



## DECISION

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

**Durham Green Manor Pty Ltd T/A Durham Green Lodge Memory Care**  
(AG2018/2224)

**DURHAM GREEN (AGED CARE), NSWNMA-ANMF NSW BRANCH  
AND HSU NSW BRANCH ENTERPRISE AGREEMENT 2018-2021**

Aged care industry

COMMISSIONER HARPER-GREENWELL

MELBOURNE, 11 OCTOBER 2018

*Application for approval of the Durham Green (Aged Care), NSWNMA-ANMF NSW Branch and HSU NSW Branch Enterprise Agreement 2018-2021.*

[1] An application has been made for approval of an enterprise agreement known as the *Durham Green (Aged Care), NSWNMA-ANMF NSW Branch and HSU NSW Branch Enterprise Agreement 2018-2021* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Durham Green Manor Pty Ltd T/A Durham Green Lodge Memory Care. The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] The Australian Nursing and Midwifery Federation and Health Services Union of Australia being bargaining representatives for the Agreement, have given notice under s.183 of the Act that it wants the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers the organisations.

[5] The Agreement was approved on 11 October 2018 and, in accordance with s.54, will operate from 18 October 2018. The nominal expiry date of the Agreement is 30 June 2021.



COMMISSIONER

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## Annexure A

### IN THE FAIR WORK COMMISSION

FWC Matter No:  
**AG2018/2224**

Applicant:  
**Durham Green Manor Pty Ltd**

Section 185 – Application for approval of a single enterprise agreement

#### Undertaking – Section 190

I, Vitas Tulich, General Manager, of Durham Green Manor Pty Ltd (**Facility**), give the following undertakings with respect to the Durham Green (Aged Care), NSWNMA-ANMF NSW Branch & HSU NSW Branch Enterprise Agreement 2018 - 2021 (**Agreement**):

1. I have the authority given to me by the board of the Facility to provide these undertakings with respect to the application before the Fair Work Commission (**Commission**).

#### Public Holidays

2. Notwithstanding Clause 35.1 of the Agreement, an employee who has agreed to work their ordinary hours on a public holiday and is then absent on that day will be entitled to payment at their base rate of pay for their ordinary hours of work in accordance with section 116 of the Fair Work Act 2009.

These undertakings are provided on the basis of queries raised by the Commission in the application before the Commission.

Signature: 

Date: 9/10/2018

**Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.**

**Durham Green (Aged Care), NSWNMA-ANMF NSW Branch  
and HSU NSW Branch Enterprise Agreement  
2018 – 2021**

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## Part 1 - Application and Operation

### 1. Title

This Agreement shall be known as the Durham Green (Aged Care), NSWNMA-ANMF NSW Branch and HSU NSW Branch Enterprise Agreement 2018-2021.

### 2. Commencement and expiry

2.1 This agreement will commence operation seven (7) days after approval by Fair Work Commission and shall have a nominal expiry date of 30 June 2021.

2.2 The parties agree to commence negotiations 6 months before the nominal expiry date of 30 June 2021.

### 3. Definitions and interpretation

3.1 In this Agreement, unless the contrary intention appears:

**Act** means the *Fair Work Act 2009 (Cth)*

**Aged care industry** means the provision of accommodation and care services for aged persons in a hostel, nursing home, aged care independent

living units, aged care serviced apartments, garden settlement, retirement village or any other residential accommodation facility including in the home.

**Assistant in Nursing** means a person appointed specifically this employment classification.

**Employee** shall mean an employee employed by the employer who performs work within the classifications contained in this Agreement

**Employer** means Durham Green Manor Pty Ltd.

**FWC** means the Fair Work Commission.

**Immediate family" is defined as:**

- (a) a spouse of the employee; or
- (b) de facto partner of the employee which:
  - (i) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
  - (ii) includes a former de facto partner of the employee (including a partner of the same sex); or
- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto partner (including a partner of the same sex) of the employee; or
- (d) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
  - (i) "relative" means a person related by blood, marriage or affinity;
  - (ii) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
  - (iii) "household" means a family group living in the same domestic dwelling.

**NES** means National Employment Standards set out under Chapter 2, Part 2-2 of the Act.

**Personal Care Worker** means a person appointed to this role

**Union or Unions** means the Australian Nursing and Midwifery Federation NSW Branch and/or the Health Services Union NSW Branch.

- 3.2 Where this agreement refers to an entitlement provided for in the NES, the NES definition applies.

#### **4. Coverage**

4.1 This Agreement shall cover:

- (a) Durham Green Manor Pty Ltd ("the employer");
- (b) the Health Services Union NSW Branch;
- (c) the Australian Nursing and Midwifery Federation NSW Branch; and
- (d) all employees of the employer performing work within the classifications contained in this agreement and employed on a residential aged care facility in NSW.

#### **5. 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.

#### **6. The National Employment Standards and this Agreement**

The NES and this Agreement contain the minimum conditions of employment for employees covered by this Agreement. The minimum wage rates in this Agreement will never fall below the minimum award rates pursuant to s206 of the Act.

#### **7. Agreement flexibility**

7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 7.5 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.

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

### **8. Model Consultation Clause**

- 8.1 This term applies if the employer:
- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
  - (b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

### Major Change

- 8.2 For a major change referred to in subclause 8.1(a):
- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
  - (b) subclauses 8.3 to 8.9 apply.
- 8.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 8.4 If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.
- 8.5 As soon as practicable after making its decision, the employer must:
- (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and
    - (ii) information about the expected effects of the change on the employees; and
    - (iii) any other matters likely to affect the employees.

- 8.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 8.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 8.8 If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph 8.2(a) and subclauses 8.3 and 8.5 are taken not to apply.
- 8.9 In this term, a major change is likely to have a significant effect on employees if it results in:
- (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure; or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.

#### **Change to regular roster or ordinary hours of work**

- 8.10 For a change referred to in paragraph 8.1(b):
- (a) the employer must notify the relevant employees of the proposed change; and
  - (b) subclauses 8.11 to 8.15 apply.
- 8.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 8.12 If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative;
- the employer must recognise the representative.

- 8.13 As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion—provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 8.14 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 8.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 8.16 In this term, relevant employees means the employees who may be affected by a change referred to in subclause 8.1.

## **9. Dispute resolution**

- 9.1 If a dispute relates to:
- (a) a matter arising under the agreement;
  - (b) the National Employment Standards; or
  - (c) the employment relationship;
- this term sets out procedures to settle the dispute.
- 9.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 9.3 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.

9.4 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.

9.5 The Fair Work Commission may deal with the dispute in 2 stages:

- (a) the 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 the Fair Work Commission is unable to resolve the dispute at the first stage, the 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 Division 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

9.6 While the parties are trying to resolve the dispute using the procedures in this term:

- (a) The status quo applying immediately prior to the dispute arising will apply 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.

9.7 The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.

## 10. **Workload Management**

10.1 The parties to this agreement acknowledge that employees and management have a responsibility to maintain a balanced workload and recognise the adverse effects that excessive workloads may have on employee/s and the quality of resident care.

