



# DECISION

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

**St Mary's Villa**  
(AG2016/3857)

## **ST MARY'S VILLA AND NSWNMA/ANMF ENTERPRISE AGREEMENT 2016-2019**

Health and welfare services

COMMISSIONER ROE

MELBOURNE, 23 AUGUST 2016

*Application for approval of the St Mary's Villa and NSWNMA/ANMF Enterprise Agreement  
2016-2019.*

[1] An application has been made for approval of an enterprise agreement known as the *St Mary's Villa and NSWNMA/ANMF Enterprise Agreement 2016-2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by St Mary's Villa. The Agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met. The Agreement does not cover all of the employees of the employer, however, taking into account the factors in Section 186(3) and (3A) I am satisfied that the group of employees was fairly chosen.

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

[4] The Agreement was approved on 23 August 2016 and, in accordance with s.54, will operate from 30 August 2016. The nominal expiry date of the Agreement is 30 June 2019.



**St Mary's Villa**

**& NSWNMA/ANMF**

**ENTERPRISE AGREEMENT**

**2016 – 2019**

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## 2. Title

This Agreement will be known as the St Mary's Villa and NSWNMA/ANMF Enterprise Agreement 2016-2019.

## 3. Parties

This Agreement will be binding on:

- (i) St Mary's Villa, Hostel and Nursing Home. 56 Burton St Concord 2137 ABN 80 910 110 919;
- (ii) The New South Wales Nurses and Midwives' Association (NSWNMA) (ABN 63 398 164 405) and the Australian Nursing and Midwifery Federation NSW Branch (ANMF) (ABN 85 726 054 782) - of 50 O'Dea Avenue Waterloo, Sydney, New South Wales, 2017; and
- (iii) Nursing employees employed in classifications listed in Table 1 – Salaries by the employer named above.

## 4. Duration

This Agreement will be lodged with the Fair Work Commission in accordance with the Act and will operate from the date of approval until its nominal expiry date of 30 June 2019.

## 5. Definitions

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

**"Act"** means the Australian Fair Work Act 2009.

**"Assistant Director of Nursing"** means:

- (a) A person appointed as such in any sized facility and includes a person appointed as the nurse in charge during the evening or night in a facility where the adjusted daily average (ADA) of occupied beds is not less than 150.
- (b) A person appointed as such to a position approved by the employer including persons appointed to be in charge of a ward or group of wards.

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

**"Assistant in Nursing – Team Leader"** means an Assistant in Nursing who holds a Certificate Level III in Aged Care Work or other appropriate qualifications/ experience acceptable to the employer appointed as such by the employer and who is designated by the employer as having the responsibility for co-ordinating the work of other AINs and/ or performing specialist functions such as orientation of new staff, mentoring, fire safety training,

specialist wound care, continence management, infection control or palliative care under RN/EN supervision.

**"Association"** or **"Union"** means the New South Wales Nurses and Midwives' Association (NSWNMA) and the Australian Nursing and Midwifery Federation NSW Branch (ANMF).

**"Board"** means the Nurses and Midwives' Board of Australia and shall also be taken to mean a reference to Australian Health Practitioner Regulation Authority (AHPRA) as appropriate.

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

**"Clinical Nurse Educator"** means a registered nurse with relevant post registration certificate qualifications or experience deemed appropriate by the employer, who is required to implement and evaluate educational programmes at the nursing home.

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

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

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

#### **"Clinical Nurse Specialist"**

- (a) In facilities with an adjusted daily average (ADA) of 250 beds and above, the definition of a Clinical Nurse Specialist is:

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

- (b) In facilities of less than 250 ADA the definition for Clinical Nurse Specialist is: "Clinical Nurse Specialist" means a registered nurse with specific post registration qualifications and twelve months experience working in the clinical areas of her/his specified post registration qualification.

**"Day Worker"** means a worker who works her/his ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6 am and before 10 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 31 Deputy Director of Nursing and Assistant Director of Nursing, of this Agreement.

**"Director of Nursing"** means a registered nurse who is registered by her/his employer with the Health Administration Corporation as the person in charge of the facility and as consistent with section 104 of the Public Health Act 2010. There shall be only one person in each facility entitled to be classified as Director of Nursing or whatever title the senior nursing administrator is known.

**"Enrolled Nurse"** (previously referred to as an "Endorsed Enrolled Nurse" means a nurse enrolled with the Board who:

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

**"Enrolled Nurse without medication endorsement"** (previously referred to as Enrolled Nurse) means a nurse enrolled with the Board who has the following notation on their licence: "does not hold Board approved qualifications in administration of medications".

**"Experience"** in relation to an enrolled nurse or assistant in nursing means experience both before and/or after the commencement of this Agreement whether within New South Wales or elsewhere and in the case of an enrolled nurse or assistant in nursing who was formerly a student nurse includes experience as such student nurse.

**"Facility"** means a nursing home or hostel.

**"FWC"** means the Fair Work Commission

**"Hostel"** means a Hostel as defined as at 1st September 1993 in the Aged and Disabled Persons Care Act 1954 (Commonwealth).

**"Immediate Family" or "member of the employee's household"** means:

- (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, the child of a de facto partner or spouse 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 or partner 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.

**"NES"** means the National Employment Standards.

**"Nurse"** includes Registered Nurses, Enrolled Nurses and Assistants in Nursing.

**"Nurse Educator"** means a registered nurse with a post registration certificate, who has relevant experience or other qualifications deemed appropriate by the employer, and who is appointed to a position of Nurse Educator.

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

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

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

Incremental progression for Nurse Educators shall be on completion of 12 months



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

**"Nursing Home"** means a Nursing Home as defined as at 31 December 2004 by the Nursing Homes Act 1988.

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

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

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

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

**"Service"** for the purpose of Clause 10 Salaries, of this Agreement, means service before or after the commencement of this Agreement in New South Wales or elsewhere as a registered nurse, plus any actual periods on and from 1 January 1971, during which a registered nurse undertook a prescribed geriatric, infants', midwifery, mothercraft or psychiatric training course, or attended a post-graduate course recognised by the Board whether in New South Wales or elsewhere;

provided that in the case of service elsewhere than in New South Wales where the period of the prescribed course of training is less than the period of the prescribed course of training in New South Wales, the nurses shall serve a period after graduation equal to the difference between the period of the prescribed course elsewhere than in New South Wales and the period of the prescribed course in New South Wales before becoming entitled to be paid as a registered nurse, general nurse, geriatric nurse, infants' nurse, midwifery nurse, mothercraft nurse or psychiatric nurse as the case may be.

**"Shift Worker"** means a worker who is not a day worker as defined.

**"Standard"** means the National Employment Standards, and shall be referred to in this Agreement as "the Standard" or the NES.

## **6. Hours of Work and Free Time of Employees**

- (i) The ordinary hours of work for day workers, 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 a.m. and before 10 a.m.
- (ii) The ordinary hours of work for shift workers, exclusive of meal times, shall not exceed an average of 38 hours per week in each roster cycle.
- (iii)
  - (a) The hours of work prescribed in subclauses (i) and (ii) of this clause shall, where possible, be arranged in such a manner that in each roster cycle of 28 calendar days each employee shall not work his/her ordinary hours of work on more than 19 days in the cycle.
  - (b) Notwithstanding the provision of paragraph (a) of this subclause, employees may, with the agreement of the employer, work shifts of less than eight hours each over 20 days in each cycle of 28 days.
  - (c) Provided that on the occasion of an employee's written request, and with the consent of the employer, a 9.5-day fortnight may be worked instead of the 19-day month.

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

- (iv) Each shift shall consist of no more than ten hours on a day shift or 11 hours on a night shift with not less than eight hours break between each shift; provided that an employee shall not work more than seven consecutive shifts unless the employee so requests and the Director of Nursing agrees. Provided also that an employee shall not work more than two quick shifts in any period of seven days, i.e., an evening shift followed by a morning shift, where the break between ordinary shifts is less than ten hours.
- (v) The employer is to decide when employees take their additional days off prescribed in subclause (iii) of this clause (as a consequence of the implementation of the 38-hour week). Where necessary, the employer must consult with the affected employees to ascertain the employees' preferences and must take any such preferences into account when arriving at a decision. Where practicable, additional days off duty shall be consecutive with the rostered days off duty prescribed in subclause (xiv) of this clause.

- (vi) Once set, the additional day off duty may not be changed, except in accordance with the provisions of Clause 9 Rosters.
- (vii) Where the employer's decision (in accordance with subclause (v) of this clause) is that an employee's additional days off be accumulated, no more than six days may be accumulated in any one year of employment. By mutual agreement this may be extended to no more than 12 days at any one time.
- (viii)
  - (a) Except for breaks for meals, the hours of duty each day shall be continuous.
  - (b) "Broken shift" for the purposes of this subclause means a shift worked by a permanent part-time employee that includes a break (other than a meal break) of not more than four hours and where the span of hours is not more than 12 hours.
  - (c) Notwithstanding paragraph (a) above and subclause (iv) of this clause, the employer may apply to the Association for permission to implement broken shifts.
  - (d) Broken shifts may be worked without the permission of the Association, but only where:
    - (1) it is for a period of one month or less; and
    - (2) it is by reason of an emergency in the roster, e.g., absence of another employee due to sick leave, annual leave on short notice or resignation; and
    - (3) the affected employees agree to work the broken shifts.
- (ix)
  - (a) Each employee shall be allowed a break of not less than 30 minutes and not more than 60 minutes for each meal occurring on duty.
  - (b) Where practicable, employees shall not be required to work more than five hours without a meal break.
- (x) Two separate ten-minute intervals (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of 7.6 hours or more; where less than 7.6 ordinary hours are worked, employees shall be allowed one ten-minute interval in each four-hour period. Subject to agreement between the employer and the employee, such intervals may alternatively be taken as one 20-minute interval, or as one ten-minute interval with the employee allowed to proceed off duty ten minutes before the completion of the normal shift finishing time. Such interval(s) shall count as working time.
- (xi) Subclauses (ix) and (x) of this clause shall not apply to an employee who, before

going on night duty, is provided with a meal between 9 p.m. and 11 p.m. and who is allowed two intervals of 20 minutes each during the period of night duty, but such intervals shall count as working time and shall be paid for as such.

