



# DECISION

*Fair Work Act 2009*

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

**Odyssey House McGrath Foundation T/A Odyssey House McGrath  
Foundation**  
(AG2015/3776)

**ODYSSEY HOUSE MCGRATH FOUNDATION & NSWNMA  
ENTERPRISE AGREEMENT 2015**

Health and welfare services

COMMISSIONER SIMPSON

BRISBANE, 17 JULY 2015

*Application for approval of the Odyssey House McGrath Foundation & NSWNMA Enterprise Agreement 2015.*

[1] An application has been made for approval of an enterprise agreement known as the *Odyssey House McGrath Foundation & NSWNMA 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 Odyssey House McGrath Foundation. 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 30 June 2016.

COMMISSIONER

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# Odyssey House McGrath Foundation & NSWNMA Enterprise Agreement 2015

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## Part 1—Application and Operation

### 1. Title

This agreement is the Odyssey House McGrath Foundation & NSWNMA Enterprise Agreement 2015

### 2. Definitions and interpretation

2.1 In this agreement, unless the contrary intention appears:

**health industry** means employers in the business and/or activity of providing health and medical services and who employ nurses and persons who directly assist nurses in the provision of nursing care and nursing services

**NES** means the National Employment Standards as contained in sections 59 to 131 of the *Fair Work Act 2009* (Cth)

**standard rate** means the minimum wage for a Registered nurse—level 1 pay point 1 in clause 13.3

2.2 Where this agreement refers to a condition of employment provided for in the NES, the NES definition applies.

### 3. Coverage and Duration

3.1 This agreement covers:

- (a) Odyssey House McGrath Foundation ABN 40 001 418 257
- (b) employees principally engaged in nursing duties comprehended by the classifications listed in Schedule A—Classification Definitions.
- (c) New South Wales Nurses and Midwives' Association & Australian Nursing and Midwifery Federation - NSW Branch

3.2 This Agreement will commence seven days after it is approved by the Fair Work Commission and expires on 30 June 2016.

### 4. Access to the Agreement and the National Employment Standards

The employer must ensure that copies of this agreement and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

### 5. The National Employment Standards and this agreement

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The NES and this agreement contain the minimum conditions of employment for employees covered by this agreement.

**6. Agreement flexibility**

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

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

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

**6.3** 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 clause 6.1; 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.

**6.4** The agreement between the employer and the individual employee must also:

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

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

**6.6** Except as provided in clause 6.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

- 6.7** An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 6.8** The agreement may be terminated:
- (a) by the employer or the individual employee giving thirteen weeks' 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.
- 6.9** The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this agreement.

## **Part 2—Consultation and Dispute Resolution**

### **7. Consultation**

#### **7.1 Consultation regarding major workplace change**

**(a) Employer to notify**

- (i) Where an 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 award 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 7.1(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 7.1(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.

## **7.2 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 award provisions concerning the scheduling of work and notice requirements.

## **8. Dispute resolution**

- 1) If a dispute relates to:
  - (a) a matter arising under the agreement; or
  - (b) the National Employment Standards;this term sets out procedures to settle the dispute.
- (2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

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- (3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.
- (5) Fair Work Commission may deal with the dispute in 2 stages:
  - (a) Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - (b) if Fair Work Commission is unable to resolve the dispute at the first stage, Fair Work Commission may then:
    - (i) arbitrate the dispute; and
    - (ii) make a determination that is binding on the parties.

Note If Fair Work Commission arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that Fair Work Commission makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

- (6) While the parties are trying to resolve the dispute using the procedures in this term:
  - (a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
  - (b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
    - (i) the work is not safe; or
    - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
    - (iii) the work is not appropriate for the employee to perform; or
    - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.
- (7) The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term

**(June 2015)**

## **Part 3—Types of Employment and Termination of Employment**

### **9. Types of employment**

#### **9.1 Employment categories**

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 an employer will inform each employee 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.

#### **9.2 Full-time employment**

A full-time employee is one who is engaged to work 38 hours per week or an average of 38 hours per week pursuant to clause 18.1 of this agreement.

#### **9.3 Part-time employment**

- (a) A part-time employee is an employee who is engaged to work less than an average of 38 ordinary hours per week and whose hours of work are reasonably predictable.
- (b) Before commencing part-time employment, the employer and employee will agree in writing the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours.
- (c) The terms of the agreement may be varied by agreement and recorded in writing.
- (d) The terms of this agreement will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38.

#### **9.4 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 1/38th of the weekly rate appropriate to the employee's classification plus a casual loading of 25%.
- (c) A casual employee will be paid a minimum of two 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.

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## **10. Termination of employment**

**10.1** Notice of termination is provided for in the NES.

### **10.2 Notice of termination by an employee**

The notice of termination required to be given by an employee is the same as that required of an 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.