- 10.2 To ensure that employee concerns involving excessive workloads are effectively dealt with by management the following procedures should be applied:
- (a) In the first instance, employee/s should discuss the issue with their immediate supervisor and, where appropriate, explore solutions.
  - (b) If a solution still cannot be identified and implemented, the matter should be referred to the Director of Care Services, however described, for further discussion. The Director of Care Services will respond within 48 hours.
  - (c) If a solution cannot be identified and implemented, the matter should be referred to an appropriate senior manager for further discussion. The senior manager will respond within a further 48 hours.
  - (d) The outcome of the discussions at each level and any proposed solutions should be recorded in writing and fed back to the effected employees.
- 10.3 Workload management will be an agenda item at staff meetings on at least a quarterly basis and preferably on a monthly basis. Items in relation to workloads will be recorded in the minutes of the staff meeting, as well as actions to be taken to resolve the workload issue/s. Resolution of workload issues should be based on the following criteria including but not limited to:
- (a) clinical assessment of residents' needs;
  - (b) staff to resident ratios;
  - (c) replacement of leave: including personal leave, annual leave, parental leave and long service leave;
  - (d) professional nursing standards (APRHA)
  - (e) the demand of the environment such as residence layout;
  - (f) statutory obligation, (including, but not limited to, workplace health and safety legislation);
  - (g) reasonable workloads;
  - (h) accreditation standards;
  - (i) budgetary considerations; and
  - (j) occupancy.
- 10.4 If the issue is still unresolved, the employee/s may advance the matter through Clause 9 - Dispute resolution.

## **11. Staff Absences**

- 11.1 The employer recognises the impact of unfilled absences on the standard of care and on other employees. Further, the employer is committed to ensuring that it maximises the engagement of its permanent workforce where possible.
- 11.2 The employer will utilise best endeavours to replace employees who are absent (e.g. due to sick leave, annual leave, training) as follows, subject to consideration of whether excessive overtime by an individual employee would be worked:
- (a) The vacant shift will first be offered to permanent staff in the same or higher classification;
  - (b) If a permanent staff member is unavailable the vacancy will be offered to casual staff in the same or higher classification;
  - (c) If the vacancy remains unfilled after (a) and (b) above, contact will be made with at least one employment agency and where an employee of the same or higher classification is able to fill the vacancy, the position will be filled by an agency employee.
  - (d) Where a replacement cannot be found, the Centre Manager, Care Manager, or Registered Nurse in Charge or however appointed will assess the work to be performed on that shift. The duties will be adjusted to ensure the work can be performed safely and appropriately.

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

### **12. Types of employment**

#### **12.1 Employment categories**

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

- (a) full-time;
- (b) part-time;
- (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.

## 12.2 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 22.1 of this agreement.

## 12.3 Part-time employment

- (a) A part-time employee is an employee who is engaged to work less than full-time hours or an average of 38 hours per week and has reasonably predictable hours of work.
- (b) Before commencing part-time employment, the employer and employee will agree in writing the guarantee minimum number of hours to be worked and the rostering arrangements which will apply to those hours.
- (c) Reasonable additional hours may be worked in accordance with clause 22 – Ordinary Hours of Work.
- (d) A part-time employee will be paid a minimum of four hours pay for each engagement, except with respect to: clause 44 – Ongoing Professional Development for Nurses; clause 45 – Training; and clause 46 – Attendance at Meetings and Fire Drills.
- (e) The terms of the agreement in clause 12.3(b) may be varied by agreement and permanent changes recorded in writing.
- (f) Unless otherwise stated, 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.

## 12.4 A review of part-time hours

- (a) At the request of an employee, a review of the hours worked by a part-time employee will be reviewed annually. Where the employee is regularly working more than their specified contract hours then such contract hours may be adjusted by the employer, to reflect the hours regularly worked. The hours worked in the following circumstances will not be incorporated in the adjustment:
  - (i) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; and
  - (ii) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident or client.

- (b) Any adjusted contracted hours resulting from a review, should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.

#### 12.5 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) Casual employees will be paid a minimum of four hours for each engagement except with respect to: clause 44 – Ongoing Professional Development for Nurses; clause 45 – Training; and clause 46 – Attendance at Meetings and Fire Drills.

#### 12.6 Casual Conversion

- (a) A casual employee who has been rostered on a regular and systematic basis over a period of 26 weeks has the right to request conversion to permanent employment:
  - (i) on a full-time basis where the employee has worked 38 hours per week or an average of 38 hours per week (excluding overtime) throughout the period of casual employment; or
  - (ii) on a part-time basis where the employee has worked a regular number of hours each week or fortnight (depending upon the roster) throughout the period of casual employment. Such part-time engagement would be on the basis of the same number of hours as previously worked, unless other arrangements are agreed between the employer and the employee.
- (b) The employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request. Arbitration of an employee's request for conversion may only occur by agreement of the employer and the relevant Association.
- (c) The hours worked in the following circumstances will not be incorporated in a consent and conversion:
  - (i) where the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, parental leave, workers compensation; and/or
  - (ii) where the increase in hours is due to a temporary increase in hours, for example, due to the specific needs of a resident.

## Part 4 – Cessation of Employment

### 13. Termination of employment

#### 13.1 Notice of termination by the employer

- (a) Notice of termination by the employer shall be in accordance with the NES.
- (b) By way of summary, the employer may terminate the employee's employment (other than a casual employee) by providing notice in accordance with clause 13.1(c) and (d).
- (c) Notice of Termination

<b>Period of Continuous Service</b>	<b>Minimum Period of Notice</b>
1 year or less	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (d) Employees other than casual employees, with at least two years' service aged 45 years of age or over will be given an additional week's notice.
- (e) Casual employees are to be given and will give notice to the end of the current shift worked.

#### 13.2 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, with the written consent of the employee, 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.

- 13.3 The employer will provide a statement of service within 7 days of termination of employment when requested by the employee.

#### 13.4 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.

## 14. Redundancy

14.1 An employee is entitled to be paid redundancy pay by the employer if the employee's employment is terminated:

- (a) at the employer's initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary & customary turnover of labour; or
- (b) because of the insolvency or bankruptcy of the employer.

14.2 Minimum payments

- (a) Where the employee is under 45 years of age, the employer shall pay the employee

<b>Minimum Years of Service</b>	<b>Redundancy Pay Period</b>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay
2 years and less than 3 years	7 weeks pay
3 years and less than 4 years	10 weeks pay
4 years and less than 5 years	12 weeks pay
5 years and less than 6 years	14 weeks pay
6 years and over	16 weeks pay.

- (b) Where the employee is 45 years of age or over, the employer shall pay the employee in accordance with the following scale:

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

- (c) "Weeks pay" means the Employee's average actual weekly earnings over the preceding twelve months from the date of termination, and shall include in addition to the ordinary pay any over-agreement payments and the following, if applicable:

- (i) shift allowances
- (ii) weekend penalties

- (iii) TAFE examination allowances
- (iv) Broken shift allowance
- (v) Any other entitlements;

#### 14.3 Transfer to lower paid duties

Where an employee is transferred to lower paid duties, 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.

#### 14.4 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 any payment in lieu of any remaining notice.

#### 14.5 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 ordinary 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 any time absent. For this purpose a statutory declaration is sufficient.

#### 14.6 Employees exempted

- (a) In accordance with the NES provisions in section 123 of Part 2-2 of the Fair Work Act 2009, the following employees (except apprentices\*) are exempted from receiving both notice and redundancy entitlements:
  - (i) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
  - (ii) an employee whose employment is terminated because of serious misconduct;
  - (iii) a casual employee;

- (iv) an employee (other than an apprentice\*) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement;
  - (v) an employee prescribed by the Fair Work Regulations 2009 as an employee to whom Division 11 of part 2-2 of the Act does not apply.
- (b) Sub clause 14.6 (a)(i) does not prevent this clause from applying to an employee if a substantial reason for employing the employee as described in that paragraph was to avoid the application of this clause.

## **Part 5 - Minimum Wages and Related Matters**

### **15. Classifications**

- 15.1 Nursing classification definitions are set out in Schedule A - Classification Definitions.
- 15.2 Aged Care classification definitions are set out in Schedule B - Classification Definitions.
- 15.3 The Employer must advise their employees in writing of their classification upon commencement and of any subsequent changes to their classification.