- (xii) (a) Except as provided for in paragraph (b) of this subclause, an employee shall not be employed on night duty for a longer period than eight consecutive weeks. After having served a period of night duty, an employee shall not be required to serve a further period on night duty until he or she has been off night duty for a period equivalent to the previous period on night duty.
- (b) The provisions of paragraph (a) shall not apply to an Assistant Director of Nursing, a Nursing Unit Manager or a registered nurse in charge, as the case may be, who is employed permanently in charge at night, nor to an employee who requests to be employed on night duty and the Director of Nursing consents.
- (xiii) An employee changing from night duty to day duty or from day duty to night duty shall be free from duty during the 20 hours immediately preceding the commencement of the changed duty.
- (xiv) (a) Each employee shall be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28-day cycle and no duties shall be performed by the employee on any of such free days except for overtime. Where practicable, days off shall be consecutive and shall not be preceded by an evening shift or a night shift unless an additional eight hours are granted as sleeping time. An evening shift shall be one which commences at or after 1 p.m. and before 4 p.m.
- (b) An employee, at his or her request, may be given free-from-duty time in one or more periods but no period shall be less than one full day.
- (c) For the purpose of this subclause, "full day" means from midnight to midnight or midday to midday.
- (xv) (a) Employees may be required to remain "on call". Any such time on call shall not be counted as time worked (except insofar as an employee may take up actual duty in response to a call), but shall be paid for in accordance with Clause 12 Special Allowances. Provided, however, that no employee shall be required to remain on call whilst on leave or on the day before entering upon leave.
- (b) No employee shall be required to remain on call while on a rostered day or days off nor on completion of the shift on the day preceding a rostered day off. This provision shall not apply where in special circumstances it is

necessary for the employer to place staff on call on rostered days off or on completion of the shift on the day preceding a rostered day off in order to ensure the provision of services.

- (xvi) The provisions of subclauses (xii) (a) and (b), (xiii) and (xiv)(a) 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.

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

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

## **8. Average Occupied Beds**

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

## **9. Rosters**

- (i) The ordinary hours of work for each employee, other than the Director of Nursing, shall be displayed on a roster in a place conveniently accessible to employees. In addition to a copy displayed in the workplace the employer may arrange for employees to have on-line remote access to the roster.
- (ii) The roster shall, where practicable, be displayed at least two weeks, and in any event not less than one week, prior to the commencing date of the first working period in the roster.
- (iii) Notwithstanding the foregoing provisions of this clause, a roster may be altered at any time to enable the nursing service of the facility to be carried on where another employee is absent from duty on account of illness or in an emergency; provided that where any such alteration involves an employee working on a day which would

otherwise have been such employee's day off, the day off in lieu thereof shall be as mutually arranged.

- (iv) Prior to the date of the changed shift, such change of roster shall be notified verbally or in writing to the employee concerned.
- (v) Where an employee is entitled to an additional day off duty in accordance with Clause 6, Hours of Work and Free Time of Employees of this Agreement, such day is to be shown on the roster of hours for that employee.
- (vi) All rosters shall be retained for at least six years.

## 10. Salaries

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

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

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

- (iii) The wage increase specified above are inclusive of any wage increases; determination or award of the Fair Work Commission (FWC) or any other authorised tribunal or commission (apart from those made in accordance with subclause (i)) made during the period of this Agreement. Should the application of any increase awarded by the FWC 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 increases contained in Table 1 of this agreement from the date specified by the FWC.

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

- (i) The employer will recognise the prior service and experience, and/or the concurrent service of an employee with other employers, upon production of documentary evidence satisfactory to the employer.
- (ii) The employee's new classification will apply from the date the evidence is received by the employer.
- (iii) The employee's classification will be backdated for prior service if the evidence is received by the employer within three months of the employee's initial engagement.
- (iv) The employee on commencement of their employment will be advised to provide the employer with documentary evidence of previous service and experience for classification purposes.
- (v) A registered nurse or enrolled nurse who has been registered or enrolled outside New South Wales will be paid as a Registered Nurse or Enrolled Nurse as from the date the Employee notifies the employer in writing that the Employee is eligible for registration or enrolment as a Registered Nurse or Enrolled Nurse. An Employee seeking recognition of training outside New South Wales must make an application for registration within seven days after being notified that the Employee is eligible for registration.
- (vi) He or she shall notify the employer as soon as possible after he or she has applied
- (vii) For the purpose of yearly progression based on service and experience an employee must complete 1786 hours of work.

## **12. Special Allowances**

- (i) (a) A Registered Nurse designated to be in charge during the day, evening or night of a facility having a daily average of occupied beds of less than 150 shall be paid, in addition to his or her appropriate salary, whilst so in charge, the relevant sum set out in Item 1 of Table 2, Allowances, per shift.
- (b) A Registered Nurse who is designated to be in charge of a shift in a ward shall be paid, in addition to his or her appropriate salary, the sum set out in Item 2 of the Table 2, per shift.
- (c) Subclauses 12(i)(a) and (b) shall not apply to Registered Nurses holding classified positions of a higher grade than a Registered Nurse.
- (d) An Enrolled Nurse shall not be required to be in charge of a facility, shift, ward or unit.
- (e) The employer shall ensure that the Registered Nurse in charge is noted in the roster.
- (ii) (a) An employee required by her or his employer to be on call otherwise than as

provided for in paragraph (b) of this subclause shall be paid the sum set out in Item 3 of Table 2 for each period of 24 hours or part thereof, provided that only one allowance shall be payable in any period of 24 hours.

- (b) An employee required to be on call on rostered days off in accordance subclause 6 (xv) (b) of Clause 6, Hours of Work and Free Time of Employees shall be paid the sum set out in Item 4 of Table 2 for each period of 24 hours or part thereof, provided that only one allowance shall be payable in any period of 24 hours.
- (c) An employee who is directed to remain on call during a meal break shall be paid the sum set out in Item 5 of Table 2, provided that no allowance shall be paid if, during a period of 24 hours, including such period of on call, the employee is entitled to receive the allowance prescribed in of subclause (ii) (a) of this clause.
- (d) This subclause shall not apply to a Director of Nursing, subsidiary nursing home Director of Nursing, Deputy Director of Nursing or Assistant Director of Nursing.

**12A. Continuing Education Allowance for Registered Nurses and Enrolled Nurses.**

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



Item 2 of Table 3, Continuing Education Allowances.

- (ix) A registered nurse who holds a relevant master's degree or doctorate in a clinical field that is accepted by the employer to be directly relevant to the competency and skills used by the registered nurse in carrying out the duties of the position shall be paid a weekly allowance as set out in Item 3, Continuing Education Allowances.
- (x) A enrolled nurse who holds a relevant certificate IV qualification in a clinical field (not including a certificate IV qualification which has the effect of upgrading the qualification leading to enrolment) that is accepted by the employer to be directly relevant to the competency and skills used by the enrolled nurse in carrying out the duties of the position shall be paid a weekly allowance as set out in Item 4 of Table 3, Continuing Education Allowances.
- (xi) The allowances set out in subclauses (vii), (viii), (ix) and (x) hereof are not included in the employee's ordinary rate of pay and will not constitute part of the all purpose rate.
- (xii) A Registered Nurse or Enrolled Nurse who is employed on a part-time or casual basis shall be paid these allowances on a pro rata basis.
- (xiii) The rates for these allowances shall be adjusted in accordance with increases in other wage-related allowances contained in this Agreement.

**12B Continuing Professional Development for Enrolled Nurses and Registered Nurses**

- (i) The management of the facility covered by this Agreement places a high priority on the ongoing education of nurses employed by the facility. The facilities education program provides employees with a variety of in service education sessions. Both internal and external in service is offered as part of general ongoing education.
- (ii) The employer is committed to the equity of access to training for all nurses. Employees are encouraged to talk to their managers about their training needs and where necessary apply for leave and the payment of the cost of training and conferences. Applications for leave to attend such training and payment for courses will be considered on a case by case basis.

**13. Penalty Rates for Shift Work and Weekend Work**

- (i) Employees working afternoon or night shift shall be paid the following percentages in addition to the ordinary rate for such shift. Provided that employees who work less than 38 hours per week shall only be entitled to the additional rates where their shifts commence prior to 6 a.m. or finish subsequent to 6 p.m.

Afternoon shift commencing at 10am and before 1pm	10 %
Afternoon shift commencing at 1pm and before 4pm	12.5 %
Night shift commencing at 4pm and before 4am	15 %
Night shift commencing at 4am and before 6 am	10 %

- (ii) "Ordinary rate" and "ordinary time" shall not include any percentages addition by reason of the fact that an employee works less than 38 hours per week, but shall include amounts payable under Clause 10, Salaries and subclauses (i) and (ii) of Clause 12, Special Allowances.
- (iii) For the purposes of this clause, day, afternoon and night shifts shall be defined as follows:
  - "Day shift" means a shift which commences at or after 6 a.m. and before 10 a.m.
  - "Afternoon shift" means a shift which commences at or after 10 a.m. and before 4 p.m.
  - "Night shift" means a shift which commences at or after 4 p.m. and before 6 a.m. on the day following.
- (iv) Employees whose ordinary working hours include work on a Saturday or Sunday shall be paid:
  - (a) for work between midnight Friday and midnight on Saturday - time and one half;
  - (b) for work between midnight Saturday and midnight on Sunday – time and three quarters.
- (v) These penalties shall be in substitution for and not cumulative upon the shift allowances in subclause (i).
- (vi) 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 Clauses 20, 21 and 22 in respect of their employment between midnight on Friday and midnight on Sunday.
- (vii) 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 24, Annual Leave and Public Holidays.

#### **14. Vehicle / Travelling Allowance**

- (i) Subject to the employer being satisfied that the employee has incurred an expense:
  - (a) An employee sent for duty to a place other than his or her regular place of duty during work hours shall be paid for all excess travelling time at the appropriate rate of pay and reimbursed excess travelling expenses.
  - (b) Where an employee is called upon and agrees to use his or her own private vehicle for official business shall be paid the per kilometre allowance set out in Item 6 of Table 2 excluding travel time to and from the employee's home to the first place of work and return to home at the end of his or her duties.

- (c) Where an employee is required to use public transport for travel on official business such employee is to be reimbursed actual expenses incurred for such travel, excluding travel from the employee's home to the first place of work and return to home at the cessation of his or her duties.

#### **15. Telephone Allowance**

- (i) If an employee is required, for the purpose of his/her employment, to be on call on a regular basis or where an employee is required by his/her employer to have a telephone installed for the purpose of his/her employment, the employer shall be responsible for the following payments:
- (a) Where the employee already has a telephone installed:
- three-quarters of the cost of rental of the telephone;
  - the cost of all official trunk line calls.
- (b) Where the employee does not have the telephone installed:
- the cost of installation of the telephone;
  - three-quarters of the cost of rental of the telephone;
  - the cost of all official trunk line calls.

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

- (i) Subject to subclause (iii) of this clause, sufficient suitable and serviceable uniforms, including one pair of shoes per annum which shall be of a recognised acceptable standard for the performance of nursing duties, and one cardigan or jacket, shall be supplied free of cost to each employee required to wear a uniform or part of a uniform. An employee to whom a new uniform or part of a uniform has been issued who, without good reason, fails to return the corresponding article last supplied shall not be entitled to have such article replaced without payment thereof at a reasonable price.
- (ii) An employee, on leaving the service of the employer, shall return any uniform or part thereof supplied by that employer which is still in use immediately prior to leaving.
- (iii) (a) In lieu of supplying uniforms and shoes to an employee, the employer shall pay the employee the sum per week set in Item 7 of Table 2 - Allowances for uniforms and the sum per week set out in Item 8 of the Table 2 for shoes.
- (b) In lieu of supplying a cardigan or jacket to an employee, the employer shall pay the employee the sum per week set out in Item 9 of Table 2.

- (c) In lieu of supplying stockings to an employee, the employer shall pay the employee the sum per week set out in Item 10 of Table 2.
- (d) In lieu of supplying socks to an employee, the employer shall pay the employee the sum per week set out in Item 11 of Table 2.
- (iv) If the uniforms of an employee are not laundered at the expense of the facility, the sum per week set out in Item 12 of Table 2 shall be paid to the employee. Provided that the payment of such laundry allowance shall not be made to any employee on absences exceeding one week.
- (v) Where the employer requires any employee to wear headwear, the facility shall provide headwear free of charge to the employee.
- (vi) The allowances referred to in subclause (iii) are also payable during any period of paid leave.

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

- (i) Subject to subclauses (ii), (iii) and (iv) of this clause, an employee who is called upon to relieve an employee in a higher classification or is called upon to act in a vacant position of a higher classification, shall be entitled to receive for the period of relief or the period during which he/she so acts, the minimum payment for such higher classification.
- (ii) The provisions of subclause (i) of this clause shall not apply where the employee of the higher classification is off duty pursuant to Clause 7 Hours of Work and Free Time of Directors of Nursing, except insofar as a Director of Nursing accumulates days off for a continuous period of one week or more; nor when an employee in a higher grade is absent from duty by reason of his/her additional day off duty as a consequence of working a 38 hour week.
- (iii) Further, the provisions of subclause (i) of this clause shall not apply where a Director of Nursing is absent from duty for a period of three working days or less for any reason other than pursuant to said clause.
- (iv) Subject to subclauses (ii) and (iii) above, the provisions of subclause (i) shall not apply where a day worker is being relieved and is absent from duty for a period of three consecutive working days or less.

#### **18. Overtime**

- (i) Employees shall work reasonable overtime when required by the employer.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.

- (iii) For the purposes of subclause (ii) what is unreasonable or otherwise will be determined having regard to:
  - (a) any risk to employee health and safety;
  - (b) the employee's personal circumstances including any family and carer responsibilities;
  - (c) the needs of the facility;
  - (d) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
  - (e) any other relevant matter.
- (iv) This subclause is subject to subclause (x) below.
  - (a) Subject to paragraphs (b) and (c) of this subclause, all time worked by employees other than Directors of Nursing in excess of the rostered daily ordinary hours of work shall be overtime and shall be paid for at the rate of time and one-half for the first two hours and double time thereafter in respect of each overtime shift worked or in respect of overtime worked prior to or at the conclusion of a normal shift. Provided that overtime worked on Sundays shall be paid for at the rate of double time and on public holidays at the rate of double time and one-half.
  - (b) All time worked by a permanent or temporary part time employee , 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.
  - (c) All time worked by a casual employee, in excess of ten hours in a day or 76 hours in a fortnight 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.
- (v) The ordinary hours of work for the Director of Nursing shall be thirty eight hours per

week and overtime will be paid at time and one half for the first two hours and double time thereafter for hours worked in excess of thirty eight hours per week.

- (vi) An employee required to work overtime following on the completion of his or her normal shift for more than two hours shall be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours overtime; all such time shall be counted as time worked, provided that the benefits of this subclause shall not apply to an employee employed pursuant to clauses 20 until the expiration of the normal shift for a majority of the full-time employees employed on that shift in the ward or section concerned.
- (vii) An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours shall be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours' overtime; all such time shall be counted as time worked.
- (viii) The meals referred to in subclauses (vi) and (vii) of this clause shall be allowed to the employee free of charge. Where the facility is unable to provide such meals, the sum per meal set out Item 13 of Table 2 shall be paid to the employee concerned.
- (ix) Where an employee is required to work an overtime shift on his or her rostered day off, the appropriate meal breaks for that shift, as prescribed by Clause 6 Hours of Work and Free Time of Employees, shall apply.
- (x) Employees who work so much overtime:
  - (a) between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times; or
  - (b) on a Saturday, a Sunday or a public holiday, not being ordinary working days, or on a rostered day off without having had eight consecutive hours off duty in the 24 hours preceding the ordinary commencing time on the next ordinary day or shift,

shall, subject to this subclause, be released after completion of such overtime until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

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

time occurring during such absence.

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

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

- (i) All salaries and other payments shall be paid weekly or fortnightly.
- (ii) Employees shall have their salary paid into one account with a bank or other financial institution as nominated by the employee. Salaries shall be deposited by facilities in sufficient time to ensure that wages are available for withdrawal by employees by no later than pay day, provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions; but in such cases facilities shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.
- (iii) Notwithstanding the provisions of subclause (ii) of this clause, an employee who has given or has been given the required notice of termination of employment, in accordance with Clause 36 Termination of Employment, where practicable, shall be paid all moneys due to him/her prior to ceasing duty on the last day of employment,

but in no case not more than three days thereafter.

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

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

## **20. Permanent Part Time Employees**

- (i) A permanent part time employee is one who is permanently appointed by a facility to work a specified number of hours which are less than those prescribed for a full-time employee and whose hours are reasonable predictable.
- (ii) Before commencing permanent part time employment, the employer and the employee will agree in writing the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours.
- (iii) The terms of the agreement may be varied by agreement and recorded in writing.

### **20.2 Hours Worked by Permanent Part Time Employees**

- (i) By agreement between employer and employee, the specified number of hours may be balanced over a week and/or a fortnightly period, provided that the average weekly hours shall be deemed to be the specified number of hours for the purposes of accrual of annual leave, long service leave and sick leave.
- (ii) Provided further that there shall be no interruption to the continuity of employment merely by reason of an employee working on a "week on, week off" basis in accordance with the paragraph immediately above (i.e. clause 20.2(i)).

### **20.3 Payment Received by Permanent Part Time Employees**

- (i) Permanent part time employees shall be paid an hourly rate calculated on the basis of:
  - (a) the appropriate rate prescribed by Clause 10 Salaries; and
  - (b) where applicable, one thirty-eighth of the appropriate allowance or



allowances prescribed by Clause 12, Special Allowances; and

- (c) one thirty-eighth of the appropriate allowances prescribed by Clause 16 Uniform and Laundry Allowance, but shall not be entitled to an additional day off or part thereof as prescribed by subclauses 6 (iii) and (v) in Hours of Work and Free Time of Employees.

**20.4 Minimum hours** – A permanent part time employee will be paid a minimum of two hours for each start.

**20.5 Annual Leave and Public Holidays for Permanent Part Time Employees**

- (i) Four weeks' Annual Leave on ordinary pay is to be granted per annum.
- (ii) In respect of annual leave and public holidays, the following clauses / subclauses of this Agreement apply to permanent part time employees:
  - Clause 23 Public Holidays Observed;
  - Subclauses 24.1 and 24.4 to 24.11 of Clause 24 Annual Leave and Public Holidays (this includes additional annual leave or “counter leave” for work on Sundays and Public Holidays); and
  - Clause 25 Annual Leave Loading.

The remaining provisions of Clause 24 Annual Leave and Public Holidays shall not apply.

- (iii) Where an employee has any period of permanent part-time employment during qualifying period for annual leave, payment for such annual leave shall be calculated on the basis of the proportion that the average number of hours worked each week bears to 38.
- (iv) A public holiday occurring on an ordinary working day shall be allowed to employees without loss of pay.

**20.6 Payment for Work on a Public Holiday / Additional Annual Leave**

- (i) A permanent part time employee who is required to and does work on a public holiday shall have one day or one half day, as appropriate, added to his/her period of annual leave and be paid at the rate of one half time extra for the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday.
- (ii) In lieu of adding to annual leave under this 20.6 (i), a permanent part time employee may elect to be paid for the time actually worked at the rate of time and one-half in

addition to his/her ordinary weekly rate.

Such election shall be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.

Where payment is made in lieu of leave in respect of time worked on a public holiday, payment shall be made for a minimum of four hours work, and any balance of the day or shift not worked shall be paid at ordinary rates.

#### **20.7 Additional Leave for Public Holidays during Annual Leave**

To the leave prescribed elsewhere in this Agreement 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.

#### **20.8 Public Holidays Observed by Permanent Part Time Employees**

Public Holidays for permanent part time employees are the same as for other employees – see details in Clause 23 Public Holidays Observed.

#### **20.9 Pro-rata Benefits for Permanent Part Time Employees**

Permanent part time employees shall be entitled to all other benefits of this Agreement not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.

#### **20.10 Annual Review of Permanent Part Time Hours**

- (i) At the request of a part-time employee, the hours he or she works will be reviewed annually.
- (ii) Where the employee is regularly working more than their specified contracted hours, the contracted hours will be adjusted by the employer to reflect the hours regularly worked having regard to the provisions of (iii) immediately below.
- (iii) The hours worked in the following circumstances will not be incorporated in the adjustment:
  - (a) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; and
  - (b) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a client.
- (iv) The agreement of the employer will not be unreasonably withheld.

- (v) Any adjusted contracted hours resulting from the review identified in this subclause should, however, be such as to reflect roster cycles and shift configurations utilised in the workplace.

## 21. 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 Payment Received by Casual Employees

A casual employee shall be paid an hourly rate calculated on the basis of:

- a) the appropriate hourly rate prescribed by Clause 10 Salaries; and,
- b) where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 12 Special Allowances and by Clause 16 Uniform and Laundry Allowance; and
- c) a casual loading of 25%.

21.3 **Minimum hours** – A casual employee will be paid a minimum of two hours for each engagement.

### 21.4 Other Clauses of this Agreement

- (i) The provisions of the following clauses/subclauses do not apply to casual employees:
- Clause 31 Deputy Directors of Nursing, Assistant Directors of Nursing;
  - Subclauses (iii) and (v) of Clause 6 Hours of Work and Free Time of Employees which provide other categories of employees with an additional day off or part thereof;
  - Clause 7 Hours of Work and Free Time of Directors of Nursing;
  - Clause 9 Rosters;
  - Clause 14 Vehicle / Travel Allowance;
  - Clause 25 Annual Leave Loading; and
  - Clause 24 Annual Leave and Public Holidays - a casual employee has no entitlement to paid annual leave. See subclause *Casual Employees Working on a Public Holiday* below for rates of pay for casual working on a public holiday.
- (ii) All other clauses in this Agreement apply to casual employees unless the clause specifically excludes casual employees.

### **21.5 Casual Employees and Long Service Leave**

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

### **21.6 Casual Employees Working on a Public Holiday**

A casual employee who is required to and does work on a public holiday as defined in Clause 23 Public Holidays Observed, shall be paid for the time actually worked:

- at the rate of double time and one-half such payment being in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday;
- a casual employee shall not be entitled to be paid in addition the casual loading prescribed in Clause 21.2(c) in respect of such work.

### **21.7 Casual Conversion**

- (i) A casual employee who has worked on a regular and systematic basis over a period of 26 weeks has the right to request conversion to permanent employment;
  - (a) on a full time basis when the employee has worked on a full time basis throughout the period of casual employment and where that work expected to continue; or
  - (b) on a part time basis where the employee has worked on a part time basis throughout the period of casual employment and where that work is expected to continue. Such a contract would be on the basis of the same number of hours previously worked unless other arrangements are agreed between the employer and the employee.
- (ii) The employer may consent to or refuse the request, but must not unreasonably withhold agreement.

## **22. Temporary Employees**

- (i) A temporary employee is one engaged for a set period not exceeding 13 weeks, provided that fixed term contracts of employment, whether for periods greater or lesser than 13 weeks, must not be offered in preference to ongoing contracts unless they are necessary to meet the genuine operational requirements of the employer, which may include but not be limited to parental leave, limited term funding arrangements, long term leave relief, forthcoming service reductions, and anticipated peak demand times
- (ii) A temporary employee shall be paid, in addition to all rates and allowances to which

the employee is entitled under this Agreement, an allowance equal to twenty per cent (20%) of the rates prescribed for his or her classification by Clause 10, Salaries, provided that this subclause shall cease to apply upon:

- (a) the period of engagement being extended after the period of 13 weeks;
- (b) the employer and the employee agreeing during the period of 13 weeks that the employee shall be employed on a permanent part-time or full-time basis.

### **23. Public Holidays Observed**

- (i) Employees are entitled to the following public holidays: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Local Labor Day, Christmas Day, Boxing Day, and any other day declared as a public holiday under the *Public Holidays Act 2010 (NSW)* or its successor, within the area in which the facility is situated.
- (ii) Employees are also entitled to a public holiday to be observed on:
  - a) the August Bank Holiday; or
  - b) on a date which is agreed upon by the respective employees and if nominated by the employees, the employees' nominated representative, 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 declared a public holiday.

### **24. Annual Leave and Public Holidays**

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

- Five weeks for employees defined as shiftworkers; and
- Four weeks for all other employees.

For the purpose of the additional weeks annual leave provided by the NES for shiftworkers, "a shiftworker" is defined as an employee who:

- Is regularly rostered to work over seven days a week; and
- Regularly works on weekends.

This definition is to be used only to calculate the minimum entitlement available to employees. Where "shift worker" is used elsewhere in this Agreement it has the

meaning in clause 5.

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

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

- (a) Full Time employees required to work on a seven (7) day basis - six (6) weeks annual leave per annum.
- (b) All other employees - four (4) weeks annual leave per annum.

24.3 (a) An employee to whom subclause 24.2 (a) 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 subclause 24.2 (a) there shall be added one working day or one half working day for each public holiday or half public holiday declared in addition to the ten (10) public holidays specifically named in subclause 23(i), or a substitute day declared 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 subclause 24.2(b) 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 subclause 24.2 (b), 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 24.2(b) 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 subclause 24.3 (d) the provision of this paragraph shall apply to any public holidays falling during the period of annual leave.

#### **24.4 Taking of Annual Leave**

- (a) An employee is entitled to take an amount of annual leave during a particular period if:
  - (i) at least that amount of 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 24.2 of this clause. Employees entitled to allocated days off duty in accordance with Clause 6 Hours of Work and Free Time of Employees, 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 24.3(b) and subclause 24.3(c) of the Agreement.

24.5 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.

#### 24.6 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 two 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  $\frac{1}{13}$  of the number of ordinary hours worked by the employee for the employer during the period of 104 weeks (2 years) ending at the time that the direction is given. This can also be expressed as 8 weeks for full time staff, pro-rated for part time staff; 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.
- (d) Notwithstanding 23.6 (c) , the employer may require the employee to take a longer period of annual leave where the employee has accumulated in excess of eight (8) weeks annual leave provided that the requested period of leave to be taken is reasonable.

#### 24.7 Payment for Leave

- (a) Each employee 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. The payment will be made in the normal pay cycle unless the employee elects to be paid before the leave commences. 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 subclause 24.2 (a) 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 24.10 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 subclause 24.3 (b) and subclause 23 (ii).

**24.8 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 in lieu of an amount of annual leave on each occasion where the annual leave is to be cashed out;
- (b) after the cashing out the employee’s remaining accrued entitlement to paid annual leave must be no less than four weeks;
- (c) the employer has agreed to the employee cashing out the annual leave; and
- (d) the employee must be paid at least the full amount that would have been payable to the employee had the leave been taken that was foregone.

24.9 Where the employment of an employee is terminated the employee shall be entitled to receive, payment for all accrued annual leave including for any days added to annual leave in accordance with subclause 23.3 of this clause. In calculating such payment no deduction is to be made for accommodation or board.

**24.10 Additional Annual Leave or “Counter Leave”**

- (a) In addition to leave prescribed elsewhere in this Agreement 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	Full-time Employees	Part-time Employees
	3 shifts or less	Nil
4 – 10 shifts	1 day	0.2 weeks
11 – 17 shifts	2 days	0.4 weeks
18 – 24 shifts	3 days	0.6 weeks
25 – 31 shifts	4 days	0.8 weeks
32 or more shifts	5 days	1 week

Provided that an employee may elect to be paid when proceeding 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 24.9.

#### **24.11 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.

#### **25. Annual Leave Loading**

- (i) Before an employee is given and takes his or her annual holiday or where, by agreement between the employer and the employee, the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay the employee a loading determined in accordance with this clause.
- (ii) The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under subclause 24.2(b) and subclause 24.3 (e), or in the case of permanent part-time employees, for the period of holiday given and taken and due to the employee.
- (iii) The loading is the amount payable for the period or the separate periods, as the case may be, at the rate per week of 17½ per cent of the appropriate ordinary weekly time rate of pay prescribed by this Agreement for the classification in which the employee was employed immediately before commencing his/her annual holiday, together with any allowances prescribed by subclauses 12 (i) and (ii) Special Allowances.
- (iv) No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when the employee would have become entitled to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with subclause (iii) of this clause, applying the agreement rates and wages payable on that day.
- (v) When the employment of an employee is terminated, and at the time of the termination the employee has not been given and has not taken the whole of an annual holiday to which the employee became entitled, he/she shall be paid a

loading calculated in accordance with subclause (iii) of this clause for the period not taken.

- (vi) This clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if she/he had not been on holidays; provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates for the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.
- (vii) No loading is payable on the additional annual leave as set out in clause 24.10.

## 26. Long Service Leave

- (i) Employees will accrue long service leave as follows:

<b>Completed Years of Continuous Service</b>	<b>Long Service Leave</b>
Less than 5 years	NIL
5 years	4.33 weeks
10 Years	8.66 weeks
15 Years	An additional 4.33 weeks
Every 5 years after 15 years	An additional 6.495 weeks

- (ii) Such leave shall be taken at a time to be mutually arranged between the employer and the employee as soon as practicable after each period of leave falls due, having regard to the reasonable preferences of each party. Where required by the employer, the term “as soon as practicable” shall mean that leave is taken by the employee within 12 months of the date that the leave falls due. The leave is to be taken in one continuous period unless the employer and employee agree otherwise.
- (iii) Notwithstanding anything contained elsewhere in this clause, an employer and an employee may mutually agree that the taking of the leave be deferred beyond the initial twelve months referred to above. In such a case the employer and employee may agree that the employee shall be paid for that leave at the rate of pay applicable at the time of the agreement to further postpone the leave, and not at the rate of pay applicable at the time that the leave is taken. For any such agreement to be valid, it must be in writing and be signed by both the employer and the employee.
- (iv) Employees with at least five years service are entitled to take, proportionate to their

length of service, to a period of long service leave on the basis of two months long service leave for ten years service leave for ten years service on full pay.

- (v) An employee who elects to take a period of long service leave as outlined in sub clause (iv) above, where practicable, shall be required to provide the employer with at least eight (8) weeks' notice of their intention to take such leave, with approval pursuant to this clause.
- (vi) Where the service of an employee with at least five years' service is terminated, the employee shall be entitled to long service leave as follows:
- For the first five years' service – one month.
  - For the next ten years' service – a proportionate amount calculated on the basis of one month for each additional five years. For the purpose of calculation, each completed whole month of continuous service gives an entitlement equal to 0.0722 weeks' pay.
  - For all subsequent service - a proportionate amount calculated on the basis of 1.5 months for each additional five years. For the purpose of calculation, each completed whole year of continuous service gives an entitlement equal to 1.2996 weeks' pay.
- (vii) Subject to subclause (i), (ii) and (iii) of this clause, where an employee has acquired a right to long service leave, then:
- (a) If, before such leave has been entered upon, the employment of such employee has been terminated, such employee shall be entitled to receive the monetary value of the leave to which such employee has become entitled, computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment.
- (b) If such employee dies before entering upon such long service leave, or if after having entered upon the same dies before its termination, any accrued long service leave will be paid out in accordance with Section 4 (Long Service Leave) subsection (5)(b) of the Long Service Leave Act 1955 (NSW). This provision provides that:

*“Where a worker dies and any long service leave:*

- (a) *to which the worker was entitled has not been taken; or*
- (b) *accrued upon termination of the services of the worker by reason of the worker's death and has not been taken, the employer shall upon request by the worker's personal representative pay to the worker's personal representative in full the ordinary pay that would have been payable to the worker in respect of long service leave less any amount already paid to the*

*worker in respect of that leave.”*

- (c) For the purpose of this clause:
  - (1) Continuous service in the same facility 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:
    - (A) absence of an employee from the facility while a member of the Defence Forces of the Commonwealth in time of war;
    - (B) any period of absence on leave without pay not exceeding six months.
    - (d) Where any employee has been granted a period of long service leave prior to the coming into force of this Agreement, the amount of such leave shall be debited against the amount of leave due under this Agreement.
- (e) Any period(s) of part-time employment with the same employer shall count towards long service leave as provided for in paragraphs (a) and (d) of this subclause. Such long service leave shall be paid for on the basis of the proportion that the average number of hours worked per week bears to 38.
- (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.
- (g) 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.

## **27. Compassionate Leave**

27.1 Compassionate Leave is provided for in the National Employment Standard (NES) Employees are entitled to two (2) days compassionate leave per occasion. See the NES for more details.

### **27.2 Other Circumstances**

- (a) 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.

- (b) 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 27.1.
- (c) Where an employee is forced to absent themselves other than in accordance with subclause 27.1 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.

## **28. Personal/Carer's (Sick leave) Leave**

### **28.1 The Standard**

- (a) Full time employees are entitled to ten (10) days personal/ carers leave in accordance with the provisions of the National Employment Standard (NES). See the NES for more detail.
- (b) Casual employees have no entitlement to paid personal/carers leave, but do have an entitlement to unpaid carer's leave.
- (c) An employee is entitled to use their personal/carers and compassionate leave entitlements in accordance with the National Employment Standard.
- (d) To be entitled to personal/carers leave or compassionate leave , an employee must give the employer notice as soon as reasonably practicable (which may be at a time before or after the leave has started) that the employee is (or will be) absent from his or her employment.

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

- (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.

## **29. Staff Amenities**

- (i) (a) The employer shall provide for the use of employees:
  - (1) toilet facilities; provided that this provision shall not apply to a facility the registered number of beds of which is less than nine;
  - (2) a full-length locker fitted with lock and key or other suitable place for

the safe keeping of clothing and personal effects of such employee.

- (b) The employer shall provide for employees morning and afternoon tea, supper and early morning tea (which shall include tea or coffee, together with milk and sugar).
- (c) Where an employee requests, the employer shall provide an employee with meals of a reasonable standard. The employer may make a charge, provided that the charge for breakfast shall be the sum set out in Item 14 of Table 2 - Other Rates and Allowances and the sum set out in Item 15 of Table 2 for other meals.

### **30. Escort Duty**

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

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

- (i) Subject to subclause (ii) of this clause, the following appointments shall be made in nursing homes with daily averages of occupied beds as specified hereunder:
  - Less than 150 beds - a Deputy Director of Nursing.
  - 150 beds and over - a Deputy Director of Nursing and Assistant Director of Nursing.
- (ii) There is no requirement to appoint a Deputy Director of Nursing in nursing homes of 40 beds and under in the following circumstances:
  - (a) the Registered Nurses at the nursing home are all given the same duties and no Registered Nurse is delegated Deputy Director of Nursing duties; and
  - (b) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.

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

- (iii) Where a decision is made, pursuant to subclause (ii) of this clause, not to appoint a Deputy Director of Nursing, the employer shall notify the Association in writing of that decision within 14 days and must certify that the requirements of subclause (ii) (a) and (b) have been met.
- (iv) In the event of a dispute arising as to the operation of this clause, the procedures set out in clause 39 Resolution of Disputes, shall be followed.
- (v) Appointments under subclause (i) of this clause shall be made within two calendar months of the date this Agreement becomes operative and thereafter within two calendar months of the occurrence of a vacancy. In default of appointment within two calendar months, the Registered Nurse employed as such or in a higher classification who has customarily relieved in the vacant position, or if no one has so customarily relieved, the general nurse employed in the same or the next senior classification below the vacant position with the longest service in such classification at the nursing home shall be deemed to be appointed until such time as another appointment is made by the nursing home.
- (vi) This clause shall not apply to a nursing home using members, novices or aspirants of religious orders where a member of an order carries out the duties under this clause of an Assistant Director of Nursing or Deputy Director of Nursing.
- (vii) This clause shall not apply to a nursing home which is owned by two or more Registered Nurses who are actively engaged as Directors of Nursing in the running of the nursing home.

### **32. Medical Examination of Nurses**

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

- (i) For protection against tuberculosis:
  - (a) Before a nurse commences duty, a PA chest x-ray examination of the nurse, unless a radiologist's report of a normal chest x-ray taken within the previous six months is available.
  - (b) As soon as practicable after the nurse commences duty, a Mantoux test on the nurse, then:
    - (i) where the Mantoux test is negative, immunisation with BCG vaccine;



- (ii) where the Mantoux test is positive (otherwise than as a result of BCG vaccination), referral to a chest clinic for assessment.
  - (c) A Mantoux test annually to:
    - (i) previously Mantoux-negative nursing staff;
    - (ii) nursing staff whose Mantoux reaction has been converted by BCG vaccination.
  - (d) A chest x-ray annually to nursing staff whose Mantoux reaction is positive (otherwise than as a result of BCG vaccination).
  - (e) Where a nurse has been caring for open tuberculosis cases, a PA chest x-ray examination of the nurse one year after completion of employment.
- (ii) For protection against other communicable diseases:
    - (a) where a nurse has not had a complete course of immunisation against diphtheria, tetanus, poliomyelitis, measles, mumps and hepatitis, immunisation against those diseases;
    - (b) booster immunisation against tetanus at ten-year intervals;
    - (c) a rubella antibody test and, where a nurse has a negative result, rubella immunisation.
  - (iii) For protection against radiation exposure, nurses required to work in close proximity to a source of ionising radiation should be provided with a film badge or personal radiation dosimeter, and a record should be maintained of the radiation exposure measured by such film badge or dosimeter.
  - (iv) The costs involved in the various screening and protection procedures should be borne by the employer.

### **33. Domestic Work**

- (i) Nurses shall not be required to perform as a matter of routine duties: washing, sweeping, polishing and/or dusting of floors, walls, windows, corridors, annexes, bathrooms or verandas, except in an emergency.
- (ii) Nothing in subclause (i) of this clause shall preclude the employment of nurses in the washing of beds, bedspreads, mattresses, bedside tables or the like, following the discharge of a resident suffering a notifiable infectious disease.
- (iii) Nothing in subclause (i) of this clause shall preclude any nurse from being required to perform all or any of the specified duties, at any time when domestic staff is not

available to perform them; provided that the employer has made all reasonable efforts to obtain domestic staff.

### **34. Labour Flexibility**

- (i) Subject to subclause 33 (i), the employer may direct a nurse to carry out such duties as are within the limits of the nurse's skill, competence and training. Such duties may include work which is incidental or peripheral to the nurse's main tasks, provided that such duties are not designed to promote deskilling.

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

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

### **35. Training for Nurses**

- (i) Each employer shall provide a minimum of 12 hours of in-service training per annum to Assistants in Nursing.
- (ii) Each employer may make training available to nurses other than Assistants in Nursing.
- (iii) Each employee shall provide to their employer details of their attendance at in-service training and the employer shall keep a record of this attendance.

- (iv) Upon termination of the employee's employment the employer shall provide to the employee a written statement of the hours of in-service training attended by the employee.
- (v) Where practicable, such training shall be provided to employees during the normal rostered hours of work. Where it is not practicable to provide such training during the normal rostered hours of work then:
  - (a) Employees shall attend in-service training outside their normal rostered working hours when required to do so by the employer.
  - (b) The employer shall provide employees with two weeks' notice of the requirement to attend training outside of their normal rostered working hours.
  - (c) Notwithstanding Clause 18 Overtime, attendance at such training shall be paid at ordinary rates.
  - (d) Notwithstanding subclause 6 (iv) Hours of Work and Free Time of Employees, attendance at such in-service training outside the normal rostered working time of an employee shall not affect the ordinary rate paid to the employee during normal rostered working time.

**36. Termination of Employment**

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.

**36.2 Notice of termination by the employer:**

- (a) (i) The employer shall give all employees, other than Directors of Nursing, the following notice of termination:

<b>Period of Continuous Service</b>	<b>Period of Notice</b>
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 of termination.
- (b) Employees (other than casuals) aged 45 years or older will be entitled to an additional one week's notice if the employee has completed at least two years

continuous service for the employer at the end of the day notice is given.

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

### **36.3 Notice by employee**

- (i) Permanent employees, other than Directors of Nursing, shall give the following written notice of resignation:

- a) employees with 12 months or less service, one week's notice; or
- b) employees with more than 12 months service, two weeks' notice.

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

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

36.4 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.

36.5 Employees who have accrued additional days off duty pursuant to clause 6 Hours of Work and Free Time of Employees shall be paid for such accrued time at ordinary rate of pay upon termination.

### **37. Transfer of Business**

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

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

- (i) Any employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety and emergency response procedures shall be entitled to be paid the "ordinary rate" for the actual time spent in attendance at such practices. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.

- (ii) Any employee required to attend Workplace Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, if such meetings are held outside the ordinary hours of work, be entitled to receive payment at the "ordinary rate" for the actual time spent in attendance at such meetings. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.

- (iii) For the purposes of this clause, "ordinary rate" shall include amounts payable under Clause 10, Salaries and subclauses 12 (i) and (ii), Special Allowances, plus, where

appropriate, the 25% casual loading prescribed in Clause 21 Casual Employees and the 20% loading prescribed in Clause 22 Temporary Employees .

### **39. Resolution of Disputes**

- 39.1 In the event of a dispute about the NES or any matter arising under this Agreement, 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.
- 39.2 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.
- 39.3 The employer or employee may appoint another person or the Union to accompany and/or represent them for the purposes of this clause.
- 39.4 If a dispute is unable to be resolved at the workplace, and all appropriate steps under clause 39.1 have been taken, a party to the dispute may refer the dispute to - FWC or other statutory tribunal.
- 39.5 Where the matter in dispute remains unresolved, the FWC or other statutory tribunal may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.
- 39.6 The parties agree that the FWC or other statutory tribunal shall have the power to do all such things as are necessary for the just resolution of the dispute including mediation, conciliation and arbitration.
- 39.7 The FWC or other statutory tribunal 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.
- 39.8. The parties agree that the FWC or other statutory tribunal may give all such directions and do all such things as are necessary for the just resolution, remedy and determination of the dispute.
- 39.9 Subject to any review of the FWC or other statutory tribunal'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.
- 39.10 The parties agree to confer immunity on the FWC or other statutory tribunal for all matters relating to the dispute resolution between the parties.

39.11 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 workplace 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.

#### **40. Anti-Discrimination**

It is the intention of the parties bound by this Agreement to achieve the object in subdivision 351 of Division 4 of Part 2-4 Anti-discrimination of the Fair Work Act 2009 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.

#### **41. Parental Leave**

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

41.2 Requests for flexible working arrangements

An employee who:

- (i) is a parent, or has responsibility for the care, of a child; and
- (ii) is returning to work after taking leave in relation to the birth or adoption of the child;

may request to work part-time to assist the employee to care for the child.

41.3 Paid Maternity Leave

Eligible employees with at least 12 months service with the employer are entitled to nine (9) weeks paid Maternity Leave at ordinary pay from the date the Maternity Leave commences. Such paid leave shall be in addition to the paid parental leave under the Federal Government Paid Parental Leave Scheme (the Scheme).

Paid Maternity Leave may commence up to two weeks prior to the expected date of birth. It is not compulsory for an employee to take this period off work. However, if an employee decides to work during this period, it is subject to them being able to satisfactorily perform the full range of duties.

41.4 Secondary Care Giver Leave

An eligible employee is entitled to one (1) week's paid Secondary Care Giver Leave in

any one year at ordinary pay which must commence within four (4) weeks of the birth of the child.

An eligible employee is required to give ten (10) weeks written notice of the intention to take leave and shall provide other notice consistent with the Act.

This Secondary Care Giver Leave is in addition to any paid parental leave in accordance with the Federal Government Paid Parental Leave Legislation.

#### 41.5 Paid Adoption Leave

An eligible employee is entitled to paid adoption leave of 3 weeks from and including the date of taking custody of the child.

### 42. Superannuation

#### (i) Employer Contributions

(a) The employer will make superannuation contributions to a superannuation fund for the benefit of an employee as required under Superannuation legislation.

(b) The contribution will be made to:

- a superannuation fund nominated by the employee; or
- where an employee does not nominate a fund to Catholic Super which offers a MySuper product.

#### (ii) Casual Employees

An employer must make such superannuation contributions to a superannuation fund for the benefit of a casual employee who has earned \$450 or more (before tax) in a month.

#### (iii) Voluntary Employee Contributions

- a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 41 (i).
- b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

#### (iv) Timing of Contribution to Fund

The employer will pay the contributions made under this subclauses to the relevant superannuation fund for each employee, no later than 28 days after the end of the

month for which the contributions and deductions were made.

### **43. Remuneration Packaging and Salary Sacrifice to Superannuation**

#### **43.1 Remuneration Packaging**

- (i) No employee or employer shall be compelled to enter into a remuneration packaging arrangement.
- (ii) Where the employer makes a decision to offer remuneration packaging the employer shall provide details of the proposed remuneration packaging to the Union 28 days before the introduction of the proposal. Where the hospital already has remuneration packaging in place prior to the operation of this clause, they shall be deemed to have complied and are not required to notify the Union in accordance with this subclause.
- (iii) The terms and conditions of a package offered to an employee shall not, when viewed objectively, be less favourable than the entitlements otherwise available under the Agreement and shall be subject to the following provisions:
  - (a) The employer shall ensure that the structure of any package complies with taxation and other relevant laws.
  - (b) Employees will have the Superannuation Guarantee Contribution (SGC) calculated on their Agreement salary prior to the application of any remuneration packaging arrangements.
- (iv) A copy of the remuneration agreement shall be made available to the employee.
- (v) The employee shall be entitled to inspect details of payments made under the terms of the remuneration agreement.
- (vi) The configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer.
- (vii) Where at the end of the Fringe Benefit Tax year the full amount allocated to a specific benefit has not been utilised, it will be paid as salary, which will be subject to appropriate taxation requirements. By agreement between the employer and the employee, any unused benefit may be carried forward to the next period on the basis that any FBT obligation is accepted by the employee.
- (viii) In the event that the employer ceases to attract exemption from payment of Fringe Benefit Tax, the employer may terminate all remuneration packaging arrangements and the employee's salary will revert to the applicable Agreement classification rate the employee would have been entitled to receive but for the remuneration packaging agreement.



- (ix) One month's notice by either party is required for change or termination of a remuneration packaging agreement, unless the change or termination is brought about by legislation or an increase to the Agreement wage.
- (x) In the event that the employee ceases to be employed by the employer the remuneration agreement will cease to apply as at the date of termination. Benefits not paid on or before the date of termination shall be treated as salary and the appropriate tax deducted.
- (xi) Pay increases granted to employees in accordance with this Agreement shall also apply to employees subject to remuneration packaging arrangements.
- (xii) Any allowance, penalty rate, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any remuneration packaging arrangements.

#### 43.2 Salary Sacrifice to Superannuation

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

post salary sacrificed amount.

- (h) Salary sacrifice arrangements can be cancelled by either the employer or employee at any time provided either party gives one months' notice. The employer has the right to withdraw from offering salary sacrifice to employees without notice if there is any alteration to relevant Australian Taxation legislation.
- (i) Contributions payable by the employer in relation to the Superannuation Guarantee Legislation shall be calculated by reference to the salary which would have applied to the employee under this Agreement in the absence of any salary sacrifice.
- (j) Employers will not use any amount that is salary sacrificed by an employee to negate contributions payable under the Superannuation Guarantee Legislation.
- (k) The employee shall have the portion of payable salary that is sacrificed paid as additional employer superannuation contributions into the same superannuation fund that receives the employer's SGC contributions.
- (l) Nothing in this clause shall affect the right of an employer to maintain alternate arrangements with respect to salary sacrifice for employees.

#### **44. Consultation**

##### **44.1 Consultation & Introduction of Change**

- (a) Employer's Duty to Notify
  - (i) Where the 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 44.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on

employees, and must give prompt consideration to matters raised by the employees and/or their 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. .
- (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.

#### **44.2 Consultation about Changes to Rosters or Hours of Work**

- (a) Where the employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
  - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
  - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
  - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other agreement provisions concerning the scheduling of work and notice requirements.

## 45. Redundancy

### 45.1 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 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 subclause (a) (i) 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.

### 45.2 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 43.1. Introduction of Change:

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

Period of continuous service	Period of notice
Less than 1 year	1 week
1 year 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 Long Service Leave (Clause 26) and Annual Leave and Public Holidays (Clause 24).

**(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 fifteen or more 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.

**45.3 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:

<b>Years of Service</b>	<b>Entitlement</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks

4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

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

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

- (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 12 (i) (a) and (b) (in-charge allowance) and (ii) (a) and (c) (on-call allowance) of clause 12 Special Allowances shall form part of the employee's "week's pay". (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 subclause 45.3 (a) (i) and (ii).

- (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 and annual leave loading.

- (b) Incapacity to Pay

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

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

(c) Alternative Employment

Subject to an application by the employer and further order of the FWC, the 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.

#### 45.4 Grievance Procedure

Refer to Clause 39, Resolution of Disputes contained in this Agreement.

#### **46. 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 the employer's policies.

#### **47. National Employment Standard (NES)**

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

47.2 Where the NES provides, or is varied to provide, a condition or entitlement more favourable to the employee in a particular respect than that set out in this Agreement, the better entitlement will apply.

47.3 The minimum guarantees provided by the NES will override less favourable provisions in this Agreement.

47.4 Where this Agreement provides a condition or entitlement more favourable to the employee than that provided by the NES the better entitlement will apply.

#### **48. Workload Management**

48.1 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.



- 48.2 To ensure that employee concerns involving excessive workloads are effectively dealt with by the employer the following procedures must be applied:
- (i) In the first instance, employee/s must discuss the issue with their immediate supervisor and, where appropriate, explore solutions.
  - (ii) If a solution cannot be identified and implemented, the matter must be referred to an appropriate senior manager for further discussion.
  - (iii) If a solution still cannot be identified and implemented, the matter must be referred to the Facility Manager for further discussion.
  - (iv) The outcome of the discussions at each level and any proposed solutions must be recorded in writing and fed back to the effected employees.
- 48.3 Resolution of workload issues should be based on the following criteria including but not limited to:
- (a) Clinical assessment of resident's needs;
  - (b) The demand of the environment such as facility layout;
  - (c) Statutory obligation (including, but not limited to, workplace health and safety legislation);
  - (d) The requirements of nurse regulatory legislation;
  - (e) Reasonable workloads;
  - (f) Accreditation Standards
  - (g) Budgetary considerations
- 48.4 Where agreement cannot be reached, the parties may exercise their rights pursuant to Clause 39 Resolution of Disputes.

#### **49. Agreement Flexibility**

- 49.1 Notwithstanding any other provision of this Agreement, the employer and an individual employee may agree to an arrangement that varies the application of certain terms of this Agreement to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:
- (a) arrangements for when work is performed
  - (b) allowances

- (c) the inclusion of leave loading in base salary
  - (d) overtime rates; and
  - (e) penalty rates
- 49.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.
- 49.3 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 49.1; 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.
- 49.4 The employer must ensure that the terms of the individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - (b) are not unlawful terms under [section 194](#) of the *Fair Work Act 2009*; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- 49.5 The employer must ensure that the individual flexibility arrangement:
- (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:
    - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (e) states the day on which the arrangement commences.

- 49.6 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 49.7 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.
- 49.8 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 the employer and an individual employee contained in any other term of this Agreement.

## **50. Representative Leave**

- (a) Leave required by a Union workplace representative (e.g under the NSWNMA rules this could include an "Official" or "Delegate") to attend trade union and union delegate courses, seminars or annual conference shall be as follows:
  - (i) To a maximum of 3 paid days per year (from 1 January to 31 December each year) for the totality of all applications of trade union, union delegate training leave and attending NSWNMA conferences, provided that:
    - (1) two weeks' notice is provided in writing by the employee outlining the purpose and the duration of the leave requested;
    - (2) the taking of leave is arranged having regard to the operational requirements of the employer.
- (b) Where the facility has two NSWNMA representatives, the total number of representative leave days prescribed in (i) above may be split equally between two NSWNMA representatives only in such a circumstance.
- (c) The Association will advise the facility of the employee(s) it recognises as the workplace representative on a two yearly basis.
- (d) Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

## **51. Community Leave**

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

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

- (a) the period consists of one or more of the following:
  - (i) time when the employee engages in the activity;
  - (ii) reasonable travelling time associated with the activity;
  - (iii) reasonable rest time immediately following the activity; and
- (b) unless the activity is jury service—the employee’s absence is reasonable in all the circumstances.

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

- (i) Each of the following is an eligible community service activity:
  - (a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
  - (b) a voluntary emergency management activity (see 51.2 (ii)); or
  - (c) an activity prescribed as an eligible community activity by regulations made in accordance with section 109 (4) of the Australian Fair Work Act 2009.
- (ii) An employee engages in a voluntary emergency management activity if, and only if:
  - (a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and
  - (b) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
  - (c) the employee is a member of, or has a member-like association with, a recognised emergency management body; and

- (d) either:
  - (1) the employee was requested by or on behalf of the body to engage in the activity; or
  - (2) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.
- (iii) A recognised emergency management body is:
  - (a) a body, or part of a body, that has a role or function under a plan that:
    - (1) is for coping with emergencies and/or disasters; and
    - (2) is prepared by the Commonwealth, a State or a Territory; or
  - (b) a fire-fighting, civil defence or rescue body, or part of such a body; or
  - (c) any other body, or part of a body, a substantial purpose of which involves:
    - (1) securing the safety of persons or animals in an emergency or natural disaster; or
    - (2) protecting property in an emergency or natural disaster; or
    - (3) otherwise responding to an emergency or natural disaster; or
  - (d) a body, or part of a body, prescribed by the regulations made in accordance with the Fair Work Act 2009; but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one or more employees to be absent from their employment under this clause.

### **51.3 Notice and evidence requirements**

- (a) An employee who wants an absence from his or her employment to be covered by this clause must give his or her employer notice of the absence.
- (b) The notice:
  - (i) must be given to the employer as soon as practicable (which may be a time after the absence has started); and
  - (ii) must advise the employer of the period, or expected period, of the absence.

- (c) An employee who has given his or her employer notice of an absence under 51.3 (a) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.
- (d) An employee's absence from his or her employment is not covered by this clause (i.e. clause 50) unless the employee complies with this subclause.

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

- (a) This section applies if:
  - (i) in accordance with this clause (i.e. Clause 50), an employee is absent from his or her employment for a period because of jury service; and
  - (ii) the employee is not a casual employee.
- (b) Subject to 50.4 (c), (d) and (e), 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.
- (c) The employer may require the employee to give the employer evidence that would satisfy a reasonable person:
  - (i) that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
  - (ii) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the employee for the period.
- (d) If, the employer requires the employee to provide evidence in accordance with 51.4 (c):
  - (i) the employee is not entitled to payment under 51.4 (b) unless the employee provides the evidence; and
  - (ii) if the employee provides the evidence - the amount payable to the employee under 51.4 (b) is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.
- (e) If an employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than 10 days in total:
  - (i) the employer is only required to pay the employee for the first 10 days of absence; and
  - (ii) the evidence provided in response to a requirement under subsection (c) need only relate to the first 10 days of absence; and

- (iii) the reference in 51.4 (d) to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first 10 days of absence.
- (f) Jury service pay means an amount paid in relation to jury service under a law of the Commonwealth, a State or a Territory, other than an amount that is, or that is in the nature of, an expense-related allowance.
- (g) Jury service summons means a summons or other instruction (however described) that requires a person to attend for, or perform, jury service.

## **52. Ceremonial Leave**

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

## **53. Catholic Ethos**

- (i) Employees are required to support the mission, teachings and ethos of the Catholic Church's work in Aged Care. It is expected that they:
  - a) acknowledge and accept that their work is part of the mission of the Catholic Church;
  - b) agree in the performance of their role to uphold the mission, teachings and ethos of the Catholic Church;
  - c) avoid any influence on residents in the workplace that is not consistent with such mission, teachings or ethos.
- (ii) It is acknowledged that the employer specifies and may continue to specify other expectations and requirements on the above in contracts of employment, policies or guidelines.

## **54. Requests for flexible working arrangements**

- (i) Employees are entitled to request flexible employment arrangements in accordance with the provisions of the NES.
- (ii) An employee may request a change to working arrangements if the following circumstances apply to the employee:
  - a) the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
  - b) the employee is a carer (within the meaning of the Carer Recognition Act 2010);

- c) the employee has a disability;
- d) the employee is 55 or older;
- e) the employee is experiencing violence from a member of the employee's family;
- f) the employee provides 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 the member is experiencing violence from the member's family.

Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

(iii) To avoid doubt, and without limiting (b), an employee who:

(iii) is a parent, or has responsibility for the care, of a child; and

(iv) is returning to work after taking leave in relation to the birth or adoption of the child;

may request to work part-time to assist the employee to care for the child.

(iv) An employee other than a casual employee is entitled to make a request if the employee has completed at least 12 months of continuous service with the employer immediately before making the request.

(v) A long term casual employee who is a long term employee of the employer immediately before making the request and who has a reasonable expectation of continuing employment on a regular and systematic basis is entitled to make a request.

(vi) The request must:

a) be in writing; and

b) set out details of the change sought and of the reasons for the change.

(vii) The employer must give the employee a written response to the request within 21 days, stating whether the employer grants or refuses the request.

(viii) The employer may refuse the request only on reasonable business grounds

(ix) If the employer refuses the request, the written response under (g) must include details of the reasons for the refusal.

(x) Without limiting what are reasonable business grounds for the purposes of (h) reasonable business grounds include the following:

a) that the new working arrangements requested by the employee would be too costly for the employer;



- b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
- c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;
- d) that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
- e) that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

**Table 1 – Salaries**

**Minimum Hourly Rates** (\*FFPP = first full pay period commencing on or after)

	<b>At commencement of agreement</b>	<b>from FFPP* on or after 1/7/2017</b>	<b>from FFPP* on or after 1/7/2018</b>
		<b>+ 2.5%</b>	<b>+ 1.7%</b>
<b>Assistant in Nursing with no qualification</b>			
1 <sup>st</sup> year	\$19.69	\$20.19	\$20.53
2 <sup>nd</sup> year	\$20.10	\$20.60	\$20.95
3 <sup>rd</sup> year	\$20.71	\$21.23	\$21.59
4 <sup>th</sup> year and thereafter	\$21.33	\$21.86	\$22.23
<b>Assistant in Nursing with Cert 3 qualification</b>			
1 <sup>st</sup> year	\$21.01	\$21.54	\$21.91
2 <sup>nd</sup> year and thereafter	\$21.33	\$21.86	\$22.23
<b>Assistant in Nursing Team Leader</b>			
	\$22.61	\$23.18	\$23.57
<b>Enrolled Nurse without medication endorsement</b>			
1st year	\$23.79	\$24.38	\$24.80
2nd year	\$24.28	\$24.89	\$25.31
3rd year	\$24.80	\$25.42	\$25.85
4th year	\$25.31	\$25.94	\$26.38
Thereafter	\$25.81	\$26.46	\$26.90
<b>Enrolled Nurse</b>			
1st year	\$24.28	\$24.89	\$25.31
2nd year	\$24.80	\$25.42	\$25.85
3rd year	\$25.31	\$25.94	\$26.38
4th year	\$25.81	\$26.46	\$26.90
Thereafter	\$26.46	\$27.12	\$27.58
<b>Registered Nurse</b>			
1st year	\$26.87	\$27.54	\$28.01
2nd year	\$28.30	\$29.01	\$29.50
3rd year	\$29.72	\$30.46	\$30.98
4th year	\$31.24	\$32.02	\$32.57
5th year	\$32.76	\$33.58	\$34.15
6th year	\$34.27	\$35.13	\$35.72
7th year	\$36.00	\$36.90	\$37.53
8th year	\$37.45	\$38.39	\$39.04

	At commencement of agreement	from FFPP* on or after 1/7/2017	from FFPP* on or after 1/7/2018
		+ 2.5%	+ 1.7%
<b>Nursing Unit Manager (personal to current occupants as at 01.03.99)</b>			
Level I 1st year	\$41.47	\$42.51	\$43.23
2nd year	\$42.62	\$43.69	\$44.43
Level II	\$43.65	\$44.74	\$45.50
Level III	\$44.79	\$45.91	\$46.69
<b>Nurse undergoing pre registration assessment</b>			
	\$23.26	\$23.84	\$24.25
<b>Clinical Nurse Specialist &amp; Clinical Nurse Educator</b>			
	\$38.97	\$39.94	\$40.62
<b>Clinical Nurse Consultant</b>			
	\$45.90	\$47.05	\$47.85
<b>Nurse Educator</b>			
1st year	\$41.47	\$42.51	\$43.23
2nd year	\$42.62	\$43.69	\$44.43
3rd year	\$43.65	\$44.74	\$45.50
4th year	\$45.90	\$47.05	\$47.85
<b>Senior Nurse Educator</b>			
1st year	\$46.99	\$48.16	\$48.98
2nd year	\$47.94	\$49.14	\$49.97
3rd year	\$49.52	\$50.76	\$51.62
<b>Assistant Director of Nursing</b>			
<150 beds	\$42.62	\$43.69	\$44.43
150-250 beds	\$45.90	\$47.05	\$47.85
250 beds	\$46.99	\$48.16	\$48.98
<b>Deputy Director of Nursing</b>			
Less than 20 beds	\$43.47	\$44.56	\$45.31
20<75 beds	\$44.58	\$45.69	\$46.47
75<100 beds	\$45.59	\$46.73	\$47.52
100<150 beds	\$46.55	\$47.71	\$48.52
150<200 beds	\$47.94	\$49.14	\$49.97
200<250 beds	\$49.52	\$50.76	\$51.62
250<350 beds	\$51.35	\$52.63	\$53.53
350<450 beds	\$53.16	\$54.49	\$55.42
450<750 beds	\$55.11	\$56.49	\$57.45
750 + beds	\$57.21	\$58.64	\$59.64

	<b>At commencement of agreement</b>	<b>from FFPP* on or after 1/7/2017</b>	<b>from FFPP* on or after 1 1/7/2018</b>
		<b>+ 2.5%</b>	<b>+ 1.7%</b>
<b>Director of Nursing</b>			
less than 25 beds	\$48.53	\$49.74	\$50.59
25<50 beds	\$51.35	\$52.63	\$53.53
50<75 beds	\$52.43	\$53.74	\$54.65
75<100 beds	\$53.52	\$54.86	\$55.79
100<150 beds	\$55.04	\$56.42	\$57.38
150<200 beds	\$56.85	\$58.27	\$59.26
200<250 beds	\$58.66	\$60.13	\$61.15
250<350 beds	\$60.84	\$62.36	\$63.42
350<450 beds	\$64.48	\$66.09	\$67.22
450<750 beds	\$68.18	\$69.88	\$71.07
750 + beds	\$72.42	\$74.23	\$75.49

**Table 2 – Allowances**

(\*FFPP = first full pay period commencing on or after)

Item No.	Allowance		Clause	At commencement of agreement	from FFPP* on or after 1/7/2017	from FFPP* on or after 1/7/2018
					+ 2.5%	+ 1.7%
1	In charge of nursing home less than 100 beds	per shift	12(i)(a)	\$25.29	\$25.92	\$26.36
	In charge of nursing home 100 to 150 beds	per shift	12 (i)(a)	\$40.75	\$41.77	\$42.48
2	In charge of ward/unit	per shift	12 (i)(b)	\$25.29	\$25.92	\$26.36
3	On call	per 24 hrs or part thereof	12 (ii)(a)	\$22.55	\$23.11	\$23.51
4	On call on rostered days off	per 24 hrs or part thereof	12 (ii)(b)	\$45.10	\$46.23	\$47.01
5	On call during meal break	per period	12 (ii)(c)	\$12.91	\$13.23	\$13.46
6	Travelling Allowance	cents per km	14 (i)(b)	\$0.90	\$0.92	\$0.94
7	Uniform	per week	16(iii)(a)	\$7.39	\$7.57	\$7.70
8	Shoes	per week	16(iii)(a)	\$2.31	\$2.37	\$2.41
9	Cardigan or Jacket	per week	16(iii)(b)	\$2.22	\$2.28	\$2.31
10	Stockings	per week	16(iii)(c)	\$3.85	\$3.95	\$4.01
11	Socks	per week	16(iii)(d)	\$0.76	\$0.78	\$0.79
12	Laundry	per week	16(iv)	\$6.17	\$6.32	\$6.43
13	Meal on overtime	per meal	18(viii)	\$10.86	\$11.13	\$11.32
14	Breakfast	per meal	26(i)(c)	\$4.07	\$4.17	\$4.24
15	Other Meals	per meal	26(i)(c)	\$7.37	\$7.55	\$7.68

**Table 3 - Continuing Education Allowances (per week)**

(\*FFPP = first full pay period commencing on or after)

Item No.	Brief Description	Clause No.	At commencement of agreement	from FFPP* on or after 1/7/17 + 2.5%	from FFPP* on or after 1/7/18 +1.7%
1	Continuing Education Allowance: Registered Nurse with relevant postgraduate certificate or degree	12A(vii)	\$21.23	\$21.76	\$22.13
2	Continuing Education Allowance: Registered Nurse with relevant postgraduate diploma or degree	12A(viii)	\$35.37	\$36.25	\$36.87
3	Continuing Education Allowance: Registered Nurse with relevant masters degree	12A(ix)	\$42.45	\$43.51	\$44.25
4	Continuing Education Allowance: Enrolled Nurse with relevant qualification	12A(x)	\$14.15	\$14.50	\$14.75

**Signature Page for St Mary's Villa, Hostel and Nursing Home  
T/A St Mary's Villa**

Dated this 4<sup>th</sup> day of July 2016

*Paul Crowley*

**Father Paul Crowley  
Parish Priest & Legal Representative  
St Mary's Villa, Hostel and Nursing Home  
56 Burton St  
CONCORD NSW 2137**

**As the Legal Representative, Father Crowley has the authority to sign this agreement**

*Rachel*

**Signature of witness**

*33/28 Gower St Summer Hill*

**Address of Witness**

*Brett Holmes*

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

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

*Margaret Potts*

WITNESS

Margaret Mary Potts  
50 O'Dea Ave, Waterloo

*Coral Levett*

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

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

*Margaret Potts*

WITNESS

Margaret Mary Potts  
50 O'Dea Ave, Waterloo

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