



## DECISION

*Fair Work Act 2009*

s.185 - Application for approval of a single-enterprise agreement

**Fresenius Medical Care Australia Pty Ltd**  
(AG2015/3892)

### **FRESENIUS MEDICAL CARE NSW NURSING STAFF ENTERPRISE AGREEMENT 2015**

Health and welfare services

COMMISSIONER SIMPSON

BRISBANE, 17 JULY 2015

*Application for approval of the Fresenius Medical Care NSW Nursing Staff Enterprise Agreement 2015.*

[1] An application has been made for approval of an enterprise agreement known as the *Fresenius Medical Care NSW Nursing Staff Enterprise Agreement 2015* (the Agreement). The Application was made pursuant to s.185 of the Fair Work Act 2009 (the Act). It has been made by Fresenius Medical Care Australia Pty Ltd. The agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss186, 187 and 188 as are relevant to this application for approval have been met.

[3] The New South Wales Nurses and Midwives' Association and New South Wales Branch of the Australian Nursing and Midwifery Federation being a bargaining representative 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) of the Act, I note that the Agreement covers this organisation.

[4] The Agreement is approved and will operate in accordance with s.54 of the Act. The nominal expiry date is 31 May 2018.

COMMISSIONER

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FRESENIUS MEDICAL CARE  
NSW NURSING STAFF

ENTERPRISE AGREEMENT

2015

## ENTERPRISE AGREEMENT

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## 2. NAME OF THE AGREEMENT

This Agreement will be known as the *Fresenius Medical Care NSW Nursing Staff Enterprise Agreement 2015* (Agreement).

## 3. APPLICATION OF THIS AGREEMENT

This Agreement covers:

- (a) Fresenius Medical Care Australia Pty Ltd (ACN 067 557 877) (Employer);
- (b) All Employees of the Employer in New South Wales who are engaged in a classification in this Agreement (Employee/Employees), including Newcastle Dialysis Centre, Norwest Private Dialysis Centre and St. Vincent's Renal Unit.
- (c) Any Employee of the Employer engaged to provide Clinical Services to the Mater Dialysis Clinic.
- (d) The New South Wales Nurses and Midwives' Association (NSWNMA) and Australian Nursing and Midwifery Federation (ANMF-NSW Branch) A.B.N 63 398 164 405 ("the Association") of 50 O'Dea Avenue, Waterloo, Sydney, NSW, 2017.

## 4. RELATIONSHIP BETWEEN THIS AGREEMENT AND OTHER INSTRUMENTS

This Agreement is a standalone agreement. It operates to the exclusion of all awards.

### 4.1 **Definitions**

- 'FW Act' means the *'Fair Work Act 2009(FW Act)* as amended or replaced from time to time.
- NES National Employment Standards, a set of minimum conditions contained within the FW Act.
- FWC Fair Work Commission.
- 'Commission' means *'Fair Work Commission'*.
- Board means the Nursing and Midwifery Board of Australia.
- 'Union' means the New South Wales Nurses and Midwives Association (NSWNMA) and Australian Nursing and Midwifery Federation (ANMF NSW Branch).

## 5. DATE AND PERIOD OF OPERATION

This Agreement commences operating seven days after it is approved by the Fair Work Commission.

This Agreement has a nominal expiry date of 31<sup>st</sup> May 2018.

## 6. POSTING OF THE AGREEMENT

A copy of this Agreement and the NES must be displayed in a conspicuous and convenient place at each site so as to be easily read by all Employees and through electronic means.

## 7. WORKLOAD MANAGEMENT STRATEGIES

- (a) The parties agree that appropriate strategies should be implemented to maintain balanced and safe workloads, identify and eliminate unnecessary tasks and recognise the adverse effect that excessive or insufficient workloads may have on Employees.
- (b) Employees' workloads must not exceed reasonable limits and staff and management should have access to a number of avenues to ensure that as changes or new processes are adopted, workloads do not become unreasonable.
- (c) Employees and management are encouraged to raise and address workload issues as soon and as efficiently as possible through line management. An issue is raised by reporting and discussing the matter with the immediate in-charge person and by entering the matter through the electronic incident management system and dealt with as per the "Incident reporting and review process policy".
- (d) If a workload issue remains unresolved, the matter should be dealt with in accordance with Clause 11 - Dispute Resolution Procedure.

## 8. SKILL MIX AND STAFFING LEVELS

- a) The Employer recognises the requirement for the provision of safe staffing levels through the following:
  - i) Professional clinical judgement
  - ii) Patient outcomes
- b) The analysis of data from these sources provides the framework for nursing management to manage individual requirements and set priorities on a shift-by-shift basis. Such strategies also ensure that staffing levels meet patient care requirements.

- c) The skill mix will aim not to be less than 50:50 registered nurses to enrolled endorsed nurses. The clinics will aim for a 1 – 4 chair ratio per staff member at any one time dependant on staffing, patient acuity and needs of the unit at the time.
- d) On a 12 hours shift the chair ratio per staff member may vary, but no more than 1 – 5. A maximum of 8 patients in a 12 hours shift, patients may be moved according to the workflow to achieve the ratio.