### **16. Minimum weekly wages**

- 16.1 The Minimum hourly wage rates payable for each classification are set out in Schedule C - Rates of Pay.
- 16.2 As per section 206 of the Act no employee will be paid less than the relevant Modern Award.
- 16.3 Employees Allowances are as outlined in Schedule D

### **17. Progression**

- 17.1 For progression for all classifications under this agreement, refer to Schedule A (Nursing), Schedule B (Aged Care).

## 18. Allowances

The following allowances do not apply to employees classified at Registered Nurse levels 4 or 5. The allowance rates are set out in Schedule D.

### 18.1 Clothing and equipment [excluding Nursing Classifications]

- (a) Employees required by the employer to wear uniforms will be supplied with a set of uniforms in accordance with the number of shifts worked per week and which are appropriate to the occupation, free of cost to employees. Such items are to remain the property of the employer and be laundered and maintained by such employer free of cost to the employee.
- (b) Instead of the provision of such uniforms, the employer may, by agreement with the employee, pay such employee a uniform allowance at the rate set out in item 1 of Schedule D. This rate is expressed as per shift or part thereof, or as a weekly rate – an employee is to be paid whichever is the lesser amount.
- (c) Where an employee's uniforms is not laundered by or at the expense of the employer, the employee will be paid a laundry allowance at the rate set out in item 2 of Schedule D. This allowance is also expressed as a payment per shift or part thereof or as a weekly payment – an employee is to be paid whichever is the lesser amount. This allowance is also expressed as a payment per shift or part thereof as a weekly payment – the employee is to be paid whichever is lesser amount.
- (d) The uniform allowance, but not the laundry allowance, will be paid during all paid absences on leave, except absences on long service leave and/or absence on personal/carer's leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.
- (e) Where an employer requires an employee to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must reimburse the employee for the cost of purchasing such special clothing or safety equipment, except where such clothing or equipment is provided by the employer.
- (f) Where the employer supplies a uniform, the uniform shall remain the property of the employer, and replacement uniforms (unless disposable) will then be re-issued on return of the old uniforms to the

employer. Otherwise, the employee will be required to pay for the replacement.

- (g) An employee who works less than 38-hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

## 18.2 Clothing and equipment [Nursing classifications only]

- (a) Employees required by the employer to wear uniforms will be supplied with an adequate number, taking into account the average number of shifts worked each week over a 6 month period, of uniforms, shoes, a cardigan or jacket, socks and stockings appropriate to the occupation free of cost to employees. Such items are to remain the property of the employer and be laundered and maintained by such employer free of cost to the employee.
- (b) Instead of the provision of such uniforms, the employer may, by agreement with the employee, pay such employee a uniform allowance at the rate set out in item 3 – uniforms of Schedule D per week.
- (c) Instead of the provision of shoes, cardigan or jacket, stockings and socks, the employer may, by agreement with the employee, pay such employee allowances at the rates set out in item 4 – shoes, item 5 – cardigan, item 6 - stockings and item 7 - socks of Schedule D per week.
- (d) Where an employee's uniforms is not laundered by or at the expense of the employer, the employee will be paid a weekly laundry allowance at the rate set out in item 8 of Schedule D.
- (e) The uniform allowance, but not the laundry allowance, will be paid during all absences on leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days.
- (f) Where an employer requires an employee to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must reimburse the employee for the cost of purchasing such special clothing or safety equipment, except where such clothing or equipment is provided by the employer.
- (g) An employee who works less than 38-hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

## 18.3 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 in accordance with the following:
  - (i) when required to work 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 at the rate set out in item 9 of Schedule D;
  - (ii) provided that where such overtime work completed by an employee exceeds four hours a further meal allowance at the rate set out in item 10 of Schedule D will be paid.
- (b) Clause 18.3(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.

#### 18.4 On call allowance (Nursing classifications only)

- (a) An on call allowance is paid to an employee who is required and has been appointed 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 – the amount set out in item 11 of Schedule D.
  - (ii) between rostered shifts or ordinary hours on a Saturday – the amount set out in item 12 of Schedule D.
  - (iii) between rostered shifts or ordinary hours on a Sunday, public holiday or any day when the employee is not rostered to work – the amount set out in item 13 of Schedule D.
- (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.

#### 18.5 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 not less than the allowance set out in item 14 in Schedule D.
- (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) An employee who leaves the facility and is recalled to duty will be reimbursed all reasonable fares and expenses actually incurred, including the per kilometre rate in item 14 of Schedule D when he or she uses a motor car in those circumstances.
- (d) Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 18.5(b) which exceed the mode of transport, meals or the standard of accommodation agreed with the employer for these purposes.

#### 18.6 Continuing Education Allowance (Nursing classifications only)

- (a) A registered nurse or enrolled nurse who holds a continuing education qualification in a clinical field, in addition to the qualification leading to registration or enrolment, shall be paid an allowance subject to the conditions set out in this clause.
- (b) The qualification must be accepted by the employer to be directly relevant to the competency and skills used by the employee in the duties of the position.
- (c) The allowance is not payable to Deputy Directors of Nursing or Directors of Nursing unless it can be demonstrated to the satisfaction of the employer that more than fifty per cent of the employee's time is spent doing clinical work.
- (d) The allowance is not payable to Clinical Nurse Specialists, Clinical Nurse Consultants or Clinical Nurse Educators.
- (e) A registered nurse or enrolled nurse holding more than one relevant qualification is only entitled to the payment of one allowance, being the allowance of the highest monetary value.
- (f) The employee claiming entitlement to a continuing education allowance must provide evidence to the employer that they hold that qualification.
- (g) A registered nurse who holds a relevant postgraduate certificate in a clinical field (not including a hospital certificate) that is accepted by the employer to be directly relevant to the competency and skills used by the registered nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Item 15 in Schedule D.
- (h) A registered nurse who holds a relevant postgraduate diploma or degree in a clinical field (other than a nursing undergraduate degree)

that is accepted by the employer to be directly relevant to the competency and skills used by the registered nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Item 16 of Schedule D.

- (i) A registered nurse who holds a relevant master's degree or doctorate in a clinical field that is accepted by the employer to be directly relevant to the competency and skills used by the registered nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Item 17 of Schedule D.
- (j) An enrolled nurse who holds a relevant certificate IV qualification in a clinical field (not including a certificate IV qualification which has the effect of upgrading the qualification leading to enrolment) that is accepted by the employer to be directly relevant to the competency and skills used by the enrolled nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Item 18 of Schedule D.
- (k) The allowances set out in sub-clauses 18.6(g), (h), (i) and (j) are not included in the employee's ordinary rate of pay and will not constitute part of the all-purpose rate.
- (l) A registered nurse or enrolled nurse who is employed on a part-time or casual basis shall be paid these allowances on a pro rata basis.
- (m) The rates for these allowances shall be adjusted in accordance with increases in other wage-related allowances contained in this Agreement.

#### 18.7 In Charge Allowance (Nursing classifications only)

- (a) A registered nurse who is designated to be in charge during the day, evening or night of a residential aged care facility shall be paid in addition to his or her appropriate salary, whilst so in charge, the per shift allowance set out in Item 19 (for less than 100 beds) or Item 20 (for 100 or more beds) in Schedule D.
- (b) A registered nurse who is designated to be in charge of a shift in a section of a residential aged care facility shall be paid in addition to his or her appropriate salary, the per shift allowance set out in item 21 in Schedule D.
- (c) This sub-clause shall not apply to registered nurses holding classified positions of a higher grade than a registered nurse.
- (d) An Assistant in Nursing (AIN) appointed Team Leader of other employees, shall be paid the allowance set out in item 22 in Schedule D.

