's ordinary pay for public holidays that occur on their rostered day off except where the public holiday falls on a Saturday or Sunday with respect to Monday to Friday employees.
- (ix) Part-time employees
  - a) A part-time employee will only be entitled to payment for those public holidays that fall on days they are normally rostered to work.
  - b) A part-time employee who is rostered off on a public holiday they would ordinarily work will be paid their ordinary pay for that day.

## 27. LONG SERVICE LEAVE

- (a) An employee's entitlement to long service leave shall be in accordance with the provisions of this Agreement and the Long Service Leave Act 1955 (NSW). Where this Agreement is silent, the provisions of the Long Services Leave Act shall prevail. Where there is an inconsistency between that legislation and the provisions of this Agreement, these provisions shall prevail to the extent that they are more generous to the employee taking such leave.
  - (i) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after fifteen 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. Subject to subclauses (d) and (e) beneath, Long service leave shall be given and taken within 6 months of it falling due. Such leave shall be taken at a time to be mutually arranged between the employer and the employee.

Continuous service shall be deemed not to have been broken by:

- Absence of an employee from the facility while a member of the Defence Forces of the Commonwealth in time of war;
  - Any period of approved parental leave;
  - Any other period of approved absence on leave without pay not exceeding six months.
- (ii) Employees who have completed at least five years' continuous service and less than ten years' continuous service and whose services are terminated by



the employer for any reason other than serious and willful misconduct, or who resign their employment on account of illness, incapacity or domestic or other pressing necessity, are entitled to a pro rata payment for long service leave on the basis of two months leave for ten years' service.

(b) Where an employee has acquired a right to extended leave under subclause (a) of this clause, then and in every such case:

(i) 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 been entitled computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment, or where in accordance with (e) beneath, an agreement to postpone leave had already been entered into, that rate of pay reflected in the agreement.

(ii) Where a worker dies and any long service leave:

a. to which the worker was entitled has not been taken, or

b. accrued upon termination of the services of the worker by reason of the worker's death and has not been taken,

the employer shall upon request pay to the worker's estate in full the ordinary pay that would have been payable to the worker in respect of long service leave less any amount already paid to the worker in respect of that leave.

(c) Any period(s) of part-time employment with the same employer shall count towards long service leave as provided for in this clause. 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 hours.

(d) The employer and the employee shall give at least two month's notice of the date from which it is proposed that the employee's long service leave shall be given and taken. Long service leave shall be taken as soon as practicable having regard to the needs of the workplace, or where the employer and the employee agree, such leave may be postponed to an agreed date.

(e) Where an employee requests the taking of a period of LSL be postponed to a future date and the Employer agrees, the period of leave shall be paid at the rate applicable at the time this arrangement is agreed. Such an arrangement must be in writing.

## 28. PERSONAL / CARERS LEAVE

**Personal /Carers leave in accordance with the National Employment Standards may be used for personal sickness (Sick Leave) or for caring responsibilities (Carer's Leave).**

**Full Time employees shall receive an amount of 76 hours per year (equivalent to 10 days per annum), to accrue on a pro rata basis fortnightly throughout the year and accumulate from year to year. Part time employees shall receive a pro rata**



**amount of entitlement based on their average hours worked every 4 weeks. Casual employees are not entitled to sick leave but are eligible for unpaid carers' leave.**

## **28.1 PERSONAL LEAVE FOR THE EMPLOYEE'S OWN ILLNESS OR INJURY (SICK LEAVE)**

- (i) The amount of paid sick leave allowed to Full time and Part time Employees will be dependent upon the total amount of paid Personal/Carers Leave they have accrued at the time it is requested. Casual employees do not accrue sick leave. Paid sick leave shall be paid at the Base Rate of Pay. Where more leave than is accrued is requested, the extra leave shall be deemed sick leave without pay.
- (ii) Any unused sick leave shall not be paid out at the cessation of the employment relationship.
- (iii) Paid sick leave and sick leave without pay is to be used by the Employee for their own absences from work, caused by their own personal illness and/or accident.
- (iv) The Employee shall be required to notify the employer of their absence, whether paid or unpaid sick leave, as soon as practicable and if possible prior to the commencement of the absence. Notification must be directly made by the employee to the Manager in the first instance or their nominated delegate if otherwise advised, via a phone call. Communication via text messages, emails, faxes or other means are not be acceptable unless endorsed by Advantaged Care. Only under exceptional circumstances may notification be made by a family member on behalf of the Employee concerned. The Employee shall comply with the requirements of the NES in producing a medical certificate (or reasonable evidence as required). Certification shall be required in all cases for each absence, including single day absences, unless special approval for exemption from this requirement is received from management.
  - (a) Where notification and/or certification requirements of the Employer are not met, the absence may be deemed leave without pay or unauthorised leave without pay.

## **28.2 PERSONAL LEAVE FOR CARERS PURPOSES (CARERS LEAVE)**

### **(i) Paid Carers Leave**

- (a) An Employee shall be entitled to use accrued Personal/carers' Leave to attend to the needs of immediate family and household in accordance with the NES. Such leave shall be deemed Paid Carers' Leave. Part time employees shall be allowed to access the pro rata equivalent of the entitlement. Casual employees do not have access to paid carers leave.
- (b) Notification for taking Carers' Leave must occur prior to the absence unless unforeseen circumstances exist. Notification must be made directly from the Employee to the Manager in the first instance or nominated delegate if otherwise advised, via a phone call. Communication via text messages, emails, faxes or other means are not be acceptable unless endorsed by Advantaged Care.



- (c) Upon each occasion of leave, the Employee shall be required to produce a medical certificate (or reasonable evidence as required) in relation to the illness or injury effecting their spouse or family being cared for.

**(ii) Unpaid Carers' Leave**

- (a) In addition to the above paid sick leave and paid carers leave entitlement, Employees (including casual Employees) shall be entitled to unpaid personal carers leave. Unpaid carers leave shall be given and taken in accordance with the NES That is, an Employee shall be allowed up to 2 days unpaid leave per occasion, only after the Employee has exhausted their entitlement to paid personal carers leave (if applicable).
- (b) Notification for taking unpaid carers leave must occur prior to the absence unless unforeseen circumstances exist. Notification must be made directly from the Employee to the Manager in the first instance or nominated delegate if otherwise advised, via a phone call. Communication via text messages, emails, faxes or other means are not be acceptable unless endorsed by Advantaged Care. Further, the Employee shall be required to comply with the requirements of the NES in producing a medical certificate (or reasonable evidence as required) for each occasion of unpaid personal carers leave entered into; covering the illness or injury of the person they are taking care of. Where notification and/or certification requirements of the Employer are not met, the absence may be deemed leave without pay or unauthorised leave without pay.

**29. PAID COMPASSIONATE LEAVE**

- (i) All Employees, other than casual Employees, shall in addition to paid sick leave and paid carers leave, be entitled to take up to 2 days of paid compassionate leave per occasion for the purpose of bereavement (where death occurs), or emergency circumstances of illness posing a serious threat to the life of an immediate family member or household, or where the employee actively supports or spends time with the affected person. The period of compassionate leave taken shall be paid at the Base Rate of Pay.
- (ii) The Employee must give the employer any evidence that the employer reasonably requires of the illness, accident or death.

**30. PARENTAL LEAVE**

Parental Leave is available to employees in accordance with the NES and the Fair Work Act.

**31. COMMUNITY SERVICE LEAVE**

Community Service Leave is available to employees in accordance with the NES and the Fair Work Act.

**32. CEREMONIAL LEAVE**

An employee who is legitimately required by Aboriginal or Torres Strait Islander tradition to be absent from work for Aboriginal or Torres Strait Island ceremonial purposes will be entitled to up to ten working days unpaid leave in any one year, with the approval of the employer.

**33. OBSERVATION LEAVE**

The following provision has been created specifically to encourage staff to take leave under this clause for religious/cultural festivals rather than inappropriately accessing their personal leave entitlements.

An employee who due to their own culture/religion/diversity observes certain festivals and therefore wishes to be absent for such purpose or ceremonial event, may access up to 2 days of leave without pay per calendar year. Such leave may only be approved subject to four weeks notification to the Employer, approval from the Employer and operational effectiveness. Evidence may be reasonably required by the Employer.





## PART 5

### ENDING THE EMPLOYMENT RELATIONSHIP

#### 34. TERMINATION OF EMPLOYMENT

##### 34.1 EMPLOYER TERMINATION WITHOUT NOTICE

The employer may terminate the employment of the Employee immediately and without notice if the Employee is involved in serious and wilful misconduct justifying summary dismissal.

Regard shall be given to the severity of the offence and each transgression shall be determined upon its own merits as well as in the context of the workplace, the duties carried out at the time, the overall conduct of the Employee and the Employee's work history.

##### 34.2 EMPLOYER TERMINATION WITH NOTICE

- (i) The Employer may lawfully terminate the employment of a permanent Employee by providing the following notice:

<u>Period of continuous service</u>	<u>Period of notice</u>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

In addition to the notice above, employees over 45 years of age at the time of the giving of the notice, with not less than two years continuous service, shall be entitled to an additional week's notice.

Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

Notwithstanding, where an employee is a casual employee, the period of notice shall be one shift only.

- (ii) Lawful termination with notice may occur for a number of reasons and is subject to the circumstances at the time.

If the Employee is absent from work as a result of injury or illness (not related to his/her employment) for a period of three (3) consecutive months or for an aggregate period of three (3) months in any 12 twelve (12) consecutive months, the Employer may lawfully terminate such employee's employment upon the giving of notice or the payment of salary in lieu of notice based on the absence no longer being deemed as "temporary" or the employee being unable to perform the inherent requirements of the job for which they were employed.



### 34.3 EMPLOYEE TERMINATION WITH NOTICE

- (i) The Employee shall be required to give the same period of notice as the employer as noted at 35.2 (i), except for the additional one week prescribed due to the employee being over 45 years with at least two years continuous service. Upon resignation, if the Employee provides notice which is less than that required, the Employer will be entitled to deduct from or set off against salary and other entitlements owing to the Employee such amount as is equivalent to the salary and other entitlements which would otherwise have been payable to the Employee during the balance of the required notice period where the employee has agreed to this in writing.

### 35. PROPERTY OF THE EMPLOYER

The Employer may provide Employees with equipment and other such property to enable the Employee to carry out the duties of their position as necessary. Employees are required to take all reasonable care in handling and using items that are the property of the Employer.

On termination of employment or upon request by Advantaged Care, an employee must return any property in his/her possession belonging to the Employer, without damage. This does not include general wear and tear.

Where the said property is not returned or has been returned in a damaged state, where the employee has agreed in writing the Employer may at their discretion withhold from the Employee's pay, an amount of monies equivalent to the value of the property or the cost of fixing any damage incurred. Where this action is to occur, Advantaged Care shall inform the Employee prior to the action taking place.

### 36. REDUNDANCY

Redundancy provisions are available for full time and part time staff only and are provided for within the Fair Work Act.

Where the employer has made a definite decision that they no longer wish the job the employee has been doing to be done by anyone, and as such the position is made redundant, in addition to the provision of Notice or payment in lieu of such notice, the following shall apply:

#### A. FOR STAFF EMPLOYED PRIOR TO THE OPERATIVE DATE OF THIS AGREEMENT

Where an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

<b>Years of Service</b>	<b>Entitlement</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks



Where an employee is 45 years of age or over, the entitlement shall be in accordance with the following scale:

<b>Years of Service</b>	<b>Entitlement</b>
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

**B. FOR STAFF EMPLOYED AFTER THE OPERATIVE DATE OF THIS AGREEMENT**

<b>Employee's period of continuous service with the employer on termination</b>	<b>Redundancy pay period</b>
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years*	12 weeks*
* There is a reduction in redundancy pay from 16 weeks to 12 weeks for employees with at least 10 years continuous service. This is consistent with the 2004 Redundancy Case decision made by the Australian Industrial Relations Commission.	

"Week's pay" shall mean the Base Rate of Pay of Pay multiplied by the nominal hours worked by the employee, averaged over the period immediately prior to their last date of employment equal to the number of weeks of severance pay to which the employee is entitled under relevant paragraphs of this subclause. In addition, over-award payments, shift and weekend penalties and other allowances that are applicable for that period of time will also apply.

**36.1 TRANSFER TO LOWER PAID DUTIES**

Where an employee is transferred to lower paid duties, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

**36.2 EMPLOYEE LEAVING DURING NOTICE PERIOD**

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause



had they remained in employment until the expiry of the notice, but is not entitled to any payment in lieu of any remaining notice.

### **36.3 JOB SEARCH ENTITLEMENT**

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of ordinary pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for any time absent. For this purpose a statutory declaration is sufficient.

## **PART 6**

### **MISCELLANEOUS**

#### **37. STAFF AMENITIES**

The employer shall provide for the use of employees:

- (i) A suitable changing room and adequate washing and toilet facilities;
- (ii) A locker or other suitable place for the safe keeping of clothing and personal effects of such employee;

#### **38. LABOUR FLEXIBILITY**

An employer may direct an employee to carry out duties as are within the limits of the employee's skill, competence and training. Such duties may include work which is incidental or peripheral to the employee's main tasks provided that such duties are not designed to promote deskilling.

Any employer may direct an employee to carry out duties and use such equipment as may be required provided that the employee 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 employees and the employer's duty of care to residents.

#### **39. ATTENDANCE AT MEETINGS AND FIRE DRILLS**

- (i) Any employee required to work outside the ordinary hours of work for compulsory fire safety practices, fire drill and evacuation procedures, shall be entitled to be paid the Base Rate of Pay for the actual time spent in attendance at such practices. In lieu of receiving payment, employees may, with the agreement of the Management, be permitted to be free from duty for a period of time equivalent to the period spent in attendance at such meetings. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.
- (ii) Any employee required to attend Work Health and Safety Committee 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 Base Rate of Pay for the actual time spent in attendance at such meetings. In lieu of receiving payment, employees may with the agreement of the employer be permitted to be free from duty for a period of time equivalent to the period spent in attendance at such meetings. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.
- (iii) For the purposes of this clause, where an employee is a casual, they shall also be entitled to be paid the 25% casual loading as applicable.

#### 40. RESOLUTION OF DISPUTES

- (1) If a dispute relates to:
  - (a) a matter arising under the Agreement; or
  - (b) the National Employment Standards;

this term sets out procedures to settle the dispute.
- (2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission
- (5) Fair Work Commission may deal with the dispute in 2 stages:
  - (a) Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - (b) if Fair Work Commission is unable to resolve the dispute at the first stage, Fair Work Commission may then:
    - (i) arbitrate the dispute; and
    - (ii) make a determination that is binding on the parties.
- (6) While the parties are trying to resolve the dispute using the procedures in this term:
  - (a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
  - (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
    - (i) the work is not safe; or
    - (ii) applicable workplace health and safety legislation would not permit the work to be performed; or
    - (iii) the work is not appropriate for the employee to perform; or
    - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.
- (7) The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.



#### **41. ANTI-BULLYING**

Advantaged Care at Barden Lodge aims to provide a workplace free of bullying and other inappropriate workplace behaviour. Where an employee encounters what they deem inappropriate workplace behaviour, then they are encouraged to address this conduct through

- (1) appropriate personal feedback to the person(s) concerned; and/or
- (2) by discussing this matter with relevant management personnel.

#### **42. VARIATION**

The Employee and the Employer acknowledge that this agreement can be varied by mutual consent of both parties at any time during the currency of the Agreement subject to the provisions of the Fair Work Act 2009 and related Regulations.

If any provision of this Agreement is invalid, unlawful, void or unenforceable, it will be severed without affecting any other obligations of the parties under this Agreement.

**SIGNATORY PAGES:**

**Employer Signature Page for Advantaged Care at Barden Lodge Clinical Staff Enterprise Agreement 2016-2018**

**For and on behalf of The Trustee for the Barden Lodge Trust [ABN: 44 045 510 661] trading as Advantaged Care at Barden Lodge, the Employer:**

Name (please print): Michaela Mellick

Signature: 

Date: 8<sup>th</sup> February 2016

Capacity of signatory (eg CEO, Managing Director): Chief Executive Officer

Address for contact: 1/355 New South Head Road Double Bay NSW 2028

Contact details:

Phone: (02) 9335 5600

Email: mmellick@advantagedcare.com.au

**Witness for the Employer:**

Name (please print): Nova Grace Delco

Signature: 

Date: 8<sup>th</sup> February 2016

Capacity of signatory (eg Manager): Registered Nurse NMW0001676921

Address for contact: 11 Barden Road Barden Ridge NSW 2234

Contact details:

Phone: (02) 9532 2888

Email: ndelco@advantagedcare.com.au



*Brett Holmes*

Brett Howard Holmes  
General Secretary  
New South Wales Nurses and  
Midwives' Association; and

Branch Secretary  
Australian Nursing & Midwifery Federation  
New South Wales Branch  
50 O'Dea Ave  
WATERLOO NSW 2017

*Margaret Potts*

WITNESS

Margaret Mary Potts  
50 O'Dea Ave, Waterloo

*Coral Levett*

Coral Vicky Levett  
President  
New South Wales Nurses and  
Midwives' Association, and;

President  
Australian Nursing & Midwifery Federation  
New South Wales Branch  
50 O'Dea Ave  
WATERLOO NSW 2017

*Margaret Potts*

WITNESS

Margaret Mary Potts  
50 O'Dea Ave, Waterloo

*Authority to sign Agreement on behalf of employees is in accordance with Rule 34 of the Rules of the New South Wales Nurses and Midwives' Association and Rule 40 of the Rules of the Australian Nursing & Midwifery Federation and as bargaining representative in accordance with the Fair Work Act 2009.*



**TABLE 1 – RATES OF PAY**

Please note, wages for nursing classifications as set out in Table 1, year 2016, are inclusive of a 1.92% buyout of one week’s annual leave.

<b>Registered Nurses</b>	<b>Effective from FFPP falling immediately after the date the Agreement is “made” in accordance with the Vote</b>	<b>1st Pay Period falling on or after 1/1/2017</b>	<b>1st Pay Period falling on or after 1/1/2018</b>
1st year	\$28.88	\$29.53	\$30.31
2nd year	\$29.50	\$30.15	\$30.92
3rd year	\$32.00	\$32.72	\$33.59
4th year	\$33.50	\$34.24	\$35.09
5th year	\$34.50	\$35.26	\$36.14
6th year	\$34.90	\$35.67	\$36.56
7th year	\$35.30	\$36.09	\$37.05
8th year and Thereafter	\$36.89	\$37.72	\$38.72

<b>Enrolled Nurses (with Notation)</b>	<b>Effective from FFPP falling immediately after the date the Agreement is “made” in accordance with the Vote</b>	<b>1st Pay Period falling on or after 1/1/2017</b>	<b>1st Pay Period falling on or after 1/1/2018</b>
1st Year	\$ 23.61	\$ 24.14	\$ 24.78
2nd Year	\$ 24.07	\$ 24.60	\$ 25.23
3rd Year	\$ 24.37	\$ 24.90	\$ 25.54
4th Year	\$ 24.88	\$ 25.42	\$ 26.07
Thereafter	\$ 25.36	\$ 25.93	\$ 26.62

<b>Enrolled Nurses (Medication Authorised)</b>	<b>Effective from FFPP falling immediately after the date the Agreement is “made” in accordance with the Vote</b>	<b>1st Pay Period falling on or after 1/1/2017</b>	<b>1st Pay Period falling on or after 1/1/2018</b>
1st Year	\$ 26.36	\$ 26.95	\$ 27.64
2nd Year	\$ 26.75	\$ 27.35	\$ 28.05
Thereafter	\$ 27.19	\$ 27.81	\$ 28.51

Where an employee is paid a higher rate of pay than those contained within this Agreement, relevant increases may or may not be applied to that employee’s rate of pay. No employee covered by this Agreement shall ever be paid less than those rates contained within this Agreement, relevant to their classification and Pay Point.



**TABLE 2 – ALLOWANCES**

Allowance	2016	2017	2018
<b>On Call per 24 hrs or part thereof:**</b>			
Between rostered shifts or ordinary hours Monday to Friday	\$19.58	\$19.58	\$19.58
Between rostered shifts or ordinary hours on a Saturday	\$29.50	\$29.50	\$29.50
Between rostered shifts or ordinary hours on a Sunday, Public Holiday or any day when the employee is not rostered to work	\$36.19	\$36.19	\$36.19
Uniform Allowance per Shift **	\$1.23	\$1.23	\$1.23
Laundry Allowance per Shift **	\$0.32	\$0.32	\$0.32
Motor Vehicle Allowance per km **	78 cents	78 cents	78 cents
<b>In charge of facility &amp; OCMB:</b>			
Less than 100 beds	\$33.86	\$33.86	\$33.86
More than 100 beds	\$45.01	\$45.01	\$45.01
RN 3 <sup>rd</sup> , 4 <sup>th</sup> , Year Service Allowance for an employee who has worked for the organisation for longer than 1 year continuous service, is permanent part time or permanent who works 60 or more hours in that fortnight not including meal breaks – calculated per roster cycle	\$1.30 per hour worked	\$1.30 per hour worked	\$1.30 per hour worked
RN 2 <sup>nd</sup> , 5 <sup>th</sup> , 6 <sup>th</sup> , 7 <sup>th</sup> Year Service Allowance for an employee who has worked for the organisation for longer than 1 year continuous service, is permanent part time or permanent who works 60 or more hours in that fortnight not including meal breaks – calculated per roster cycle	\$0.80 per hour worked	\$0.80 per hour worked	\$0.80 per hour worked

\*\* These will be changed by any increases made to the equivalent rates in the Nurses Award 2010.



**TABLE 3 – CLASSIFICATION DESCRIPTIONS**

**REGISTERED NURSE (RN) - (AWARD EQUIVALENT RN LEVEL 1)**

Means a person registered by the Board as such. Registered Nurses will be paid at a rates set out in Table 1.

All Registered Nurses under this Agreement shall progress from 1<sup>st</sup> year of service through to 8<sup>th</sup> year and thereafter after having completed 1786 hours in not less than one anniversary year.

**ENROLLED NURSE (WITH NOTATION)**

Enrolled Nurse (with Notation) means an Enrolled Nurse registered by the Board as an Enrolled Nurse with the notation “does not hold a Board Approved qualification in medicines administration”. Enrolled Nurses (with notation) will be paid at a rates set out in Table 1.

All Enrolled Nurses (with Notation) under this Agreement shall progress from 1st year of service through to 5th year and thereafter after having completed 1786 hours in not less than one anniversary year.

**ENROLLED NURSE (MEDICATION AUTHORISED)**

Enrolled Nurse (Medication Authorised) means an Enrolled Nurse registered by the Board as an Enrolled Nurse who has an endorsement on their registration to administer medications and is required to do so as part of their duties.

All Enrolled Nurses (Medication Authorised) under this Agreement shall progress from 1st year of service through to 3rd year and thereafter after having completed 1786 hours in not less than one anniversary year.