



FAIR WORK  
AUSTRALIA

## DECISION

*Fair Work Act 2009*

s 185 - Application for approval of a greenfields agreement

### **Concord Private Hospital Pty Ltd**

(AG2011/13894)

### **CONCORD PRIVATE HOSPITAL AND NSWNA/ANF GREENFIELDS AGREEMENT 2011 - 2012**

Health and welfare services

DEPUTY PRESIDENT SAMS

SYDNEY, 20 DECEMBER 2011

*Application for approval of the Concord Private Hospital and NSWNA/ANF Greenfields Agreement 2011-2012.*

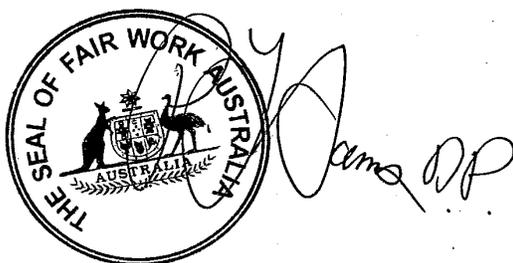
[1] This is an application, pursuant to s 185 of the *Fair Work Act 2009* ('the Act'), filed by Concord Private Hospital Pty Ltd (the 'applicant') which seeks the approval of Fair Work Australia (FWA) of a single-enterprise greenfields agreement to be known as the *Concord Private Hospital and NSWNA/ANF Greenfields Agreement 2011 - 2012* (the Agreement). The Agreement was negotiated with the New South Wales Nurses Association ('the Union') and concluded on 24 November, 2011. The Agreement is to cover all nursing staff, to be engaged by the applicant, upon the completion of the refurbishment of its 20 bed hospital site in Concord, New South Wales.

[2] In the Employer's declaration in support of the application (Form 20) Ms L *Johnston*, identified the *Private Hospital Industry Nurses (State) Award* [AN120435] and the *Nurses Award 2010* [MA000034] as the relevant reference instruments for the purposes of the Better Off Overall Test (BOOT). It was said that the Agreement does not contain any terms or conditions detrimental to the prospective employees when compared to the National Employment Standards (NES) and provides for a number of conditions which are more beneficial than the terms of the relevant reference instruments. In particular, I note that the Agreement provides for salaries and allowances which are significantly in excess of the relevant reference instruments. The Agreement also includes enhanced long service leave provisions and higher redundancy benefits than the Awards. I am satisfied that the

Agreement satisfies the BOOT. The Agreement provides for the mandatory flexibility and consultation terms at clauses 44 and 39 respectively and a disputes resolution procedure at clause 35 provides for mediation, conciliation and arbitration by FWA.

[3] At a hearing of the application on 12 December 2011, Ms L *Street*, Workplace Relations Consultant, appeared for the applicant. There was no appearance for the Union. The Union had filed a Declaration in support of the application (Form 21). Pursuant to s 187(5)(a) of the Act, I am satisfied that the Union is entitled to represent the industrial interests of the employees who will be covered by the Agreement. Ms *Street* outlined the main features of the Agreement and submitted that all of the legislative requirements for approval of the Agreement have been satisfied and the Agreement should be approved by FWA.

[4] Having heard Ms *Street's* submissions and upon reviewing the terms of the preapproval process documentation and the Agreement itself, I am satisfied that all of the requirements of the Act, in particular ss 186 and 187, in so far as relevant to this application, have been met. Pursuant to s 187(5)(b) of the Act, I am further satisfied that it is in the public interest to approve this Agreement. Accordingly, I approve a single-enterprise greenfields agreement known as the *Concord Private Hospital and NSWNA/ANF Greenfields Agreement 2011-2012*. Pursuant to s 54 of the Act, the Agreement shall operate from 19 December 2011 and have a nominal expiry date of 15 November, 2012.



DEPUTY PRESIDENT

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**CONCORD PRIVATE HOSPITAL**

**AND**

**NSWNA/ANF**

**GREENFIELDS AGREEMENT**

**2011 – 2012**

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**(2) Title**

This agreement will be known as and referred to as the Concord Private Hospital and NSWNA/ANF Greenfields Agreement 2011-2012 ('the Agreement').

**(3) Parties**

This agreement will be binding on:

3.1 Concord Private Hospital Pty Ltd, 55 Burwood Rd Concord NSW 2137 A.B.N 85 142 743 191 (the employer)"

3.2 The New South Wales Nurses' Association (NSWNA) and the Australian Nursing Federation (ANF) A.B.N 63 398 164 405 ('the Association") of 50 O'Dea St WATERLOO, New South Wales, 2017 and

3.3 Nursing staff employed by the employer in the classifications listed in Table 1 – Salaries.

**(4) Duration**

This agreement will commence seven days after it is approved by Fair Work Australia and shall remain in force until its nominal expiry date of 15 November 2012.

**(5) Definitions**

Where a term of this Agreement has a corresponding definition in the Act, the Regulations or the NES, the definitions in the Act, the Regulations or the NES shall apply. Any such terms that are also defined in this Agreement are defined for the convenience of the parties and shall be overridden to the extent of any inconsistency with the definitions found in the Act, the Regulations or the NES for the purposes of this Agreement:

“**Act**” shall mean the *Fair Work Act 2009*, as amended.

"**Assistant in Nursing**" means a person, other than a registered nurse, or enrolled nurse, who is employed in nursing duties in a hospital.

“**Average Occupied Beds**” means calculating the adjusted daily average of occupied beds of a hospital, per annum shall count as one occupied bed. The average shall be taken for the twelve months ended on the 30 June in each and every year and such average shall relate to the salary of the succeeding year.

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

"**Clinical Nurse Educator**" means a registered nurse with relevant post registration certificate qualifications or experience deemed appropriate by the employer, who is required to implement and evaluate educational programmes at the ward/unit level. The Clinical Nurse Educator shall cater for the delivery of clinical nurse education in the ward/unit level only.

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

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

“**Clinical Nurse Specialist**” means a registered nurse with relevant post-basic qualifications and 12 months’ experience working in the clinical area of his/her specified post-basic qualification, or a minimum of four years’ post-basic registration experience, including three years’ experience in the relevant specialist field and who satisfies the local criteria.

"**Day Worker**" means a worker who works their ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6.00 am and before 10.00 am otherwise than as part of the shift system.

"**Director of Nursing**" includes a registered nurse who is registered by their employer with the Health Administration Corporation of New South Wales as the person in charge of the hospital. There shall be only one person in each hospital entitled to be classified as Director of Nursing or whatever title the Senior Nursing Administrator is known by at the hospital.

“**Enrolled Nurse**” (previously referred to as an “Enrolled Nurse – Medication Endorsement”) means a nurse enrolled with the Nursing and Midwifery Board of Australia who:

- prior to July 1, 2010 held an endorsement for medication administration; or
- subsequent to July 1, 2010 has completed the Board’s required approved qualifications in order to have the notation on their licence removed. For a nurse who applies to have their enrolment notation removed, this classification shall also apply from the date upon which the Board so removes the notation; or
- has been enrolled for the first time subsequent to July 1, 2010.

“Enrolled Nurse without medication qualification” (previously referred to as an Enrolled Nurse) means a nurse enrolled with the Board who has the following notation on their licence: “Does not hold Board-approved qualifications in administration of medications” attached to their enrolment.”

"**Experience**" in relation to an enrolled nurse, or assistant in nursing means experience 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.

For the purpose of determining the year of experience for part time or casual employment, a year of experience shall be 1786 hours of employment. Only paid leave shall be counted as service.

**"Hospital"** means a private hospital as defined by the *Private Health Facilities Act 2007*.

**"Industry of Nursing"** means the industry of persons engaged and employed in New South Wales in the profession or occupation of nursing and employed in or in connection with private hospitals.

**"NES"** means the National Employment Standards as amended from time to time.

**"Nurse Educator"** means a registered nurse with a post registration certificate, who has relevant experience or other qualifications, deemed appropriate by the employer 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 hospital or group of hospitals. Nurse education programmes shall mean courses conducted such as post registration certificates, continuing nurse education, new graduate orientation, post registration enrolled nurses courses and where applicable general staff development courses.

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

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

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

**"Nursing Unit Manager"** means a registered nurse in charge of a ward or unit or group of wards or units in a hospital shall include:

(a) **"Nursing Unit Manager Level 1"** whose responsibilities include:

(1) Co-ordination of Patient Services

- Liaison with all health care disciplines for the provision of services to meet patient needs.
- The orchestration of services to meet patient needs after discharge.
- Monitoring catering and transport services.

(2) Unit Management

- Implementation of hospital policy.
- Dissemination of information to all personnel.

- Ensuring environmental safety.
- Monitoring the use and maintenance of equipment.
- Monitoring the supply and use of stock and supplies.
- Monitoring cleaning services.

(3) Nursing Staff Management

- Direction, co-ordination and supervision of nursing activities.
- Training, appraisal and counselling of nursing staff.
- Rostering and/or allocation of nursing staff.
- Development and/or implementation of new nursing practice according to patient need.

(b) **"Nursing Unit Manager Level 2"** whose responsibilities in relation to patient services, ward or unit management and staff management are in excess of those of a Nursing Unit Manager Level 1.

(c) **"Nursing Unit Manager Level 3"** whose responsibilities in relation to patient services ward or unit management and staff are in excess of those of a Nursing Unit Manager Level 2.

**"Ordinary pay"** of an employee includes in addition to the basic periodic rate of pay any applicable over-agreement payments for ordinary hours of work. It does not include shift or weekend penalties.

**"Registered Nurse"** means a person registered by the Board as a Registered Nurse.

**"Regulations"** means the regulations associated with the *Fair Work Act 2009* (as amended from time to time).

**"Service"** for the purpose of Clause 10, Salaries, means service before or after the commencement of this Agreement in New South Wales or elsewhere as a registered nurse, provided that all service recognised prior to the commencement of this Agreement shall continue to be recognised.

To the foregoing shall be added any actual periods during which a registered nurse undertook a post-graduate course while an employee of and rendering service in an institution or hospital and such course is recognised by the Board or acceptable to the Health Administration Corporation of New South Wales, or is one of the following certificate or diploma courses:

Associate Diploma in Community Health – College of Nursing, Australia; NSW College of Nursing

Associate Diploma in Nursing Administration – College of Nursing Australia; NSW College of Nursing

Associate Diploma in Nursing Education – College of Nursing Australia; NSW College of Nursing  
Newcastle College of Advanced Education

Certificate in Operating Theatre Management – NSW College of Nursing, Australia

Certificate in Operating Theatre Technique – College of Nursing, Australia

Certificate in Coronary Care – NSW College of Nursing

Certificate in Orthopaedic Nursing – NSW College of Nursing

Certificate in Ward Management – NSW College of Nursing

Occupational Health Nursing Certificate – NSW College of Nursing

No more than three such courses shall count as service.

A reference to the New South Wales College of Nursing in this Agreement shall be deemed to be a reference also to the School of Nursing Studies, Cumberland College of Health Sciences.

For the purpose of determining the year of service for part time or casual employment a year of service shall be 1786 hours of employment. Only paid leave shall be counted as service.