18.8 Leading hand allowance (Aged Care Classifications only)

(a) A leading hand is an employee who is placed in charge of not less than two other employees of a substantially similar classification, but does not include any employee whose classification denotes supervisory responsibility.

(b) A leading hand will be paid a weekly allowance of the amount specified by the item number in accordance with the following scale:

Leading hand in charge of:	Weekly allowance
2-5 other employees	Item 23 of Schedule D
6-10 other employees	Item 24 of Schedule D
11-15 other employees	Item 25 of Schedule D
16-19 other employees	Item 26 of Schedule D

(c) This allowance will be part of salary for all purposes of this agreement.

(d) An employee who works less than 38 hours per week will be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

18.9 Nauseous work allowance (Aged Care Classifications only)

(a) The allowance set out in item 27 of Schedule D per hour or part thereof will be paid to an employee in any classification if they are engaged in handling linen of a nauseous nature other than linen sealed in airtight containers and/or for work which is of an unusually dirty or offensive nature having regard to the duty normally performed by such employee in such classification. Any employee who is entitled to be paid an allowance will be paid a minimum sum set out in item 28 of Schedule D for work performed in any week.

**19. Payment of wages**

19.1 Wages must be paid fortnightly unless otherwise mutually agreed up to a monthly maximum period.

19.2 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.

19.3 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.

19.4 Notwithstanding the above, an employer will not be held liable for any unforeseen event outside the control of the employer which delays the employer's ability to meet the requirements of this clause, for example bank error or delay.

## 20. Superannuation

### 20.1 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.

### 20.2 Employer contributions

(a) 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, and where possible within the month with respect to the relevant pay-cycle under superannuation legislation with respect to that employee.

### 20.3 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 20.2.

(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 20.3(a) or 20.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or 20.3(b) was made.

## 20.4 Superannuation fund

- (a) Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or 20.3(b) to one of the following superannuation funds:
- (i) Health Employees Superannuation Trust of Australia (HESTA), which is a MySuper product;
  - (ii) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before the commencement of this Agreement, provided the superannuation fund is an eligible choice fund.

## 21. Salary Sacrifice to Superannuation

- 21.1 Permanent employees may be able to make voluntary pre-tax contributions or payments through a written salary packaging agreement between the employer and the employee. The employer will pay the salary packaging amount in accordance with the salary packaging agreement. The salary packaging arrangements pertain only to packaging superannuation contributions.
- 21.2 An employee may apply to have their ordinary time earnings reduced by an amount nominated by them as a salary packaging contribution for their benefit.
- 21.3 The total value of the reduced salary and the agreed value of the benefits provided will not be less than the amount that would otherwise be paid if the salary packaging arrangement was not in place.
- 21.4 The Employer recognises the need for employees to consider independent financial and taxation advice and recommend that employees consider such advice prior to entering into salary packaging arrangements.
- 21.5 In the event that the law governing superannuation and/or taxation make the objective of this clause ineffective, unattainable or illegal, the employer will advise the employee concerned. The salary packaging contribution arrangement will be terminated or amended to comply with such laws.

21.6 Unless otherwise agreed by the employer, an employee may revoke or vary their salary packaging contribution/payment by giving not less than one month's written notice, provided the terms of any other agreement relating to the salary packaging benefit are met.

## **Part 6 - Hours of Work and Related Matters**

### **22. Ordinary hours of work**

#### **22.1 Reasonable Additional Hours**

- (a) All hours worked over an average of 38 ordinary hours per week, will be deemed to be additional hours. All hours worked by part-time employees beyond their guaranteed minimum number of hours will be treated as additional hours for the purpose of this clause. From time to time, full time employees may be required to work a reasonable amount of additional hours. Part time employees may be asked, but not required, to work a reasonable number of additional hours. All additional hours worked will be paid in accordance with this Agreement.
- (b) An employee may not be required to work additional hours in circumstances where the working of additional hours would result in the employee working hours which are unreasonable having regards to (refer to section 62 of the Act):
  - (i) any risk to employee health and safety from working the additional hours;
  - (ii) the employee's personal circumstances, including family responsibilities;
  - (iii) the needs of the workplace or enterprise in which the employee is employed;
  - (iv) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
  - (v) any notice given by the employer of any request or requirement to work the additional hours;
  - (vi) any notice given by the employee of his or her intention to refuse to work the additional hours;
  - (vii) the usual patterns of work in the industry, or the part of an industry, in which the employee works;

- (viii) the nature of the employee's role, and the employee's level of responsibility;
- (ix) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;
- (x) any other relevant matter.

22.2 The ordinary hours of work will be 38 hours per week, or an average of 38 hours per week worked over 76 hours per fortnight or 152 hours per 28 calendar days and will be worked either:

- (a) in a period of 28 calendar days of not more than 20 work days in roster cycle; or
- (b) in a period of 28 calendar days of not more than 19 work days in a roster cycle, with the twentieth (20) day taken as an accrued paid day off (ADO).

22.3 Each shift shall consist of no more than 10 hours of work at ordinary time (not including unpaid breaks).

22.4 The hours of work on any day will be continuous except for meal breaks and the periods not worked in broken shifts.

### **23. Span of hours**

23.1 The ordinary hours of work for a day worker will be between 6.00 am and 6.00 pm Monday to Friday.

23.2 A shift-worker is an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of a day worker as defined in clause 23.1.

### **24. Rostered Days Off**

24.1 Employees, other than a casual employee, will 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, days off will be consecutive.

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

25.1 An employee will be allowed a rest break of ten hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift, except by agreement where it may be 8 hours.

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

26.1 Where an employee is entitled to an ADO in accordance with the arrangement of ordinary hours of work as set in clause 22(a)(ii), ADOs will be taken within 12 months of the date on which the first full ADO accrued.

26.2 With the consent of the employer, ADOs may be accumulated up to a maximum of five in any one year.

26.3 Where an employee's employment terminates for any reason, accumulated ADOs will be paid to the employee at ordinary rates.

26.4 The employer will schedule the taking of ADOs and display them on the roster. Scheduling decisions will be based on the needs of the workplace and will have regard to employee's preferences.

26.5 Wherever possible ADOs will be consecutive with rostered days off prescribed in clause 24 above.

26.6 Once set, ADOs may not be changed, except in accordance with Clause 27 Rosters.

26.7 ADOs will not be rostered on public holidays.

**27. Rosters**

27.1 Employees will work in accordance with a weekly or fortnightly roster fixed by the employer.

27.2 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 fourteen days before the commencement of the roster period.

27.3 It is not obligatory for the employer to display any roster of the ordinary hours of work of casual or relieving staff.

- 27.4 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.
- 27.5 Seven days' notice of a change of roster will be given by the employer to an employee. However, the roster may be altered at any time to enable the functions of the facility to be carried out where another employee is: unexpectedly absent from work; or in an emergency; or where the employer and employee/s affected agree. 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.
- 27.6 This clause will not apply where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked such that the part-time employee still has two rostered days off in that week or four rostered days of in that fortnight, as the case may be.

**28. Broken Shifts (Aged Care Classifications only)**

- 28.1 Broken shifts for the purpose of this clause means a shift worked by an employee that includes breaks (other than a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours.
- 28.2 A broken shift may be worked where there is mutual agreement between the employer and employee to work the broken shift.
- 28.3 Payment for a broken shift will be at ordinary pay with penalty rates and shift allowances in accordance with clause 32.1 – Shiftwork, with shift allowances being determined by the commencing time of the broken shift.
- 28.4 All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double time.
- 28.5 An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

**29. Saturday and Sunday work**

- 29.1 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.