### **10.3 Job search entitlement**

Where an 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.

## **11. Redundancy**

**11.1** Redundancy pay is provided for in the NES.

### **11.2 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.

### **11.3 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.

### **11.4 Job search entitlement**

- (a)** 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.
- (b)** 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.

- (c) This entitlement applies instead of clause 10.3.

## Part 4—Minimum Wages and Related Matters

### 12. Classifications

Classification definitions are set out in Schedule A—Classification Definitions. Employers must advise their employees in writing of their classification upon commencement and of any subsequent changes to their classification.

### 13. Minimum weekly wages

#### 13.1 Nursing assistant

	Per hour \$	Per Hour First pay period on or after 1 July 2015
1st year	20.5605	21.0745
2nd year	21.2132	21.7435
3rd year and thereafter	21.8842	22.4313
Experienced (the holder of a relevant certificate III qualification)	22.5579	23.1218

#### 13.2 Enrolled nurses

Enrolled Nurse without medication qualification

1st year	25.2289	25.8596
2nd year	25.7895	26.4342
3rd year	26.3368	26.9952
4th year	26.8947	27.5671
5th year and thereafter	27.4632	28.1498
Special Grade	28.3158	29.0237

**Enrolled Nurse with medication qualification**

Pay point 1	25.7895	26.4342
Pay point 2	26.3368	26.9952
Pay point 3	26.8947	27.5671

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Pay point 4	27.4632	28.1498
Pay point 5	28.0184	28.7189

**13.3 Registered nurses**

**Registered nurse**

Pay point 1	28.6079	29.3231
Pay point 2	30.1632	30.9173
Pay point 3	31.7211	32.5141
Pay point 4	33.3921	34.2269
Pay point 5	35.0500	35.9263
Pay point 6	36.7000	37.6175
Pay point 7	38.5842	39.5488
Pay point 8 and thereafter	40.1737	41.1780

<b>Senior Registered Nurse</b>	40.8079	41.8531
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**Clinical Nurse Specialist**

Grade 1, Year 1 and thereafter	41.8079	42.8531
Grade 2, Year 1	44.9105	46.033
Grade 2, Year 2 and thereafter	46.3816	47.5411

**14. Progression through pay points**

Progression for all classifications for which there is more than one pay point will be by annual movement to the next pay point, or in the case of a part-time or casual employee 1786 hours of experience, having regard to the acquisition and use of skill described in the definitions contained in Schedule A—Classification Definitions and knowledge gained through experience in the practice settings over such a period.

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## **15. Allowances**

The following allowances do not apply to employees classified at Registered nurse levels 4 or 5.

Nurses are not required to wear a uniform.

### **15.1 Meal allowances**

- (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 in addition to any overtime payment as follows:
  - (i) when required to work overtime after the usual finishing hour of work beyond one hour or, in the case of shift workers, when the overtime work on any shift exceeds one hour.
  - (ii) provided that where such overtime work exceeds four hours a further meal allowance will be paid.
- (b) Clause 15.1(a) will not apply when an employee could reasonably return home for a meal within the meal break.
- (c) On request the meal allowance will be paid on the same day as overtime is worked.

### **15.2 On call allowance**

- (a) An on call allowance is paid to an employee who is required by the employer to be on call at their private residence, or at any other mutually agreed place. The employee is entitled to receive the following additional amounts for each 24 hour period or part thereof:
  - (i) between rostered shifts or ordinary hours Monday to Friday inclusive—2.35% of the standard rate;
  - (ii) between rostered shifts or ordinary hours on a Saturday—3.54% of the standard rate; or
  - (iii) between rostered shifts or ordinary hours on a Sunday, public holiday or any day when the employee is not rostered to work—4.13% of the standard rate.
- (b) For the purpose of this clause the whole of the on call period is calculated according to the day on which the major portion of the on call period falls.

### **15.3 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 \$0.75 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 on production of receipted account(s) or other evidence acceptable to the employer.

- (c) Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 15.3(b) which exceed the mode of transport, meals or the standard of accommodation agreed with the employer for these purposes.

## **16. Payment of wages**

- 16.1** Wages must be paid fortnightly unless otherwise mutually agreed up to a monthly maximum period.
- 16.2** Employees will be paid by cash, cheque or electronic funds transfer, as determined by the employer, into the bank or financial institution account nominated by the employee.
- 16.3** When notice of termination of employment has been given by an employee or an employee's services have been terminated by the employer, payment of all wages and other monies owing to an employee will be made to the employee.

## **17. Superannuation**

### **17.1 Superannuation legislation**

- (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. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the agreement covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

### **17.2 Employer contributions**

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

### **17.3 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 17.2.

- (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.
- (c) The employer must pay the amount authorised under clauses 17.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 17.3(a) or (b) was made.