## 9. SECURITY

- (a) The Employer will ensure that adequate measures are in place with regard to the safety and security of Employees at all times. Such measures may include but not be limited to the following:
  - (i) Adequate numbers of suitably qualified nursing staff to safely monitor and assist patients who are, based on a clinical assessment, considered to be a risk to themselves or others;
  - (ii) Adequate numbers of suitably qualified nursing staff commensurate with patient acuity and throughput;
  - (iii) Risk minimisation strategies in consultation with staff.

## 10. CONSULTATION

### 10.1 Consultation regarding major workplace change

#### (a) Employer to notify

(i) Where the Employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on Employees, the Employer must notify the Employees who may be affected by the proposed changes and their representatives, if any.

(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. Provided that where this agreement makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

(b) Employer to discuss change

(i) The Employer must discuss with the Employees affected and their representatives, if any, the introduction of the changes referred to in clause 10.1(a), the effects the changes are likely to have on Employees and measures to avert or mitigate the adverse effects of such changes on Employees and must give prompt consideration to matters raised by the Employees and/or their representatives in relation to the changes.

(ii) The discussions must commence as early as practicable after a definite decision has been made by the Employer to make the changes referred to in clause 10.1(a).

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

10.2 Consultation about changes to rosters or hours of work

(a) Where an Employer proposes to change an Employee's regular roster or ordinary hours of work, the Employer must consult with the Employee or Employees affected and their representatives, if any, about the proposed change.

(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 provisions concerning the scheduling of work and notice requirements.

#### 11. DISPUTE RESOLUTION PROCEDURE

- (a) In the event of a dispute in relation to a matter arising under this Agreement, or the NES (except disputes about whether the Employer had reasonable business grounds under subsection 65(5) or 76(4) of the FW Act), the parties will 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 Director of Nursing organises further discussions with the relevant Employee or Employees concerned.
- (b) A party to the dispute may appoint another person or the Union to accompany and/or represent them in relation to the dispute.
- (c) If a dispute in relation to a matter arising under this Agreement or the NES, is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the FWC for resolution by mediation and/or conciliation, recommendation, and, where the matter in dispute remains unresolved, arbitration where any decision of the FWC is binding on all parties.
- (d) If arbitration is necessary the FWC may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective and the parties agree to abide by such a decision and further accept that either party has the right to appeal that decision.
- (e) It is a term of this agreement that while the dispute resolution procedure is being conducted, work will continue normally unless there is reasonable concern about an imminent workplace health and safety issue.

#### 12. BACKGROUND CHECK

- (a) Employees agree that the Employer may undertake a criminal record background check prior to Employees commencing employment. Should the results of the criminal record background check be unsatisfactory, the Employer may terminate Employee's employment with immediate effect.

#### 13. TYPES OF EMPLOYMENT

Employees under this Agreement will be employed in one of the following categories:

- (a) full-time;
- (b) part-time; or
- (c) casual.

At the time of engagement the Employer will inform each Employee in writing whether they are employed on a full-time, part-time or casual basis. An Employer may direct an Employee to carry out such duties that are within the limits of the Employee's skill, competence and training, consistent with the respective classification.

#### 13.1 Full-time employment

- (a) A full-time Employee is an Employee who is engaged to work 76 ordinary hours per fortnight.

#### 13.2 Part-time employment

- (a) A part-time Employee is an Employee who is engaged to work less than an average of 76 ordinary hours per fortnight.
- (b) Before commencing part-time employment, the Employer and Employee will agree in writing the guaranteed minimum number of hours to be worked per fortnight.
- (c) The terms of the agreement may be varied by agreement and recorded in writing.
- (d) A minimum engagement in a shift for a permanent part time Employee will be four hours, except for training days.
- (e) The terms of this Agreement will apply on a pro rata basis to part-time Employees on the basis that the fortnightly hours for full-time Employees are 76.

#### 13.3 Casual employment

- (a) A casual Employee is an Employee engaged as such on an hourly basis.
- (b) A casual Employee will be paid an hourly rate equal to the hourly rate appropriate to the Employee's classification plus a casual loading of 25%.
- (c) A casual Employee will be paid a minimum of 2 hours pay for each engagement.
- (d) A casual Employee will be paid shift allowances calculated on the ordinary rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.
- (e) The provisions for annual leave, paid personal leave, overtime, payment for public holidays not worked and termination shall not apply in the case of a casual Employee.

#### 14. WAGES

- (a) Wage rates effective from the commencement of this Agreement will be as shown in Appendix A of the Agreement.
- (b) The wage increases as set out in appendix A of this Agreement will be payable as follows:
  - i. 3% increase from the beginning of the first full pay period to commence on or after 1 July 2015.
  - ii. 3% increase from the beginning of the first full pay period to commence on or after 1 July 2016.
  - iii. 3% increase from the beginning of the first full pay period to commence on or after 1 July 2017.
- (c) Payment of wages will be by electronic transfer at the end of each fortnightly pay period, along with electronic pay advice slips. Any other form of payment can be at the discretion of the Employer by agreement with the Employee.
- (d) If a normal payroll processing day falls on a public holiday, payment will be processed on the business day prior to that day

#### 15. SALARY SACRIFICE ARRANGEMENTS

- (a) An Employee may request the Employer to pay amounts to 3<sup>rd</sup> parties on the Employee's behalf, subject to sub clause (c), and have such amounts deducted from their wages (salary sacrifice). The Employer must act in accordance with such request.
- (b) This arrangement is subject to the current legislative salary sacrifice arrangements with the Australian Taxation Office (ATO).
- (c) Only the following items may be salary sacrificed:
  - I. Superannuation
  - II. A subscriptions to trade or professional journals
  - III. Novated Leases
- (c) Any salary sacrifice request made pursuant to this Clause can be terminated by the Employee providing at least 14 days' notice of termination is given.

#### 16. SUPERANNUATION

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, the *Superannuation Guarantee Charge Act 1992 (Cth)*, the *Superannuation Industry (Supervision) Act 1993 (Cth)*

and the *Superannuation (Resolution of Complaints) Act 1993 (Cth)*, deals with the superannuation rights and obligations of Employers and Employees.

- (b) Under superannuation legislation Employees have the opportunity to choose their own superannuation fund.
- (c) The Employer will calculate superannuation contributions by calendar month (the contribution period) and will remit contributions to the relevant superannuation fund within one month of the contribution period end or in accordance with the relevant fund deed or agreement.
- (d) Where an Employee fails to nominate a fund of choice within the first month of commencement of employment, the superannuation payments for that Employee will be placed in the default fund being 'HESTA' which offers a MySuper product.
- (e) The Employer shall pay to the Employee's Superannuation account, the minimum amount required by legislation or the applicable percentage of the Employees' wages as per the Employer's superannuation policy.

#### 17. LONG SERVICE LEAVE

An Employee's entitlement to long service leave shall be in accordance with the Long Service Leave Act 1955 (NSW).

#### 18. SPAN OF HOURS

- (a) The ordinary hours of work for an Employee will be between 6.00 am and 6.00 pm Monday to Friday.
- (b) A shiftworker is an Employee who is regularly rostered to work their ordinary hours of work outside the ordinary hours of work of an Employee as defined in sub clause (a).

#### 19. HOURS OF WORK - ORDINARY HOURS OF WORK

- (a) The ordinary hours of work for full-time Employees will be 76 hours in any one fortnight or 152 hours per four week cycle, to be worked according to a roster as follows:
  - i. The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks, except for a shift which the Employer and Employee agree in writing in advance is a maximum of 12 ordinary hours.
  - iii. The hours of work on any day will be continuous except for meal breaks.

- iv. Employees may be offered additional (additional to rostered hours of work) shifts from time to time to meet the change in activity levels. Additional shifts will be worked and rostered by mutual agreement.
- (b) An Employee may, from time to time, be required to work reasonable overtime, where reasonable notice has been provided and where due consideration has been given to Workplace Health and Safety matters and the Employees circumstances. Employees working overtime will be entitled to the overtime provisions according to Clause 23.

## 20. TWELVE (12) HOUR - SHIFT ROSTER ARRANGEMENTS

### (a) Participation in 12 Hour-Shift Roster

- (i) An Employee may elect to participate, or not to participate, in the 12 Hour Shift Roster subject to the provisions of this clause. Participation in the 12 Hour Shift Roster is at the sole discretion of the individual Employee. Pressure or coercion to participate or not to participate in the 12 Hour Shift Roster is strictly prohibited.
- (ii) An Employee who wishes to participate in the 12 Hour Shift Roster shall advise their Manager in writing that they wish to do so. The Employee shall then be entitled to commence working 12-hour shifts in the next roster period, provided that a minimum of 8 weeks' notice is given to the Manager. Earlier commencement to work 12-hour shifts may occur by agreement between the Employee and the Manager.
- (iii) An Employee may cease working 12-hour shifts by advising the Manager to that effect in writing. A full published roster period of notice to cease working 12-hour shifts should be provided to the Manager except in unusual or exceptional circumstances.
- (iv) An Employee ceasing 12-hour shifts shall revert to the shift arrangements that applied to that Employee immediately prior to commencing 12-hour shifts, unless otherwise mutually agreed. An Employee without an alternative shift arrangement to 12 hour shifts, and who ceases working 12 hour shifts, will work a roster consistent with the shift length referred to in this Agreement and their contracted hours, unless otherwise mutually agreed.

### (b) Roster Guidelines

- (i) The 12-hour roster must provide for the following:

- Work on no more than 2 consecutive days with 3 by mutual agreement
- No night shifts
- There shall be no extension of work beyond 12 hours (i.e. no overtime following a 12 hour shift);
- There shall be a reasonable distribution of days off between block shifts;
- The roster cycle is a period of four weeks;

(ii) Minimum Breaks between Shifts

The minimum break between shifts shall be at least 10 hours to allow sufficient time for rest and recuperation.

(iii) Meal and Tea Breaks

During each day or shift an Employees shall have:

- (i) one unpaid 30 minute meal break and
- (ii) two 30 minute paid tea breaks.

(iv) Additional Shifts

Except in exceptional circumstances the working of any additional, agreed, unrostered shift by full time Employees participating in the 12-hour roster is not permitted. In exceptional circumstances only, a full time Employee may, by agreement between the Manager and the Employee, work up to one additional shift in any fortnightly work cycle to cover for unplanned Employee absences, subject to all other roster rules. Any such shift shall be overtime with all of the overtime provisions of the Agreement observed.

## 21. ROSTERING ARRANGEMENTS

- (a) The Employee will be required to work the ordinary hours of work over a 14 day cycle (except for those on the 12 hour shift). In a 14 day cycle the Employee will work up to a maximum of 76 ordinary hours.
- (b) The Employee will be rostered off duty for at least two (2) days per week. Wherever practicable the Employer will roster the Employee off duty for at least two (2) consecutive days unless by agreement otherwise between the Employer and Employee.
- (c) The Employer will provide the Employee with the 2 weeks roster at least 10 days before the commencement of the roster.

- (d) Except as in emergency situations seven days' notice shall be given of a change of roster.
- (e) Starting/finishing times of shifts may vary to accommodate the smooth running of the clinic and subject to operational requirements. 24 hours' notice should be given to roster changes wherever possible.
- (f) The length of a shift may be varied by agreement between the Employer and Employee.
- (g) The required notice period for the cancellation by the Employer of any shift will be 12 hours before commencement of the shift.
- (h) In the event that an agreed shift is cancelled by the Employer without the required notice period being given, the Employee will be entitled to four hours payment.
- (i) In the event of a breakdown of machinery or equipment or a stoppage of work for any cause for which the Employer cannot reasonably be held responsible, the Employee will be entitled to two hours payment.
- (j) The Employer will consult with the Employee regarding the composition of the roster and where possible will adjust the roster to accommodate the requirements of the Employee and operational requirements.

## 22. REST BETWEEN PERIODS OF ROSTERED WORK

- (a) An Employee will be allowed a break of not less than 10 hours between the termination of work on one day or shift and the commencement of another.
- (b) The 10 hours break may be reduced to a break of not less than 8 hours under the following circumstances:
  - (i) To permit changes of shift rosters; or
  - (ii) The 10 hour break may be reduced by agreement between the Employer and the Employee in circumstances where they are of the opinion the Employee will not be unduly fatigued and the Employee's professional competence not be adversely affected.

## 23. OVERTIME

### 23.1 Overtime penalty rates

- (a) Hours worked in excess of eight hours on any shift or in excess of 76 hours per fortnight, are to be paid as follows:
  - (i) Monday to Saturday (inclusive)—time and a half for the first two hours and double time thereafter;
  - (ii) Sunday—double time; and

(iii) Public holidays—double time and a half.

- (c) Overtime rates under this clause will be in substitution for and not cumulative upon the shift and weekend premiums prescribed in clause 26—Saturday and Sunday work and clause 27—Shift Work.

23.2 Time off instead of payment for overtime

- (a) By agreement between the Employer and Employee, an Employee may take time off instead of receiving payment for overtime at a mutually agreed time.
- (b) The Employee may take one hour of time off for each hour of overtime plus a period of time equivalent to the overtime penalty incurred.

23.3 Rest period after overtime

- (a) When overtime work is necessary, it will, wherever reasonably practicable, be so arranged that Employees have at least 10 consecutive hours off duty between the work of successive days or shifts, including overtime.
- (b) An Employee, other than a casual Employee, who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day, that they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime, until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If, on the instruction of the Employer, an Employee resumes or continues to work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until released from duty for such period. The Employee will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during the absence.

23.4 Rest break during overtime

An Employee working overtime will take a paid rest break of 20 minutes after each four hours of overtime worked if required to continue to work after the break.

23.5 Recall to work

- (a) An Employee who is recalled to work after leaving the Employer's premises will be paid for a minimum of three hours' work at the appropriate overtime rate.
- (b) The time spent travelling to and from the place of duty will be deemed to be time worked. Except that, where an Employee is recalled within three hours of their rostered commencement time, and the Employee remains at work, only the time spent in travelling to work will be included with the actual time worked for the purposes of the overtime payment.

- (c) An Employee who is recalled to work will not be obliged to work for three hours if the work for which the Employee was recalled is completed within a shorter period.
- (d) If an Employee is recalled to work, the Employee will be provided with transport to and from their home or will be refunded the cost of such transport.

#### 24. EMPLOYEE INCREMENTAL PAY POINTS

Each Employee will be entitled to increments for service in their classification in accordance with the following scale:

- (a) A full time Employee is entitled to move to the next increment within their level on completion of each twelve months satisfactory service with the Employer, until the maximum wage for that level is attained.
- (b) Incremental progression for part time and casual Employees will occur on the completion of 1786 ordinary hours. Progression to the next applicable increment can not occur earlier than twelve (12) months at the previous or existing increment:
  - (i) A part time or casual Employee who believes an incremental pay point is due for increase they will need to provide to their Manager a certificate of employment of any other Employer showing clearly their hours of work for that Employer.
  - (ii) It is the Employee's responsibility to provide the certificate as per sub clause (i) on time. If an Employee does not provide the certificate on time but produces it in a period longer than six months after the increase, the company will only back pay a maximum of six months period.

#### 25. QUALIFICATION ALLOWANCES

##### 25.1 REGISTERED NURSES – QUALIFICATION ALLOWANCES

- (a) An Employee, other than a casual Employee, may be eligible to receive the following qualifications allowance on ordinary base earnings, subject to satisfaction of the criteria set out in this clause. Please note these qualifications do not cover basic Registered Nurse qualifications.
  - (i) An allowance equivalent to 3% calculated on the appropriate hourly rate of the Registered Nurse, for the hospital certificates, graduate certificates (university based or equivalent) or Diplomas issued by a University or College of Advanced Education prior to the implementation of Graduate Certificates or Graduate Diplomas in relevant nursing practice areas;

(ii) An allowance equivalent to 3.5% calculated on the appropriate hourly rate of the Registered Nurse, for graduate diploma/double degree (university based or equivalent);

(iii) An allowance equivalent to 4.5% calculated on the appropriate hourly rate of the Registered Nurse, for Masters degree;

The allowance is available for Registered Nurses Level 1 and Clinical Nurse.

- (b) The qualification allowance is only payable to the Employee while they undertake responsibilities that are directly relevant to the prescribed qualification.
- (c) The qualification allowance is payable to part time Employees on a pro rata basis according to hours worked.
- (d) The above allowances are to be paid during all periods of leave except personal leave beyond 21 days and long service leave.
- (e) Where an Employee holds two or more relevant qualifications, the allowance is only payable in respect of one qualification. If the Employee holds one qualification of a higher level, that qualification will only be paid to the exclusion of the lower qualification.
- (f) Employees who believe they may be eligible for payment of a qualification allowance shall make an application to their appropriate Manager and if approved, the allowance will be payable from the date of application. Employees shall be required to provide appropriate supporting documentation attesting to their qualifications. Eligibility will be determined by the relevant Manager. In the case of any dispute related to the Manager's determination please refer to the Dispute Resolution Procedure (clause 11).

#### 25.2 ENROLLED NURSES – QUALIFICATION ALLOWANCE

- b) An Enrolled Nurse, other than a casual Employee, without medication qualification or an Enrolled Nurse or an Enrolled Nurse Special Grade, who holds a Certificate IV qualification shall be paid an allowance of 2.5% calculated on the appropriate hourly rate of the Enrolled Nurse.
- c) An Enrolled Nurse, other than a casual Employee, without medication qualification or an Enrolled Nurse or an Enrolled Nurse Special Grade, who holds an Advanced Diploma of Nursing (Enrolled Nursing) shall be paid an allowance of 3% calculated on the appropriate hourly rate of the Enrolled Nurse.

Subclauses 25.2 (a) and (b) are subject to the following condition:

- (i) The allowance is only payable where the qualification is accepted by the Employer to be directly relevant to the competency and skills used by the Enrolled Nurse or an Enrolled Nurse Special Grade in the duties of the position.

26. SATURDAY AND SUNDAY WORK

- (a) Where a permanent Employee is rostered to work ordinary hours between midnight Friday and midnight Saturday, the Employee will be paid a loading of 50% of their ordinary rate of pay for the hours worked during this period.
- (b) Work done by a casual Employee on a Saturday will be paid 50% loading (inclusive of casual loading).
- (c) Where a permanent Employee is rostered to work ordinary hours between midnight Saturday and midnight Sunday, the Employee will be paid a loading of 75% of their ordinary rate of pay for the hours worked during this period.
- (d) Work done by a casual Employee on a Sunday will be paid 75% loading (inclusive of casual loading).
- (e) Saturday and Sunday work loading shall be in substitution for and not cumulative upon the shift premiums prescribed in clause 27 –Shift Work.

27. SHIFT WORK

- (a) Employees working afternoon or night shift shall be paid the following percentages in addition to the ordinary rate for such shift.

Afternoon shift commencing at 10am and before 1pm - 10%.

Afternoon shift commencing at 1pm and before 4pm - 12.5%.

Nightshift commencing at 4pm and before 6am – 15%.

For the purpose of this clause: day, afternoon and night shifts shall be defined as follows:

"Day shift" means a shift which commences at or after 6am and before 10am.

"Afternoon shift" means a shift which commences at or after 10am and before 4pm.

"Night shift" means a shift which commences at or after 4pm and before 6am on the day following.

28. IN CHARGE OF SHIFT

- (a) A Registered Nurse Level 1 Employee required to be the 'IC - in charge RN' on any shift for at least five (5) hours shall be paid an additional allowance of 2% of a weekly rate of the maximum pay-point for Level 1 per shift, as set out in Appendix A. This will include any shift where the Clinical Nurse (or higher) is absent from the clinic for five (5) hours or more.
- (b) An Employee shall not be entitled to receive In-Charge Allowance when receiving the Higher Duty allowance under this Agreement.

29. HIGHER DUTIES

- (a) A Registered Nurse, who is required to relieve another Registered Nurse in a higher classification than the one in which they are ordinarily employed will be paid at the lowest incremental level of that higher classification rate provided the relieving is for a period of 5 consecutive days, or more and where they will be paid for the whole period.

30. UNIFORM AND LAUNDRY ALLOWANCE

- (a) Employees are required by the Employer to wear the Employer's uniform which consists of a distinctive blouse/shirt with the Employer's logo, and the Employer requests that the Employee wears blue trousers or a blue skirt of the Employee's choice.
- (b) Upon commencement of employment, the Employer will provide the Employee with uniform blouses/ shirts as follows (based on contracted hours):
  - (i) Full-time and 0.7 FTE – 3 tops;
  - (ii) Part-time of 0.6 FTE and below – 2 tops; and
  - (iii) Casual – 1 top.
- (c) Uniforms be replaced on a reasonable 'fair wear and tear, as needs' basis
- (d) If an Employee ceases their employment with the Employer, the Employer will have the right to request the return of the provided uniform items.
- (e) The Employee shall be paid a laundry allowance of \$6.229 per week pro rata on hours worked, this allowance will increase per year as per clause 14 (refer to Appendix A).

## 31. BREAKS

### 31.1 Meal breaks

- (a) An Employee who works in excess of five hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes.
- (b) The time of taking the meal break may be varied by agreement between the Employer and Employee.
  - (i) An Employee may request the Employer to finish a shift earlier in substitution of a meal break. A written request must be made on each occasion, and agreed between Employer and Employee. The Employer might refuse the request as per the clinic's need but will not unreasonably refuse such a request. A copy of the request will be kept in the Employee's personnel file in HR.
- (c) Where an Employee is required to remain available or on duty during a meal break, the Employee will be paid overtime for all time worked until the meal break is taken.

### 31.2 Tea breaks

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

## 32. MEAL ALLOWANCE

- (a) An Employee will be supplied with an adequate meal where an Employer has adequate cooking and dining facilities or be paid a meal allowance of \$11.96 in addition to any overtime payment as follows:
  - (i) when the overtime work on any shift exceeds one hour.
  - (ii) provided that where such overtime work exceeds four hours a further meal allowance of \$11.96 will be paid.
- (b) Sub clause (a) will not apply when an Employee could reasonably return home for a meal within the meal break.

### 33. TRAVELLING, TRANSPORT AND FARES

- (a) An Employee required and authorised to use their own motor vehicle in the course of their duties will be paid an allowance of not less than \$0.78 per kilometre.
- (b) When an Employee is involved in travelling on duty, if the Employer cannot provide the appropriate transport, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the Employer.
- (c) Provided further that the Employee will not be entitled to reimbursement for expenses referred to in sub clause (b) which exceed the mode of transport, meals or the standard of accommodation agreed with the Employer for these purposes.

### 34. ANNUAL LEAVE

Annual leave is provided for in the NES. This clause contains additional provisions.

#### 34.1 Quantum of annual leave

- (a) In addition to the entitlements in the NES, an Employee is entitled to an additional week of annual leave on the same terms and conditions.
- (b) For the purpose of the additional weeks annual leave provided by the NES, a shiftworker is defined as an Employee who:
  - (i) is regularly rostered over seven days of the week; and
  - (ii) regularly works on weekends.
- (c) To avoid any doubt, this means that an Employee who is not a shiftworker for the purposes of clause 34.1(b) above is entitled to five weeks of paid annual leave for each year of service with their Employer, and an Employee who is a shiftworker for the purposes of clause 34.1(b) above is entitled to six weeks of paid annual leave for each year of service with their Employer.

#### 34.2 Annual leave loading

- (a) In addition to their ordinary pay, an Employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their ordinary pay on a maximum of 152 hours/four weeks annual leave per annum.
- (b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:
  - (i) an annual leave loading of 17.5% of ordinary pay; or
  - (ii) the weekend and shift penalties the Employee would have received had they not been on leave during the relevant period.

#### 34.3 Payment of annual leave on termination

On the termination of their employment, an Employee will be paid their untaken annual leave and pro rata leave.

### 35. CASHING OUT ANNUAL LEAVE ENTITLEMENT

- (a) The Employer and the Employee may agree in writing that the Employee forgo part of their entitlement to accrued annual leave in exchange for payment at the rate which would have applied had the day been worked. It will also include any applicable annual leave loading.
- (b) There will be no limit on the amount of accrued annual leave that may be paid out provided that the balance of annual leave entitlement will allow for a minimum of four (4) weeks leave to be taken in the calendar year in which the payment is made.
- (c) Leave already taken during the calendar year in which the payment is made may be counted towards the minimum four (4) weeks annual leave requirement.

### 36. PUBLIC HOLIDAYS

- (a) The following are NSW state declared Public Holidays: Easter Sat, Easter Sun and Labour Day and shall be observed in accordance with NES in addition to the prescribed Public Holidays: New Years Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Christmas Day and Boxing Day.
- (b) Employees (other than casual Employees) who would "normally work" on the day of the public holiday and are not required to work on such day will be paid at ordinary rates of pay as if they had worked their normal number of hours on that day.
- (c) To clarify the term "normally work" on sub clause (b), and to be paid for a PH not worked nursing staff will need to have worked greater than 50% of the day of the week that the PH falls on during the year. Staff also needs to be available to work on the Public Holiday in question in order to be paid for a PH not worked.
- (d) The Employer may request an Employee to work on a particular public holiday. An Employee who, without the consent of the Employer or without reasonable cause such as personal/carers leave, is absent from work on a public holiday after agreeing to work on a public holiday, is not entitled to any payment for such public holiday.
- (e) All work done by an Employee (other than casual Employees) during their ordinary shifts on a public holiday, including a substituted day, will be paid at double time and a half (250%) of their ordinary rate of pay.
- (f) All work done by a casual Employee during their ordinary shifts on a public holiday will be paid at the rate of 250% (inclusive of casual loading).

- (g) If any such holiday falls within an Employee's period of annual leave, the period of leave will be increased by one day for each public holiday if:
- i. the holiday is observed on a day which the Employee would have normally been working; and
  - ii. the Employee commences work at the Employee's ordinary starting time on the Employee's working day immediately following the last day of the Employee's annual leave, or provides proof of reasonable cause for absence on that day.
- (h) In addition to the public holidays prescribed under sub clause (a) of this clause, there shall be an extra public holiday each year. Such public holiday will occur on the 31st December, if this date falls on a weekend then it will move to the Friday before. This sub clause shall apply in substitution for any additional local public holiday or half public holiday proclaimed in a local government area.
- (i) Public Holiday loading will be in substitution for and not cumulative upon the Saturday and Sunday Work premiums prescribed in clause 26.

### 37. PERSONAL/CARERS AND COMPASSIONATE LEAVE

Personal/carer's and compassionate leave are provided for in the NES

### 38. PARENTAL LEAVE

An Employee is entitled to Unpaid Parental Leave provided for in the NES. This clause contains additional provisions:

- (a) An Employee is entitled to Parental Leave if the leave is associated with:
- (i) The birth of a child, being a child who is born to the Employee or the Employee's spouse or de facto partner;
- Or
- (ii) The placement of a child with the Employee for adoption.
- (b) For the purposes of this clause:
- (i) \_\_\_ An Employee is to include both full time and part time Employees.
  - (ii) \_\_\_ A paid Parental Leave can only be accessed by an Employee who is the primary care giver of a newly born or newly adopted child.
  - (iii) \_\_\_ An Employee must have completed twelve (12) months continuous service immediately prior to the commencement of a leave entitlement under this clause.
- (c) Parental Leave for the primary care giver will include eight (8) weeks (based on contracted hours) paid leave at the rate of the classification

the Employee holds when commencing the leave, and 44 weeks unpaid leave.

- (d) Parental Leave is to be paid upon commencement of the leave as a single sum or the Employee may request that this payment be paid over a period of eight (8) weeks at full pay, or taking sixteen (16) weeks at half-pay following the taking of such leave, or in another way agreed to by the Employer during such period of leave.
- (e) In the case of an Employee who in the opinion of an appropriate medical practitioner had reduced the number of hours worked due to their pregnancy, the rate of pay and conditions will be no less favourable than their substantive position until the commencement of maternity leave.
- (f) This clause is to be read in conjunction with the Fair Work Act 2009, Part 2-2, Division 5, subdivision B. An Employee may apply for part time work from the seventh week after the birth. The Employer may refuse the request only on reasonable business grounds.
- (g) Where an Employee has received payment in accordance with this clause, and the pregnancy subsequently results in stillbirth, the Employee is entitled to take such leave to a maximum period of six (6) weeks, subject to the following:
  - (i) Where an Employee is paid for the full eight week period in advance and the Employee returns to work before the end of the period of leave, the Employee and the Employer will agree on how the balance of the leave will be credited to the Employer. The Employer will not cause additional hardship to an Employee and will give compassionate consideration to the Employee when considering an agreement in such circumstances;
  - (ii) Where an Employee commences half paid leave and returns to work prior to the expiration of such leave, the Employee will be paid a further amount equal to the difference between the half pay paid for the period of maternity leave taken and full pay for the for the period of maternity leave taken
- (h) Paternity /Partner Leave: where a parent is not the primary caregiver of the child, they may apply for one (1) week paid paternity or partner leave (based on contracted hours), this leave is to be taken within one month of their child's birth or adoption date and it will be paid at the rate of the classification the Employee holds when commencing the leave.
- (i) During unpaid parental leave, accrual of leave types such as annual leave and personal/carer's leave will be suspended.

- (j) Paid personal/carer's leave, compassionate leave and paid community service leave is not available during parental leave.
- (k) Superannuation contributions are suspended during the unpaid parental leave period as per the superannuation legislation. All leave and superannuation entitlements recommence once the Employee returns to work.
- (l) Absence on paid parental leave will count as service for all employment purposes.

39. 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.

40. COMMUNITY SERVICE LEAVE

Community service leave is provided for in the NES.

41. TRAINING AND STAFF DEVELOPMENT

- (a) The Employer recognises that the achievement of increased productivity and effectiveness requires that Employees have opportunities to attend relevant training and education programs and to effectively utilise the training provided to them.
- (b) The Employer will provide financial assistance to the Employee for approved study courses, training programs and other professional development, e.g. conferences. An Employee will be able to apply to their manager for funding assistance. The allocation of funding will be on a merit based system which reflect the priorities of the Clinic, the value of the programme and the personal training needs of the Employee, the number of applications and the nature of the assistance sought. Assistance will be provided on an equitable basis to all interested Employees.
- (c) A Full-time Employee will be entitled to 24 hours of professional development leave per annum. The hours of leave will be paid on a pro-rata basis to part-time Employees based on their contracted hours.
  - (i) Self – directed learning and development is a recognized form of training and education

- (ii) Membership and active participation in the relevant professional bodies is strongly encouraged
- (iii) Commitment to Clinic quality activities is encouraged
- (d) Mandatory training is paid work and provided by the Employer.
- (e) Professional Development also encompasses study leave: undertaking and/or preparing for examinations in a course of study.

#### 42. NURSING BOARD REGISTRATION

- (a) All Employees must have a current registration with the Board.
- (b) If an Employee does not renew their registration by the expiry date or within the following one-month, the registration will lapse and the Employer may terminate their employment.
- (c) A copy of the nursing registration is kept at the clinic where the Employee works in. It is the responsibility of the Employee to ensure that a copy is provided on renewal to their Manager.
- (d) An Employee (other than a casual) with minimum contracted hours of 48 per fortnight will be reimbursed for the full amount of registration paid in their next pay period after the claim has been submitted.

#### 43. INDIVIDUAL FLEXIBILITY ARRANGEMENT

- (1) An Employer and Employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
  - (a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the Employer and Employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the Employer and Employee.
- (2) The Employer must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
- (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
- (c) result in the Employee being better off overall than the Employee would be if no arrangement was made.

(3) The Employer must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of the Employer and Employee; and
- (c) is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- (d) includes details of:
  - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
  - (ii) how the arrangement will vary the effect of the terms; and
  - (iii) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.

(4) The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

(5) The Employer or Employee may terminate the individual flexibility arrangement:

- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
- (b) if the Employer and Employee agree in writing at any time.

#### 44. TERMINATION OF EMPLOYMENT

Notice of termination is provided for in the NES.

(a) Notice of termination by an Employee

The notice of termination required to be given by an Employee is the same as that required of the Employer except that there is no requirement on the Employee to give additional notice based on the age of the Employee concerned. If an Employee fails to give the required notice the Employer may withhold from any monies due to the Employee

on termination under this Agreement or the NES, an amount not exceeding the amount the Employee would have been paid under this Agreement in respect of the period of notice required by this clause less any period of notice actually given by the Employee.

(b) Job search entitlement

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

#### 45. REDUNDANCY

Redundancy pay is provided for in the NES.

(a) Transfer to lower paid duties

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

(b) Employee leaving during notice period

An Employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The Employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

(c) Job search entitlement

(i) An Employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(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 must, at the request of the Employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.

46. RECOVERY OF OVERPAYMENTS

- (a) Any overpayment will be repaid to the Employer within a reasonable period of time.
- (b) Where an overpayment is identified and proven, the Employer will provide the Employee with the written details of the overpayment and notify the Employee of their intent to recover the overpayment.
- (c) Where the Employee accepts that there has been an overpayment, arrangements for the recovery of the overpayment will be negotiated between the Employer and Employee.
- (d) If the Employee disputes the existence of an overpayment and the matter is not resolved within a reasonable period of time, the matter should be dealt with in accordance with Clause 11 - Dispute Resolution Procedure.
- (e) Nothing in this clause shall be taken as precluding the Employer's legal right to pursue recovery of overpayments.

47. SIGNATORIES

DATED this 02<sup>nd</sup> day of July 2015.

  
.....  
Grant Rudman  
Managing Director - Clinics  
Fresenius Medical Care Australia Pty Ltd  
Level 17, 61 Lavender Street  
Milsons Point  
NSW 2061

Kerri-Anne Michael  
.....  
Witness - Name  
Fresenius Medical Care Australia Pty Ltd  
Level 17, 61 Lavender Street  
Milsons Point  
NSW 2061

  
.....  
Signature

*Brett Holmes*

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

Branch Secretary  
Australian Nursing 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 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 Federation and as bargaining representative in accordance with the Fair Work Act 2009.*



## **APPENDIX B - CLASSIFICATION DEFINITIONS**

(for more detailed information refer to job descriptions)

**Enrolled Nurse (EN)** means an associate to the Registered Nurse who demonstrates competence in the provision of patient centered care as specified by the registering authorities' license to practice, educational preparation and context of care. The Enrolled Nurse works under the direction and supervision of the Registered Nurse. At all times, the enrolled nurse retains responsibility for their actions and remains accountable in providing delegated patient care.

### **Registered Nurse—level 1 (RN L1)**

An Employee at this level performs their duties according to their level of competence; and under the general guidance of, or with general access to a more competent registered nurse (RN) who provides work related support and direction. At all times, registered nurses (level 1) accept accountability for their own standards of nursing care and service delivery and responsibility for their actions.

An Employee at this level is required to perform general nursing duties which include substantially, but are not confined to:

- being responsible to deliver patient centered care within the haemodialysis setting in accordance with the organisational core values / standards of practice and codes and guidelines as set out by APHRA
- provide support to the Dialysis Clinic Manager by participating in the clinical, management, education and quality activities of staff and patients within the clinic
- being a team member by performing duties relating to direct and indirect patient care whilst promoting the values, missions and goals of the clinic and company, constantly working towards their achievement
- provide support, direction and education to newer or less experienced staff, including EN's.

### **Registered Nurse—level 2 (Clinical Nurse)**

An Employee at this level holds any other qualification required for working in the haemodialysis setting and is appointed as such by a selection process or by reclassification from a lower level when the Employee is required to perform the duties detailed in this subclause on a continuing basis. At all times, registered nurses (level 2) accept accountability for their own standards of nursing care and service delivery and responsibility for their actions.

This position is in charge of the clinic if a higher Registered Nurse or Dialysis Clinic Manager is absent from the clinic for 5 hours or more in any shift.

In addition to the duties of an RN L1, an Employee at this level is required to:

- provide support, direction, orientation and education to RN L1, EN's, and AIN's
- act as a role model in the provision of holistic care to patients in the haemodialysis setting
- be responsible for planning and coordinating services relating to a particular group of patients in the haemodialysis setting, as delegated by the Dialysis Clinical Manager
- participate in quality assurance programs and policy development within the haemodialysis setting.