- 29.2 Where an employee is rostered to work ordinary hours between midnight Saturday and midnight Sunday, all employees will be paid a loading of 75% of their ordinary rate of pay for the hours worked during this period.
- 29.3 Casual employees will be paid in accordance with clauses 29.1 and 29.2. The rates prescribed in clauses 29.1 and 29.2 will be in substitution for and not cumulative upon the casual loading prescribed in clause 12.5(b) for all employees other than Assistants in Nursing and Enrolled Nurses, who shall be entitled to the casual loading calculated on their ordinary rate of pay and then added to the weekend penalty.
- 29.4 These extra rates will be in substitution for and not cumulative upon the shift penalties prescribed at Clause 32 – Shiftwork.

### **30. Breaks**

#### 30.1 Meal breaks

- (a) An employee who works in excess of 5 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 such a break should be after five hours of work. This may be varied by agreement between the employer and the employee.
- (c) Where an employee is required to remain available for duty during a meal break, the employee will be paid an 'on call during meal break allowance' as provided for in Item 29 in Schedule D, provided that only one allowance shall be payable in any period of 24 hours. If an employee is recalled to work during the meal break, then overtime will be paid for all time worked during such meal break.

#### 30.2 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.

### **31. Overtime**

- 31.1 Overtime is paid in the following circumstances:

- (a) Where a full time employee:
  - (i) works in excess of their ordinary hours;
  - (ii) works in excess of 10 hours per shift;
  - (iii) works on a rostered day off. This means the employee works on more than 10 days in a fortnight or more than 20 days in a 28-day cycle
- (b) Where a part time employee:
  - (i) works in excess of 10 hours per shift; and/or
  - (ii) works in excess of 76 hours per fortnight, where employed by the fortnight; and/or
  - (iii) works in excess of 152 hours per 4-weekly period, where employed on a 4-weekly basis; and/or
  - (iv) works on a rostered day off. This means the employee works on more than 10 days in a fortnight or more than 20 days in a 28-day cycle.
- (c) Where a casual employee:
  - (i) works in excess of 10 hours per shift; and/or
  - (ii) works in excess of 76 hours per fortnight.
- (d) Where an employee is deprived of part or their break between shifts.

31.2 Overtime shall be paid at the base rate of pay in accordance with the following:

- (a) Monday to Saturday - Overtime shall be paid time and one half up to 2 hours each day and thereafter double time;
- (b) Sunday - Overtime shall be paid at double time;
- (c) Public Holidays - Overtime shall be paid double time and one-half;
- (d) Overtime rates under this clause will be in substitution for and not cumulative upon the shift penalties and weekend penalties prescribed in clause 29 – Saturday and Sunday Work and clause 32 - Shiftwork and the casual loading in clause 12.2(a).
- (e) Overtime penalties do not apply to Registered Nurse level 4 and 5.

31.3 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under this of clause.
- (c) An agreement must state each of the following:
  - (i) the number of overtime hours to which it applies and when those hours were worked;
  - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
  - (iii) if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
  - (iv) that any payment made in accordance with clause 31.3(c)(iii) must be made in the next pay period following the request.
  - (v) An agreement under this clause can also be made by an exchange of emails between the employee and employer or by other electronic means.
- (d) Employees other than Assistants in Nursing and Enrolled Nurses. Time off in lieu of overtime is taken on the basis of hour for hour at ordinary pay.

**Example:** One hour off for each hour of overtime worked.
- (e) Assistants in Nursing and Enrolled Nurses. The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

**Example:** An employee who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.
- (f) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (g) If the employee requests at any time to be paid for overtime covered by an agreement under this clause, but not taken as time off, the employer must pay the employee for the overtime in the next pay period following the request at the overtime rate applicable to the overtime when worked.

- (h) If time off for overtime that has been worked is not taken within the period of 6 months the employer must pay the employee for the overtime in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (i) The employer must keep a copy of any agreement under this clause as an employee record.
- (j) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (k) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 31.3 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (l) If, on the termination of the employee's employment, time off for overtime worked by the employee under this clause 26 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under this clause.

#### 31.4 Rest period after overtime

- (a) When overtime work is necessary and has been authorised or appointed to do overtime, 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 a 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.

### 31.5 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.

### 31.6 Recall to work when on call

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

### 31.7 Recall to work when not on call

- (a) An employee who is not required to be on call and who is recalled to work at the facility after leaving the employer's premises will be paid for a minimum of four 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 four hours if the work for which the employee was recalled is completed within a shorter period.

## 32. Shiftwork

### 32.1 Shift penalties

Employees working afternoon or night shift shall be paid the following percentages in addition to their ordinary rate, for such shift. Provided that employees who work less than 38 hours per week will only be entitled to the

additional rates where their shifts commence prior to 6.00am or finish subsequent to 6.00pm.

- (a) 10% for afternoon shift commencing after 10:00 a.m. and before 1:00 p.m.
- (b) 12.5% for afternoon shift commencing at or after 1:00 p.m. and before 4:00 p.m.
- (c) 15% for night shift commencing at or after 4:00 p.m. and before 4:00 a.m.
- (d) 10% for night shift commencing at or after 4:00 a.m. and before 6:00 a.m.

32.2 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.

32.3 The shift penalties prescribed in this clause will not apply to shiftwork performed by an employee on Saturday, Sunday or a public holiday where the extra payment prescribed by clause 29 — Saturday and Sunday work and clause 35 — Public holidays applies.

32.4 The provisions of this clause will not apply to Registered Nurse levels 4 and 5.

### **33. Higher duties**

33.1 An employee engaged in any duties carrying a higher wage rate than the classification in which they are ordinarily employed in any one day or shift will be paid at the higher wage rate for:

- (a) the time so worked for two hours or less; or
- (b) full day or shift where the time so worked exceeds two hours.

33.2 Higher duties allowance does not apply to Registered Nurse levels 4 and 5.

## **Part 7 - Leave and Public Holidays**

### **34. Annual leave**

Annual leave is provided for in the NES.

34.1 Quantum of annual leave

- (a) Annual leave on full pay is to be granted in accordance with the NES as follows:

- (i) Full time employees - four weeks annual leave
- (ii) Full time shift workers - five weeks annual leave
- (iii) Part time employees - four weeks annual leave on a pro rata basis
- (iv) Part time shift workers – five weeks annual leave on a pro rata basis

**Definition of a shiftworker (for the purposes of the NES)**

(b) For the purposes of clause 34.1, the following applies;

(i) Nursing Staff only

A shiftworker is an employee who is regularly rostered over seven days of the week; and regularly works on weekends.

(ii) Non Nursing Staff only

A shiftworker is an employee who is regularly rostered to work their ordinary hours outside Monday to Friday, 6am to 6pm; and/or an employee who works for more than four ordinary hours on 10 or more weekends.

34.2 Taking of leave

**Excessive Annual Leave**

- (a) An employee has an excessive leave accrual if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker as defined in clause 34.1(b)).
- (b) Where an employee has an excessive leave accrual the employer will seek to confer with the employee and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Where agreement cannot be reached in accordance with clause 34.2(b) (including because the employee refuses to confer) the employer may direct the employee to take one or more periods of Annual Leave in accordance with the following:
  - (i) the direction must not require the employee to take any period of paid annual leave of less than one week; and
  - (ii) the direction must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iii) the amount of annual leave left to the employees' credit must be at least 6 weeks.

### 34.3 Payment for annual leave

- (a) An employee will be paid the amount of wages in accordance with the usual pay day relevant to the period of leave taken
- (b) At the agreement of the employee and employer such payments may be paid in advance of the leave.