“**Shift worker**” means a worker who is not a day worker as defined.

“**Standard**” shall mean the National Employment Standard as determined by the *Fair Work Act 2009*.

“**Union**” means the NSW Nurses Association/ Australian Nursing Federation New South Wales Branch.

“**Workplace Representative**” Workplace Representative means a person(s) nominated by an employee or employees to represent them in accordance with the provisions of this Agreement.

#### **(6) Hours of Work and Free Time of Employees Other than Directors of Nursing**

6.1 The ordinary hours of work for day workers, other than Directors of Nursing, exclusive of meal times, shall be 152 hours per 28 calendar days to be worked Monday to Friday inclusive and to commence on such days at or after 6.00 am and before 10.00 am.

6.2 The ordinary hours of work for shift workers, other than Directors of Nursing, exclusive of meal times, shall not exceed an average of 38 hours per week in each roster cycle.

6.3 (a) The hours of work prescribed in sub-clauses 6.1 and 6.2 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 their ordinary hours or work on more than nineteen days in the cycle.

(b) Notwithstanding the provision of paragraph (a) of this sub-clause, employees may, with the agreement of the employer work shifts of less than 8 hours each over 20 days in each cycle of 28 days.

(c) Provided that on the occasion of an employee's written request, and with the consent of the employer, a 9.5 day fortnight may be worked instead of the 19-day month or the 38 hours per week, may be arranged in order that an employee shall not be required to work his/her ordinary hours in more than five days in one week or 10 days in one fortnight.

6.4 Except where authorised by sub-clause 6.18 of this clause, each shift shall consist of no more than 10 hours on a day shift or 11 hours on a night shift with not less than 8 hours break between each shift; provided that an employee shall not work more than 7 consecutive shifts unless the employee so requests and the Director of Nursing agrees. An employee shall not work more than two (2) quick shifts in any period of 7 days.

A quick shift is an evening shift which is followed by a morning shift.

6.5 The employer is to decide when employees take their additional days off duty prescribed by sub-clause 6.3 of this clause (as a consequence of the implementation of the 38 hour week). Where necessary the employer must consult with the affected employees to ascertain the employees' preferences and must take any such preferences into account when arriving at a decision. Where

practicable additional days off duty shall be consecutive with the rostered days off duty prescribed in sub-clause 6.14 of this clause.

- 6.6 Once set, the additional days off may not be changed except in accordance with the provisions of Clause 9, Rosters.
- 6.7 Where the employer's decision (in accordance with sub-clause 6.5 of this clause) is that an employee's additional days off be accumulated, no more than 6 days may be accumulated in any one year of employment. By mutual agreement this may be extended to no more than 12 days at any one time. Where the employee wants to accumulate more than 6 accumulated additional days off the employee must apply and the employer will not unreasonably decline the request. Such accumulated additional days off may be taken in conjunction with the Employee's annual leave, or as otherwise agreed.
- 6.8 Except for breaks for meals the hours of duty each day shall be continuous. Provided, that in the case of permanent part-time employees, an employer will consult with employees and if requested by the employee any nominated representative which may be a union representative an exemption from this provision, and from sub-clause 6.4 of this clause with regard to the span of hours only, to enable an additional break of no more than 4 hours. In any event, the span of hours shall not exceed 12 hours.
- 6.9 (a) Each employee shall be allowed a break of not less than thirty minutes and not more than sixty minutes for each meal occurring on duty.
- (b) Where practicable, employees shall not be required to work more than 5 hours without a meal break. Provided that where practicable an employee engaged to work for 5 hours or less in any one shift may elect not to take a meal break as otherwise provided for by this sub-clause without penalty to the employer. The term "where practicable" encompasses regard being paid to the service requirements of the employer.
- 6.10 Two separate ten-minute intervals (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of 8 or 10 hours as the case may be. Subject to agreement between the employer and the employee, such intervals may alternatively be taken as one twenty-minute interval, or by one 10-minute interval with the employee allowed to proceed off duty 10 minutes before the completion of the normal shift finishing time. Such interval(s) shall count as working time.
- 6.11 (a) Sub-clauses 6.9 and 6.10 of this clause shall not apply to an employee who, before going on night duty, is provided with a meal between 9.00 pm and 11.00 pm and who is allowed two intervals of twenty minutes each during the period of night duty but such intervals shall count as working time and shall be paid for as such.
- (b) Where an employee is required to change into a uniform or a specified type of garment at the employer's premises they shall be allowed ten minutes for such a purpose and such time shall be counted as working time and paid as such.
- 6.12 (a) Except as provided for in paragraph (b) an employee shall not be employed on night duty for a longer period than 8 consecutive weeks. After having served a period of night duty an employee shall not be required to serve a further period on night duty until they have been off night duty for a period equivalent to the previous period on night duty.
- (b) The provisions of paragraph (a) shall not apply to an Assistant Director of Nursing, a Nursing Unit Manager or a general nurse in charge, as the case may be, who is employed permanently in charge at night, nor to an employee who requests to be employed on night duty and the Director of Nursing consents.
- 6.13 An employee changing from night duty to day duty or from day duty to night duty shall be free from duty during the twenty hours immediately preceding the commencement of the changed day.

- 6.14 (a) Each employee shall be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each twenty-eight (28) day cycle and no duties shall be performed by the employee on any of such free days except for overtime. Where practicable, days off shall be consecutive and shall not be preceded by an evening shift or a night shift unless an additional eight hours are granted as sleeping time. An evening shift shall be one which commences at or after 1.00 pm and before 4.00 pm.
- (b) An employee, at her or his request, may be given free from duty time in one or more periods but no period shall be less than one full day.
- (c) For the purpose of this sub-clause "full day" means from midnight to midnight or midday to midday.
- 6.15 (a) Employees may be required to remain on call. Any such time on call shall not be counted as time worked (except insofar as an employee may take up actual duty in response to a call), but shall be paid for in accordance with Clause 12, Special Allowances, of this Agreement: Provided, however, no employee shall be required to remain on call whilst on leave or on the day before entering upon leave.
- (b) No employee shall be required to remain on call whilst on a rostered day off nor on completion of the shift on the day preceding a rostered day off. This provision shall not apply where in special circumstances it is necessary for an employer to place staff on call on rostered days off or on completion of the shift on the day preceding a rostered day off in order to ensure the provision of services.
- 6.16 The employer shall not alter the period over which the ordinary hours of work of employees are balanced except upon giving one month's notice of their intention to do so to affected employees and if requested by the employee, any nominated representative which may be a union representative.
- 6.17 The provisions of paragraphs (a) and (b) of sub-clause 6.12 and of sub-clause 6.13 and of paragraph (a) of sub-clause 6.14 of this clause, shall not apply if the employee is required to perform duty to enable the nursing service of the employer to be carried on or where another employee is absent from duty on account of illness or in an emergency.
- 6.18 The following criteria shall apply to the introduction of 12 hour shifts:
- (a) 12 hour shifts will only be introduced in units where there has been full consultation with the staff affected and a majority of the staff affected agree to the introduction of the proposed 12 hour shift system;
- (b) any employee who does not wish to work under the 12 hour shift system may work a mutually agreed alternative shift system in the unit affected or may transfer to another mutually agreed position within the facility with no loss of classification and contracted hours;
- (c) the span of hours must not exceed 12.5 hours;
- (d) there must be a maximum of three consecutive night shifts which include one or more 12 hour shifts;
- (e) there must be a minimum break of 11.5 hours rostered between each 12 hour shift;
- (f) employees must be allowed either two 30 minutes or one 60 minutes meal break. In addition to the meal breaks employees must be allowed either two 10 minute or one 20 minute paid tea break;

- (g) the employer must notify the employees, and if requested by the employee any nominated employee representative, which may be a union representative, of the implementation of the 12 hour shifts at least one month prior to commencing the new arrangements. The details of that notification must indicate the number of staff involved, the section of the hospital involved and the Agreement provisions which need to be overridden.
- (h) there must be an evaluation process at the completion of the first 12 months, or sooner if the employer and affected employees agree. The evaluation process must involve representatives of employees and the employer. Aspects which are to be considered in the evaluation process are to include occupational health and safety data, sick leave patterns and the frequency of overtime.
- (i) the employees and if requested by the employee any nominated employee representative which may be a union representative are to be notified of the outcome of the evaluation process;
- (j) nothing contained in this sub-clause shall prevent an individual employee and their employer reaching mutual agreement to that individual working 12 hour shifts.

**(7) Hours of Work and Free Time of Directors of Nursing**

This clause does not apply to part-time employees.

- 7.1 A Director of Nursing shall be free from duty for not less than 9 days in each 28 consecutive days and such days free from duty may be taken in one or more periods.
- 7.2 If any of the days mentioned in sub-clause 7.1 of this clause cannot be taken by reason of emergency, such day or days shall be given and taken within 28 days of becoming due.
- 7.3 A Director of Nursing shall, where practicable, inform his or her employer giving not less than seven days' notice of the days he or she proposes to be free from duty; provided that such days shall be subject to the approval of the employer, and such approval shall not be unreasonably withheld.

**(8) Banking of Hours**

- 8.1 A full time or part time employee may, by agreement made daily, weekly or fortnightly with their Nurse Unit Manager or DON:
  - (a) work less than their daily, weekly or fortnightly rostered or contracted hours and work those hours at a later date; or
  - (b) work more than their daily, weekly or fortnightly rostered or contracted hours and take time off in lieu of payment, or may set off the additional hours worked against any owing under (a) above.
- 8.2 An employee who works less than their rostered or contracted hours shall be paid as if those hours had been worked during the relevant period, including payment for any weekend or shift penalties that would otherwise have been due for the time not worked.
- 8.3 An employee who works more than their rostered or contracted hours shall not receive payment for any weekend or shift penalties that would otherwise have been due for that extra time worked.
- 8.4 Time debited or credited under these arrangements shall all be at ordinary time, i.e. an hour for an hour.
- 8.5 An employee may not have more than 76 hours in debit or credit at any point in time.

- 8.6 Employees who have hours in debit must be given first option to work additional hours prior to the use of casual employees.
- 8.7 The hospital must keep detailed records of all hours credited and debited to employees under these arrangements. Employees must have full access to these records.
- 8.8 On termination of employment the employer must pay the employee for all hours in credit and may deduct from termination pay the value of any hours in debit.
- 8.9 Either party shall have the right to terminate an agreement under this clause with two weeks notice.

**(9) Rosters**

- 9.1 The ordinary hours of work for each employee, other than the Director of Nursing and casual employees, shall be displayed on a roster in a place conveniently accessible to employees.
- 9.2 The roster shall be displayed where practicable at least two weeks prior, but in any event not less than one week prior, to the commencing date of the first working period in the roster. Provided that in the case of a permanent part-time employee whose hours are balanced over 4 weeks, the roster shall be displayed where practicable, at least 4 weeks prior to the commencing date of the first working period in the roster but in any event not less than one week prior, to the commencing date of the first working period in the roster.
- 9.3 Notwithstanding the foregoing provisions of this clause, a roster may be altered at any time to enable the nursing service of the hospital to be carried on where another employee is absent from duty on account of illness or in an emergency: Provided that where any such alteration involves an employee working on a day which would otherwise have been such employee's day off, the day off in lieu thereof shall be as mutually arranged.
- 9.4 Prior to the date of the changed shift, such change of roster shall be notified verbally or in writing to the employee concerned.
- 9.5 An employee may change their roster at short notice, with the agreement of their nurse unit manager or Director of Nursing for any reasonable ground.
- 9.6 An employer may change an employee's roster at short notice, with the agreement of the employee, for any reasonable ground including unexpected situations and unforeseen fluctuations in patient dependency.
- 9.7 Where an employee is entitled to an additional day off duty in accordance with Clause 6, Hours of Work and Free Time of Employees other than Directors of Nursing, of this Agreement, such day is to be shown on the roster of hours for that employee.
- 9.8 All rosters shall be retained for at least six years.

**(10) Salaries**

- 10.1 The minimum weekly salaries to be paid shall be as set out in Table 1, Salaries, of Part B Monetary Rates.
- 10.2 The allowances as set out in Table 2 – Other Rates and Allowances, shall be paid.
- 10.3 In relation to the salaries of Director of Nursing, "beds" means adjusted daily average of occupied beds.

10.4 The wages specified in this Agreement are inclusive of any wage increases; determination or award of Fair Work Australia or any other authorised tribunal or commission made during the period of this Agreement. Should the application of any increase awarded by Fair Work Australia result in rates applicable to the employees that are greater than those applying in this Agreement, those rates will be applied in lieu of the wages set out in this Agreement from the date specified by Fair Work Australia.

#### **(11) Recognition of Service and Experience**

11.1 The employer shall notify each nurse in writing of the requirements of this clause at the time of the nurse's commencement of employment. If the employer does not so notify the nurse then the requirements of this clause shall not commence until the employer does so notify the nurse.

11.2 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 5, 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.

11.3 Until such time as the nurse furnishes any such documentation contemplated in 11.2 above the employer shall pay the nurse at the level for which documentary evidence has been provided.

11.4 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.

11.5 If a nurse provides documentary evidence of other previous service or experience not disclosed at the time of commencement after the said three months period, the nurse shall be paid a rate appropriate for the previous service or experience then proved but only from the date of providing that evidence to the employer.

11.6 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 of service or experience, as appropriate, worked with those other employers in the last quarter.

11.7 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 documentary evidence 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 particular date. If the documentary evidence is provided outside that three month period the nurse shall be paid at the higher rate only from the date of proof.

#### **(12) Special Allowances**

12.1 (a) A registered nurse in charge during the day, evening or night of the hospital having a daily average of occupied beds of less than 100 shall be paid, in addition to her or his appropriate salary, whilst so in charge, the sum set out in Item 1 of Table 2, per shift.

(b) A registered nurse appointed in charge of ward or hospital, shall be paid in addition to their salary whilst so in charge the sum set out in Item 2 of Table 2 per shift.

(c) This sub-clause shall not apply to registered nurses holding classified positions of a higher grade than that of registered nurse.

12.2 (a) An employee required by their employer to be on call otherwise than as provided for in paragraph (b) shall be paid the sum set out in Item 3 of Table 2 for each period of 24 hours or part thereof provided that only one allowance shall be payable in any period of 24 hours.

- (b) An employee required to be on call on rostered days off in accordance with sub-clause 6.15(b) of Clause 6, Hours of Work and Free Time of Employees other than Directors of Nursing, shall be paid the sum set out in Item 4 of Table 2 for each period of 24 hours or part thereof provided that only one allowance shall be payable in any period of 24 hours.
- (c) An employee who is directed to remain on call during a meal break shall be paid an allowance of the sum set out in Item 5 of Table 2 provided that no allowance shall be paid if, during a period of 24 hours including such period of on call, the employee is entitled to receive the allowance prescribed in 12.2(a) above. If an employee is recalled to duty during such meal break, they shall be paid at overtime rates for the total period of the meal break.
- (d) Where an employee on call leaves the hospital and is recalled to duty, they shall be reimbursed all reasonable fares and expenses actually incurred provided that where an employee uses a motor car in these circumstances the allowance payable shall be paid the relevant rate set out in Item 7 of Table 2 per kilometre. The provisions of this paragraph shall apply to all employees.
- (e) This subclause shall not apply to the Director of Nursing.

12.3 An employee required to wear a lead apron shall be paid an allowance of the sum set out in Item 6 of Table 2 for each hour or part thereof that they are required to wear the said apron.

### **(13) Penalty Rates for Shift Work and Weekend Work**

13.1 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 am or finish subsequent to 6.00 pm.

Afternoon shift commencing at 10am and before 1pm – 10%

Afternoon shift commencing at 1.00 pm and before 4.00 pm - 12.5%

Night shift commencing at 4.00 pm and before 4.00 am - 15%

Night shift commencing at 4.00 am and before 6.00 am - 10%

13.2 "**Ordinary rate**" and "**ordinary time**" shall not include any percentage addition by reason of the fact that an employee works less than 38 hours per week but shall include amounts payable under Clause 10, Salaries and Clause 12 Special Allowances.

13.3 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 am and before 10.00 am.

**"Afternoon shift"** means a shift which commences at or after 10.00 am and before 4.00 pm.

**"Night Shift"** means a shift which commences at or after 4.00 pm and before 6.00 am on the day following.

13.4 All 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 the sub-clause 13.1 of this clause.

13.5 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 Public Holidays, of this Agreement.

13.6 (a) This sub-clause shall only apply to nurses who work an entire ordinary time shift in a discrete designated day procedure ward or unit which routinely functions between the hours of 7.00 am and 6.00 pm.

(b) A nurse to whom this sub-clause applies shall not be entitled to an additional penalty rate payment for ordinary time worked prior to 6.00 pm on any week day.

(c) A nurse to whom this sub-clause applies shall be paid, in addition to their ordinary rate, a penalty payment at the rate of 15% for all ordinary time worked after 6.00 pm on any week day.

13.7 A casual employee will be paid shift allowances pursuant to subclauses 13.1 and 13.4 calculated on the ordinary rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.

#### **(14) Fares and Expenses**

14.1 An employee required to travel in the performance of duty shall be paid all reasonable out of pocket expenses (including fares).

14.2 An employee who claims reimbursement of fares, pursuant to this clause, shall furnish to the employer, if so required, satisfactory proof that they have not received from another employer reimbursement in respect of those fares.

#### **(15) Telephone Allowance**

If an employee is required for the purpose of their employment, to be on call, the employee shall be reimbursed for all telephone calls made by the employee in responding to a call to the hospital, upon production of satisfactory evidence by the employer.

#### **(16) Uniform and Laundry Allowances**

16.1 Subject to sub-clause 16.2 of this clause, all employees shall be paid the sum set out in Item 8 of Table 2 in lieu of the employer supplying and laundering uniforms.

16.2 Operating theatre staff will be provided with all uniform requirements, with the exception of socks. Accordingly, operating theatre staff shall be paid the sum set out in Item 9 of Table 2 in lieu of the provision of such socks.

16.3 The allowances referred to sub-clauses 16.1 and 16.2 are also payable during any period of paid leave.

16.4 Where the employer requires any employee to wear headwear, the hospital shall provide headwear free of charge to the employee.

#### **(17) Higher Grade Duty**

17.1 An employee who is called upon to relieve an employee in a higher classification or is called upon to act in a vacant position of a higher classification shall be entitled to receive for the period of relief or the period during which they act the minimum payment for such higher classification.

17.2 The provisions of sub-clause 17.1 shall not apply where the employee being relieved is absent from duty for a period of three consecutive working days or less which have been rostered in advance, except where the duties of the higher position involve being in charge of the facility during the period in question.

17.3 Further, the provisions of sub-clause 17.1 shall not apply where a Director of Nursing is absent from duty for a period of three working days or less for any reason other than Clause 7, Hours of Work and Free Time of Directors of Nursing.

#### 17A Qualifications Allowances

The provision of this clause including the payment of allowances prescribed in this clause shall apply from the first pay period on or after the date of certification. The allowances contained in this clause, are considered as wage related allowances and will be increased in the same manner as wages. Appropriate qualifications or their equivalent attracting this allowances are found in Table 3 of this Agreement. The payment of all allowances in this Clause is subject to the conditions stated below in paragraphs (a) – (e) in subclause (i).

- 17A.1 An employee employed in the classification of Registered Nurse (years 1 to 8), Clinical Nurse Specialist, Clinical Nurse Educator who holds a qualification in a clinical field, in addition to the qualification leading to registration, shall be paid a skills allowance, subject to the following conditions set out below:
- (a) the allowance is only payable where the qualification is accepted by the employer to be directly relevant to the competency and skills used by the nurse in the duties of the position. The employer shall review eligibility of the allowance annually.
  - (b) an employee holding more than one relevant qualification is only entitled to one allowance, being the allowance of the highest monetary value;
  - (c) the employee claiming entitlement to a qualification allowance must provide evidence to the employer that they hold that qualification;
  - (d) where an employee works part time the allowance will be paid on a pro rata basis on the contracted hours.
  - (e) Where an employees' works as a casual this allowance shall not apply.
- 17A.2 Subject to the provisions in subclause 17A.1, an employee who holds a post-registration hospital certificate as recognised by the employer and relevant to the employee's current role shall be paid an allowance of \$26.95 per week.
- 17A.3 Subject to the provisions in subclause 17A.1, an employee who holds a post-graduate certificate or post graduate diploma shall be paid an allowance of \$26.95 per week.
- 17A.4 Subject to the provisions in subclause 17A.1, an employee who holds a degree (other than an undergraduate nursing degree) shall be paid an allowance of \$37.75 per week.
- 17A.5 Subject to the provisions in subclause 17A.1, an employee who holds a masters degree or doctorate shall be paid an allowance of \$37.75 per week.
- 17A.6 An enrolled nurse who holds an Advanced Diploma of Nursing (Enrolled/Division 2 Nursing) qualification shall be paid an allowance of \$30.18 per week.
- 17A.7 The above allowances are not to be included in the employee's ordinary rate of pay. The allowances are payable during periods of paid leave taken by an employee.

#### (18) Overtime

18.1 Subject to sub-clause 18.2 an employer may require an employee to work reasonable overtime

18.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.

18.3 For the purposes of sub-clause 18.2 what is unreasonable or otherwise will be determined having regard to:

- (a) the risk to the employee's health and safety;
- (b) the employee's personal circumstances including any family and carer responsibilities;
- (c) the needs of the facility;
- (d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
- (e) any other relevant matter.

18.4 (a) Subject to paragraph (b) hereof all time worked by employees in excess of the rostered daily ordinary hours of work shall be overtime and shall be paid for at the rate of time and one half for the first two hours and double time thereafter in respect of each overtime shift worked or in respect of overtime worked prior to or at the conclusion of a normal shift. Provided that overtime worked on Sundays shall be paid for at the rate of double time and on public holidays at the rate of double time and one half.

(b) All time worked by permanent part time employees, in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the ward or section concerned shall be paid for at the rate of time and one half for the first two hours and double time thereafter except that on Sundays such overtime shall be paid for at the rate of double time and on public holidays at the rate of double time and one half.

Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift in the ward or section concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.

18.5 The ordinary hours of work for the Director of Nursing shall be thirty eight hours per week and overtime will be paid time and one half for the two hours and double time thereafter.

18.6 An employee recalled to work overtime after leaving the employer's premises shall be paid for a minimum of four hours work at the appropriate rate for each time so recalled. If the work required is completed in less than four hours, the employee shall be released from duty.

18.7 An employee required to work overtime following on the completion of their normal shift for more than two hours shall be allowed twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hours overtime. All such time shall be counted as time worked; provided that benefits of this sub-clause shall not apply to permanent part time employees, until the expiration of the normal shift for a majority of the full-time employees employed on that shift in the ward or section concerned.

18.8 An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours shall be allowed twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hour's overtime; all such time shall be counted as time worked.

18.9 The meals referred to in sub-clauses 18.7 and 18.8 of this clause shall be allowed to the employee free of charge. Where the hospital is unable to provide such meals, an allowance per meal of the sum set out in Item 10 of Table 2, shall be paid to the employee concerned.

18.10 Where an employee is required to work an overtime shift on his or her rostered day off, the appropriate meal breaks for that shift, as prescribed by Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing shall apply.

18.11 If an employee is recalled to duty during a meal break, they shall be paid at overtime rates for the total period of the meal break.

18.12 An employee who works so much overtime:

- (a) between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times; or
- (b) on a Saturday, a Sunday and a holiday, not being ordinary working days, or on a rostered day off without having had eight consecutive hours off duty in the twenty-four hours preceding their next day or shift; shall subject to this sub-clause, 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.

18.13 In lieu of receiving payment for overtime in accordance with this clause, employees may be compensated by way of time off in lieu of overtime on the following basis:

- (a) Time off in lieu of overtime must be taken within four months of it being accrued at ordinary rates.
- (b) Where it is not possible for a nurse to take the time off in lieu of overtime within the four month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
- (c) Nurses cannot be compelled to take time off in lieu of overtime.
- (d) Records of all time off in lieu of overtime owing to nurses and taken by nurses must be maintained by the employer.

## **(19) Payment and Particulars of Salaries**

19.1 All salaries and other payments shall be paid weekly or fortnightly, provided that payment for any overtime worked may be deferred to the pay day next following the completion of the working cycle within which such overtime is worked, but for no longer; provided further that the payment of shift and weekend penalties relating to work performed in the second week of a fortnightly roster period may be deferred to the pay day next following the completion of the working cycle within which such shifts were worked, but for no longer.

19.2 Employees shall have their salary paid into one account with a bank or other financial institution in New South Wales as nominated by the employee. Wages may be initially deposited into the hospital's own local bank and transferred to each employee's requested financial institution. Salaries shall be deposited by hospitals in sufficient time to ensure that wages are available for withdrawal by employees by no later than pay day, provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions, but in such cases facilities shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.

19.3 Notwithstanding the provisions of sub-clause 19.2 of this Clause, an employee who has given or has been given the required notice of termination of employment, in accordance with Clause 33, Termination of Employment, of this Agreement, shall be paid all moneys due to them prior to ceasing duty on the last day of employment.

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

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

## **(20) Registration or Enrolment Pending**

20.1 A student who has completed the course of training prescribed by the Board and applied for registration or enrolment shall, upon registration or enrolment, be paid as from the date of application for registration or enrolment the salary to which they would have been entitled if registered or enrolled.

20.2 A nurse or enrolled nurse who has trained outside New South Wales shall be paid as a registered nurse or enrolled nurse as from date of registration.

## **(21) Part-Time, Casual and Temporary Employees**

### **21.1 Permanent Part-time Employees**

(i) A permanent part-time employee is one who is permanently appointed by the hospital to work a specified number of hours which are less than those prescribed for a full-time employee with a minimum engagement of two hours.

(ii) Before commencing part time employment, the employer and the employee will agree in writing the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours. The terms of the Agreement may be varied by agreement and recorded in writing.

By agreement between employer and employee, the specified number of hours may be balanced over a week, a fortnight or four weeks. Provided that the average weekly hours shall be deemed to be the specified number of hours for the purposes of accrual of annual leave.

(iii) An employee whose hours are averaged over 4 weeks shall be paid each week or fortnight according to the employee's average weekly or fortnightly hours as is appropriate.

(iv) Provided further that there shall be no interruption to the continuity of employment merely by reason of an employee, whose hours are balanced over a fortnight or over four weeks, not working in any one week in accordance with sub-clause (ii).

(v) Permanent part time employees shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed by Clause 10, Salaries, and, where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 12, Special Allowances, and Clause 16, Uniform and Laundry Allowances with a minimum payment of 2 hours for each start. They shall not be entitled to an additional day off or part thereof, as prescribed by sub-clauses 6.3 and 6.5 of Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing.

- (vi) Four weeks' Annual Leave on ordinary pay is to be granted per annum. The provisions of sub-clauses 22.1 and 22.6 to 22.14 of Clause 22, Annual Leave and Public Holidays, and Clause 23, Annual Leave Loading, shall apply to permanent part time employees. The remaining provisions of Clause 22, Annual Leave and Public Holidays shall not apply.

Where an employee has any period of permanent part-time employment during any 12 months 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 hours.

- (vii) A public holiday occurring on a day on which the employee would normally be rostered to work shall be allowed to employees without loss of pay; provided that an employee who is required to and does work on a public holiday shall have one day or one half day, as appropriate, added to their period of annual leave and be paid at the rate of one half time extra to the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday. In lieu of adding to annual leave under this paragraph an employee may elect to be paid for the time actually worked at the rate of time and one half in addition to their ordinary weekly rate.

Such election shall be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of time worked on a public holiday, payment shall be made for a minimum of four hours work, and any balance of the day or shift not worked shall be paid at ordinary rates.

- (viii) To the leave prescribed by sub-clause 21.1 (vii) 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.
- (ix) Permanent part time employees are eligible for the public holidays: 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 pursuant to the *Public Holidays Act 2010 (NSW)* within the area in which the hospital is situated.
- (x) In addition to those public holidays prescribed in sub-clause 21.1 (ix), there shall be an extra public holiday each year. This additional day's holiday will occur on the August Bank Holiday or on a date agreed by the respective employees and if requested by the employee any nominated representative which may be a union representative. This additional day may be taken by agreement between Christmas and the 5<sup>th</sup> day of the new calendar year, provided that such day is placed between Monday to Friday (inclusive) which is not gazetted as a public holiday and where practicable is consecutive with other days off (for example another public holiday).
- (xi) The foregoing does not apply in areas where, in each year:
  - (a) a day in addition to the ten named public holidays specified in sub-clause 21.1 (x), is proclaimed and observed as a public holiday; or
  - (b) two half days, in addition to the ten named public holidays specified in sub-clause 21.1 (x), are proclaimed and observed as half public holidays.
- (xii) In areas where in each year one half day in addition to the ten named public holidays specified in sub-clause 21.1 (x), is proclaimed and observed as a half public holiday, for the purposes of this Agreement the whole day is to be regarded and observed as a public holiday, and no additional public holiday which would otherwise apply as a result of this sub-clause will be observed.
- (xiii) The public holiday entitlement explained in sub-clauses 21.1 (x) to (xii) is inclusive of the NES provisions. To avoid doubt, employees are entitled to the public holidays detailed in this Agreement - the NES does not provide for additional public holidays.

- (xiv) 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
- (xv) **Annual Review of Part-time Hours**
  - (a) At the request of a part-time employee, the hours worked by the employee will be reviewed annually.
  - (b) Where the employee is regularly working more than their specified contracted hours, then it may be agreed that such contracted hours will be adjusted by the employer, to reflect the hours regularly worked. The agreement of the employer will not be unreasonably withheld.
  - (c) The hours worked in the following circumstances will not be incorporated in the adjustment:
    - (1) 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
    - (2) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a patient.
    - (3) Any adjusted contracted hours resulting from the review identified in this subclause should, however, be such as to reflect roster cycles and shift configurations utilised in the workplace.

## 21.2 - Casual Employees

- (i) A casual employee is one engaged on an hourly basis otherwise than as a permanent part-time or full-time employee and shall have a minimum of two hours for each start.
- (ii) A casual employee shall be paid:
  - (a) an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate, prescribed by Clause 10, Salaries; and
  - (b) where applicable one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 12, Special Allowances and Clause 16, Uniform and Laundry Allowances; and
  - (c) a casual loading of 21.5 % - from 1 July 2011 this loading will increase to 22.67% 1 July 2012
  - (d) with a minimum payment of 2 hours for each start.
- (iii) With respect to a casual employee the provisions of Clause 29, Deputy Directors of Nursing, Assistant Directors of Nursing; Clause 7, Hours of Work and Free Time of Directors of Nursing; Clause 9, Rosters; Clause 18, Overtime; Clause 22, Annual Leave and Public Holidays, Clause 14, Fares and Expenses and subclause 40.4 Severance Pay of this Agreement, shall not apply. Further, casual employees shall not be entitled to an additional day off or part thereof as prescribed by sub-clauses 6.3 and 6.5 of Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing.
- (iv) In accordance with the NES, casual employees have no entitlement to paid annual leave; paid personal/carer's or paid compassionate leave.
- (v) A casual employee who is required to and does work on a public holiday as defined in sub-clauses 22.4 and 22.5 of Clause 22, Annual Leave and 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. A

casual employee shall be entitled to be paid in addition the casual loading explained in sub-clause 21.2 (ii) in respect of such work.

(vi) For the entitlement to payment in respect of long service leave, see the *Long Service Leave Act 1955*.

(vii) Casual Conversion

(a) A casual employee who has been rostered on a regular and systematic basis over a period of 6 months has the right to request conversions to permanent employment:

(1) on a full time contract where the employee has worked on a full time basis throughout the period of casual employment; or

(2) on a permanent part time contract where the employee has worked on a permanent part time basis throughout the period of casual employment. Such contract would be on the basis of the same number of hours as previously worked, unless other arrangements are agreed between the employer and the employee.

(b) The employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request.

## **(22) Annual Leave and Public Holidays**

22.1 The National Employment Standard (NES) for annual leave is a minimum to which all employees covered by this Agreement are entitled. That minimum entitlement for each year of service is:

- o five weeks for employees defined as shift workers; and
- o four weeks for all other employees.

For the purpose of the additional weeks annual leave provided by the NES for shift workers, “a shift worker” is defined as an employee who:

- is regularly rostered over seven days a week; and
- regularly works on weekends.

This definition is to be used only to calculate the minimum entitlement available to employees. Where “shift worker” is used elsewhere in this Agreement it has the meaning in clause 5.

The provisions of the following clauses provide for annual leave entitlements in terms that are different from those used in the NES. Employees covered by this Agreement are eligible for the relevant NES minimum or the entitlements described below, whichever is the higher.

22.2 Annual leave will accrue progressively during a year of service in accordance with the provisions of the NES.

(a) Full Time employees required to work on a seven (7) day basis - six (6) weeks annual leave per annum.

(b) All other employees - four (4) weeks annual leave per annum.

22.3 (a) An employee to whom paragraph (a) of sub-clause 22.2 applies and who is required to and does work on a public holiday shall be paid, in addition to the appropriate ordinary weekly rate of pay, at the rate of one half time extra for the time actually worked on such holiday. Such payment shall be in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday.

- (b) To leave prescribed by paragraph (a) of sub-clause 22.2 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 (10) specifically named public holidays prescribed by sub-clause 22.4 of this clause, 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 subject to clause 22.5.
- (c) A public holiday occurring on a day that the employee would normally work shall be allowed to employees covered by paragraph (b) of sub-clause 22.2 on full pay; provided that an employee who is required to and does work on a public holiday shall have one day or one half day, as appropriate, added to their period of annual leave and be paid at the rate of one half time extra for the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday. In lieu of adding to annual leave under this paragraph an employee may elect to be paid for the time actually worked at the rate of time and one half in addition to their ordinary weekly rate. Such election shall be made on the commencement of employment and then on the anniversary date each year.

The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of the time worked on a public holiday payment shall be made for a minimum of four hours work, and any balance of the day or shift not worked shall be paid at ordinary rates.

- (d) Where a public holiday falls on a rostered day off of a full time shift worker as defined in Clause 5, Definitions, of this Agreement, and who receives four (4) weeks annual leave in accordance with paragraph (b) of sub-clause 22.2 of this clause, such shift worker shall be paid one day's pay in addition to the weekly rate or if the employee so elects shall have one day added to the period of annual leave.
- (e) To the leave prescribed by paragraph (b) of sub-clause 22.2 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; provided that in the case of a shift worker referred to in paragraph (d) of this sub-clause the provision of this paragraph shall apply to any public holidays falling during the period of annual leave.

22.4 For the purpose of this clause the following are to be public holidays, viz: 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 pursuant to the Public Holidays Act 2010 (NSW) within the area in which the hospital is situated.

- 22.5 (a) In addition to those public holidays prescribed in sub-clause 22.4 of this clause, employees are entitled to an extra public holiday each year. Such public holiday will occur
- (i) on the August Bank Holiday; or
  - (ii) on a date which is agreed upon by the respective employees and if nominated by the employee, the employee's nominated representative which may be a union representative;
  - (iii) as an additional public holiday between Christmas and the first week of the following calendar year; provided that such day is placed between Monday to Friday (inclusive) which is not gazetted as a public holiday.

The foregoing does not apply in areas where in each year:

- (iv) a day in addition to the ten (10) named public holidays specified in sub-clause (i) is proclaimed and observed as a public holiday in accordance with the NES;  
or
  - (v) two half days in addition to the ten (10) named public holidays specified in sub-clause (i) are proclaimed and observed as half public holidays.
- (b) In areas where in each year only one half day in addition to the ten (10) named public holidays specified in sub-clause 22.4 is proclaimed and observed as a half public holiday for the purposes of this Agreement the whole day is to be regarded and observed as a public holiday and no additional public holiday which would otherwise apply as a result of this sub-clause will be observed.
- (c) The public holiday entitlement explained in clauses 22.4 and 22.5 is inclusive of the NES provisions. To avoid doubt, employees are entitled to the public holidays detailed in this Agreement - the NES does not provide for additional public holidays.

22.6 (a) **Taking of Annual Leave** – An employee is entitled to take an amount of annual leave during a particular period if:

- (i) at least that amount if annual leave is credited to the employee; and
  - (ii) the employer has authorised the employee to take the annual leave during that period.
- (b) An employee will request annual leave, in writing, at least two (2) weeks prior to the date on which the leave would commence.
- (c) Credit of time towards an allocated day off duty shall not accrue when an employee is absent in accordance with sub-clause 22.2 of this clause. Employees entitled to allocated days off duty in accordance with Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing, of 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 sub-clauses 22.3 (b) and sub-clause 22.3 (c) of the Agreement.

22.7 Annual leave shall be taken in an amount and at a time which is approved by the employer subject to the operational requirements of the workplace. The employer shall not unreasonably withhold or revoke such approval.

22.8 **Extensive accumulated annual leave:** An employee must take an amount of annual leave during a particular period if:

- (a) the employee is directed to do so by the employer. The employer shall give the employee at least one month's notice. Provided that, where an employee makes a written request to take annual leave which has not been approved by the employer, that employee shall not be directed to take annual leave for a period of 12 months after that request;
- (b) 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 ordinary hours worked by the employee for the employer during the period of 104 weeks ending at the time that the direction is given; and
- (c) the amount of annual leave that the employee is directed to take is less than, or equal to, ¼ of the amount of credited annual leave of the employee at the time that the direction is given.

- 22.9 (a) Each employee before going on leave shall be paid for the period of the leave at the ordinary rate of salary to which she or he 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 hours.
- (b) An employee to whom paragraph (a) of sub-clause 22.2 applies shall be paid during the first twenty eight (28) consecutive days whilst on annual leave her or his ordinary rate of salary plus shift allowances and weekend penalties relating to ordinary time the employee would have worked if they had not been on annual leave; additional annual leave accrued under sub-clause 22.12 attracts shift allowances and weekend penalties relating to ordinary time the employee would have worked if they had not been on annual leave; provided that the provisions of the preceding paragraphs of this sub-clause shall not apply to public holidays which occur during a period of annual leave or days which have been added to annual leave in accordance with paragraph (b) of sub-clause 22.3 and sub-clause 22.5 of this clause.

**22.10 Cashing out of Annual Leave**

Annual leave credited to an employee may be cashed out, subject to the following conditions:

- (a) the employee must elect in writing to receive payment in lieu of an amount of annual leave on each occasion on which annual leave is cashed out;
- (b) after the cashing out the employee's remaining accrued entitlement to paid annual leave must be no less than four (4) weeks;
- (c) the employer has agreed to the employee cashing out the annual leave; and
- (d) the employee must be paid at least the full amount that would have been payable to the employee had she or he taken the leave that he or she has foregone.

22.11 Where the employment of an employee is terminated the employee shall be entitled to receive payment for all accrued annual leave including for any days added to annual leave in accordance with sub-clause 22.3 of this clause.

22.12 (a) In addition to leave prescribed by sub-clause 22.2 employees who work their ordinary hours on Sundays and/or Public Holidays 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	Additional Annual Leave
4 – 10	1 Day
11- 17	2 Days
18-24	3 Days
25 – 31	4 Days
32 or more	5 Days

Provided that an employee may elect to be paid when proceeding on annual leave on annual leave an amount equivalent to the value of their additional leave entitlement in lieu of taking the annual leave. Such election is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during the currency of that year of employment.

- (b) On termination of employment employees are to be paid for any untaken annual leave due under this sub-clause together with payment for any leave in respect of an uncompleted year of employment calculated in accordance with this sub-clause together with payment for any untaken annual leave due in accordance with sub-clause 22.11.

#### 22.13 **Annual Leave and Service**

A period of paid annual leave does not break an employee's continuity of service and annual leave counts as service for all purposes.

#### 22.14 **Annual Closedown Provision**

- (a) The employer may temporarily close a part or the whole of the hospital not more than once every twelve months for a period not exceeding three weeks.
- (b) The employer will give at least three (3) months notice of the dates of the closedown; all prospective employees will be advised of any closedown in the letter offering them employment.
- (c) An employee with an entitlement to annual leave and / or accumulated Additional Days Off (ADOs) sufficient to cover the closedown period will be required to access their accumulated annual leave and / or ADOs for the period of the closedown. The employee may choose the combination of annual leave and accrued ADOs that she or he will use to cover the closedown period.
- (d) Where an employee has an entitlement to annual leave which is less than the period of the closedown, she or he will have to choose one or more of the following forms of leave to make up the difference between the accumulated annual leave and the period of the closedown:
  - (i) leave without pay;
  - (ii) annual leave taken in advance; and/or
  - (iii) accumulated ADOs.
- (e) The employer will favourably consider requests for staff to accumulate up to 12 ADOs for use during a closedown.
- (f) Employees will continue to be able to access annual leave throughout the year. They will not be required to store their annual leave for use during a closedown.

#### **(23) Annual Leave Loading**

23.1 Before an employee is given and takes an annual holiday, or where by agreement between the employer and the employee the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay the employee a loading determined in accordance with this clause.

23.2 The loading is payable in addition to the pay for the period of holiday given and taken due to the employee under sub-clauses 22.2 (b) and 22.3 (c) of Clause 22, Annual Leave and Public Holidays, of this Agreement, or in the case of part-time employees for the period of holiday given and taken and due to the employee.

23.3 The loading is the amount payable for the period or the separate periods, as the case may be, of accrued Annual Leave of the rate per week of 17½% 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 by the employee's annual holiday together with any allowances prescribed by sub-clause 12.3 of Clause 12, Special Allowances, of this Agreement.

23.4 No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when the employee would have become entitled under the said Clause 22, Annual Leave and Public Holidays 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 sub-clause 23.4 of this clause applying the Agreement rates and wages payable on that day. This sub-clause applies where an annual holiday has been taken wholly or partly in advance.

23.5 No loading is payable on the additional annual leave as set out in Clause 22.12 of this agreement

23.6 (a) When the employment of an employee is terminated by his/her employer for a cause other than misconduct, and at the time of termination the employee has not been given and has not taken the whole of the annual holiday to which she or he is entitled, she or he shall be paid a loading calculated in accordance with sub-clause 23.3 of the period not taken.

(b) When an employee resigns and at the time of the termination of their employment the employee has not been given and has not taken the whole of the annual holiday to which the employee is entitled, the employee shall be paid a loading calculated in accordance with subclause 23.3 of the period not taken.

23.7 This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if the employee 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 to the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.

#### **(24) Long Service Leave**

24.1 This clause provides Long Service Leave more beneficial than the provisions of the *Long Service Leave Act 1955*.

24.2 The provisions of this clause shall apply for Long Service Leave. Where the provisions of this clause are more beneficial these provisions shall apply. Where this clause is silent the provisions of the *Long Service Leave Act 1955* shall apply

(a) (1) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after fifteen years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one half months' long service leave on full pay. Such leave shall be taken at a time to be mutually arranged between the employer and the employee.

(2) Where the service of an employee with at least five years' service is terminated, the employee shall be entitled for five years' service to one month's long service leave on full pay and for service after 5 years to a proportionate amount of such leave on full pay calculated on the basis of 2 months' long service leave for 10 years' service.

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

(1) If before such leave has been entered upon the employment of such employee has been terminated such employee shall be entitled to receive the monetary value of the leave to which such employee has been entitled computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment.

- (2) If such employee dies before entering upon such 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:
- (1) Continuous service in the same hospital prior to the coming into force of this Agreement shall be taken into account.
- (2) One month equals four and one-third weeks.
- (3) Continuous service shall be deemed not to have been broken by:
- (i) any period of absence on leave without pay not exceeding six months;
- (ii) absence of an employee from the hospital whilst a member of the Defence Forces of the Commonwealth in time of war.
- (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.
- (e) Any period(s) of part-time employment with the same employer shall count towards long service leave as provided for in sub-clause 24.2 (a) (1). Such long service leave shall be paid for on the basis of the proportion that the average number of hours worked per week bears to 38 hours.
- (f) Where an employee has accrued a right to an allocated day off duty on pay prior to entering a period of long service leave such day shall be taken on the next working day immediately following the period of long service leave.

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

## **(25) Compassionate Leave**

### **25.1 Entitlement to compassionate leave**

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:

- (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
- (b) sustains a personal injury that poses a serious threat to his or her life; or
- (c) dies.

Where the employee is involved in funeral arrangements, travelling etc., leave may be allowed for up to 3 days for each permissible occasion.

25.2 For the purposes of this clause,

- “de facto partner” includes a partner of the same sex; and
- immediate family means:
  - (i) a spouse of the employee; or
  - (ii) de facto partner of the employee which:
    - (a) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis; and
    - (b) includes a former de facto partner of the employee; or
  - (iii) 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 partner of the employee.
  - (iv) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
    - (1) "relative" means a person related by blood, marriage or affinity;
    - (2) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
    - (3) "household" means a family group living in the same domestic dwelling.

### 25.3 Taking compassionate leave

- (1) An employee may take compassionate leave for a particular permissible occasion if the leave is taken:
  - (a) 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 sub-clause 25.1; or
  - (b) after the death of the member of the employee’s immediate family or household referred to in sub-clause 25.1.
- (2) An employee may take compassionate leave for a particular permissible occasion as:
  - (a) a single continuous period; or
  - (b) separate periods of 1 day each; or
  - (c) any separate periods to which the employee and his or her employer agree.

(3) 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.

#### **25.4 Payment for compassionate leave (other than for casual employees)**

If 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.

#### **25.5 Other Circumstances**

The above principles are not intended to codify completely purposes for which compassionate leave with pay may be allowed. The element of unforeseen emergency could be present in other situations, e.g. floods and bushfires, which clearly prevent attendance for duty.

In view of the purpose for which compassionate leave is intended, it is not possible to prescribe a precise limitation of the amount of leave to be granted in a given period. It is suggested, however, that only under the most exceptional circumstances should leave exceeding a total of three days be granted to an employee in any year other than in accordance with sub-clause 25.1.

Where an employee is forced to absent themselves other than in accordance with sub-clause 25.1 or in circumstances that do not reasonably constitute an unforeseen emergency, the employee can cover such an absence by applying for leave with pay or, if the employee so desires, taking annual leave.

### **(26) Personal/Carer's Leave**

#### **26.1 The Standard**

- (a) Employees are entitled to personal leave in accordance with the provisions of the National Employment Standard. (NES)
- (b) Casual employees have no entitlement to paid personal/carers' leave, but do have an entitlement to unpaid carer's leave.

#### **26.2 Meaning of Personal/Carer's Leave**

Personal/carers' leave is either:

- (a) paid leave (**sick leave**) taken by an employee because of a personal illness, or injury, of the employee; or
- (b) paid or unpaid leave (carer's leave) taken by an employee to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
  - (i) a personal illness, or injury, of the member; or
  - (ii) an unexpected emergency affecting the member.
- (c) For the purposes of this clause,
  - "de facto partner" includes a partner of the same sex; and
  - "immediate family" means:

- (i) a spouse of the employee; or
- (ii) de facto partner of the employee which:
  - (a) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis; and
  - (b) includes a former de facto partner of the employee; or
- (iii) 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 partner of the employee.
- (iv) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
  - (1) "relative" means a person related by blood, marriage or affinity;
  - (2) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
  - (3) "household" means a family group living in the same domestic dwelling.

### **26.3 Accrual of Paid Personal/Carer's Leave**

- (a) For each year of service with his or her employer, an employee is entitled to 10 days of paid personal/carers leave.
- (b) An employee's entitlement to paid personal/carers leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.
- (c) No payment will be made in lieu of accumulated personal/carers leave.
- (d) Casual employees have no entitlement to paid personal/carers leave.

### **26.4 Payment of Paid Personal/Carer's Leave**

If, in accordance with this clause (clause 26), an employee takes a period of paid personal/carers 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.

### **26.5 Employee taken not to be on paid personal/carers leave on public holiday**

If the period during which an employee takes paid personal/carers leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carers leave on that public holiday.

### **26.6 Unpaid Carer's Leave**

- (a) An employee is entitled to a period of up to 2 days unpaid carers leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support during such a period because of:
  - (i) a personal illness, or injury, of the member; or
  - (ii) an unexpected emergency affecting the member.

- (b) This entitlement extends to casual employees and the employer agrees not to fail to re-engage a casual employee because the employee accessed the entitlements provided for in this sub-clause. The rights of the employer to engage or not to engage a casual employee are otherwise not affected.
- (c) An employee is entitled to unpaid carer's leave for a particular occasion only if the employee cannot take an amount of paid personal/carer's leave.

#### **26.7 Taking of Personal/Carer's Leave and Compassionate Leave**

- (a) An employee is entitled to use their personal/carer's and compassionate leave entitlement in accordance with the National Employment Standard.
- (b) **Notice:** To be entitled to personal/carers leave or compassionate leave , an employee must give the employer notice as soon as reasonably practicable (which may be at a time before or after the leave has started) that the employee is (or will be) absent from his or her employment..

This requirement does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.

- (c) **Documentary Evidence:** An employee who has given his or her employer notice of the taking of personal/carer's leave or compassionate leave, if required by the employer, give the employer evidence that would satisfy a reasonable person that:
  - (a) if it is paid personal/carer's leave—the leave is taken for a reason specified in sub-clause 26.2; or
  - (b) if it is unpaid carer's leave—the leave is taken for a permissible occasion in circumstances specified in sub-clause 26.6; or
  - (c) if it is compassionate leave—the leave is taken for a permissible occasion in circumstances specified in clause 25.

#### **26.8 Time Off in Lieu of Payment for Overtime**

- (a) For the purpose only of providing care and support for a person in accordance with sub-clause 26.2 of this clause, and despite the provisions of Clause 18, Overtime, the following provisions shall apply.
- (b) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
- (c) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- (d) If, having elected to take time as leave in accordance with paragraph (a) of this sub-clause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
- (e) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the Agreement.

#### **26.9 Make-up time**

- (a) An employee may elect, with the consent of their employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Agreement at the ordinary rate of pay.

- (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

#### **26.10 Rostered Days Off**

- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
- (d) This sub-clause is subject to the employer informing the affected employees and their workplace representatives of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the affected employees and their workplace representatives to participate in negotiations.

#### **26.11 Personal/Carer's Leave and Service**

- (a) A period of paid personal/carer's leave does not break an employee's continuity of service and paid personal/carer's leave counts as service for all purposes.
- (b) A period of unpaid personal/carer's leave does not break an employee's continuity of service, however a period of unpaid personal/carer's leave does not count as service.

#### **(27) Staff Amenities**

The employer shall provide for the use of employees:

27.1 A suitable changing room and adequate washing and toilet facilities;

27.2 A locker fitted with lock and key or other suitable place for the safe keeping of clothing and personal effects of such employee;

27.3 An employer shall provide for an employee morning and afternoon tea, supper and early morning tea (which shall include tea or coffee together with milk and sugar) when the employee is on duty, at times appropriate for the partaking thereof, and shall provide also for such an employee, who requires them, meals of a reasonable standard, which fall due during the duty period, and for such meals so provided may make a charge, provided that the charge for breakfast shall be the sum set out in Item 11 of Table 2 and the sum set out in Item 12 of Table 2 for other meals.

#### **(28) Escort Duty**

28.1 Periods during which an employee, other than Director of Nursing, 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.

28.2 All reasonable out-of-pocket expenses shall be reimbursed.

28.3 Rostered time shall be paid as such even though an employee may be travelling, in hotel/motel accommodation, or waiting for transport.

28.4 In respect of non-rostered time not spent in nursing duties:

- (a) Periods in hotel/motel accommodation or waiting for transport shall not be counted as working time;
- (b) Periods in travelling shall count as working time.

**(29) Medical Examination of Nurses**

29.1 Medical examination of nurses will be in accordance with employer's policy in line with NSW Health PD2011\_005 (*Occupational Assessment, Screening and Vaccination against the Specified Infectious Diseases*) as varied from time to time.

29.2 Prior to the commencement of employment, the costs involved in the various screening and protection procedure shall be borne by the employee.

**(30) Domestic Work**

30.1 Except as hereinafter provided, nurses, enrolled nurses and assistants-in-nursing shall not be required to perform, as a matter of routine, the following duties, viz: washing, sweeping, polishing and/or dusting of floors, walls or windows of wards, corridors, annexes, bathrooms or verandas, nor any duties which are generally performed by classifications other than nursing staff: but this provision shall not preclude the employment of nurses, enrolled nurses and assistants-in-nursing on any of such duties in an isolation block or where the performance of those duties involves disinfection.

30.2 Nothing in sub-clause 31.1 of this clause shall preclude any employee from being required to perform all or any of the specified duties at any time when domestic staff is not available to perform them; provided that the employer has made all reasonable efforts to obtain domestic staff.

**(31) Labour Flexibility**

31.1 An employer may direct an employee to carry out duties as are within the limits of the employee's skill, competence and training. Such duties may include work which is incidental or peripheral to the employee's main tasks provided that such duties are not designed to promote deskilling nor are inconsistent with Clause 31, Domestic Work.

31.2 Any employer may direct an employee to carry out duties and use such equipment as may be required provided that the employee has been properly trained or has otherwise acquired the necessary skills in the use of such equipment. Any such direction issued by the employer shall be consistent with the employer's responsibility to provide a safe and healthy working environment for employees and the employer's duty of care to patients.

**(32) Termination of Employment**

32.1 Employment, other than of a casual, will be terminated only by appropriate notice on either side or by the payment by the employer or forfeiture by the employee of wages in lieu of notice. Provided that employment may be terminated by part of the period of notice specified, and part payment or forfeiture, in lieu of the period of notice specified. Sub-clause 33.2 shall not apply to employment of an employee on probation.

32.2 Notice of termination by the employer:

(a)	(i)	<u>Period of Continuous Service</u>	<u>Minimum Period of Notice</u>
		1 year or less	1 week
		More than 1 year but not more than 3 years	2 weeks
		More than 3 years but not more than 5 years	3 weeks
		More than 5 years	4 weeks
	(ii)	A Director of Nursing shall be entitled to four weeks notice.	

(b) Employees (other than casuals) aged 45 years or older will be entitled to an additional one week's notice if the employee has completed at least two years continuous service for the employer at the end of the day the notice is given.

(c) Casuals are to be given notice to the end of the current shift worked.

32.3 Notice by employee –

(a) Subject to sub-clauses 33.3 (c), employees shall give the employer two week's notice of termination in writing. Provided that where an employee has been employed for one (1) year or less, they shall only be required to provide one (1) weeks notice of termination in writing.

(b) A Director of Nursing shall give four (4) weeks notice of termination in writing.

(c) Casuals shall only be required to give notice to the end of the current shift worked.

32.4 Upon the termination of the services of an employee, the employer shall furnish the employee with a written statement, surely signed by or on behalf of the employer, setting out the period of the employment and the capacity in which the employee was employed.

32.5 Employees who have accrued additional days off duty pursuant to sub-clause 6.7 of Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing, shall be paid for such accrued time at ordinary rate of pay upon termination.

**(33) Transfer of Business**

Where there is a Transfer of Business, the provisions in the Act will apply.

**(34) Attendance at Meetings and Fire Drills**

34.1 Any employee required to work outside the ordinary hours of work in satisfaction of the requirements of fire safety and emergency response procedures required by the *Private Health Facilities Act Regulations 2010* shall be entitled to be paid the "ordinary rate" for the actual time spent in meeting such requirements. In lieu of receiving payment employees may, with the agreement of the employer, be permitted to be free from duty for a period of time equivalent to the period spent in attendance on such duties. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.

34.2 Any employee required to attend Occupational Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, if such meetings are held outside the ordinary hours of work, be entitled to receive payment at the "ordinary rate" for the actual time spent in attendance at such meetings. In lieu of receiving payment, employees may with the agreement of the employer be permitted to be free from duty for a period of time equivalent to the period spent in attendance at such meetings. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.

34.3 For the purposes of this clause "ordinary rate" shall include amounts payable under Clause 10, Salaries, and Clause 12, Special Allowances, sub-clauses 12.1 and 12.2, of this

Agreement; plus, where appropriate, the 20% loading prescribed in Clause 21, Part-time, Casual and Temporary Employees of this Agreement for employees engaged otherwise than as a full-time or permanent part-time employee.

**(35) Resolution of Disputes**

- 35.1 In the event of a dispute about any matter, including a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 35.2 The parties agree that disputes in relation to requests for reasonable working arrangements and extending a period of unpaid parental leave may be dealt with under the terms of this clause.
- 35.3 An employer or employee may appoint another person or the Union to accompany and/or represent them for the purposes of this clause.
- 35.4 If a dispute is unable to be resolved at the workplace, and all appropriate steps under clause 35.1 have been taken, a party to the dispute may refer the dispute to Fair Work Australia. This is not intended to prevent a party referring the dispute to another statutory tribunal if that is more appropriate.
- 35.5 Where the matter in dispute remains unresolved, Fair Work Australia may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 35.6 The parties agree that Fair Work Australia shall have the power to do all such things as are necessary for the just resolution of the dispute including mediation, conciliation and arbitration.
- 35.7 Fair Work Australia shall be provided access to the workplace to inspect or view any work, material, machinery, appliance, article, document or other thing or interview any employee who is usually engaged in work at the workplace.
- 35.8 The parties agree that Fair Work Australia may give all such directions and do all such things as are necessary for the just resolution, remedy and determination of the dispute.
- 35.9 Subject to any review of Fair Work Australia's decision or direction relating to the dispute, the decision or direction shall be accepted by all affected parties as a settlement of the dispute and shall be implemented by them.
- 35.10 The parties agree to confer immunity on Fair Work Australia for all matters relating to the dispute resolution between the parties.
- 35.11 While the dispute resolution procedure is being conducted, the status quo must remain and work must continue in accordance with this agreement and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

**(36) Anti-Discrimination**

It is the intention of the parties bound by this Agreement to achieve the object in section 3(e) of the *Fair Work Act* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, colour, sex, sexual preference, age, marital status, physical or mental disability, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, homosexuality, transgender identity and age.

**(37) Parental Leave**

37.1 Parental Leave entitlements are governed by the National Employment Standards.

37.2 Requests for flexible working arrangements

An employee who is a parent, or has responsibility for the care of a child may request the employer for a change in working arrangements to assist the employee to care for the child if the child is under school age; or is under 18 and has a disability. See the National Employment Standard for more detail.

**(38) Superannuation**

**38.1 Definitions**

- (a) "Default fund" means the Health Employees' Superannuation Trust Australia (H.E.S.T.A.)
- Should an employee fail to nominate a fund, the employer will choose the above approved fund as the default fund into which contributions shall be paid under this Agreement.
- (b) "Complying regulated fund" means a superannuation fund that is regulated under the Superannuation Industry (Supervision) Act 1993 and has been issued with a Certificate of Compliance by the Australian Prudential Regulation Authority.
- (c) "Ordinary-time earnings" means remuneration for an employee's weekly number of hours of work, excluding overtime hours, calculated at the ordinary-time rate of pay, including the following:
- (i) Monday to Friday shift premiums for ordinary hours of work;
  - (ii) Weekend shift premiums for ordinary hours of work;
  - (iii) Public holiday loadings;
  - (iv) Any percentage addition payable to casual employees for ordinary hours or work;
  - (v) Ordinary time allowances (not including expense related allowances);
  - (vi) Payments made above the base rate for ordinary hours of work.
- (d) "Qualified employee" means:
- (i) a full-time or part-time employee who has completed at least four weeks service in the industry of nursing. Provided that once this period has elapsed, payments shall be made for the entire period of service with the employer;
  - (ii) a casual employee who has earned in excess of \$2,000.00 ordinary-time earnings during their employment with an employer in the course of any one year (1 July to 30 June). Provided further that any casual employee who is deemed to be a qualified employee prior to 8 July 1997 will continue to be qualified.

### **38.2 Superannuation Legislation**

The subject of superannuation is dealt with extensively by federal 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, shall govern the superannuation rights and obligations of the parties.

### **38.3 Contributions**

- (a) For qualified employees the employer shall, in respect of each employee, pay a sum equal to the Superannuation Guarantee legislation, as amended from time to time, of the employee's gross ordinary time earnings into a complying fund. Such contributions shall be remitted to the complying fund on a monthly basis. With respect to casual employees, contributions shall be remitted at the time that employees receive their annual group certificates
- (b) An employee may nominate one complying fund to which all Agreement and statutory superannuation contributions shall be paid, subject to employer approval of the fund nominated by the employee. Provided that the employer shall not unreasonably withhold agreement unless it establishes good and proper reasons for the withholding of the agreement.
- (c) Where no such nomination is made before any such contributions become payable, the contributions referred to in this clauses will be paid to the default fund for that place of employment.

### **38.4 Salary Sacrifice to Superannuation**

- (a) Salary Sacrifice to Superannuation means the option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre tax dollars) under the parent awards. This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- (b) Salary sacrifice to superannuation shall be offered to employees by mutual agreement between the employee and employer.
- (c) Such election must be made prior to the commencement of the period of service to which the earnings relate.
- (d) One change of a sacrificed amount will be permitted in an employee's anniversary year, which is 12 months from the date of commencement of employment, without incurring an administration charge (\$50). Changing from full-time to part-time or part-time to full-time employment will not be classified as a change for administration charge purposes.
- (e) The amount sacrificed must not exceed any relevant superannuation guarantee contribution limit.
- (f) The sacrificed portion of salary reduces the salary subject to PAYG Taxation deductions.
- (g) Any allowance, penalty rate, overtime payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post salary sacrificed amount.
- (h) Salary sacrifice arrangements can be cancelled by either the employer or employee at any time provided either party gives one months notice. The employer has the right to withdraw

from offering salary sacrifice to employees without notice if there is any alteration to relevant Australian Taxation legislation.

- (i) Contributions payable by the employer in relation to the Superannuation Guarantee Legislation shall be calculated by reference to the salary which would have applied to the employee under this Agreement in the absence of any salary sacrifice.
- (j) Employers will not use any amount that is salary sacrificed by an employee to negate contributions payable under the Superannuation Guarantee Legislation.
- (k) The employee shall have the portion of payable salary that is sacrificed paid as additional employer superannuation contributions into the same superannuation fund that receives the employer's SGC contributions.
- (l) Nothing in this clause shall affect the right of an employer to maintain alternate arrangements with respect to salary sacrifice for employees.

## **(39) Consultation**

### **39.1 Introduction of Change**

- (a) Employer's Duty to Notify
  - (i) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and or their workplace representatives, which may include the Union
  - (ii) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.
- (b) Employer's Duty to Discuss Change
  - (i) The employer must discuss with the employees affected and their workplace representatives, inter alia, the introduction of the changes referred to in sub-clause 40.1(a)(i) of this clause, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and must give prompt consideration to matters raised by the employees and/or their workplace representatives, which may include the Union, in relation to the changes.
  - (ii) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in the said sub-clause 40.1(a)(i).
  - (iii) For the purpose of such discussion, the employer must provide in writing to the employees concerned and their representatives, including the Union, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the Employer.

## **(40) Redundancy**

### **40.1 Application of this Clause**

- (a) In accordance with the NES provisions in section 123 of part 2-2 of the Act, the following employees are exempted from this clause:
  - (i) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
  - (ii) an employee whose employment is terminated because of serious misconduct;
  - (iii) a casual employee;
  - (iv) an employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement;
  - (v) an employee prescribed by the regulations as an employee to whom Division 11 of part 2-2 of the Act does not apply.
- (b) Sub clause 41.1 (a)(i) does not prevent this clause from applying to an employee if a substantial reason for employing the employee as described in that paragraph was to avoid the application of this clause.

### **40.2 Redundancy**

- (a) Discussions Before Terminations
  - (i) Where the employer has made a decision that they no longer wish the job an employee has been doing to be done by anyone and pursuant to sub-clause 40.1 (a) (i), and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and their workplace representatives.
  - (ii) The discussions shall take place as soon as practicable after the employer has made a definite decision which will invoke the provisions of subclause 41.2 (a) (i) and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
  - (iii) For the purpose of the discussion the employer shall, as soon as practicable, provide to the employees concerned and if requested by the employee, any nominated employee representative which may be a union representative, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

### **40.3 Termination of Employment**

- (a) Notice for Changes in Production, Programme, Organisation or Structure

This sub-clause sets out the notice provisions to be applied to terminations by the employer for reasons arising from production, programme, organisation or structure in accordance with Clause 40.1 (a) (i) Introduction of Change.

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

<u>Period of continuous service</u>	<u>Period of notice</u>
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

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

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

(b) Notice for Technological Change

This sub-clause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with Clause 40.1 (a) (i) Introduction of Change:

- (i) In order to terminate the employment of an employee the employer shall give to the employee three months notice of termination.

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

- (iii) The period of notice required by this sub-clause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, or any Act amending or replacing the Act and Clause 22 Annual Leave and Public Holidays.

(c) Time Off During the Notice Period

- (i) 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, to a maximum of five weeks, for the purpose of seeking other employment.

- (ii) 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, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent.

(d) Employee Leaving During the Notice Period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstance the employee shall not be entitled to payment in lieu of notice.

(e) Statement of Employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

(f) Notice to Centrelink

Where a decision has been made to terminate the employment of employees, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(g) Centrelink Employment Separation Certificate

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.

(h) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties, for reasons set out in Clause 41.2 (a) (i) Redundancy – Discussions before termination the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's 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 ordinary-time rate for the number of weeks notice still owing.

**40.4 Severance Pay**

(a) Where the employment of an employee is to be terminated, the employer shall pay the following severance pay in respect of a continuous period of service.

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

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

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

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

(iii) "Week's pay" means the all-purpose rate of pay for the employee concerned at the date of termination. For the purposes of this clause, in addition to the ordinary rate of pay and over-agreement payments, all allowances, penalties or shift payment to which the nurse would be entitled shall form part of an employee's "week's pay". ". For the purpose of this subparagraph the following allowances in Clause 12 Special

Allowances shall form part of the employee's "week's pay"; sub-clauses 12.1 (a) and 12.1 (b), 12.2 (a) and (c) and 12.4 (a).

- (iv) A "week's pay" for a particular employee shall be determined according to the average week's pay received by the employee in the period immediately prior to their last date of employment equal to the number of weeks of severance pay to which the employee is entitled under (a) (1) and (2) of this sub-clause.
- (v) The employer shall also pay the following amounts to any employee terminated pursuant to this clause:
  - A Pro rata long service leave; and
  - B Accrued annual leave.

(b) Incapacity to Pay

Subject to an application by the employer and further order of Fair Work Australia, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subparagraphs (i) and (ii) of paragraph (a) of this subclause.

Fair Work Australia shall have regard to such financial and other resources of the employer concerned as Fair Work Australia thinks relevant, and the probable effect paying the amount of severance pay in the said subclause (a) will have on the employer.

(c) Alternative Employment

Subject to an application by the employer and further order of Fair Work Australia, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) of this sub-clause if the employer obtains acceptable alternative employment for an employee.

#### 40.5 Grievance Procedure

Refer to Clause 36, Resolution of Disputes contained in this Agreement.

#### **(41) No Extra Claims**

- 41.1 The parties agree not to pursue any extra claims except where provided for under this Agreement, Further, this provision will not apply to any improvements in conditions that may arise from any consolidation of the organisation's policies.

#### **(42) National Employment Standards (NES)**

- 42.1 It is the intention of this Agreement that the NES, as it may be varied from time to time, shall apply to the employees the subject of this Agreement. Any provisions of the NES that are also referred to or set out in this Agreement are for the convenience only of the parties.
- 42.2 Where the NES provides, or is varied to provide, a condition or entitlement more favourable (to the employee) in a particular respect than that set out in this Agreement, the condition or entitlement set out in this Agreement shall have no effect.
- 42.3 The minimum guarantees provided by the NES will override less favourable provisions in this Agreement.
- 42.4 Where this Agreement provides a condition or entitlement more favourable to the employee than that provided by the NES the better entitlement will apply.

#### **(43) Intentions**

This Agreement is entered into on the understanding that it does not contravene any aspect of the *Fair Work Act 2009* and relevant Regulations. Where any term of this Agreement contravenes legislation, such term shall not apply. Where this Agreement is silent in whole or in part, the relevant legislation will apply.

#### **(44) Agreement Flexibility**

44.1 Notwithstanding any other provision of this agreement, an employer and an individual employee may agree to vary the application of certain terms of this agreement to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates
- (c) penalty rates.
- (d) allowances; and
- (e) leave loading.

44.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.

44.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in sub clause 44.1; and
- (b) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to; and
- (c) not financially disadvantage other employees (either directly or indirectly).

44.4 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this agreement that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

44.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

44.6 Except as provided in sub-clause 45.4 (a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

44.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

44.8 The agreement may be terminated:

(a) by the employer or the individual employee giving 14 days' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(b) at any time, by written agreement between the employer and the individual employee.

44.9 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this agreement.

#### **(45) Access to Copies of the Agreement and the Standard**

Where practicable, a copy of this Agreement and the National Employment Standards will be made readily accessible to staff at each workplace covered by the Agreement. In all cases a copy of both documents will be available for inspection through the person responsible for personnel matters at the workplace.

#### **(46) Community Leave**

##### **47.1 Entitlement to be absent from employment for engaging in eligible community service activity**

An employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if:

(a) the period consists of one or more of the following:

(i) time when the employee engages in the activity;

(ii) reasonable travelling time associated with the activity;

(iii) reasonable rest time immediately following the activity; and

(b) unless the activity is jury service—the employee's absence is reasonable in all the circumstances.

##### **47.2 Meaning of *eligible community service activity***

(1) Each of the following is an ***eligible community service activity***:

(a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or

(b) a voluntary emergency management activity (see 47.2 (2)); or

(c) an activity prescribed as an eligible community activity by regulations made in accordance with section 109 (4) of the Fair Work Australia Act 2009.

(2) An employee engages in a ***voluntary emergency management activity*** if, and only if:

(a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and

- (b) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
- (c) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
- (d) either:
  - (i) the employee was requested by or on behalf of the body to engage in the activity; or
  - (ii) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.

(3) A **recognised emergency management body** is:

- (a) a body, or part of a body, that has a role or function under a plan that:
  - (i) is for coping with emergencies and/or disasters; and
  - (ii) is prepared by the Commonwealth, a State or a Territory; or
- (b) a fire-fighting, civil defence or rescue body, or part of such a body; or
- (c) any other body, or part of a body, a substantial purpose of which involves:
  - (i) securing the safety of persons or animals in an emergency or natural disaster; or
  - (ii) protecting property in an emergency or natural disaster; or
  - (iii) otherwise responding to an emergency or natural disaster; or
- (d) a body, or part of a body, prescribed by the regulations made in accordance with the Fair Work Act 2009;

but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one or more employees to be absent from their employment under this clause.

**47.3 Notice and evidence requirements**

- (1) An employee who wants an absence from his or her employment to be covered by this clause must give his or her employer notice of the absence.
- (2) The notice:
  - (a) must be given to the employer as soon as practicable (which may be a time after the absence has started); and
  - (b) must advise the employer of the period, or expected period, of the absence.
- (3) An employee who has given his or her employer notice of an absence under 47.3 (1) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.
- (4) An employee's absence from his or her employment is not covered by this clause (i.e. clause 47) unless the employee complies with this sub-clause (i.e. sub-clause 47.3).

**47.4 Payment to employees (other than casuals) on jury service**

- (1) This section applies if:
  - (a) in accordance with this clause (i.e. clause 47), an employee is absent from his or her employment for a period because of jury service; and
  - (b) the employee is not a casual employee.
- (2) Subject to 47.4 (3), (4) and (5), 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.
- (3) The employer may require the employee to give the employer evidence that would satisfy a reasonable person:

- (a) that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
  - (b) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the employee for the period.
- (4) If, the employer requires the employee to provide evidence in accordance with 47.4 (3):
  - (a) the employee is not entitled to payment under 47.4 (2) unless the employee provides the evidence; and
  - (b) if the employee provides the evidence—the amount payable to the employee under 47.4 (2) is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.
- (5) If an employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than 10 days in total:
  - (a) the employer is only required to pay the employee for the first 10 days of absence; and
  - (b) the evidence provided in response to a requirement under subsection (3) need only relate to the first 10 days of absence; and
  - (c) the reference in 47.4 (4) to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first 10 days of absence.
- (6) **Jury service pay** means an amount paid in relation to jury service under a law of the Commonwealth, a State or a Territory, other than an amount that is, or that is in the nature of, an expense-related allowance.
- (7) **Jury service summons** means a summons or other instruction (however described) that requires a person to attend for, or perform, jury service.

**(47) 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.

**Table 1 – Salaries**

The following table shows the minimum weekly pay rates that will apply with effect from the first full pay period (FFPP) that commences on or after approval of this Agreement by Fair Work Australia.

<b>Classification</b>	<b>Minimum weekly rate from FFPP after approval by FWA \$</b>
<b>Assistant in Nursing</b>	
1st year	707.40
2nd year	729.90
3rd year	752.80
Thereafter	776.40
<b>Enrolled Nurse without medication qualification (Previously Enrolled Nurse)</b>	
1st year	868.00
2nd year	887.10
3rd year	906.40
4th year	925.60
Thereafter	944.90
<b>Enrolled Nurse (Previously Enrolled Nurse – Medication Endorsement)</b>	
1st year	885.40
2nd year	904.80
3rd year	924.30
4th year	944.00
Thereafter	963.60
<b>Nurse undergoing pre-registration training</b>	\$848.70
<b>Registered Nurse</b>	
1st year	984.30
2nd year	1,037.80
3rd year	1,091.30
4th year	1,148.90
5th year	1,205.60
6th year	1,262.90
7th year	1,327.50
8th year	1,382.40
<b>Clinical Nurse Specialist</b>	1,438.50
<b>Clinical Nurse Consultant</b>	
	1,768.80
<b>Nursing Unit Manager</b>	1,733.90
<b>Director of Nursing</b>	1,871.80

**Table 2 – Other Rates and Allowances**

The following table shows the minimum rates for allowances that will apply with effect from the first full pay period (FFPP) that commences on or after Date of Approval by FWA

<b>Item No.</b>	<b>Clause No.</b>	<b>Brief Description</b>	<b>FFPP on or after D.O.A by FWA \$</b>
1	12.1(a)	In charge of hospital (per shift)	\$33.00
2	12.1(b)	In charge of ward/unit in absence of NUM (per shift)	\$33.00
3	12.2(a)	On call per 24 hours	\$27.16
4	12.2(b)	On call on rostered days off per 24 hour period	\$53.90
5	12.2(c)	On call during meal break	\$12.11
6	12.3	Lead apron allowance	\$1.71
7	12.2(d)	Use of Private Vehicle (cents per km)	Rate set by ATO as varied
8	16.1	Uniforms	\$19.42
9	16.2	Socks	\$0.67
10	18.9	Meal on overtime	\$18.64
11	27.3	Breakfast	\$3.80
12	27.3	Other meals	\$6.90

**Table 3 – Qualifications Allowance**

Enabling payment for nurses holding a clinical qualification from a recognised educational institution and practising in any speciality field outlined:

<b>Critical Care / High Dependency</b>	<b>Medical/Surgical</b>
Bariatric	Surgical Nursing
Perioperative Nursing	
Anaesthetics and Recovery	
High Dependency	

*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

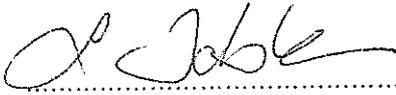
Margaret Mary Potts  
50 O'Dea Ave, Waterloo

*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.*

Employers Signature Page

Signed for and on behalf of Concord Private Hospital Pty Ltd on ..... 24/11/2011

Date

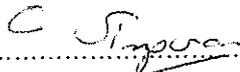


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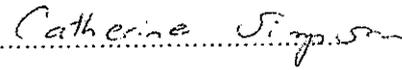
Hospital Director

Concord Private Hospital

55 Burwood Rd CONCORD NSW 2137

 A.N.  
.....  
N.M.W. 001225 75 3

Witness Signature



Name of Witness



Address of Witness

As Hospital Director Mrs Johnston has authority to execute this Agreement on behalf of the employer.