



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

s.185—Approval of enterprise agreement

Independent Private Hospitals of Australia

(AG2009/24336)

INDEPENDENT PRIVATE HOSPITALS OF AUSTRALIA AND NURSING STAFF ENTERPRISE AGREEMENT 2009-2010

Health and welfare services

DEPUTY PRESIDENT SAMS

SYDNEY, 10 FEBRUARY 2010

Application for approval of the Independent Private Hospitals of Australia and Nursing Staff Enterprise Agreement 2009-2010.

[1] Approval is sought from Fair Work Australia pursuant to s 185 of the *Fair Work Act 2009* ('the Act') for a single-enterprise agreement known as the *Independent Private Hospitals of Australia and Nursing Staff Enterprise Agreement 2009-2010*. The Agreement is to cover some 180 nursing staff at three private hospitals operated by the Independent Private Hospitals of Australia Trust at Longueville, Guildford and Ashfield, NSW.

[2] In the F17 – Employer's Declaration filed by Lorraine Johnston, Director of Hospital/Nursing, she stated that the Agreement was made on 23 December 2009 and lodged with Fair Work Australia the same day, thereby fulfilling the requirement of s 185(3) of the Act.

[3] The Agreement was made during the bridging period¹ as defined in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act), accordingly, when considering whether to approve the Agreement I have taken into account the provisions of Part 2–4 of Chapter 2 of the Act as modified by Schedule 7 of the Transitional Act.

[4] The Agreement is to cover the nursing staff only at the three hospitals, of which 161 are females and 94 are over 45 years of age.

¹ Item 2, Part 1, of Schedule 2.

[5] The negotiations for the Agreement have had a long history, as Ms R *Kassis* from the New South Wales Nurses' Association ('the Union') advised the Tribunal at a hearing on 4 February 2010. The process for seeking the employees' approval of the Agreement involved meetings, posted information and website communications and employees were invited to cast their vote either at the hospital or on the website. 75 valid votes were cast and 69 votes recorded as being in favour of the Agreement. Ms *Kassis* submitted that this was true representation of the overwhelming majority support for the Agreement.

[6] The Agreement is to be referenced to the following industrial instruments:

Private Hospital Industry Nurses' (State) Award (NSW)
Nurses' (Private Sector) Superannuation (State) Award
Nurses' (Private Sector) Redundancy (State) Award
Nurses' (Private Sector) Training Wage (State) Award

and it was said that the Agreement does not contain any less beneficial terms and conditions compared to the reference instruments. I am also well satisfied that the Agreement meets the No Disadvantage Test (NDT) and does not offend the National Employment Standards (NES)

[7] The Agreement provides for a 4% wage increase from 23 December 2009 (already being paid), a flexibility term (cl 45), a consultation process (cl 40), a no extra claims commitment (cl 44) and a dispute resolution procedure (cl 36) which provides for consent arbitration by Fair Work Australia.

[8] The Agreement is to expire on 31 December 2010. Ms *Kassis* explained that this relatively short term was to serve as a basis for ongoing negotiations as this was the first agreement of its type applying at the hospitals in question.

[9] Having considered the detailed and helpful submissions of Ms *Kassis*, the approval documentation and the terms of the Agreement, I am satisfied that the requirements of s 186, s 187 and s 188 of the Act, in so far as they are relevant to this application, have been met.

[10] Accordingly, I approve the agreement known as the *Independent Private Hospitals of Australia and Nursing Staff Enterprise Agreement 2009-2010*. Pursuant to s 54 of the Act, the Agreement will operate from 11 February 2010 with a nominal expiry date of 31 December 2010; although I note that salary increases have been made from 23 December 2009.

DEPUTY PRESIDENT SAMS

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INDEPENDENT PRIVATE HOSPITALS OF AUSTRALIA

AND

NURSING STAFF

ENTERPRISE AGREEMENT

2009 – 2010

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(2) **Title**

This agreement will be known as and referred to as the Independent Private Hospitals of Australia and Nursing Staff Enterprise Agreement 2009-2010 ("the Agreement").

(3) **Parties**

This agreement will be binding on:

3.1 Independent Private Hospitals of Australia Trust ABN 42 5252 258267 of 12 Robert Street Ashfield 2131 in respect of hospitals owned or operated by Independent Private Hospitals in NSW as listed in Schedule 1; and

3.2 3.3 Nursing employees employed in classifications listed in Table 1 – Salaries of Part B, Monetary Rates employed in the industry of nursing or in connection with hospitals listed in Schedule 1.

(4) **Duration**

This agreement will commence seven days after it is approved by Fair Work Australia and shall remain in force until 31 December 2010.

The parties will commence negotiations on a successor for this Agreement at least six months before its termination date.

(5) **Definitions**

Unless the context otherwise indicates or requires the several expressions hereunder defined shall have the respective meanings assigned to them:

"**Act**" shall mean the Fair Work Act.

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

"**Average Occupied Beds**" means calculating the adjusted daily average of occupied beds of a hospital, each newly born baby shall count as one half patient and 700 outpatients 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 Nurses' and Midwives' Board of New South Wales.

"**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.

"Clinical Nurse Consultant" means a registered nurse appointed as such to the position of, who has had at least five years post-basic registration experience and who has in addition approved post-basic nursing qualifications relevant to the field in which they are appointed or such other qualifications or experience deemed appropriate by the employer.

"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.

"Deputy Director of Nursing" means a person appointed to that position or deemed to hold that position pursuant to Clause 29, Deputy Directors of Nursing and Assistant Directors of Nursing, of this Agreement.

"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 at the hospital.

"Enrolled Nurse" means a person enrolled by the Board as such.

“Enrolled Nurse – Medication Endorsement” means a person enrolled by the Board and endorsed to administer medications by the Board.

"Experience" in relation to an enrolled nurse, or assistant in nursing/ midwifery 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/midwifery 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 1976 hours of employment.

"Hospital" means a private hospital as defined by the *Private Hospitals and Day Procedure Centres Act* 1988.

"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.

"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 and 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.

"Standard" shall mean the Australian Fair Pay and Condition Standard or the National Employment Standard as of 1st January 2010 as determined by the *Fair Work Act 2009*, as varied from time to time.

"Senior Nurse Educator" means a registered nurse with a post registration certificate or appropriate qualifications, who has, or is working towards recognised tertiary qualifications in education or equivalent and has demonstrated experience and skills in the field of education appointed to a position of Senior Nurse Educator.

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

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

"Service" for the purpose of Clause 11, Recognition of Service and Experience, 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 on and from January 1971 during which a registered nurse undertook a post-basic course whilst 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:

To the foregoing shall be added any actual periods on and from January 1971 during which a registered nurse undertook a post-basic course whilst 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 – NSW College of Nursing, Australia

Certificate in Coronary Care – NSW College of Nursing, Australia

Certificate in Orthopaedic Nursing – NSW College of Nursing, Australia

Certificate in Ward Management - NSW College of Nursing

Midwife Tutor Diploma – College of Nursing Australia or Central Midwives Board London

Occupational Health Nursing Certificate – NSW College of Nursing

Provided that 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 1976 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**” means the Australian Fair Pay and Conditions Standard until 31 December 2009 and the National Employment Standards (NES) as varied thereafter.

“**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.

“**WR Act**” refers to the Workplace Relations Act 1996, and the provisions of this Act will apply to this Agreement until midnight 31 December 2009 in accordance with Schedule 4, Part 2 (2) of the Fair Work Act (Transitional Provisions & Consequential Amendments Act 2009

(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 subclauses 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 subclause, 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 subclause 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 subclause 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 subclause 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 subclause 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 subclause 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 subclause 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) Subclauses 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 subclause "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 subclause 6.12 and of subclause 6.13 and of paragraph (a) of subclause 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 subclause 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 subclause 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 salaries per week shall be as set out in Table 1 - Salaries, of Part B, Monetary Rates. The current minimum salaries are set out in Column 1 of Table 1 – Salaries.
 - (a) The parties have agreed that 4% wage increase will be paid at the conclusion of the ballot Column 2.
 - (b) The parties agree that where an employee receives a pay rate above the minimum in Column 1 the employee will receive the 4% increase on that actual rate of pay.
- 10.2 The allowances as set out in Table 2 – Other Rates and Allowances, of Part B Monetary Rates shall be paid. The current allowances are set out in Column 1 of Table 2 – Other Rates and Allowances. The parties have agreed to the increases as set out in Columns 2.
- 10.3 An Enrolled Nurse who is endorsed to administer medication will be classified and paid as an Enrolled Nurses – Medication Endorsement from the commencement of the first full pay period following the issuing by the Board of their Letter of Endorsement to Administer Medication or Authority to Practice Certificate, Enrolled Nurse including Endorsement to Administer Medication, whichever is issued earlier. This provision will commence on or after the date of certification of this Agreement.

Provided that an Enrolled Nurse – Medication Endorsement 1st year shall not progress to Enrolled Nurse – Medication Endorsement 2nd year until completion of twelve months' service at the 1st year rate (or for part time employees the full time equivalent of 1,982 hours), and to the 3rd year rate until completion of twelve months' service at the 2nd year rate (or for part time employees the full time equivalent of 1,982 hours), and so on throughout the scale.
- 10.4 In relation to the salaries of Deputy Director of Nursing and Director of Nursing, "beds" means adjusted daily average of occupied beds; in relation to the salary of Subsidiary Hospital Director of Nursing, "beds" means the adjusted daily average of occupied beds in the subsidiary hospital.
- 10.5 The wage increase specified above 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. Any increase in the Award rates of pay shall be absorbed into the wage rates paid under 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 above increase 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 a 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 (Part B), per shift.
- (b) A registered nurse in charge of a shift in a ward or unit during the day, evening or night in the absence of the Nursing Unit Manager shall be paid, in addition to her or his appropriate salary whilst so in charge the sum set out in Item 2 of Table 2 (Part B) per shift. This subclause shall only apply where the registered nurse is in charge of one or more other nurses in the ward or unit in question.
- (c) This subclause 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 (Part B) 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 subclause 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 (Part B) 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 (Part B) 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 the rate set out in Item 8 of Table 2 (Part B). The provisions of this paragraph shall apply to all employees.
- (e) This subclause shall not apply to a Director of Nursing, Subsidiary Hospital Director of Nursing, Deputy Director of Nursing or Assistant 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 (Part B) for each hour or part thereof that they are required to wear the said apron.

- 12.4 (a) A registered nurse who is designated to be in-charge of a ward or unit when the Nursing Unit Manager is not rostered for duty and who is also designated to be in-charge of a hospital with less than 100 beds during the day, evening or night on the same shift shall be paid an allowance per shift of the sum set out in Item 7 of Table 2 (Part B). This subclause shall only apply where the registered nurse is in charge of one or more other nurses in the ward or unit in question.
- (b) This subclause shall not apply to registered nurses holding classified positions of a higher grade than of a registered nurse.

(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 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 subclause 13.1 of this clause.

The foregoing paragraph shall apply to employees who work less than 38 hours per week, but such employees shall not be entitled to be paid in addition any allowance prescribed by Clause 21. Part-time, Casual and Temporary Employees, of this Agreement in respect of their employment between midnight on Friday and midnight on Sunday.

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 subclause 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) This subclause shall not apply to any nurse whose employment commenced prior to 15 December 1994 and who has been employed on a continuous basis since that date.

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

(d) A nurse to whom this subclause 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.

(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 (a) An employee who is engaged for an indefinite period and who remains in the employment for at least six months shall be reimbursed forward fares from the place of engagement; provided that the distance of normal travel there from to the employment exceeds 40 kilometres.

(b) An employee who is engaged for an indefinite period and who is dismissed within six months for any reason other than misconduct or inefficiency shall be reimbursed forward fares from the place of engagement; provided that the distance of normal travel there from to the employment exceeds 40 kilometres; and shall also be reimbursed return fares to such place of engagement or the employee's immediate destination, whichever is the cheaper.

14.3 An employee who is engaged for a definite period and who completed the period of engagement or who is dismissed before completing such period for any reason other than misconduct or

inefficiency shall be reimbursed also return fares to such place of engagement or to the employee's immediate destination, whichever is the cheaper.

14.4 Fares within the meaning of this clause shall include only fares incurred in respect to travel within New South Wales.

14.5 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 on a regular basis or where an employee is required by their employer to have a telephone installed for the purpose of their employment the employer shall be responsible for the following payments:

15.1 Where the employee already has a telephone installed:

- (a) three quarters of the cost of rental of the telephone;
- (b) the cost of all official STD and mobile phone calls.

15.2 Where the employee does not have the telephone installed:

- (a) the cost of installation of the telephone;
- (b) three quarters of the cost of rental of the telephone;
- (c) the cost of all official STD and mobile phone calls.

15.3 Provided that where the employee is provided with a Pager the employer shall be responsible for the following payments:

- (a) one half of the cost of rental of the telephone;
- (b) the cost of all official STD and mobile phone calls.

(16) Uniform and Laundry Allowances.

16.1 Subject to subclause 16.3 of this clause, sufficient, suitable and serviceable uniforms, including one pair of shoes per annum which shall be of a recognised acceptable standard for the performance of nursing duties, and one cardigan or jacket shall be supplied free of cost to each employee required to wear a uniform. An employee to whom a new uniform or part of a uniform has been issued who, without good reason, fails to return the corresponding article last supplied shall not be entitled to have such article replaced without payment therefore at a reasonable price.

16.2 An employee, on leaving the service of an employer, shall return any uniform or part thereof supplied by that employer which is still in use immediately prior to leaving.

- 16.3 (a) In lieu of supplying uniforms and shoes to an employee, an employer shall pay the said employee the sum set out in Item 9 of Table 2 (Part B), for uniforms and the sum set out in Item 10 of Table 2 (Part B) for shoes per week.
- (b) In lieu of supplying stockings to a female employee an employer shall pay the said employee the sum set out in Item 11 of Table 2 (Part B) per week.

- (c) In lieu of supplying a cardigan or jacket to an employee an employer shall pay the said employee the sum set out in Item 12 of Table 2 (Part B) per week.
- (d) If, in any hospital, the uniforms of an employee are not laundered at the expense of the hospital an allowance of the sum set out in Item 13 of Table 2 (Part B) shall be paid to the said employee; provided that the payment of such laundry allowance shall not be made to any employee on absences exceeding one week.
- (e) Where the employer requires any employee to wear headwear, the hospital shall provide headwear free of charge to the employee.
- (f) In lieu of supplying socks to an employee the employer shall pay the said employee the sum set out in Item 14 of Table 2 (Part B) per week.
- (g) The allowances referred to subclause 16.3 are also payable during any period of paid leave.

(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 subclause 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 subclause 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.

(18) Overtime

- 18.1 Subject to subclause 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 subclause 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 other than the Director of Nursing in excess of the rostered daily ordinary hours of work shall be overtime and shall be paid for at the rate of time and one half for the first two hours and double time thereafter in respect of each overtime shift worked or in respect of overtime worked prior to or at the conclusion of a normal shift. Provided that overtime worked on Sundays shall be paid for at the rate of double time and on public holidays at the rate of double time and one half.
- (b) All time worked by 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 shall not, without payment of overtime at the rate of time and one half, exceed:

- (a) 43 hours in any week; or
- (b) 86 hours in any fortnight; or
- (c) 129 hours in any twenty one consecutive days; or
- (d) 172 hours in any twenty eight consecutive days.

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 provided that this subclause does not apply to a Director of Nursing.

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 subclause 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 subclauses 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 15 of Table 2 (Part B), 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 subclause, be released after completion of such overtime until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues to work without having such eight consecutive hours off duty they shall be paid at double time of the appropriate rate applicable on such

day until they are released from duty for such period and they then shall be entitled to be absent until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

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 subclause 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 and from the date they are notified that they are eligible for registration or enrolment as a registered nurse or enrolled nurse provided that they make application for registration within seven days after being so notified.

20.3 They shall notify the employer as soon as possible after they have so applied.

(21) Part-Time, Casual and Temporary Employees

PART I - Permanent Part-time Employees

- 21.1 (a) A permanent part-time employee is one who is permanently appointed by the hospital to work no less than a guaranteed written minimum number of hours which are less than those prescribed for a full-time employee.
- (b) 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.
- (c) 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.
- (d) 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 paragraph (b).

21.2 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, of this Agreement and, where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 12, Special Allowances, of this Agreement, with a minimum payment of 2 hours for each start, and one thirty-eighth of the appropriate allowances prescribed by Clause 16, Uniform and Laundry Allowances of this Agreement, but shall not be entitled to an additional day off or part thereof, as prescribed by subclauses 6.3 and 6.5 of Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing.

21.3 Four weeks' Annual Leave on ordinary pay is to be granted per annum. The provisions of subclauses 22.5 to 22.14 of Clause 22, Annual Leave and Public Holidays, and Clause 23, Annual Leave Loading, of this Agreement shall apply to employees engaged under Part I of this clause. 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.

21.4 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.

- 21.5 To the leave prescribed by subclause 21.4 of Part I of this clause there shall be added one working day for each public holiday or one half working day for each half public holiday which occurs on what would have been an ordinary working day during a period of annual leave.
- 21.6 For the purpose of Part I of this clause the following are to be public holidays, viz: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Local Labour Day, Christmas Day, Boxing Day and any other day duly proclaimed and observed as a public holiday within the area in which the hospital is situated.
- 21.7 In addition to those public holidays prescribed in subclause 21.6 of Part I of this clause, 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 5th 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.
- 21.8 The foregoing does not apply in areas where, in each year:
- (a) a day in addition to the ten named public holidays specified in subclause 21.6 Part I of this clause is proclaimed and observed as a public holiday; or
 - (b) two half days in addition to the ten named public holidays specified in subclause 21.6 of Part I of this clause are proclaimed and observed as half public holidays.
- 21.9 In areas where in each year one half day in addition to the ten named public holidays specified in subclause 21.6 of Part I of this Clause 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 subclause will be observed.
- 21.10 Employees engaged under Part I of this clause 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.

PART II - Casual Employees

- 21.1 A casual employee is one engaged on an hourly basis otherwise than as a permanent part-time or full-time employee.
- 21.2 A casual employee shall be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate, prescribed by Clause 10, Salaries, of this Agreement and where applicable one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 12, Special Allowances, of this Agreement plus 20 per centum thereof, with a minimum payment of 2 hours for each start, and one thirty-eighth of the appropriate allowances prescribed by Clause 16, Uniform and Laundry Allowances, of this Agreement.
- 21.3 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 and Clause 14, Fares and Expenses of this Agreement, shall not apply. Further, casual employees shall not be entitled to an additional day off or part thereof as prescribed by subclauses 6.3 and 6.5 of Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing.
- 21.4 In accordance with the Standard, casual employees have no entitlement to paid annual leave.
- 21.5 A casual employee who is required to and does work on a public holiday as defined in sub-clauses 22.3 and 22.4 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; provided that a casual employee shall not be entitled to be paid in addition the allowance of 20 per centum prescribed in subclause 21.12 of Part II in respect of such work.

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

PART III - Temporary Employees

- 21.1 A temporary employee is one engaged for a set period not exceeding 13 weeks.
- 21.2 A temporary employee shall be paid, in addition to all rates and allowances to which the said employee is entitled under this Agreement, an allowance equal to 10 per centum of the rates prescribed for his or her classification by Clause 10, Salaries, of this Agreement, provided that this subclause shall cease to apply upon:
- (a) The said period of engagement being extended after the said period of 13 weeks;
 - (b) The employer and the employee agreeing during the said period of 13 weeks, that the employee shall be employed on a permanent part-time or full-time basis.
- 21.3 For entitlement to payment in respect of annual leave, refer to Clause 22, Annual Leave and Public Holidays. For the purposes of this clause "transitional date" means the first pay period commencing on or after 1 March 1997.

(22) Annual Leave and Public Holidays

- 22.1 Annual leave will accrue on a pro rata basis and be credited to the employee monthly in accordance with the provisions of the Standard.
- (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.
- 22.2 (a) An employee to whom paragraph (a) of subclause 22.1 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 subclause 22.1 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 subclause 22.3 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.
- (c) A public holiday occurring on a day that the employee would normally work shall be allowed to employees covered by paragraph (b) of subclause 22.1 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 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 subclause 22.1 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 subclause 22.1 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 subclause the provision of this paragraph shall apply to any public holidays falling during the period of annual leave.

22.3 For the purpose of this subclause the following are to be public holidays, viz: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Local Labour Day, Christmas Day, Boxing Day and any other day duly proclaimed and observed as a public holiday within the area in which the hospital is situated.

- 22.4 (a) In addition to those public holidays prescribed in subclause 22.3 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:

- (i) a day in addition to the ten (10) named public holidays specified in subclause (i) is proclaimed and observed as a public holiday; or
 - (ii) two half days in addition to the ten (10) named public holidays specified in subclause (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 subclause 22.3 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 subclause will be observed.

22.5 (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 subclause 22.1 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 subclauses 22.2(b) and subclause 22.2(c) of the Agreement.

22.6 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.

22.7 **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 months 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, $\frac{1}{4}$ of the amount of credited annual leave of the employee at the time that the direction is given.

22.8 (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 subclause 22.1 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 subclause 22.11 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 subclause shall not apply to public holidays which occur during a period of annual leave or days which have been added to annual leave in accordance with paragraph (b) of subclause 22.2 and subclause 22.4 of this clause.

22.9 **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;
- (b) during each 12 month period, an employee is only entitled to cash in an amount of annual leave that is less than or equal to 1/26 of the ordinary hours worked by the employee during the period;
- (c) the employer has agreed to the employee cashing out the annual leave; and
- (d) the payment in lieu of the amount of annual leave shall be at a rate that is no less than the employee's ordinary pay at the time of the election is made.

22.10 Where the employment of an employee is terminated the employee shall be entitled to receive, in addition to all other amounts due, in respect of service of less than one year an amount equal to one-twelfth (6/46ths in respect of employees rostered to work on a seven (7) day basis) of her or his ordinary pay for that period of employment together with payment for any days added to annual leave in accordance with subclause 22.2 of this clause, and in calculating such payment no deduction is to be made for accommodation or board..

22.11(a) In addition to leave prescribed by subclause 22.1 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 subclause together with payment for any leave in respect of an uncompleted year of employment calculated in accordance with this subclause together with payment for any untaken annual leave due in accordance with subclause 22.10.

22.12 Annual Leave Accrued prior to the Act

(a) (i) Entitlements to annual leave accrued under the Standard are to be treated differently to previously accrued entitlements to annual leave not accrued under the Standard

(ii) It is noted that in accordance with the *WR Act* (including its transitional arrangements) the Standard commenced on 27 March 2006 for some employees. Subject to subparagraph (iii) of this subclause, any entitlements to annual accrued by an employee prior to the commencement of the Standard shall continue to be treated according to all of the relevant administrative arrangements in place at the time such annual leave was accrued.

As and when applicable, for the purposes of this subclause only, and in accordance with Section 355 of the *WR Act* and Schedule 8 Clause 52A of the *WR Act*, this subclause incorporates by reference the content of the annual leave provisions of any relevant Notional Agreement Preserving State Award binding upon the employer just before this Agreement was made.

(iii) By agreement in writing between the employer and an employee, any and all annual leave accrued to that employee prior to 27 March 2006 may be paid out by the employer in lieu of the employee taking such annual leave.

(b) Transmission to the Act

If before 27 March 2006, an employee was credited with annual leave, in advance of the employee's service, and the employee would be entitled to accrue and be credited with annual leave, in accordance with the Standard, (refer to Division 6 of Part 2-2 of the *WR Act*)

then the employee is taken to absorb leave accruals under the Standard until the amount of annual leave that the employee would have accrued is equal to the amount of annual leave with which the employee has been credited in advance of the employee's service.

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 Close Down 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) month's 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 the following four options to cover the difference between their current annual leave entitlement and the length of the closedown:
 - (i) temporary reassignment to another part of the Hospital; or
 - (ii) access any accrued ADOs; or
 - (iii) take annual leave in advance; or
 - (iv) take leave without pay.

By mutual agreement between the employer and employee, more than one of the options available under this subclause (d) may be used to cover the difference between an employee's current annual leave entitlement and the length of the closedown.

- (e) The employer will favourably consider requests for staff to accrue 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 subclauses 22.1(b) and 22.2(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 to be calculated in relation to any period of annual holiday to which the employee becomes or has become entitled since 31 December 1973 and which commences on or after 11 July 1974 or, where such a holiday is given and taken in separate periods, then in relation to each such separate period.
- 23.4 The loading is the amount payable for the period or the separate periods, as the case may be, stated in subclause 23.3 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 subclause 12.3 of Clause 12, Special Allowances, of this Agreement.
- 23.5 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 subclause 23.4 of this clause applying the Agreement rates and wages payable on that day. This subclause applies where an annual holiday has been taken wholly or partly in advance.
- 23.6 No loading is payable on the additional annual leave as set out in Clause 22.11 of this agreement
- 23.7 (a) When the employment of an employee is terminated by his/her employer after 11 July 1974 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 an annual holiday to which he became entitled after 31 December 1973, he shall be paid a loading calculated in accordance with subclause 23.4 of the period not taken.
- (b) Except as provided by paragraph (a) of this subclause no loading is payable on the termination of an employee's employment.
- 23.8 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 For long service leave falling due prior to 20th February 1981, see *Long Service Leave Act 1955*.
- 24.2 For long service leave falling due after 20th February 1981 the following provisions shall apply:
- (a) (1) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after 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 subclause (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, his widow, or in the case of a widower leaving children his children or their guardians or other dependent relatives or their legal representatives, shall be entitled to receive the monetary value of the leave not taken or not completed, as the case may be, and computed at the rate of salary which the employee had been receiving at the time of death.
- (c) For the purpose of this clause:
- (1) Continuous service in the same 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 award 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 paragraph 2(a) of this clause. Such long service leave shall be paid for on the basis of the proportion that the average number of hours worked per week bears to 38 hours.
- (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 paid 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, immediate family means:

- (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

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 subclause 25.1; or

(b) after the death of the member of the employee's immediate family or household referred to in subclause 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 subclause 25.1.

Where an employee is forced to absent themselves other than in accordance with subclause 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 Standard.
- (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) immediate family or member of the employees household is defined as:
 - (i) a spouse of the employee; or
 - (ii) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (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 spouse of the employee; or
 - (iv) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
 - (v) 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) Subject to transitional arrangements, an employee shall accrue an amount of paid personal/carers' leave, for each completed 4 week period of continuous service with the employer, of $\frac{1}{26}$ of the number of ordinary hours worked by the employee for the employer during that 4 week period.
- (b) Paid personal/carers' leave shall accrue on a pro-rata basis and be credited monthly.
- (c) Paid personal/carers' leave is cumulative.
- (d) No payment will be made in lieu of accumulated personal/carers' leave.

- (e) Casual employees have no entitlement to paid personal/carer's leave.

26.4 Payment of Paid Personal/Carer's Leave

If an employee takes paid personal/carer's leave during a period, the personal/carer's leave shall be paid at the employee's ordinary pay immediately before the period begins.

26.5 Annual Limit - Paid Carer's Leave

- (a) The employee is not entitled to take paid carer's leave from his or her employment with the employer at the time if, during the period of 12 months ending at the time, the employee has already taken a total amount of paid carer's leave from that employment of 1/26 of the ordinary hours worked by the employee for the employer during that period.
- (b) The annual limit on paid carer's leave set out in this clause shall not apply to sick leave accrued to that employee prior to 27 March 2006 subsequently taken as paid carer's leave.

26.6 Unpaid Carer's Leave

- (a) An employee is entitled to a period of up to 2 days unpaid carer's 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 Paid Sick Leave

- (a) An employee is entitled to use their paid personal/carer's leave entitlement as paid sick leave in accordance with the Standard.
- (b) An employee is not entitled to be paid sick leave whilst they are in receipt of workers' compensation payments.
- (c) **Sick Leave - Notice:** To be entitled to sick leave during a period, an employee must give the employer notice as soon as reasonably practicable (which may be at a time before or after the sick leave has started) that the employee is (or will be) absent from his or her employment during the period because of a personal illness, or injury, of the employee.

This requirement does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.
- (d) **Sick Leave - Documentary Evidence:** If the employer requires an employee to give the employer documentary evidence in relation to a period of sick leave taken (or to be taken) by the employee:
 - (i) To be entitled to sick leave during the period, the employee must give the employer as soon as reasonably practicable (which may be at a time before or after the sick leave has started):
 - A if it is reasonably practicable to do so - a medical certificate from a registered health practitioner;

- B if it is not reasonably practicable for the employee to give the employer a medical certificate - a statutory declaration made by the employee; and
- (ii) The document must include a statement to the effect that:
 - A if the document is a medical certificate - in the registered health practitioner's opinion, the employee was, is, or will be unfit for work during the period because of a personal illness or injury; or
 - B if the document is a statutory declaration - the employee was, is, or will be unfit for work during the period because of a personal illness or injury.

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

26.8 Taking of Carer's Leave

- (a) An employee is entitled to use their paid personal/carer's leave entitlement as paid carer's leave in accordance with the Standard.
- (b) An employee who is entitled to a period of unpaid carer's leave is entitled to take the unpaid carer's leave as:
 - (i) a single, unbroken period of up to 2 days; or
 - (ii) any separate periods to which the employee and the employer agree.
- (c) **Carer's Leave - Notice:** To be entitled to carer's leave during a period, an employee must give the employer notice as soon as reasonably practicable (which may be at a time before or after the carer's leave has started) that the employee requires (or required) leave during the period to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires (or required) care or support because of:
 - (i) a personal illness, or injury, of the member; or
 - (ii) an unexpected emergency affecting the member.

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

- (d) **Carer's Leave - Documentary Evidence:** If the employer requires an employee to give the employer documentary evidence in relation to a period of carer's leave taken (or to be taken) by the employee:
 - (i) To be entitled to carer's leave during the period, the employee must give the employer as soon as reasonably practicable (which may be at a time before or after the carer's leave has started):
 - (A) if the care or support is required because of a personal illness, or injury, of the member - a medical certificate from a registered health practitioner or a statutory declaration made by the employee;
 - (B) if the care or support is required because of an unexpected emergency affecting the member - a statutory declaration made by the employee; and
 - (ii) The document must include a statement to the effect that:
 - (A) if the document is a medical certificate - in the registered health practitioner's opinion, the member had, has or will have a personal illness or injury during the period; or

(B) if the document is a statutory declaration - the employee requires (or required) leave during the period to provide care or support to the member because the member requires (or required) care or support during the period because of:

- (1) a personal illness, or injury, of the member; or
- (2) an unexpected emergency affecting the member.

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

26.9 Time Off in Lieu of Payment for Overtime

- (a) For the purpose only of providing care and support for a person in accordance with subclause (i) of this clause, and despite the provisions of Clause 20, Overtime, the following provisions shall apply.
- (b) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
- (c) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- (d) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
- (e) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the Agreement.

26.10 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.

26.11 Personal / Carers Leave and Rostered Days Off

- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
- (d) This subclause is subject to the employer informing 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.

26.12 Personal/Carer's Leave and Service

- (a) A period of paid personal/carers leave does not break an employee's continuity of service and paid personal/carers leave counts as service for all purposes.
- (b) A period of unpaid personal/carers leave does not break an employee's continuity of service, however a period of unpaid personal/carers 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 16 of Table 2 (Part B) and the sum set out in Item 17 of Table 2 (Part B) 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) Deputy Directors of Nursing, Assistant Directors of Nursing

29.1 The following appointments shall be made in the hospital with adjusted daily averages of occupied beds as specified hereunder:

Less than 40 beds – a Deputy Director of Nursing except where

- (a) the Registered Nurses at the hospital are all given the same duties and no Registered Nurse is delegated Deputy Director of Nursing duties; and

- (b) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.

40 beds and over but less than 75 beds – a Deputy Director of Nursing except where

- (a) at least two full time equivalent Nursing Unit Managers are employed; and
- (b) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.

Provided that no Deputy Director of Nursing employed as at 1 January 1998 shall be dismissed or demoted as a result of the implementation of this clause.

29.2 Appointments under subclause 29.1 of this clause shall be made within two calendar months of the date this Agreement becomes operative and thereafter within two calendar months of the occurrence of a vacancy. In default of appointment within the said period of two calendar months of the occurrence of a vacancy, the registered nurse employed as such or in a higher classification who has customarily relieved, in the vacant position, or if no one has so customarily relieved, the registered nurse employed in the same or the next senior classification at the hospital, shall be deemed to be appointed until such time as another appointment is made by the hospital.

(30) Medical Examination of Nurses

- 30.1 Medical examination of nurse will be in accordance with Independent Private Hospitals of Australia policy as varied from time to time.
- 30.2 The costs involved in the various screening and protection procedures shall be met by the employer.

(31) Domestic Work

- 31.1 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.
- 31.2 Nothing in subclause 31.1 of this clause shall preclude an enrolled nurse or an assistant-in-nursing from being required to perform all or any of the specified duties during the first thirteen weeks of training or experience, as the case may be.
- 31.3 Nothing in subclause 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.
- 31.4 Nothing in subclause 31.1 shall preclude an employee from engaging in and promoting the IPHoA core value of Kaizen and the 5S principles as taught to all employees of IPHoA by the Kaizen Institute of Australia

(32) Labour Flexibility

An employer may direct an employee to carry out duties as are within the limits of the employee's skill, competence and training. Such duties may include work which is incidental or peripheral to the

employee's main tasks provided that such duties are not designed to promote deskilling nor are inconsistent with Clause 31, Domestic Work.

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.

(33) Termination of Employment

33.1 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.

33.2 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.

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

33.3 Notice by employee -

(a) Subject to sub-clauses 33.3 (b), (c) employees shall give the employer two week's 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.

33.4 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.

33.5 Employees who have accrued additional days off duty pursuant to subclause 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.

(34) Transfer of Business

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

(35) Attendance at Meetings and Fire Drills

- 35.1 Any employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety practices (fire drill and evacuation procedures) contained from time to time within the Private Hospitals and Day Procedure Centres Act 1988, and the regulations made there under, shall be entitled to be paid the "ordinary rate" for the actual time spent in attendance at such practices. 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.
- 35.2 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.
- 35.3 For the purposes of this clause "ordinary rate" shall include amounts payable under Clause 10, Salaries, and Clause 12, Special Allowances, subclauses 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.

(36) Resolution of Disputes

- 36.1 In the event of a dispute about any matter, except the actual termination of employment, 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.
- 36.2 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.
- 36.3 An employer or employee may appoint another person as their workplace representative to accompany and/or represent them for the purposes of this clause.
- 36.4 If a dispute is unable to be resolved at the workplace, and all appropriate steps under Clause 36.1 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.
- 36.5 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.
- 36.6 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 conciliation and mediation. Further, if the parties agree, Fair Work Australia may arbitrate the issue.
- 36.7 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.
- 36.8 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.

- 36.9 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.
- 36.10 The parties agree to confer immunity on Fair Work Australia for all matters relating to the dispute resolution between the parties.
- 36.11 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.

(37) Anti-Discrimination

It is the intention of the parties bound by this Agreement to achieve the object in section 3(e) of the *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.

(38) Parental Leave

38.1 Parental Leave entitlements are governed by the Standard.

38.2 *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 Standard for more detail.

(39) Superannuation

39.1 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.

39.2 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.

39.3 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.

39.4 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 month's notice. The employer has the right to withdraw from offering salary sacrifice to employees without notice if there is any alteration to relevant Australian Taxation legislation.
- (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.

(40) Introduction of Change and Consultation

40.1 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 subclause 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 subclause 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.

(41) Redundancy

41.1 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 subparagraph (i) of paragraph (a) of subclause (i) of this clause, and that decisions 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 subparagraph (1) of paragraph (a) of this clause 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.

41.2 Termination of Employment

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

This subclause 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 subparagraph (1) of paragraph (a) of subclause (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 subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance subparagraph (1) of paragraph (a) of subclause (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 subclause 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 subparagraph (1) of paragraph (a) of subclause (ii) 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.

41.3 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"; paragraph (a) and (b) of subclause (i); paragraphs 9a) and (c) of subclause (ii); and paragraph (a) of subclause (v).
- (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 subparagraphs (1) and (2) of paragraph (a) this subclause.
- (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 (1) and (2) 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 subclause if the employer obtains acceptable alternative employment for an employee.

41.4 Grievance Procedure

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

(42) No Extra Claims

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 hospital policies.

(43) Australian Fair Pay and Conditions Standard and the National Employment Standards

43.1 It is the intention of this Agreement that the Standard, as it may be varied from time to time, shall apply to the employees the subject of this Agreement. Any provisions of the Standard that are also referred to or set out in this Agreement are for the ease of the parties.

43.2 Where the Standard 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 better entitlement will apply.

43.3 The minimum guarantees provided by the Standard will override less favourable provisions in this Agreement.

(44) 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.

(45) Agreement Flexibility

45.1 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 in relation to the timing of breaks and time off in lieu of overtime;
- (b) the simplification of allowances and the inclusion of allowances in base salary; and
- (c) the inclusion of leave loading in base salary.

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

45.3 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 45.1; 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.

45.4 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.

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

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

45.7 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.

45.8 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.

45.9 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.

(46) 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.

(47) Workload management

- 47.1 The parties to this agreement acknowledge that employees and management have a responsibility to maintain a balanced workload and recognise the adverse affects that excessive workloads may have on employee/s and the quality of resident/client care.
- 47.2 To ensure that employee concerns involving excessive workloads are effectively dealt with by Management the following procedures should be applied:
- (a) In the first instance, employee/s should discuss the issue with their immediate supervisor and, where appropriate, explore solutions.
 - (b) If a solution cannot be identified and implemented, the matter should be referred to an appropriate senior manager for further discussion.
 - (c) If a solution still cannot be identified and implemented, the matter should be referred to the Director of Nursing for further discussion.
 - (d) The outcome of the discussions at each level and any proposed solutions should be recorded in writing and fed back to the effected employees.
- 47.3 Where agreement cannot be reached, the parties may exercise their rights pursuant to Clause 36 Resolution of Disputes.

Table 1 – Salaries

Classification	Column1	Column 2
	Current Minimum weekly rates	4% wage increase Weekly rate from 23 December 2009
	%	\$
Assistant in Nursing, Assistant in Midwifery and Trainee Enrolled Nurse Under 18 years of age -		
First year of experience	\$516.40	\$537.10
Second year of experience	\$537.30	\$558.80
Thereafter	\$557.10	\$579.40
18 years of age and over -		
First year of experience	\$612.20	\$636.70
Second year of experience	\$626.60	\$651.70
Third year of experience	\$644.10	\$669.90
Thereafter	\$673.40	\$700.30
Enrolled Nurse -		
First year of experience	\$728.80	\$758.00
Second year of experience	\$743.70	\$773.40
Third year of experience	\$753.20	\$783.30
Fourth year of experience	\$768.40	\$799.10
Thereafter	\$818.10	\$850.80
Enrolled Nurse – Medication Endorsed		
First year of experience	\$761.10	\$791.50
Second year of experience	\$814.00	\$846.60
Third year of experience	\$831.40	\$864.70
Fourth year of experience	\$848.90	\$882.90
Thereafter	\$866.80	\$901.50
Nurse undergoing pre-registration training	\$719.00	\$747.80
Registered Nurse/Midwife	\$0.00	\$0.00
First year of experience	\$814.00	\$846.60
Second year of experience	\$855.80	\$890.00
Third year of experience	\$897.20	\$933.10
Fourth year of experience	\$941.60	\$979.30
Fifth year of service	\$986.10	\$1,025.50
Sixth year of service	\$1,094.40	\$1,138.20
Seventh year of service	\$1,149.10	\$1,195.10
Eighth year of service	\$1,197.40	\$1,245.30
Clinical Nurse/Midwifery Specialist	\$1,245.60	\$1,295.40

Clinical Nurse/Midwifery Educator	\$1,167.00	\$1,213.70
Nurse/Midwifery Educator -		
First year	\$1,289.30	\$1,340.90
Second year	\$1,324.30	\$1,377.30
Third year	\$1,355.50	\$1,409.70
Fourth year	\$1,423.50	\$1,480.40
Clinical Nurse/Midwifery Consultant	\$1,423.50	\$1,480.40
Nursing/Midwifery Unit Manager -		
Level I	\$1,396.50	\$1,452.40
Level II	\$1,460.30	\$1,518.70
Level III	\$1,498.30	\$1,558.20
Senior Nurse/ Midwifery Educator -		
First year	\$1,456.90	\$1,515.20
Second year	\$1,485.80	\$1,545.20
Third year	\$1,533.70	\$1,595.00
Assistant Director of Nursing – 100 beds & over	\$1,498.30	\$1,558.20
Deputy Director of Nursing -		
Less than 100 beds	\$1,460.30	\$1,518.70
100 beds, less than 200 beds	\$1,498.30	\$1,558.20
200 beds, less than 250 beds	\$1,533.70	\$1,595.00
250 beds, less than 350 beds	\$1,589.20	\$1,652.80
350 beds, less than 450 beds	\$1,644.60	\$1,710.40
450 beds, less than 750 beds	\$1,703.50	\$1,771.60
750 beds and over	\$1,767.80	\$1,838.50
Director of Nursing		
Less than 25 beds	\$1,503.70	\$1,563.80
25 beds, less than 50 beds	\$1,589.20	\$1,652.80
50 beds, less than 75 beds	\$1,622.60	\$1,687.50
75 beds, less than 100 beds	\$1,655.30	\$1,721.50
100 beds, less than 150 beds	\$1,701.60	\$1,769.70
150 beds, less than 200 beds	\$1,756.40	\$1,826.70
200 beds, less than 250 beds	\$1,811.80	\$1,884.30
250 beds, less than 350 beds	\$1,878.30	\$1,953.40
350 beds, less than 450 beds	\$1,988.50	\$2,068.00
450 beds, less than 750 beds	\$2,101.00	\$2,185.00
750 beds and over	\$2,229.80	\$2,319.00

Table 2 – Other Rates and Allowances

Item No	Clause No.	Brief Description	Column 1	Column 2
			Current Minimum Rates	FFPP on or after 23/12/09
			\$	\$
				4.0%
1	12.1(a)	In charge of hospital	\$ 32.00	\$33.28
2	12.1(b)	In charge of ward/unit in absence of NUM	\$ 18.69	\$19.44
3	12.2(a)	On call	\$ 16.80	\$17.47
4	12.2(b)	On call on rostered days off	\$ 33.18	\$34.51
5	12.2(c)	On call during meal break	\$ 9.42	\$ 9.80
6	12.4	Lead apron allowance	\$ 1.32	\$ 1.37
7	12.4(a)	In charge of ward/unit and hospital	\$ 28.01	\$29.13
8	12.2(d)	Use of Private Vehicle (cents per km)	\$ 0.68	ATO
9	16.3(a)	Uniforms	\$ 5.31	\$ 5.52
10	16.3(a)	Shoes	\$ 1.64	\$ 1.71
11	16.3(b)	Stockings	\$ 2.75	\$ 2.86
12	16.3(c)	Cardigan or jacket	\$ 1.60	\$ 1.66
13	16.3(d)	Laundry	\$ 4.42	\$ 4.60
14	16.3(f)	Socks	\$ 0.54	\$ 0.56
15	18.9	Meal on overtime	\$ 14.50	\$ 15.08
16	27.3	Breakfast	\$ 2.96	\$ 3.08
17	27.3	Other meals	\$ 5.37	\$ 5.58

Schedule 1: List of hospitals owned & operated by Independent Private Hospitals of Australia Trust in NSW

Kaizen Hospitals (Ashfield) Pty Ltd ABN 97 094 662 914

Kaizen Hospitals (Holroyd Private Hospital) Pty Ltd ABN 14 064 223 481

Kaizen Hospitals (Longueville) Pty Ltd ABN 681 108 42058

Signature Page for

DATED this day of 2009

.....
EMPLOYER

(Name & Address of Employer)

.....
WITNESS

(Name & Address of Witness)

Signature Page for Nursing Staff

DATED this day of 2009

.....

.....
WITNESS

(Name & Address of Witness)

.....
Name

.....
WITNESS

Signature Page for

DATED this 23 day of December 2009

[Handwritten Signature]

EMPLOYER

[Handwritten Signature]

WITNESS

Name JENNY KING
Address (home) PO Box 705 Ashfield 1600
Position within Company DOEN

(Name & Address of Witness)

Carol Zhang
6/56 Stanes St
Summer Hill NSW 2130

Signature Page for Nursing Staff

DATED this 23 day of December 2009

Name Kelly Busutti
Address (home) P.O. Box 111 Concord West 2138
Position within Company and explanation of why you can sign agreement:

Employee who has taken part in the process and is happy to sign the agreement on behalf of other staff.

[Handwritten Signature]

SIGNATURE

[Handwritten Signature]

WITNESS

(Name & Address of Witness)

Carol Zhang
6/56 Stanes Street
Summer Hill NSW 2130