### 34.4 Cashing out of Annual Leave

- (a) An employee, with consent of the employer, may elect to cash out his or her annual leave in accordance with the provisions of the Fair Work Act 2009 (or any legislation that replaces that Act).
- (b) By way of summary, an employee may cash out annual leave if:
  - (i) the employee gives a written election to the employer requesting to cash out annual leave; and
  - (ii) the request by the individual employee to cash out any accrued entitlements to annual leave does not result in the employee having a remaining entitlement annual leave entitlement of less than 4 weeks; and
  - (iii) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee.
- (c) The employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

### 34.5 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.

### 34.6 Payment of annual leave and annual leave loading on termination.

If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the

amount that would have been payable to the employee had the employee taken that period of leave.

#### 34.7 Responses to Annual Leave Requests

- (a) The employer will utilise its best endeavours to respond to an application for annual leave made by an employee within 2 weeks of such an application being made.
- (b) The parties to this Agreement understand that in certain circumstances (for example, the Christmas period) the employer has additional rostering constraints to take into account and therefore the obligation in subclause (a) may be constrained in these circumstances."

### 35. Public holidays

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

35.1 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.

35.2 The employee may refuse the request (and take the day off) if the employee has reasonable grounds for doing so. In determining whether an employee has reasonable grounds for refusing a request to work on a public holiday regard must be had to the matters set out in section 114 of the Act. This Agreement expressly contemplates that the employer will require work on public holidays, or particular public holidays, and the parties acknowledge that the nature of the work performed by the employee, the type of employment (for example, whether full-time, part-time, casual or shift work) and the nature of the employer's workplace or enterprise (including its operational requirements) will require work on public holidays, or particular public holidays.

#### 35.3 Payment for work done on public holidays

- (a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at 250% of their ordinary rate of pay. Alternatively, if the employee elects, the employee will be paid half-time extra (50%) for all time worked in addition to the weekly rate and have one ordinary working day added to the period of annual leave. This additional annual leave shall not attract the annual leave loading prescribed at Clause 34.5.

- (b) The election in clause 35.3(a) will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.
- (c) Payments and entitlement under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.
- (d) For the purposes of this agreement public holidays shall be in accordance as gazetted as per the NSW Public Holiday Act 2010, the following shall be deemed to be public holidays:
  - (i) New Year's Day; Australia Day; Good Friday; Easter Saturday; Easter Sunday; Easter Monday; Anzac Day; Queen's Birthday; Labour Day; Christmas Day; Boxing Day.
  - (ii) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.
  - (iii) Local Public Holiday: any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed within a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday

#### 35.4 Public Holiday Substitution

- (a) If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday because of subclause 35.1(d), then the substituted day or part-day is the public holiday.

35.5 In addition to those public holidays specified in sub-clause 35.1(d), employees shall be entitled to an extra public holiday each year. Such public holiday shall occur on one of the following days as determined by the employer:

- (a) On the day on which the August Bank Holiday is observed; or
- (b) On a day between Christmas and New Year within the days Monday to Friday inclusive and not coinciding with a date that is already a gazetted public holiday for that calendar year; or
- (c) A mutually agreed date.

35.6 The extra Public Holiday entitlement in clause 35.5:

- (a) Will not apply where a full day local public holiday is proclaimed and observed within the calendar year and within the area in which the facility is situated;
- (b) Will apply if no local public holiday is proclaimed and observed within the calendar year and within the area in which the facility is situated;
- (c) Will apply in substitution for a part of a day proclaimed and observed as a local public holiday within the calendar year and within the area in which the facility is situated.

#### 35.7 Public holiday substitution

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

#### 35.8 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.

#### 35.9 Part-time employees

- (a) A part-time employee will only be entitled to payment for those public holidays that fall on days they are normally rostered to work.
- (b) A part-time employee who is rostered off on a public holiday they would ordinarily work will be paid their ordinary pay for that day.

#### 35.10 Casual employees

- (a) A casual employee will be paid only for those public holidays they work at the total rate of 250% for hours worked.
- (b) Payments under clause 35.10(a) are inclusive of and not in addition to the casual loading referred to in clause 12.5(b).

### 36. **Personal/carer's leave**

#### 36.1 Entitlement

- (a) Employees are entitled to personal/carer's leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 7 of the Act).
- (b) Casual employees have no entitlement to paid personal/carer's leave, but do have an entitlement to unpaid leave.
- (c) For each year of service with his or her employer, an employee is entitled to 10 days of paid personal/carer's leave.

- (d) An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

### 36.2 Taking of Personal/Carer's Leave

An employee may take paid personal/carer's leave:

- (a) where the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
  - (i) a personal illness, or personal injury, affecting the member; or
  - (ii) an unexpected emergency affecting the member.

### 36.3 Payment of Paid Personal/Carer's Leave

If an employee takes a period of paid personal/carer's leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

### 36.4 Personal/Carers Leave on Public Holidays

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

### 36.5 Unpaid Carer's Leave

- (a) An employee is entitled to 2 days' unpaid carer's leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:
  - (i) a personal illness, or personal injury, affecting the member; or
  - (ii) an unexpected emergency affecting the member.
- (b) An employee may take unpaid carer's leave as:
  - (i) a single continuous period of up to 2 days: or
  - (ii) any separate periods agreed with the employer.
- (c) An employee is entitled to unpaid carer's leave for a particular occasion only if the employee cannot take an amount of paid personal/carer's leave.

### 36.6 Notice and Evidence Requirements

- (a) To be entitled to leave under this clause an employee must give the employer notice of the period, or expected period of the leave:
  - (i) as soon as reasonably practicable (which may be at a time before or after the leave has started) that the employee is (or will be) absent from his or her employment;
- (b) An employer may require an employee to give the employer evidence that would satisfy a reasonable person that the leave was taken for a permissible reason or occasion.
- (c) To be entitled to personal leave during the period, the employee may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the personal leave has started) either:
  - (i) a medical certificate from a medical practitioner stating that in their opinion, the employee was, is, or will be unfit for work during the period because of a personal illness or injury; or
  - (ii) a statutory declaration made by the employee stating that the employee was, is, or will be unfit for work during the period because of a personal illness or injury.
- (d) To be entitled to carer's leave during the period, the employee may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the carer's leave has started) either:
  - (i) a medical certificate from a medical practitioner stating that in their opinion the member requires or required care and support during the period due to personal illness or injury; or
  - (ii) a statutory declaration made by the employee stating that the employee requires or required leave during the period to provide care or support to the member because the member requires or required care or support during the period because of personal illness, or injury, of the member or an unexpected emergency affecting the member.
- (e) For the purpose of clause 36.6(c) the employer will require an employee to provide evidence in the following circumstances:
  - (i) The absence is for two or more consecutive days;
  - (ii) The employee has been absent for a total of three single days in the preceding twelve months, without the production of evidence;

- (iii) The absence is from a day immediately before or after a period of authorised or unauthorised absence, including all forms of paid and unpaid leave, Public Holidays, Rostered Days Off and Workers Compensation;
- (iv) At any other time the employer holds a reasonable belief that the employee does not have a valid reason to take the leave.

36.7 In addition to the NES provisions, an employee may use accumulated personal/carer's leave when on workers compensation only where his or her workers compensation payments are less than his or her normal full pay. In this case a personal/carer's leave entitlement may be used to make up the difference between the full normal pay and the workers compensation payment. This provision cannot be used in a way which may hinder rehabilitation of the employee, nor be used in a way in which the employee may refuse acceptable and suitable alternative employment to those of their normal duties.

36.8 Service

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

### **37. Compassionate Leave**

37.1 Compassionate leave shall be available to employees in accordance with the NES.

- (a) Employees are entitled to two days compassionate leave for each permissible occasion when a member of the immediate family or a member of the employee's household;
  - (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
  - (ii) sustains a personal injury that poses a threat to his or her life or;
  - (iii) dies.

37.2 An employee may take compassionate leave as:

- (b) a single continuous period of 2 days; or
- (c) 2 separate periods of 1 day each; or
- (d) any separate periods agreed with the employer.

### 37.3 Payment for Compassionate Leave

- (a) If an employee takes a period of paid compassionate leave, the employer must pay the employee, other than a casual employee, at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (b) Casual employees are entitled to unpaid compassionate leave.

### 37.4 Notice and Evidence Requirements

- (a) To be entitled to Compassionate leave an employee must give the employer notice of the period, or expected period of the leave as soon as reasonably practicable (which may be at a time before or after the leave has started) that the employee is (or will be) absent from his or her employment;
- (b) An employer may require an employee to give the employer evidence that would satisfy a reasonable person that the leave was taken for a permissible reason or occasion.

### 37.5 To be entitled to compassionate leave during the period, the employee may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the compassionate leave has started):

- (a) a medical certificate from a medical practitioner stating that in their opinion the member is suffering from an illness or injury that poses a serious threat to the member's life; or
- (b) a statutory declaration made by the employee stating that the employee requires or required leave during the period due to the death of the member.

### 37.6 Service

- (a) A period of paid compassionate leave does not break an employee's continuity of service and counts as service for all purposes.

## 38. Long Service Leave

38.1 An employee's entitlement to long service leave shall be in accordance with the provisions of this Agreement and the Long Service Leave Act 1955 (NSW). Provided that should there be any inconsistency between that legislation and the provisions of this Agreement these provisions shall prevail, to the extent the Agreement entitles employees to long service leave in excess of the employee's entitlement to long service leave under the Long Service Leave Act (1955) NSW.

### 38.2 Quantum of Long Service Leave (Nursing Classifications)

- (a) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after 15 years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one-half months' long service leave on full pay.
- (b) Where the service of an employee with at least five years' service is terminated and has less than 10 years of service, the employee shall be entitled to long service leave as follows:
  - (i) For the first five years' service – one month.
  - (ii) For the next ten years' service – a proportionate amount calculated on the basis of one month for each additional five years. For the purpose of calculation, each completed whole month of continuous service gives an entitlement equal to 0.0722 weeks' pay.
  - (iii) For all subsequent service - a proportionate amount calculated on the basis of 1.5 months for each additional five years. For the purpose of calculation, each completed whole year of continuous service gives an entitlement equal to 1.2996 weeks' pay.

### 38.3 Quantum of Long Service Leave (Aged Care Classifications).

- (a) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after fifteen years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one-half months' long service leave on full pay.
- (b) Where the services of an employee with at least five years' service are terminated, except where an employee has been summarily dismissed and has less than 10 years of service, the employee shall be entitled for five years service to one month's long service leave on full pay and for service after five years to a proportionate amount of such leave on full pay calculated on the basis of three months long service leave for 15 years' service.

### 38.4 Taking of Long Service Leave

- (a) The employer shall give to each employee at least one month's notice of the date from which it is proposed that the employee's long service

leave shall be given and taken. Such leave shall be taken as soon as practicable having regard to the needs of the facility, or, where the employer and the employee agree, such leave may be postponed to an agreed date.

- (b) In such a case, where the employer and employee agree to postpone the taking of leave, the employee shall be paid for that leave at the rate of pay applicable at the time of the agreement and not at the rate of pay applicable at the time that the leave is taken. For any such agreement to be valid, it must be in writing and be signed by both the employer and the employee.
- (c) For the purposes of this clause:
  - (i) Continuous service in the same facility prior to the coming into force of this agreement shall be taken into account, and:
  - (ii) Continuous service shall be deemed not to have been broken by:
    - A. Absence of an employee from the facility while a member of the Defence Forces of the Commonwealth in time of war;
    - B. Any period of absence on leave without pay not exceeding six month
  - (iii) One month equals four and one-third weeks.

38.5 Subject to subclause 38.2 and 38.3, where an employee has acquired a right to long service leave, then:

- (a) If before such leave has been entered upon, the employment of such employee is terminated, the employee shall be entitled to receive the monetary value of the leave to which such employee has been entitled computed at the rate of salary which such employee was receiving immediately prior to the termination of employment.
- (b) Where an employee dies and any long service leave:
  - (i) to which the employee was entitled has not been taken, or
  - (ii) accrued upon termination of the services of the employee by reason of the employee's death and has not been taken, the employer shall pay to the employee's estate in full the ordinary pay that would have been payable to the employee in respect of long service leave less any amount already paid to the employee in respect of that leave.

38.6 Notwithstanding the provisions of this clause, casual employees engaged in Aged Care and Nursing classifications shall be entitled to long service leave under the Long Service Leave Act 1955.

### 39. Community service leave

39.1 Employees are entitled to community service Leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 8 of the Act).

39.2 Eligible community service activities

- (a) entitle an employee, acting reasonably, to be absent from employment for periods including:
  - (i) time when the employee engages in the activity;
  - (ii) reasonable travelling time associated with the activity;
  - (iii) reasonable rest time immediately following the activity.
- (b) include:
  - (i) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
  - (ii) a voluntary emergency management activity; or
  - (iii) an activity prescribed in regulations made for the purpose of Section 109(4) of the Act.

39.3 Jury Service

- (a) There is no limit on the amount of unpaid jury service leave an employee can take in a 12-month period of employment.
- (b) Employees, other than casuals, are entitled to be paid:
  - (i) for the first 10 days when absent from work in one or more periods to attend jury service re a particular jury service summons.
  - (ii) the difference between what the employee received as jury service pay and the base rate of pay for the employee's ordinary hours of work in the period or periods.
- (c) Where the duration of jury service re a particular jury service summons exceeds 10 days, the employer agrees to assist the employee as far as is reasonably practical to maintain their regular income. The assistance may include: flexibility of rosters; access to Annual Leave and/or Long Service Leave.

- (d) The employer may require the employee to provide evidence that would satisfy a reasonable person:
  - (i) that the employee took all necessary steps to obtain any amount of jury service pay to which they were entitled; and
  - (ii) of the total amount of jury service pay, paid or payable to the employee.
- (e) No payment is required where evidence is required by the employer and not provided by the employee.

#### 39.4 Voluntary emergency management activity (VEMA)

- (a) An employee engages in a VEMA if:
  - (i) they voluntarily participate;
  - (ii) the activity involves dealing with an emergency or natural disaster;
  - (iii) they are a member of, or have a member like association with a recognised emergency management body (REMB); and
  - (iv) the REMB requests their participation.

#### 40. Ceremonial Leave

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

#### 41. Natural Disaster Leave

- 41.1 Where a permanent employee is unable to attend work because of a natural disaster, i.e. bushfire or flood, they will be entitled to 3 paid days of leave. This entitlement will apply once per calendar year and is not cumulative from year to year.
- 41.2 The employer may require the employee to provide evidence to support their claim.

#### 42. Parental Leave

- 42.1 Parental leave shall be available to employees in accordance with the NES.

## **Part 8 – Other Matters**

### **43. Preventing and Responding to Workplace Bullying**

- 43.1 The employer and employees are committed to a safe and healthy work environment that is free from harassment, discrimination and/or bullying.
- 43.2 This means that the employer will take reasonable steps to prevent any unwanted harassment, discrimination or bullying behaviours in the workplace and employees will not engage in bullying, discriminatory or harassing conduct. The employer recognises that bullying, harassment and discrimination behaviours can be carried out by management, staff members, residents and residents' relatives.
- 43.3 The employer will maintain a bullying, harassment and discrimination policy that provides a clear process for the reporting, investigation and resolution of bullying, harassment and discrimination matters, building on the minimum standards of this clause.
- 43.4 Employees who have reported, who are being investigated, or who are otherwise involved in the reporting, investigation and resolution of bullying, harassment and discrimination matters will be afforded procedural fairness and will be protected from victimisation or intimidation.

### **Reporting bullying, harassment and/or discrimination**

- 43.5 Employees should notify the employer of anyone engaging in bullying, discriminatory or harassing conduct.
- 43.6 Any reports of harassment, discrimination or bullying will be treated seriously and confidentially.

### **Investigation of bullying, harassment and/or discrimination**

- 43.7 Reasonable steps will be taken to investigate any report of harassment, discrimination or bullying behaviours in the workplace. The employer acknowledges the importance of impartial and thorough investigations of such reports. Investigations may be conducted internally or by an appropriate external investigator.
- 43.8 Employees acknowledge their obligation under this clause extends to participating in employer investigations of workplace bullying, harassment and discrimination and maintaining confidentiality of such investigations.

## **Outcomes of bullying, harassment and/or discrimination investigations**

- 43.9 The employer will take reasonable steps to resolve instances of bullying, harassment and/or discrimination that have been substantiated via an investigation.
- 43.10 The employer will assist the parties to work constructively towards a resolution of the bullying, harassment and/or discrimination issue where possible. Options that may be used to resolve, or assist in resolving, the issue include:
- (a) A verbal or written apology
  - (b) An external, suitably qualified mediator will be used to run compulsory mediation sessions to explore options for resolution.
  - (c) Provision of appropriate training
  - (d) Counselling, to be made available to all parties
  - (e) Rostering changes, changes of reporting lines, or changes of location will be considered where possible and where agreed.
- 43.11 An employee(s) found to have engaged in such conduct could face disciplinary action.

## **44. Ongoing Professional Development for Nurses**

- 44.1 The management of Employer places a high priority on the ongoing education of nurses employed by the facility. The facility's education program provides staff with a variety of in-service sessions. Both internal and external in-service training is offered as part of general ongoing education.
- 44.2 Employer is committed to equity of access to training for all nurses. Staff are encouraged to talk to their manager about their training needs and where necessary apply for leave and the payment of the cost of training and conferences. Applications for leave to attend such training and any payment for courses will be considered on a case by case basis.
- 44.3 Each employee shall provide a minimum of 12 hours of in-service training per annum to Nursing Assistants.
- 44.4 Each employer may make training available to nurses other than Nursing Assistants to assist those employees to maintain professional registration or endorsement.

- 44.5 Each employee shall provide to their employer details of their attendance at in-service training and the employer shall keep a record of this attendance.
- 44.6 Upon termination of the employee's employment the employer shall provide to the employee a written statement of the hours of in-service training attended by the employee.
- 44.7 Where practicable, such training shall be provided to employees during the normal rostered hours of work.

#### **45. Training**

- 45.1 As part of their duties, all employees may be required to complete training relating to their work including, for example, work health and safety training ("mandatory training"). The employer will provide to an employee, upon request (which may be made at any time during the employment or until 3 months after termination, which 3 months may be extended at the discretion of the employer), a written statement of the hours of mandatory training attended by the employee. In addition, the employer recognises that employees registered with AHPRA are required to complete a minimum number of "CPD" hours to maintain their registration standards.
- 45.2 Wherever reasonably practicable, the employer will offer and employees will complete all mandatory training and CPD "in house", within ordinary rostered hours. Modules may be delivered face to face or via another delivery model, such as e-learning.
- 45.3 The employer may also reasonably require employees to undertake paid mandatory training offsite and/or outside of rostered hours. Except in unforeseen or exceptional circumstances the employer shall provide employees with two weeks' notice of any requirement to attend mandatory training outside their normal rostered hours.

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

- 46.1 Any employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety practices (e.g., fire drill and evacuation procedures), shall be entitled to be paid the "ordinary rate" for the actual time spent in attendance at such practices. Such time spent in attendance shall not be viewed as overtime for the purposes of this agreement.

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

#### **47. Savings Clause**

47.1 No employee shall suffer a reduction in total entitlement to annual leave and payment for public holidays worked that they were eligible to receive at immediately prior to the coming into force of this agreement.

47.2 Nor will this agreement result in any employee's accrued annual leave (including counter leave and/or additional annual leave in lieu of payment for public holidays worked), as at the date that this agreement commences being reduced.

47.3 The wages contained in this Agreement shall not fall below the minimum rates in the modern award as amended by Fair Work Commission.

47.4 No employee on the commencement of this Agreement and the implementation of this grading structure shall suffer a reduction in wages as a result of this Agreement coming into operation.

#### **48. Family Violence Leave**

48.1 The employer will support employees experiencing family violence where needed and an employee may request Family Violence Leave.

48.2 For the purpose of this clause, family violence is defined as violent or threatening behaviour (including physical, sexual, emotional, psychological or financial abuse) directed towards an employee by a member of the person's immediate family or household that causes the employee physical or psychological harm that has been reported to the police and/or may be the subject of an Apprehended Violence Order.

48.3 An employee who has established evidence of being the victim of family or domestic violence will have access to up to three (3) days leave on ordinary pay per year, to attend legal proceedings, counselling, appointments with a medical or legal practitioner and relocation and safety activities directly

associated with alleviating the effects of family and domestic violence. This leave entitlement is non-cumulative from year to year.

- 48.4 Upon exhaustion of the paid leave entitlement, an employee will have access to a further period of at least 2 days unpaid leave, for the same activities for which paid leave would be available. Additional days may be granted at the CEO's discretion.
- 48.5 To access paid and unpaid leave, where requested, the employee will provide the employer with evidence, to the employer's satisfaction, substantiating the purpose(s) of the leave and that the leave is related to alleviating the effects of family violence. Whilst an employer may accept a variety of evidence in support of an application for leave, if requested by the employer, the evidence shall constitute an Apprehended Violence Order or Police Report. In collecting evidence in support of a leave application, to protect privacy, it will be sufficient for the employer to source evidence establishing the definition of family violence. It will therefore generally be unnecessary to access significant detail related to the precise circumstances of the family violence.
- 48.6 Matters related to family violence can be sensitive matters and therefore, information collected by an employer associated with accessing leave will be managed in a sensitive manner. Employees encountering circumstances of family violence are also encouraged to discuss other ways where the employer may be able to assist them.

## **49. Union Matters**

### **Leave**

- 49.1 A union representative will be released from work to attend union business in accordance with the following:
- (a) five (5) days paid leave per calendar year to attend training facilitated by a Union to increase awareness and knowledge of workplace issues and/or consultative mechanisms and/or statutory entitlements and obligations, which will contribute to a more productive, aware and harmonious workplace environment
  - (b) a minimum of four (4) weeks' written notice, or less by agreement, must be provided to the employer of a request to attend such union business. The notice must specify the time and nature of the union business

## **Notice Board**

49.2 The employer will make available a notice board at each workplace for the purposes of union representatives placing union communications or other materials related to valid union activities in the workplace.

## **Union Inductions**

49.3 On an annual basis, at a time convenient to the employer when the maximum attendance by employees occurs (i.e. following mandatory training such as fire training), the employer will allow a union representative (which may be an Official of the Union) a period of 20 minutes to present to all employees the benefits of Union membership or if on the odd chance of a group recruitment of 10 or more employees

## Schedule A - