



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Calvary Retirement Communities Hunter-Manning Ltd
(AG2011/2440)

**CALVARY RETIREMENT COMMUNITIES HUNTER-MANNING AND
THE NEW SOUTH WALES NURSES' ASSOCIATION / ANF - NSW
BRANCH TRANSFERRED NURSING STAFF ENTERPRISE
AGREEMENT 2011**

Aged care industry

COMMISSIONER STANTON

NEWCASTLE, 11 OCTOBER 2011

Application for approval of the Calvary Retirement Communities Hunter-Manning and the New South Wales Nurses' Association / ANF - NSW Branch Transferred Nursing Staff Enterprise Agreement 2011.

[1] An application has been made for approval of an enterprise agreement known as the *Calvary Retirement Communities Hunter-Manning and the New South Wales Nurses' Association / ANF - NSW Branch Transferred Nursing Staff Enterprise Agreement 2011* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). The Agreement is a single-enterprise agreement.

[2] The application was subject to a Conference before Fair Work Australia on 11 October 2011. During the course of that Conference the applicant agreed to provide certain undertakings in the full knowledge and understanding that the terms of an undertaking shall be taken to be a term of the enterprise agreement in the event Fair Work Australia accepts the undertaking and approves the Agreement.

[3] The applicant has provided written undertakings. A copy of these undertakings are set out in "Annexure A". Pursuant to s.191 of the Act, the undertakings annexed to this Decision are taken to be a term of the Agreement.

[4] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[5] The New South Wales Nurses' Association and the Australian Nursing Federation NSW Branch, 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) I note that the Agreement covers these organisations.

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 18 October 2011. The nominal expiry date of the Agreement is 30 June 2013.



COMMISSIONER

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“Annexure A”

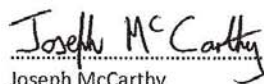
UNDERTAKINGS - AG2011/2440 - Calvary Retirement Communities Hunter-Manning and the New South Wales Nurses' Association/ANF-NSW Branch Transferred Nursing Staff Enterprise Agreement 2011

- (1) The reference at subclause 20(c)(ii) of the *Calvary Retirement Communities Hunter-Manning and the New South Wales Nurses' Association/ANF-NSW Branch Transferred Nursing Staff Enterprise Agreement 2011* (“Agreement”) shall be amended thereby deleting “Item 10” of Table 2 – Other Rates and Allowances and inserting “Item 9” of Table 2 – Other Rates and Allowances.
- (i) In addition, at Table 2 of Appendix 1 of the Agreement, it shall be amended in respect to the following insertion:

Item	Brief Description of Allowance	EFFPPOA 1 July 2011	EFFPPOA 1 July 2012
No			
		(\$)	(\$)
9	Uniform (per week)	6.4998	6.7273

- (3) The reference at Item 19 of Table 2 – Other Rates and Allowances of the Agreement shall be amended thereby deleting “per shift” and inserting “per hour”. To clarify, this amendment pertains to the payment of the AIN Team Leader Allowance under the Agreement.
- (4) A copy of these undertakings will be affixed to all copies of this Agreement distributed by the employer. The employer will forward to all employees a copy of these undertakings.

Signed


 Joseph McCarthy
 [Insert Position]
 Acting National Director
 Aged Care and Retirement Services
 Calvary

CALVARY RETIREMENT COMMUNITIES
HUNTER-MANNING

and

THE NSW NURSES ASSOCIATION/ ANF –
NSW BRANCH

NURSING STAFF ENTERPRISE
AGREEMENT

2011

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of this agreement.

ENTERPRISE AGREEMENT

1. ARRANGEMENT

The Agreement is arranged as follows:

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2. NAME OF THE AGREEMENT

This Agreement shall be known as the *Calvary Retirement Communities Hunter-Manning and the New South Wales Nurses' Association/ ANF – NSW Branch Transferred Nursing Staff Enterprise Agreement 2011*.

3. PARTIES TO THE AGREEMENT

The parties to this Agreement are:

- (a) Calvary Retirement Communities Hunter-Manning (“the Employer”) – ABN: 34 102 625 212.
- (b) Nursing employees transferred from CatholicCare on 1 April 2011 employed by the Employer in the facilities listed in Appendix 3. This agreement does not apply to nurses employed from 1 April 2011.
- (c) The New South Wales Nurses' Association/ Australian Nursing Federation NSW Branch. ('NSWNA').

4. SCOPE OF THE AGREEMENT

- (a) This Agreement contains all the terms and conditions of employment for employees covered by the agreement and shall apply to Registered Nurses, Endorsed/ Enrolled Nurses and Assistants in Nursing employed by the Employer in accordance with Clause 3(b) of this Agreement, excluding nursing staff listed in Appendix 2 whilst those persons remain in continuous employment with the Employer.

- (i) Appendix 2 Persons Excluded from Agreement Coverage

- These employees are paid in accordance with the terms and conditions of the NSW Public Health System Nurses' & Midwives' (State) Award, as amended from time to time.

5. DATE AND PERIOD OF OPERATION

This Agreement shall commence operation from the 7th day after the agreement is approved by Fair Work Australia (FWA) and shall remain in force until 30 June 2013 and thereafter in accordance with the *Fair Work Act 2009*.

The parties agree that discussions shall commence for a new Agreement no later than six months prior to the expiry date of the Agreement.

6. POSTING OF THE AGREEMENT

A copy of this Agreement shall be displayed in a conspicuous and convenient place at the workplace so as to be easily read by all employees.

7. CONSULTATION REGARDING CHANGE

- (a) This term applies if the Employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and the change is likely to have a significant effect on employees of the Employer.
- (b) The employer must notify the relevant employees of the decision to introduce the major change. The relevant employees may appoint a representative, which may be a representative from the NSWNA, for the purposes of the procedures in this term. If a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
- (c) As soon as practicable after making its decision, the employer must discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- (d) For the purposes of the discussion, provide in writing, to the relevant employees all relevant information about the change including the nature of the change proposed; and information about the expected effects of the change on the employees; and any other matters likely to affect the employees.
- (e) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (f) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (g) If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in subclauses (ii) and (iii) are taken not to apply.
- (h) In this term, a major change is *likely to have a significant effect on employees* if it results in the termination of the employment of employees; or major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or the elimination or diminution of job opportunities

(including opportunities for promotion or tenure); or the alteration of hours of work; or the need to retrain employees; or the need to relocate employees to another workplace; or the restructuring of jobs.

- (i) In this term, *relevant employees* means the employees who may be affected by the major change.

8. DISPUTE RESOLUTION PROCEDURE

- (a) In the event of a dispute in relation to a matter arising under this agreement or the National Employment Standards ('NES'), in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- (b) A party to the dispute may appoint another person, organisation or association, which may be a representative from the NSWNA, to accompany or represent them in relation to the dispute.
- (c) If a dispute in relation to a matter arising under the agreement is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to Fair Work Australia (FWA) for resolution by conciliation and, where the matter in dispute remains unresolved, arbitration.
- (d) It is a term of this agreement that while the dispute resolution procedure is being conducted work shall continue according to the custom and practice before the grievance arose unless an employee has a reasonable concern about an imminent risk to his or her health or safety.
- (e) If arbitration is necessary the FWA may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.
- (f) The above steps shall take place within seven days (health and safety matters are exempt from this clause).
- (g) For the avoidance of doubt, employee grievances are included in the matters to be dealt with in accordance with the dispute resolution procedure of the Agreement.

9. DISCUSSIONS PRIOR TO DECISION TO TERMINATE EMPLOYMENT

- (a) Prior to determining whether to terminate the employment of an employee on the grounds other than would justify summary dismissal, the Employer shall:
- (i) inform the employee that the termination of their employment is being considered; and

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- (ii) advise the employee of the reasons for possible termination; and
 - (ii) provide the employee with an opportunity to respond to any allegations regarding their conduct or performance and to show cause why their employment should not be terminated.
- (b) An employee shall be given reasonable time to respond, and shall be provided with details of any relevant material. An employee who wishes to be represented may, at the request of the employee, be represented by a representative of the employee's choice, which may be a union representative.
- (c) Any request by the employee to meet and discuss the matter shall not be unreasonably refused.

10. WAGES

- (a) The wage increases in subclause (i) hereof shall be payable as follows:-
- (i) The amount shown in Column 1 of Appendix 1 shall be payable from the beginning of the first full pay period to commence on or after 1 July 2011.
 - (ii) The amount shown in Column 2 of Appendix 1 shall be payable from the beginning of the first full pay period to commence on or after 1 January 2012.
 - (iii) The amount shown in Column 3 of Appendix 1 shall be payable from the beginning of the first full pay period to commence on or after 1 July 2012.
- (b) The wage increases referred to in subclause (a) of this Clause shall be absorbed into any payment made to the Employee beyond the minimum rates contained within this Agreement.
- (c) Any further wage increase shall be at the discretion of the Employer, unless the rate of pay falls below the Modern Award rate (with reference to the transitional provisions), in such circumstances the rate of pay shall default to the minimum rate prescribed in accordance with the relevant Modern Award rate (with reference to the transitional provisions).
- (d) Rates of pay as increased by this Agreement are set out in Appendix 1.
- (e) Payment of Wages will be by electronic transfer into the employee's nominated financial institution account at the end of each fortnightly pay period, along with a pay advice. Wherever practicable such payment shall be available for withdrawal by employees on the designated pay day. Any other form of

payment will be at the discretion of the employer by agreement with the employee.

- (f) Where the wages are not available to the employee by such time due to circumstances beyond the employer's control, the employer shall not be held accountable for such delay.
- (g) If a public holiday falls on a normal payroll processing day, payment may be delayed by one day.

11. DEFINITIONS

- (a) Unless the context otherwise indicates or requires, the several expressions hereunder defined shall have the respective meanings assigned to them:

- (i) **“Assistant in Nursing Care”** means a person, other than a registered nurse, trainee or enrolled nurse who is employed in nursing and associated duties in the nursing home facility and who holds a Certificate Level III in Aged Care. Associated duties may include all functions involved in the provision of personal support, care and lifestyle including but not limited to the following:

Provision of personal care to support resident's lifestyle

- Assisting with serving and clean-up of meals and morning and afternoon teas
- Assisting with washing of personal laundry of residents
- Participation in social activities with residents
- Tidying personal lockers and bedside tables of residents
- Ensuring bathroom items are available for resident's use

- (ii) **“Assistant in Nursing Care Team Leader”** means an employee who holds either a Certificate Level IV in Aged Care or other appropriate Qualifications/Experience acceptable to the Employer who is designated by the Employer as having the responsibility for leading and/or supervising the other Assistants in Nursing.

- (1) Notwithstanding subclause (ii) above, employees engaged as AIN Team Leaders as at the date of approval of this Agreement may hold a minimum qualification of a Certificate Level IV in Aged Care or other Qualifications/Experience acceptable to the Employer.

- (iii) **“Assistant Director of Care (Nursing)”** means:

- (1) A person appointed as such in any sized nursing home facility and includes a person appointed as the nurse in charge during the evening or night in a nursing home facility where the occupied beds is not less than 150.

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- (2) 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.
- (iv) **“Association”** means the New South Wales Nurses’ Association/ Australian Nursing Federation – New South Wales Branch.
- (v) **“Board”** means the Nurses’ and Midwives’ Registration Board of NSW renamed the *Australian Health Practitioner Regulation Agency (AHPRA)*
- (vi) **“Registered Nurse”** means a person registered by the Board as such.
- (vii) **“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.
- (viii) **“Day Worker”** means a worker who works his/her ordinary hours from Monday to Friday, inclusive, and who commences work on such days at or after 6.00 a.m. and before 10.00 a.m., otherwise than as part of the shift system.
- (ix) **“Deputy Director of Care (Nursing)”** means a person appointed to that position or deemed to hold that position.
- (x) **“Enrolled Nurse without Medication Endorsement”** means a person enrolled by the Board as such.
- (xi) **“Enrolled Nurse”** means a person enrolled by the Board as such and endorsed to administer medications by the Board
- (xii) **“Experience”** in relation to an enrolled nurse or assistant in nursing means experience both before and/or after the commencement of this Agreement, 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 and/or hostel. For the purposes of this Agreement the terms “nursing home” and “hostel” shall be as defined in relevant legislation.
- (xiv) **“Industry of Nursing”** means the industry of persons engaged in New South Wales in the profession of nursing in nursing homes and/or hostel.

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- (xv) **“Nurse”** includes Registered Nurses, Enrolled Nurses and Assistants in Nursing.
- (xvi) **“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 and/or hostel. 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 post-graduate specialist clinical nursing qualifications shall commence on the third-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 third-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 third-year rate unless the person possesses the qualifications detailed in the two previous paragraphs. Persons appointed to the third-year rate by virtue of paragraphs three and four above shall progress to the fourth-year rate after completion of 12 months satisfactory full-time service.

- (xvii) **“Service”** for the purposes of Clause 10 of this Agreement means service before or after the commencement of this Agreement in NSW 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.

(xviii) **“Shift Worker”** means a worker who is not a day worker as defined.

(xix) **“Student Enrolled Nurse”** means a student undertaking study to become an enrolled nurse.

(xx) **Nurse Practitioner** A Nurse practitioner:

Is a registered nurse appointed to the role;

Has obtained an additional qualification relevant to the state regulating authority to enable them to become licensed Nurse practitioners.

A Nurse practitioner is authorised to function autonomously and collaboratively in an advance and extended clinical role.

Role of a licensed Nurse practitioner

The nurse practitioner is able to assess and manage the care of clients/residents using nursing knowledge and skills. It is dynamic practice that incorporates application of high level knowledge and skills, beyond that required of a registered nurse/midwife in extended practice across stable, unpredictable and complex situations.

The nurse practitioner role is grounded in the nursing profession’s values, knowledge, theories and practice and provides innovative and flexible health care delivery than complements other health care providers.

Scope of practice - The scope of practice of the Nurse practitioner is determined by the context in which:

The nurse practitioner is authorised to practice. The nurse practitioner therefore remains accountable for the practice for which they directed; and the professional efficacy whereby practice is structured in a nursing model and enhanced by autonomy and accountability.

The Nurse practitioner is authorised to directly refer clients/residents to other health professionals, prescribe medications and order diagnostic investigations including pathology and plain screen x-rays.

Nurse practitioners exhibit clinical leadership that influences and progresses clinical care, policy and collaboration through all levels of health service.

12. SALARY SACRIFICE AND PACKAGING ARRANGEMENTS

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- (a) Employees may be able to make voluntary pre-tax contributions or payments through a written salary sacrifice/ packaging agreement between the Employer and the Employee. The Employer will pay the salary sacrifice amount in accordance with the salary sacrifice agreement.
 - (b) An employee may apply to have their ordinary time earnings reduced by an amount nominated by them as a salary sacrifice contribution for their benefit.
 - (c) The total value of the reduced salary and the agreed value of the benefits provided will not be less than the amount that would otherwise be paid if the salary sacrifice/ packaging arrangement was not in place. The employees will be offered the opportunity to choose from the list of benefits, which will be paid by the Employer, through the provider of the service, instead of receiving gross salary. Gross salary is reduced by the amount of the benefits paid by the Employer. The new gross salary is then subject to PAYG tax.
 - (d) The Employer will nominate a provider of salary sacrificing services to manage these arrangements. The cost of the administration of the salary packaging arrangement is to be borne by the employee and deducted from the employee's account each fortnight.
 - (e) The Employer shall meet the cost of implementing the administrative and payroll arrangements necessary for the introduction of salary sacrifice/ packaging to the employees under this Agreement.
 - (f) All existing entitlements such as superannuation, leave loading, penalties and overtime etc., will be based on the pre-packaged salary.
 - (g) The parties recognise the need for employees to consider independent financial and taxation advice and recommend that employees consider such advice prior to entering into salary sacrifice/ packaging arrangements.
 - (h) The employees covered under this Agreement will have access to salary sacrifice/ packaging arrangements subject to the following provisions:
 - (i) Accessing a salary sacrifice/ packaging arrangement is a voluntary decision to be made by the individual employee.
 - (ii) The employee wishing to enter into a salary sacrifice/ packaging arrangement will be required to sign a document which indicates that:
 - (1) The Employee has sought expert advice in relation to entering into such an arrangement and;
 - (2) The Employee understands that in the event that Fringe Benefits Tax (FBT) becomes payable on the benefit items which are selected, the salary sacrifice/ packaging arrangement shall lapse

and a new arrangement be put in place whereby the total cost of salary sacrificing to the Employer does not increase.

- (3) If the Employee elects to continue with sacrificing/ packaging, the cost of the payment of the FBT will be passed back to the Employee, or benefit items can be converted back to the agreed salary as per this Agreement.
 - (4) that upon resignation or termination of employment the Employer shall be, by deduction from final payments or upon demand, reimbursed any amounts of over-expenditure.
- (i) In the event that the law governing superannuation and/or taxation make the objective of this clause ineffective, unattainable or illegal, the employer will advise the employee concerned. The salary sacrifice/ packaging contribution arrangement will be terminated or amended to comply with such laws.
 - (j) Unless otherwise agreed by the Employer, an employee may terminate their salary sacrifice contribution/payment by giving not less than one month's written notice, provided the terms of any other agreement relating to the salary sacrifice benefit are met.

13. SUPERANNUATION

- (a) The subject of superannuation is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties. The minimum contribution is 9% at the commencement of this Agreement.
- (b) "The Fund" for the purpose of this Agreement shall mean:
 - (i) HESTA established and governed by a trust deed as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto; or
 - (ii) An employee may nominate an alternate complying fund to that provided at subclause (b)(i) above.
- (c) In addition to the Organisation's statutory contributions to the Fund an employee may make additional contribution from their salary, and on receiving written authorisation from the employee the Organisation must commence making contributions to the Fund in accordance with the Superannuation Guarantee Charge Act 1992.
- (d) Superannuation fund payments will be made in accordance with trust fund deeds.

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- (e) Where an Employee salary packages their wages in accordance with this Agreement, superannuation shall be paid on the pre-packaged wages.

14. HOURS OF WORK – ORDINARY HOURS OF WORK

- (a) The ordinary hours of work for Day Workers, exclusive of meal times, shall not exceed 152 hours per 28 calendar days or 76 hours per fortnight to be worked Monday to Friday and to commence on such days at or after 6:00 a.m. and at or before 10.00am.
- (b) The ordinary hours of work for Shift Workers, exclusive of meal times, shall not exceed 152 hours per 28 calendar days or 76 hours per fortnight or an average of 38 hours per week in each roster cycle.
- (c) The ordinary hours of work may be arranged as follows:
 - (i) The hours of work prescribed in subclauses (a) and (b) 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.
 - (ii) Notwithstanding the provision of paragraph (i) of this subclause, where there is mutual agreement between the employer and employee, employees may work shifts of less than eight hours each over 20 days in each cycle of 28 days, resulting in a 38 hour week.
 - (iii) Provided that on the occasion where there is mutual agreement between the employer and employee, a 9.5-day fortnight may be worked instead of the 19-day month.
- (d) Each employee shall be entitled to not less than four full days in each fortnight free from duty or two full days in each week free from duty (rostered days off).
- (e) 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 employer agrees.
- (f) Permanent part-time and casual employees shall receive a minimum payment of two hours for each start.
- (g) Two separate ten-minute tea breaks (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 tea break in each four-hour period. Subject to agreement between the employer and the employee, the two ten-minute tea breaks may alternatively be taken as one 20-minute tea break. Such tea break(s) shall count as working time.

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- (h)
 - (i) 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.
 - (ii) Where practicable, employees shall not be required to work more than five hours without a meal break.
 - (i) Subclauses (g) and (h) 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.
 - (h) Employees must receive a minimum break of eight hours between ordinary rostered shifts, which are not broken shifts.
 - (i) Except for meal breaks, all time from the commencement to the cessation of duty each shift shall count as working time, except for shifts being worked as broken shifts.

The Employer will consult with the respective employee(s) in regard to the introduction of broken shifts.

- (j) The employer and the employee may mutually agree for the employee to work broken shifts. With respect to broken shifts:
 - (i) A “broken shift” for the purposes of this sub clause means a single shift worked by a permanent part-time employee that includes one or more breaks in excess of that provided for meal breaks, where the time between the commencement and termination of the broken shift shall not exceed 12 hours.
 - (ii) An employee must receive a minimum break of ten hours between broken shifts rostered on successive days.
 - (iii) Where broken shifts are worked, employees shall receive an allowance of the amount set out in Table 2 Item number 20.
 - (iv) Payment for a broken shift shall be at ordinary pay with penalty rates and shift allowances in accordance with this Agreement, with shift allowances being determined by the commencing time of the broken shift.
 - (v) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double ordinary pay.

15. PART-TIME EMPLOYMENT

- (a) 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.

- (b) Part-time employees shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate and where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 20 - Allowances, with a minimum payment of two hours for each start.
- (c) Four weeks annual leave on ordinary pay is to be granted on completion of each 12 months’ service. The provisions of subclauses (c) to (o) of Clause 22 - Annual Leave and Leave Loading shall apply to employees engaged as part-time employees. 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.

- (d) 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 be paid for the time actually worked at the rate of time and one-half in addition to his/her ordinary weekly rate. 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.
- (e) To the leave prescribed by subclause (c) 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.
- (f) 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 Sunday; 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.
- (g) In addition to those public holidays prescribed in subclause (f) 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. This subclause shall apply in substitution for any local public holiday or half public holiday proclaimed in local government area.

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- (h) Part-time employees shall be entitled to all other benefits of this Agreement not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.
 - (i) Where the employee is regularly working more than their specified contract hours they may request that their contracted hours are reviewed by their Manager. The Manager will formally respond to the request by the employee stating the reasons if the request is not agreed to. The Manager will not unreasonably reject the request. The Manager will also take into account that the hours worked in the following circumstances will not be incorporated to any adjustment made:
 - (i) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; and
 - (ii) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident or client.
 - (iii) Any adjusted contracted hours resulting from a review by the employer should however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.

16. CASUAL EMPLOYMENT

- (a) A casual employee is one engaged on an hourly basis otherwise than as a permanent part-time or full-time employee.
- (b) A casual employee shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate plus 22% casual loading and where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 20 - Allowances, with a minimum payment of two hours for each start. Effective the first full pay period on or after 1 July 2011 the casual loading shall be increased to 23% and effective the first full pay period on or after 1 July 2012 the casual loading shall be increased to 25%.
- (c) With respect to a casual employee, the provisions of the Hours of Work, Rosters, Overtime; Annual Leave and Leave Loading; Personal/Carers Leave (excluding unpaid carers leave); Long Service Leave; Compassionate Leave (excluding unpaid compassionate leave) and Deputy Director of Care (Nursing) and Assistant Director of Care (Nursing) shall not apply. Further, casual employees shall not be entitled to an additional day off or part thereof under this Agreement.
- (d) In accordance with the *Fair Work Act 2009* casual employees have no entitlement to paid annual leave.
- (e) For the entitlement to payment in respect of long service leave, see *Long Service Leave Act 1955*, as amended from time to time.

(f) A casual employee who is required to and does work on a public holiday as defined in subclauses (a) and (b) of Clause 21 - 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 twenty five per cent prescribed in subclause (b) of this Clause in respect of such work.

(g) Casual Conversion

A casual employee who has been rostered on a regular and systematic basis over 26 weeks, (provided that the rostering pattern has not resulted from coverage for extended absences such as maternity leave, long service leave, workers compensation leave and extended sick leave), has the right to request conversion to permanent employment and that request will not be unreasonably refused by the Employer.

17. ROSTERS

(a) The ordinary hours of work and allocated days off duty for each employee shall be displayed on a roster in a place conveniently accessible to employees.

(b) 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.

(c) 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 a full-time 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.

(d) Prior to the date of the changed shift, such change of roster shall be notified verbally or in writing to the employee concerned.

(e) All rosters shall be retained for at least six years.

18. SHIFT WORK AND WEEKEND WORK

(a) 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 10.00am and before 1.00 p.m. 10 per cent.

Afternoon shift commencing at 1.00 p.m. and before 4.00 p.m 12.5 per cent.

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

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

- (b) “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 10 – Wages and Clause 20 - Allowances.
- (c) 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 10.00am.

“**Afternoon shift**” means a shift which commences at or after 10.00am 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.

- (d) 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 (a) of this clause.

The foregoing subclause 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 the casual and temporary employment provisions, in respect of their employment between midnight on Friday and midnight on Sunday.

- (e) The additional payments prescribed by this clause shall not form part of the employee’s ordinary pay for the purposes of this Agreement, except as provided in Clause 22 - Annual Leave and Leave Loading.

19. RECOGNITION OF SERVICE AND EXPERIENCE

- (a) The employer shall notify each nurse 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.

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- (b) 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 11 - 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.
 - (c) Until such time as the nurse furnishes any such documentation contemplated in subclause (b) above, the employer shall pay the nurse at the level for which proof has been provided.
 - (d) 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.
 - (e) If a nurse provides documentary evidence of other previous service or experience not disclosed at the time of commencement after the said three month 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.
 - (f) A nurse who is working as a nurse for more than one organisation shall notify each employer under this Agreement within one month of the end of each quarter of their hours worked with those other employers in the last quarter.
 - (g) 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.

20. ALLOWANCES

- (a) In Charge Allowances
 - (i) A registered nurse in charge during the day, evening or night of a nursing home facility having 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 Appendix 1, Monetary Rates, per shift.
 - (ii) A registered nurse who is designated to be in charge of nursing home facilities shall be paid, in addition to his or her appropriate salary, the sum set out in Item 2 of Table 2, per shift.

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- (iii) This subclause shall not apply to registered nurses holding classified positions of a higher grade than of a registered nurse.
 - (iv) An enrolled nurse employed in a nursing home facility shall not be required to be in charge of a nursing home facility.
 - (v) An employee who is directed to remain on call during a meal break shall be paid at their hourly rate.
- (b) 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 Care (Nursing), Assistant Director of Care, Clinical Nurse Educators, Clinical Nurse Consultants or Nurse Practitioners.
 - (iv) 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.
 - (v) The employee claiming entitlement to a continuing education allowance must provide evidence to the employer that they hold that qualification.
 - (vi) 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 Appendix 1, Monetary Rates.
 - (vii) 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 I Item 2 of Table 3, Continuing Education Allowances of Appendix 1, Monetary Rates.
 - (viii) 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 Appendix 1, Monetary Rates.

- (ix) 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 Appendix 1, Monetary Rates.
- (x) The allowances set out in sub-clauses (vii), (viii), and (x) hereof are not included in the employee's ordinary rate of pay and will not constitute part of the all-purpose rate.
- (xi) 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.
- (xii) The rates for these allowances shall be adjusted in accordance with increases in other wage-related allowances contained in this Agreement.

(c) Uniform and Laundry Allowance

Where an employee is required by the Employer to wear a uniform, the following arrangements will apply:

- (i) Subject to subclause (ii) of this clause, sufficient suitable and serviceable uniforms, including one pair of a special type of shoes per annum where applicable, 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. Replacement of items will be on a fair wear and tear basis.
- (ii)
 - (1) In lieu of supplying uniforms and special type 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.
 - (2) 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.
 - (3) In lieu of supplying stockings to an employee, an employer shall pay the said employee the sum per week set out in Item 13 of Table 2.

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- (4) 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.
 - (iii) 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 16 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.
 - (iv) Where the employer requires any employee to wear headwear, the facility shall provide headwear free of charge to the employee.
 - (v) The allowances referred to in subclause (ii) are also payable during any period of paid leave.
- (d)
- (i) An employee required and authorised to use their own motor vehicle in the course of their duties will be paid an allowance per kilometre as set out in Item 6 of Table 2.
 - (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 paragraph 2 of subclause (iii) which exceed the mode of transport, meals or the standard of accommodation agreed with the employer for these purposes.
- (e) Higher Grade Duty Allowance
- (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 due to an allocated day off, 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.

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- (iii) Further, the provisions of subclause (i) of this clause shall not apply where a Director of Care (Nursing) is absent from duty for a period of three working days or less.
 - (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 which have been rostered in advance.
 - (f) AIN Team Leader Allowance– Employees classified as an AIN Team Leader, as defined in Clause 11 (a)(ii) of this Agreement, shall be paid the allowance set out in Item 19 in Table 2 of Appendix 1.
 - (g) Special Allowance Enrolled Nurse - An allowance of \$2.00 per hour will be paid to an Enrolled Nurse that is required by the Employer to be responsible for additional functions/ duties of higher work value, as determined by the Employer, on a regular or on-going basis. Such additional functions/ duties of a higher work value means work that requires a greater level of judgement by the employee, whereby the employee was required to make independent decisions and have a greater degree of accountability than would otherwise be expected of an equivalent Enrolled Nurse.
 - (h) An Employee who is directed to remain on call during a meal break will be paid the meal break allowance in Item 21 of Table 2 of Appendix 1.

21. PUBLIC HOLIDAYS

- (a) The following days shall be public holidays, viz: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday; 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.
- (b) In addition to those public holidays prescribed in subclause (a) 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. This subclause shall apply in substitution for any local public holiday or half public holiday proclaimed in local government area.
- (c)
 - (i) A full-time employee who is covered by paragraph (ii) of subclause (a) of Clause 22 - Annual Leave and Leave Loading, and who is required to and does work on a public holiday prescribed by subclauses (a) and (b) of this clause shall be paid for the time actually worked at the rate of time and one-half in addition to his/her ordinary weekly rate. 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.

- (ii) Where a public holiday falls on a rostered day off of a full-time shift worker as defined in Clause 11 - Definitions, who receives four weeks annual leave in accordance with paragraph (ii) of subclause (a) of Clause 22 - Annual Leave and Leave Loading, such shift worker shall be paid one day's pay in addition to the appropriate ordinary weekly rate.
- (iii) 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.
- (d) Employees engaged upon a seven-day shift roster and who are required to work on any public holiday prescribed by subclause (a) 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.

22. ANNUAL LEAVE AND LEAVE LOADING

- (a) Annual leave shall accrue progressively during a year of service according to the employee's ordinary hours of work and accumulates from year to year. Annual leave shall be granted on full pay on completion of each 12 months service as follows:
 - (i) Employees required to work on a seven-day basis - six weeks annual leave.
 - (ii) All other employees – four weeks annual leave.
- (b)
 - (i) An employee to whom paragraph (i) of subclause (a) 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.
 - (ii) To the leave prescribed by paragraph (i) of subclause (a) 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 (a) of Clause 21 - 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.

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- (iii) To the leave prescribed by paragraph (ii) of subclause (a) 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.
- (c)
- (i) 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.
 - (ii) Credit of time towards an allocated day off duty shall not accrue when an employee is absent in accordance with subclause (a) of this clause. Employees entitled to allocated days off duty in accordance with this Agreement, 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 (ii) of subclause (b) of this clause and paragraph (i) of subclause (c) of Clause 21 - Public Holidays.
- (d) Paid annual leave may be taken for a period agreed between an employee and the Employer, and may include the approval for taking a single day of annual leave.
- (e) An employee must take an amount of annual leave during a particular period if:
- (i) the employee is directed to do so by his or her employer; and
 - (ii) at the time that the direction is given, the employee has annual leave credited to him or her of more than 1/13 of the number of nominal hours worked by the employee for the employer during the period of 104 weeks ending at the time that the direction is given; and
 - (i) the amount of annual leave that the employee is directed to take is less than, or equal to, 1/4 of the amount of credited annual leave of the employee at the time that the direction is given.
 - (iv) the timing of the annual leave can be at the employees' choosing, but it cannot be later than 4 weeks after the direction is given by the employer.
- (f)
- (i) 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 Agreement. 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.

- (ii) An employee to whom paragraph (i) of subclause (a) 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 (i) 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 (ii) of subclause (a) of this clause and subclause (b) of Clause 21 - Public Holidays.
- (g) Except as provided in subclauses (h) and (i) of this clause, payment for annual leave shall not be made or accepted in lieu of annual leave.
- (h) 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 (c) of the said Clause 21.
- (i) (i) In addition to the leave prescribed by subclause (a) of this clause, employees who work their ordinary hours on Sundays and/or public holidays prescribed by Clause 21 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 day's additional annual leave
18 to 24	3 day's additional annual leave
25 to 31	4 day's additional annual leave
32 or more	5 day's 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.

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- (ii) 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 (h) of this clause.
 - (iii) 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.
 - (j) Annual leave loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under paragraph (ii) of subclause (a) and paragraph (iii) of subclause (b), or in the case of permanent part-time employees, for the period of holiday given and taken and due to the employee.
 - (k) 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 Agreement for the classification in which the employee was employed immediately before commencing his/her annual holiday, together with any allowances prescribed by subclauses (a)(i) and (a)(ii) of Clause 20 – Allowances.
 - (l) The loading is the amount payable for the period or the separate periods, as the case may be, stated in subclause (m) at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by this Agreement for the classification in which the employee was employed immediately before commencing his/her annual holiday, together with any allowances prescribed by subclauses (a)(i) and (a)(ii) of Clause 20 – Allowances.
 - (i) 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 (l) of this clause for the period not taken.
 - (m) 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 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 (l) of this clause, applying the Agreement rates and wages payable on that day.
 - (n)
 - (i) 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 (l) of this clause for the period not taken.

- (ii) Except as provided by paragraph (i) of this subclause, no loading is payable on the termination of an employee's employment.
- (o) 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.
- (p) Pay in lieu of an amount of annual leave
 - (i) Upon receipt of a written request by an Employee, the Employer may authorise the Employee to receive pay in lieu of an amount of annual leave.
 - (1) Paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
 - (2) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and
 - (3) Where an Employee forgoes an entitlement to take an amount of annual leave, the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

23. OVERTIME

- (a) Employees shall work reasonable overtime when required by the employer.
- (b) Where the Employer requires or requests the Employee to work reasonable additional hours, all relevant factors must be taken into account. Those factors may include, but are not limited to, the following:
 - (i) any risk to employee health and safety that might reasonably be expected to arise if the employee worked the additional hours;
 - (ii) the employee's personal circumstances including family and carer responsibilities;

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- (iii) the operational requirements of the workplace, in relation to which the employee is required or requested to work additional hours;
 - (iv) any notice given by the employer of the requirement or request that the employee work additional hours;
 - (v) any notice given by the employee of the employee's intention to refuse to work the additional hours;
 - (vi) whether any of the additional hours are on a public holiday;
 - (vii) the employee's hours of work over the 4 weeks ending immediately before the employee is required or requested to work the additional hours.

An employee may refuse to work such overtime if it is considered unreasonable with regard to the factors in subclause (b)(i) to (vii).

- (c) This subclause is subject to subclause (h) below.
 - (i) Subject to paragraph (ii) of this subclause, all time worked by employees in excess of 8 or up to 10 hours in a day (as per the rostered shift length) 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.
 - (ii) Time worked up 8 hours, or up to 10 hours in a day as per the rostered shift length of full-time employees, 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.
- (e) An employee required to work overtime following on the completion of his or her normal shift for more than two hours or an employee recalled to work overtime after leaving the employer's premises and who is required to work 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, provided that in the case of overtime the benefits of this subclause shall not apply to an employee employed on a Part-time and Casual, 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.

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.

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- (f) The meal referred to in subclause (vi) 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 in Item 10 of Table 2 shall be paid to the employee concerned.
 - (g) Where an employee is required to work an overtime shift on his or her rostered day off, the appropriate meal breaks for that shift shall apply.
 - (h) Employees who work so much overtime:
 - (i) 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
 - (ii) 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.
 - (i) 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:
 - (i) Time off in lieu of overtime must be taken at ordinary rates within three months of it being accrued.
 - (ii) 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.
 - (iii) Nurses cannot be compelled to take time off in lieu of overtime.
 - (iv) 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.

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

24. PERSONAL/ CARERS LEAVE

- (a) Subject to the following limitations and conditions, an employee shall be entitled to personal 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.
 - (i) An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.
 - (ii) For each year of service with his or her employer, an employee is entitled to 10 days of paid personal/carer's leave.
 - (iii) 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.
 - (iv) All periods of sickness shall be certified by a medical certificate from the employee's registered health practitioner or statutory declaration, or such other evidence that would satisfy a reasonable person that the employee was unfit for the reason of personal sick leave or carers leave. The employer may dispense with the requirements of a medical certificate or statutory declaration 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.
 - (v) 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.
- (b) 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.

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- (c) For the purpose of this clause, “service” means service in the employment of an employer.
- (d) For the purpose of this clause, continuity of service in the employment shall not be broken by:
- (i) paid absences from such employment on account of illness;
- (e) Permanent Part-time Employees - A permanent part-time employee shall be entitled to personal/carers leave on a pro-rata basis. Such entitlements shall be subject to all the above conditions applying to full-time employees.
- (f) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph (ii) of paragraph (h), who needs the employee’s care and support, shall be entitled to use, in accordance with this subclause, any current or accrued personal leave entitlement, for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.
- (g) The employee shall, if required, establish, by giving the employer evidence that would satisfy a reasonable person which may include production of a medical certificate from an employee’s registered health practitioner or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer’s leave under this subclause where another person has taken leave to care for the same person.
- (h) The entitlement to use personal 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:
 - (1) a spouse of the employee; or
 - (2) 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
 - (3) 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

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- (4) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
 - (5) a relative of the employee who is a member of the same household where, for the purposes of this subparagraph:
 - (A) relative means a person related by blood, marriage or affinity;
 - (B) affinity means a relationship that one spouse because of marriage has to blood relatives of the other; and
 - (C) household means a family group living in the same domestic dwelling.
 - (i) 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.
 - (j) Unpaid Carers Leave

An employee, including casual employees, shall be entitled to up to two days unpaid carers leave per occasion in accordance with the *Fair Work Act 2009*.
 - (k) 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.

25. COMPASSIONATE LEAVE

- (a) An employee is entitled to 2 days of compassionate leave for each occasion (a *permissible occasion*) when a member of the employee's immediate family, or a member of the employee's household:
 - (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
 - (ii) sustains a personal injury that poses a serious threat to his or her life; or
 - (iii) dies.
- (b) An employee may take compassionate leave for a particular permissible occasion if the leave is taken:

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- (i) to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in subclause (a); or
 - (ii) after the death of the member of the employee's immediate family or household referred to in subclause (a).
- (c) An employee may take compassionate leave for a particular permissible occasion as a single continuous 2 day period; or 2 separate periods of 1 day each; or any separate periods to which the employee and the employer agree.
- (d) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.
- (e) If, in accordance with this Clause, an employee, other than a casual employee, takes a period of compassionate leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period. For casual employees, compassionate leave is unpaid leave.
- (f) The employee, if required by the employer, shall supply relevant evidence of the requirement for such leave. Such evidence may include a requirement to supply a medical certificate.

26. LONG SERVICE LEAVE

- (a) Existing employees, other than casual employees, as at the date of approval of this Agreement by FWA, covered by the *CatholicCare (Diocese of Maitland-Newcastle) Aged Care Enterprise Agreement 2008 - 2009*, will be entitled to long service leave in accordance with the provisions of the *CatholicCare (Diocese of Maitland- Newcastle) Aged Care Enterprise Agreement 2008 – 2009*. All other employees, other than casual employees, shall be entitled to long service leave, in accordance with the following:
- (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 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.

(ii) 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:

(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 become entitled, computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment.

(ii) If such employee dies before entering upon such long service leave, or if after having entered upon the same dies before its termination, any accrued long service leave will be paid out in accordance with Section 4 (Long Service Leave) subsection (5)(b) of the Long Service Leave Act 1955 (NSW). This provision provides that:

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 by the worker's personal representative pay to the worker's personal representative 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) For the purpose of this clause:
 - (i) Continuous service in the same facility prior to the coming into force of this Agreement shall be taken into account.
 - (ii) One month equals four and one-third weeks.
 - (iii) 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 Agreement, the amount of such leave shall be debited against the amount of leave due under this Agreement.

27. MEDICAL EXAMINATION OF NURSES

- (a) The Employer may require the employee to comply with the following:
 - (i) For protection against tuberculosis:
 - (1) Before a nurse commences duty, at the request of the Employer, 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.
 - (2) As soon as practicable after the nurse commences duty, at the request of the Employer, a Mantoux test on the nurse, then -
 - (A) where the Mantoux test is negative, immunisation with BCG vaccine;
 - (B) where the Mantoux test is positive (otherwise than as a result of BCG vaccination), referral to a chest clinic for assessment.
 - (3) A Mantoux test may be required by the Employer annually for
 - (A) previously Mantoux-negative nursing staff;
 - (B) nursing staff whose Mantoux reaction has been converted by BCG vaccination.

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- (4) A chest x-ray may be required by the Employer annually for nursing staff whose Mantoux reaction is positive (otherwise than as a result of BCG vaccination).
 - (5) 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 may be offered.
- (ii) For protection against other communicable diseases:
 - (1) where a nurse has not had a complete course of immunisation against diphtheria, tetanus, poliomyelitis, measles, mumps and hepatitis, immunisation against those diseases;
 - (2) booster immunisation against tetanus at ten-year intervals;
 - (3) a rubella antibody test and, where a nurse has a negative result, rubella immunisation.
 - (b) The employer will provide Influenza vaccinations to employees upon request.
 - (c) The costs involved in the various screening and protection procedures shall be borne by the employer.

28. ESCORT DUTY

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

29. REGISTRATION OR ENROLMENT PENDING

- (a) 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.

- (b) He or she shall notify the employer as soon as possible after he or she has applied.

30. TERMINATION OF EMPLOYMENT

- (a) Notice of termination by the employer

- (i) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of continuous service	Period of notice
Less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 5 years	3 weeks
5 years and over	4 weeks

- (ii) In addition to the notice in (a)(i) hereof, 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.

- (iii) Payment in lieu of the notice prescribed in (a)(i) and/or (a)(ii) hereof 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.

- (iv) The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be calculated on the basis of:

- (1) the employee's ordinary hours of work (even if not standard hours); and
- (2) the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and
- (3) any other amounts payable under the employee's contract of employment.

- (v) The period of notice in this clause does not apply:

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- (1) in the case of dismissal for serious misconduct;
 - (2) to employees engaged for a specific period of time or for a specific task or tasks;
 - (3) to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or
 - (4) to casual employees.
- (vi) For the purposes of this clause, continuity of service shall be calculated in the manner prescribed in the Long Service Leave clause of this Agreement.
- (b) Notice of termination by the employee
- (i) The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned.
- (c) Time off work during notice period

Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

31. TRAINING FOR NURSES

- (a) As part of the Employer's ongoing commitment to training and development, the Employer shall provide a minimum of 12 hours of in-service training which will include mandatory training such as fire and safety and OH&S, per annum to Assistants in Nursing Care.
- (b) The Employer will either provide or pay for Mandatory training such as first aid courses.
- (c) The Employer will support registered and enrolled nurses in maintaining their registration by providing internal training opportunities. The employer will review all requests for external training on a case by case basis.
- (d) 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.

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- (e) 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.
 - (f) 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:
 - (i) Employees shall attend in-service training outside their normal rostered working hours when required to do so by the employer.
 - (ii) An employer shall provide employees with two weeks' notice of the requirement to attend training outside of their normal rostered working hours.
 - (iii) Notwithstanding Clause 23 - Overtime, attendance at such training shall be paid at ordinary rates.
 - (iv) 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.
 - (g) Subject to a selection process, the employer shall pay course fees for Assistant in Nursing Care approved to undertake Certificate IV.
 - (i) Where practicable, such training shall be provided on site to employees during normal rostered hours of work.
 - (ii) Following approval by the employer, the employer shall grant the Assistant In Nursing Care employees paid leave to attend relevant course requirements including examinations.

32. PARENTAL LEAVE

- (a) Employees are entitled to parental leave in accordance with the provisions of the *Fair Work Act 2009*.
 - (i) Full-time employees and permanent part-time employees are eligible for paid parental leave in accordance with the following provisions:
 - (1) Permanent employees are eligible for paid parental leave when they have completed at least 40 weeks' of continuous service prior to the expected date of birth or prior to the date of taking custody of the child.
 - (ii) Employees who are eligible for paid parental leave are entitled to such leave as follows:

(1) Paid Leave

- (A) Paid Primary Carer Leave - an eligible employee is entitled to nine weeks paid primary carer leave at ordinary pay from the date the primary carer leave commences.

Primary carer leave may commence up to nine weeks prior to the expected date of birth. It is not compulsory for an employee to take this period off work. However, if an employee decides to work during this period, it is subject to the employee being able to satisfactorily perform the full range of normal duties.

- (B) Paid Non-Primary Carer Leave - an eligible employee is entitled to one week paid non-primary carer leave in any one year at ordinary pay which must commence within four weeks of the birth of the child. (Eligible employees will be as defined in the *Fair Work Act 2009*.)

- (C) Paid Primary Carer Adoption Leave - an eligible employee is entitled to paid primary carer adoption leave of three weeks from and including the date of taking custody of the child.

- (D) Such leave may be paid:

- (i) on a normal fortnightly basis;
- (ii) in advance in a lump sum;
- (iii) at the rate of half pay over a period of 18 weeks on a regular fortnightly basis for primary carer leave and at the rate of half pay over a period of six weeks on a regular fortnightly basis for primary carer adoption leave.

Annual and/or long service leave credits can be combined with periods of primary carer leave or primary carer adoption leave on half pay to enable an employee to remain on full pay for that period.

- (E) Commonwealth Government scheme;

- (i) The payment provided in this Agreement shall not be reduced in terms of its monetary value by the Commonwealth Government's scheme of publicly funded paid parental leave (however titled or styled). For the avoidance of doubt the value of the paid parental leave provided under this Agreement will be

in addition to the value of the leave provided by the Commonwealth scheme.

(2) Unpaid Leave

- (A) Unpaid Primary Carer Leave - An employee is entitled to a further period of unpaid primary carer leave of not more than twelve months after the actual date of birth of the child.
- (B) Unpaid Non-Primary Carer Leave - An employee is entitled to a further period of unpaid non-primary carer leave of not more than three weeks, to be taken in conjunction with a period of paid non-primary carer leave, unless otherwise agreed by the employer and employee.
- (C) Unpaid Primary Carer Adoption Leave - An employee is entitled to unpaid primary carer adoption leave as follows:
- (i) where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;
 - (ii) where the child is over the age of 12 months - a period of up to 12 months, such period to be agreed upon by both the employee and the employer.
- (iii) An employee who has once met the conditions for paid primary carer leave and paid primary carer adoption leave will not be required to again work the 40 weeks' continuous service in order to qualify for a further period of primary carer leave or primary carer adoption leave, unless:
- (1) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement or after her services have been otherwise dispensed with; or
 - (2) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, primary carer leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act*.
- (iv) An employee who intends to proceed on primary carer or non-primary carer leave should formally notify the employer of such intention as early as possible, so that arrangements associated with the absence can be made. Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.

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- (v) In the case of notification of intention to take primary carer adoption leave, due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify their employer as early as practicable of the intention to take primary carer adoption leave. This will allow arrangements associated with the primary carer adoption leave to be made.
 - (vi) After commencing primary carer leave or primary carer adoption leave, an employee may vary the period of her primary carer leave or primary carer adoption leave, once, without the consent of the employer and otherwise, with the consent of the employer. A minimum of four weeks' notice must be given, although an employer may accept less notice if convenient.
 - (vii) Any person who occupies the position of an employee on parental leave must be informed that the employee has the right to return to her former position. Additionally, since an employee also has the right to vary the period of her primary carer leave or primary carer adoption leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should also be set down clearly, to a fixed date or until the employee elects to return to duty, whichever occurs first.
 - (viii) When an employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual and long service leave and any period of primary carer leave or primary carer adoption leave on half pay is taken into account to the extent of one-half thereof when determining the accrual of annual and long service leave.
 - (ix) Except in the case of employees who have completed ten years' service the period of parental leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years' service the period of parental leave without pay shall count as service for long service leave purposes provided such leave does not exceed six months.
 - (x) Parental leave without pay does not count as service for incremental purposes. Periods of parental leave on full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.
 - (xi) Where public holidays occur during a period of paid parental leave, payment is at the rate of parental leave received, that is the public holidays occurring in a period of full pay parental leave are paid at the full rate and those occurring during a period of half pay leave are paid at the half rate.

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- (xii) If because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.
 - (xiii) Where an employee is entitled to paid primary carer leave, but because of illness, is on sick, recreation, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of the birth. The employee then commences primary carer leave with the normal provisions applying.
 - (xiv) Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.
 - (xv) In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions.
 - (xvi) In the case of stillbirth, an employee may elect to take sick leave, subject to the production of a medical certificate, or primary carer leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.
 - (xvii) An employee who gives birth prematurely, and prior to proceeding on primary carer leave shall be treated as being on primary carer leave from the date leave is commenced to have the child. Should an employee return to duty during the period of paid primary carer leave, such paid leave ceases from the date duties are resumed.
 - (xviii) An employee returning from parental leave has the right to resume their former position. Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of her former position and for which the employee is capable or qualified.
 - (xix) Employees may make application to their employer to return to duty for less than the full-time hours they previously worked by taking weekly leave without pay. Such return to work is to be according to the following principles:
 - (1) the period is to be limited to twelve months after which the full-time duties must be resumed;
 - (2) the employee is to make an application for leave without pay to reduce her full-time weekly hours of work. This application should be made as early as possible to enable the employer to make

suitable staffing arrangements. At least four weeks' notice must be given;

- (3) the quantum of leave without pay to be granted to individual employees is to be at the absolute discretion and convenience of the employer;
 - (4) salary and conditions of employment are to be adjusted on a basis proportionate to the employee's full-time hours of work, that is for long service leave the period of service is to be converted to the full-time equivalent and credited accordingly.
 - (5) Full-time employees who return to work under this arrangement remain full-time employees.
- (xx) Where an employee becomes pregnant whilst on primary carer leave, a further period of primary carer leave may be granted. Should this second period of primary carer leave commence during the currency of the existing period of primary carer leave, then any residual primary carer leave from the existing entitlement lapses.

33. STAFF AMENITIES

- (a) The employer shall provide for the use of employees:
- (i) toilet facilities;
 - (ii) a locker fitted with lock and key or other suitable place for the safe keeping of clothing and personal effects of such employee.
 - (iii) morning and afternoon tea, supper and early morning tea (ie tea, coffee, milk and sugar).

34. REDUNDANCY

- (a) Where the Employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and the change is likely to have a significant effect on employees of the Employer, the Employer shall consult with affected employees in accordance with the consultation regarding change provision of this Agreement.

Transfer to lower paid duties

- (b) Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) the employee shall be entitled to the same period of notice of transfer as she/he would be entitled to if her/his employment had been terminated, and the Employer may at the Employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay

and the new lower ordinary time rates for the number of weeks' notice still owing.

Severance pay

(c) In addition to the period of notice prescribed for termination, an employee whose employment is terminated for reasons set out in paragraph (a) shall be paid the following amount of severance pay in respect of a period of continuous service.

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

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay*
2 years and less than 3 years	7 weeks' pay
3 years and less than 4 years	10 weeks' pay
4 years and less than 5 years	12 weeks' pay
5 years and less than 6 years	14 weeks' pay
6 years and over	16 weeks' pay

(ii) Where the employee is 45 years of age or over, the employer shall pay the employee in accordance with the following scale:

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	5 weeks' pay*
2 years and less than 3 years	8.75 weeks' pay
3 years and less than 4 years	12.5 weeks' pay
4 years and less than 5 years	15 weeks' pay
5 years and less than 6 years	17.5 weeks' pay
6 years and over	20 weeks' pay

Definitions

(d) "Week's pay" means the ordinary time rate of pay for the employee concerned at the date of termination and shall include in addition to the ordinary pay any shift allowances and/ or weekend penalties.

Employee Leaving During Notice Period

(e) An employee whose employment is terminated for reasons set out in paragraph (a) may terminate her/his employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had she/he remained with the employer until the expiry of such notice. Provided in such circumstances the employee shall not be entitled to payment in lieu of notice.

Alternative Employment

- (f) Where the Employer offers the Employee acceptable alternative employment and the employee refuses such an offer, no severance payment is payable, subject to an order of FWA.

Time off Period of Notice

- (g) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (h) 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 shall, at the request of the employer, produce proof of attendance at an interview or she/he shall not receive payment for the time absent.
- (i) For this purpose a statutory declaration will be sufficient.

Employees with Less Than One Year's Continuous Service

- (j) This clause does not apply to employees with less than one year's continuous service.

Employees Exempted

- (k) This clause shall not apply where employment has been terminated because the conduct of an employee justifies instant dismissal or in the case of casual employees, or employees engaged for a specific period of time or for a specified task or tasks.

35. CRIMINAL CHECKS

- (a) The Employer will arrange for the Criminal Record History Checks of all new employees. The Employer will meet the costs of the Criminal Record History Checks. The Criminal History Record Checks will remain the exclusive property of Calvary Retirement Communities Hunter-Manning.
- (b) The Employer will also organise and meet the costs of the Criminal Record History Checks renewals for employees.
- (c) The employer shall ensure that all checks are conducted and stored in a confidential manner.

36. RELATIONSHIP TO THE NATIONAL EMPLOYMENT STANDARDS

Entitlements in accordance with the National Employment Standards (“NES”) are provided for under the *Fair Work Act 2009*. Where this Agreement also has provisions regarding matters dealt with under the NES and the provisions in the NES set out in the Act are more favourable to an Employee in a particular respect than those provisions, then the NES will prevail in that respect and the provisions dealing with that matter in this Agreement will have no effect in respect of that Employee. The provisions in this Agreement otherwise apply.

37. FLEXIBILITY ARRANGEMENT

- (a) The employer and employees covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- (i) the agreement deals with 1 or more of the following matters:
 - (1) arrangements about when work is performed;
 - (2) overtime rates;
 - (3) penalty rates;
 - (4) allowances;
 - (5) leave loading; and
 - (ii) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (i); and
 - (iii) The employer and the individual employee must have genuinely made the agreement without coercion or duress.
- (b) The employer must ensure that the terms of the individual flexibility arrangement:
- (i) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (ii) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (iii) result in the employee being better off overall than the employee would be if no arrangement was made.
- (c) The employer must ensure that the individual flexibility arrangement:
- (i) is in writing; and
 - (ii) includes the name of the employer and employee; and
 - (iii) 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
 - (iv) includes details of:
 - (1) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (2) how the arrangement will vary the effect of the terms; and

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- (3) 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
 - (v) states the day on which the arrangement commences.
 - (d) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
 - (e) The employer or employee may terminate the individual flexibility arrangement:
 - (i) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (ii) if the employer and employee agree in writing — at any time.

38. WORKLOAD MANAGEMENT

- (a) The Employer is committed to ensuring that staffing levels are appropriate, thus ensuring the delivery of quality resident care and keeping within accreditation principles which take into account the level of care appropriate for the assessed needs of the resident.
- (b) Should any employee or group of employees feel that the workloads are unreasonably heavy, on a regular basis, than they have a responsibility to discuss their concerns with their Manager.
- (c) The Manager shall investigate any issue that is raised within 48 hours and provide a response to the issues. If the Manager is unable to resolve the workload issue or respond within this period, the issue is to be referred to their Manager.
- (d) It is the intent of the parties that the issue be initially dealt with as close to the source as possible, with graduated steps for further discussion and resolution at higher authority levels where necessary. If the matter is not settled within a reasonable period of time, the employee (or their nominated employee representative, which may include a representative from the NSWNA) may utilise the dispute settlement procedure of this Agreement.

39. REPRESENTATIVE LEAVE

- (a) Leave to attend trade union and union delegate courses/ seminars shall be as follows:
 - (i) To a maximum of three (3) days per year (1 January to 31 December) for each facility listed in Appendix 3 for the totality of all applications of paid trade union, union delegate training leave, attendance at association conferences, meetings and courses provided that:

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1. The scope, content and level of the courses are directed to the enhancement of the operation of the settlement of dispute procedures;
 2. That two (2) weeks' notice is provided to the employer;
 3. The approval of leave must have regard to the operational requirements of the employer;
 4. This leave shall be paid at the ordinary time rate of pay.
- (b) Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

40. PAID EMERGENCY SERVICES LEAVE

At the discretion of the Employer, whose discretion will be exercised on the basis of operational requirements and what is reasonable in a particular circumstance, the employer will facilitate an employee who is a member of a voluntary emergency relief organisation such as the Rural Fire Services, Red Cross, St John Ambulance and the State Emergency Services to be released from normal duty without loss of pay (up to a maximum of three shifts per year) to assist in regard to a critical incident where a local emergency situation arises that requires the attendance of the employee.

41. STUDY/ PROFESSIONAL DEVELOPMENT LEAVE

- (a) Each full time nurse (pro rata, for part time nurse) may make application to the Employer in order to access study/ professional development leave. Each application will be assessed on its merits in the context of the applicability of the conference/ seminar, the number of other similar applications and the resources available to the employer.
- (b) In accordance with subclause (a) above the employee may apply to the Employer in order to access up to 16 hours paid leave per year for the purposes of attendance at approved conferences/ seminars.
- (c) The time and manner of taking any such approved leave under this provision is to be mutually agreed between the employer and the employee and the course and means of dissemination of conference/seminar information is to be approved by the Employer. Should mutual agreement not be possible on repeated occasions this matter is to be referred to the Director of Care or their delegate for resolution under the dispute resolution process.
- (d) Reasonable travel, accommodation and registration costs may be paid by the employer, when the employer approves the employee's attendance at the conference/seminar.

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- (e) All staff granted conference/seminar leave will be required to provide an in-service to other staff on the learning from the leave and to provide a report to the Director of Care on the learning's from the conference/seminar.

42. 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 Islander ceremonial purposes will be entitled to up to ten working days unpaid leave in any one year, with the approval of the employer.

43. CONSULTATIVE COMMITTEE

If requested by the employees, the Employer will agree to establish a Consultative Committee (CC). The CC will meet as required and have arrangements for the timely provision of information.

44. JURY SERVICE

- (a) An employee other than a casual employee, required to attend for jury service during his or her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his or her attendance for such jury service and the amount of ordinary salary he or she would have received in respect of the ordinary time he or she would have worked had he or she not been on jury service. The period of payments of jury service shall be limited to the period prescribed under relevant Legislation.
- (b) An employee shall notify his or her employer as soon as possible of the date upon which he or she is required to attend for jury service. Further the employee shall give his or her employer proof of his or her attendance at the court, the duration of such attendance and the amount received in respect of such jury service.

I am authorised to sign this Agreement on behalf of CALVARY RETIREMENT COMMUNITIES HUNTER-MANNING

J McCarthy
SIGNATURE

JOSEPH MCCARTHY
PRINT NAME AND TITLE
General Manager Hunter-Manning

Address:
52 Portland Place New Lambton
NSW 2305

Date
9th September, 2011

I am authorised to sign this Agreement as the nominated employee representative on behalf of the NSW NURSES' ASSOCIATION

SIGNATURE

PRINT NAME AND TITLE

Address:

Date

Brett Holmes

Brett Howard Holmes
General Secretary,
NSW Nurses' Association, and
Branch Secretary
Australian Nursing Federation – NSW 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
NSW Nurses' Association, and
President
Australian Nursing Federation – NSW 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 NSWNA and Rule 40 of the Rules of the Australian Nursing Federation.

APPENDIX 1 – SALARIES AND ALLOWANCES

Table 1

Classification		EFFPPOA 1 July 2011	EFFPPOA 1 Jan 2012	EFFPPOA 1 July 2012
		Per Hour	Per Hour	Per Hour
		(\$)	(\$)	(\$)
Assistant in Nursing Care/Trainee Enrolled Nurse				
	1st year	17.5867	17.9384	18.9087
	2nd year	18.1354	18.4981	19.4866
	3rd year	18.6841	19.0578	20.0639
	Thereafter	19.2450	19.6299	20.6666
Enrolled Nurse (Without Med. Endorsement):				
	1st year	21.4613	21.8905	23.0145
	2nd year	21.9064	22.3445	23.4826
	3rd year	22.3697	22.8171	23.8018
	4th year	22.8300	23.2866	24.2937
	Thereafter	23.2905	23.7563	24.7855
Enrolled Nurse:				
	1st year	22.24		23.52
	2nd year	22.69		23.99
	3rd year	23.00		24.31
	4th year	23.47		24.80
	Thereafter	23.95		25.29
Registered Nurse				
General, M.R. Psych.,	1st year	26.24		27.16
Infants, Geriatric, Midwifery	2nd year	27.56		28.52
	3rd year	28.97		29.99
	4th year	30.37		31.44
	Thereafter	34.72		35.94
Clinical Nurse Specialist		34.6528		35.8656
Nurse Educator				
	1st year	37.4139	38.1622	39.7724
	2nd year	38.4535	39.2226	40.8789
	3rd year	39.3803	40.1679	41.8624
	4th year	41.4105	42.2387	44.0139
Nurse Practitioner				
	1st year	45.0086		46.5839
	2nd year	46.0214		47.6321
	3rd year	47.3433		49.0003
	4th year	48.6545		50.3574

Assistant Director of Care (Nursing)				
	<150 beds	38.4535	39.2226	40.8789
	150-250 beds	41.4105	42.2387	44.0139
	250 beds & over	42.3983	43.2463	45.0584
Deputy Director of Care (Nursing)				
	< 20 beds	39.2156	39.9999	41.3999
	20 – 75 beds	40.2156	41.0199	42.4556
	75 – 100 beds	41.1331	41.9558	43.4242
	100-150 beds	41.3959	42.8357	44.6405
	150-200 beds	42.6412	44.1244	45.9684
	200-250 beds	44.0402	45.5720	47.4808
	250-350 beds	45.6629	47.2511	49.2268

Table 2 - Other Rates and Allowances

Item No	Brief Description of Allowance	EFFPPOA 1 July 2011 (\$)	EFFPPOA 1 July 2012 (\$)
1	In Charge of Nursing Home 100 beds & < 150 beds (per shift)	36.26	37.53
	In Charge of Nursing Home Less than 100 Beds (per shift)	22.51	23.29
2	In Charge Ward/Unit (per shift)	22.51	23.29
6	Travel Allowance (per km)	0.74	0.7659
10	Overtime Meal Breakfast (per meal)	13.09	13.55
	Lunch (per meal)	16.93	17.52
	Dinner (per meal)	24.70	25.57
11	Shoe Allowance (per week)	1.9906	2.0602
12	Cardigan/ Jacket Allowance (per week)	1.9295	1.9970
13	Stocking Allowance (per week)	3.3094	3.4253
14	Sock Allowance (per week)	0.6554	0.6783
16	Laundry (per week)	5.3448	5.5318
19	AIN Team Leader (Cert IV) (per shift)	3.00	3.40
20	Broken Shift Allowance	8.67	8.97
21	On Call During Meal Break	10.54	10.91

Table 3 - Continuing Education Allowances:

Item No.	Brief Description	EFFPPOA 1 July 2011	EFFPPOA 1 July 2012
		(\$)	(\$)
1	Continuing education allowance: RN	18.90	19.56
2	Continuing education allowance: RN	31.48	32.58
3	Continuing education allowance: RN:	37.76	39.08
4	Continuing education allowance: EN	12.59	13.03

APPENDIX 2 – PERSONS EXCLUDED FROM AGREEMENT COVERAGE

EMPLOYEE NO	SURNAME	GIVEN NAME
1017	ANDREW	LESLEY
1138	COLLINS	MARIA
1407	LADOCKI	JANINE
1742	TOLL	GAIL
1417	LEES	LINDSAY

APPENDIX 3 – FACILITIES

Cooinda Aged Care, Singleton – 42 Bathurst Street, Singleton, NSW, 2330

Mt Carmel Village, Maitland – 9 Dwyer Street, Maitland, NSW, 2320

Mt Providence Village – 59 Tindale Street, Muswellbrook, NSW, 2333

Nazareth Village, Belmont – Vincent Street, Belmont North, NSW, 2280

St Francis Village, Eleebana – Gleeson Crescent, Eleebana, NSW, 2282

St Joseph's Home, Sandgate – 240 Maitland Road, Sandgate, NSW, 2304

St Martin de Porres Aged Care – 26 Lorna Street, Waratah, NSW, 2298

St Pauls Aged Care – 54 River Street, Cundleton, NSW, 2430

Tanilba Shores Village – 71 Tanilba Avenue, Tanilba Bay, NSW, 2319

UNDERTAKINGS - AG2011/2440 - Calvary Retirement Communities Hunter-Manning and the New South Wales Nurses' Association/ANF-NSW Branch Transferred Nursing Staff Enterprise Agreement 2011

- (1) The reference at subclause 20(c)(ii) of the *Calvary Retirement Communities Hunter-Manning and the New South Wales Nurses' Association/ANF-NSW Branch Transferred Nursing Staff Enterprise Agreement 2011* ("Agreement") shall be amended thereby deleting "Item 10" of Table 2 – Other Rates and Allowances and inserting "Item 9" of Table 2 – Other Rates and Allowances.
- (i) In addition, at Table 2 of Appendix 1 of the Agreement, it shall be amended in respect to the following insertion:

Item	Brief Description of Allowance	EFFPPOA 1 July 2011	EFFPPOA 1 July 2012
No			
		(\$)	(\$)
9	Uniform (per week)	6.4998	6.7273

- (3) The reference at Item 19 of Table 2 – Other Rates and Allowances of the Agreement shall be amended thereby deleting "per shift" and inserting "per hour". To clarify, this amendment pertains to the payment of the AIN Team Leader Allowance under the Agreement.
- (4) A copy of these undertakings will be affixed to all copies of this Agreement distributed by the employer. The employer will forward to all employees a copy of these undertakings.

Signed

Joseph McCarthy
 Joseph McCarthy
 [Insert Position]
 Acting National Director
 Aged Care and Retirement Services
 Calvary