#### **17.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 17.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 17.2 and pay the amount authorised under clauses 17.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) Health Employees Superannuation Trust of Australia (HESTA);
- (b) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund.

## **Part 5—Hours of Work and Related Matters**

### **18. Ordinary hours of work**

- 18.1** The ordinary hours of work for a full-time employee will be 38 hours per week, 76 hours per fortnight or 152 hours over 28 days.
- 18.2** The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.
- 18.3** An accrued day off (ADO) system of work may be implemented, for full-time employees, via an employee working no more than 19 days in a four week period of 152 hours.
- 18.4** Each employee must 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. Where practicable, such days off must be consecutive.
- 18.5** The hours of work will be continuous, except for meal breaks. Except for the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours. An employee and the employer may agree work more than one shift in each 24 hours at the request of the employee.

## **19. Span of hours**

- 19.1** The ordinary hours of work for a day worker will be between 6.00 am and 6.00 pm Monday to Friday.
- 19.2** A shift worker is an employee who is regularly rostered to work their ordinary hours of work outside the ordinary hours of work of a day worker as defined in clause 19.1.

## **20. Rest breaks between rostered work**

An employee will be allowed a rest break of eight hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift.

## **21. Accumulation and taking of accrued days off (ADOs)**

- 21.1** ADO's maybe accrued by full-time employees. Where an employee is entitled to an ADO, in accordance with the arrangement of ordinary hours of work as set out in clause 18—Ordinary hours of work. ADOs will be taken within 12 months of the date on which the first full ADO accrued.
- 21.2** With the consent of the employer, ADOs may be accumulated up to a maximum of five in any one year.
- 21.3** An employee will be paid for any accumulated ADOs, at ordinary rates, on the termination of their employment for any reason.

## **22. Rostering**

- 22.1** Employees will work in accordance with a weekly or fortnightly roster approved by the employer.
- 22.2** The roster will set out employees' daily ordinary working hours and starting and finishing times and will be displayed in a place conveniently accessible to employees at least seven days before the commencement of the roster period.
- 22.3** Unless the employer otherwise agrees, an employee desiring a roster change will give seven days notice except where the employee is ill or in an emergency.
- 22.4** Seven days' notice of a change of roster will be given by the employer to an employee. Except that, a roster may be altered at any time to enable the functions of the community health centre to be carried out where another employee is absent from work due to illness or in an emergency. Where any such alteration requires an employee working on a day which would otherwise have been the employee's day off, the day off instead will be as mutually arranged.

## **23. Saturday and Sunday work**

**23.1** Where an 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.

**23.2** Where an 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.

## **24. Breaks**

### **24.1 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) 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.

### **24.2 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.

## **25. Overtime**

### **25.1 Overtime penalty rates**

(a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 18—Ordinary hours of work, 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.

(b) Overtime penalties as prescribed in clause 25.1(a) do not apply to Registered nurse levels 4 and 5.

(c) Overtime rates under this clause will be in substitution for and not cumulative upon the shift and weekend premiums prescribed in clause 23—Saturday and Sunday work and clause 26—Shiftwork.

**(d) Part-time employees**

All time worked by part-time employees in excess of the rostered daily ordinary full-time hours will be overtime and will be paid as prescribed in clause 25.1(a).

**25.2 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.

**25.3 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.

**25.4 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.

**25.5 Recall to work when on call**

An employee, who is required to be on call and who is recalled to work, will be paid for a minimum of three hours work at the appropriate overtime rate.

**25.6 Recall to work when not on call**

- (a) An employee who is not required to be on call and 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.

## **26. Shiftwork**

### **26.1 Shift penalties**

- (a) Where an employee works a rostered afternoon shift between Monday and Friday, the employee will be paid a loading of 12.5% of their ordinary rate of pay.
- (b) Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of 15% of their ordinary rate of pay.
- (c) The provisions of this clause do not apply where an employee commences their ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.
- (d) For the purposes of this clause:
  - (i) **Afternoon shift** means any shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on the same day; and
  - (ii) **Night shift** means any shift commencing on or after 6.00 pm and finishing before 7.30 am on the following day.
- (e) The shift penalties prescribed in this clause will not apply to shiftwork performed by an employee on Saturday, Sunday or public holiday where the extra payment prescribed by clause 23—Saturday and Sunday work and clause 29—Public holidays applies.
- (f) The provisions of this clause will not apply to Registered nurse levels 4 and 5.

## **27. Higher duties**

**27.1** An employee, who is required to relieve another employee in a higher classification than the one in which they are ordinarily employed will be paid at the higher classification rate provided the relieving is for three days or more.

**27.2** Higher duties allowance does not apply to Registered nurse levels 4 and 5.

## Part 6—Leave and Public Holidays

### 28. Annual leave

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

#### 28.1 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 shift worker is defined as an employee who:
  - (i) is regularly rostered (26 weeks or more per year) over seven days of the week, including Saturday and Sunday; and
  - (ii) regularly (26 weeks or more per year) works on weekends.
- (c) To avoid any doubt, this means that an employee who is not a shift worker for the purposes of clause 28.1(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 shift worker for the purposes of clause 28.1(b) above is entitled to six weeks of paid annual leave for each year of service with their employer. The entitlement to a sixth week of annual leave will be calculated on the employees anniversary of employment date.

#### 28.2 Taking of leave

Annual leave will be given and taken within six months of the employee becoming entitled to annual leave of more than five weeks.

#### 28.3 Payment for annual leave

Before going on annual leave, an employee will be paid the amount of wages they would have received for ordinary time worked had they not been on leave during that period.

#### 28.4 Annual leave loading

- (a) In addition to their ordinary pay, an employee, other than a shift worker, 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.

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**28.5 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.

**29. Public holidays**

Public holidays are provided for in the NES. This clause contains additional provisions.

**29.1 Payment for work done on public holidays**

All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at double time of their ordinary rate of pay.

**29.2 Public holiday substitution**

An employer and the employees may, by agreement, substitute another day for a public holiday.

**29.3 Public holidays occurring on rostered days off**

All full-time employees will receive a day's ordinary pay for public holidays that occur on their rostered day off except where the public holidays fall on Saturday or Sunday with respect to Monday–Friday employees. Where nursing staff are permitted to self roster, prior approval is required from the Clinical nurse specialist as to when staff can take their rostered day off.

**29.4 Accrued days off on public holidays**

Where an employee's accrued day off falls on a public holiday, another day, determined by the employer, will be taken instead within the same four or five week work cycle, where practical. Where nursing staff are permitted to self roster, prior approval is required from the Clinical nurse specialist as to when staff can take their accrued day off.

**30. Ceremonial leave**

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

**31. Personal/carer's leave and compassionate leave**

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

**32. Community service leave**

Community service leave is provided for in the NES.

## **Schedule A—Classification Definitions**

### **A.1 Nursing assistant**

**Nursing assistant** means an employee, other than one registered with the Nursing and Midwifery Board of Australia or its successor or one who is in training for the purpose of such registration, who is under the direct control and supervision of a Registered or Enrolled nurse and whose employment is solely to assist an RN or EN in the provision of nursing care to persons.

### **A.2 Nursing care**

**Nursing care** means:

- giving assistance to a person who, because of disability, is unable to maintain their bodily needs without frequent assistance;
- carrying out tasks which are directly related to the maintenance of a person's bodily needs where that person because of disability is unable to carry out those tasks for themselves; and/or
- assisting a registered nurse.
- For the purposes of this agreement nursing care also includes care provided by midwives.

#### **A.2.1 Enrolled nurse**

"Enrolled Nurse without medication qualification" means a person registered by the Board as an enrolled nurse with the notation "does not hold a Board approved qualification in medicines administration".

"Enrolled Nurse means a person registered by the Board as an enrolled nurse.

#### **A.2.2 Registered nurse**

"Registered Nurse" means a person registered by the Board as a Registered Nurse and/or Registered Midwife.

#### **A.2.3 Senior Registered Nurse**

In addition to the duties of an Registered nurse, an employee at this level is required, to perform duties delegated by a Clinical nurse specialist or any higher level classification

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#### A.2.4 Clinical Nurse Specialist

- (a) An employee at this level:
- (i) holds any other qualification required for working in the employee's particular practice setting; and
  - (ii) 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.

An employee at this level may also be known as a Clinical nurse.

**“Clinical Nurse Specialist Grade 1”** means: a Registered Nurse who applies a high level of clinical nursing knowledge, experience and skills in providing complex nursing care directed towards a specific area of practice, a defined population or defined service area, with minimum direct supervision.

A Clinical Nurse Specialist Grade 1 shall satisfy the following minimum criteria:

- Relevant post-registration qualifications and at least 12 months experience working in the relevant clinical area of their post-registration qualification; or four years post- registration experience, including three years experience in the relevant specialist field.
- A Clinical Nurse Specialist/Clinical Midwife Specialist Grade 1 is distinguished from an 8th Year Registered Nurse/Midwife by being required to satisfy the following criteria:
  - a) actively contributes to the development of clinical practice in the ward/unit/service;
  - b) acts as a resource and mentor to others in relation to clinical practice; and
  - c) actively contributes to their own professional development.

Clinical Nurse Specialist Grade 1 is a personal grading.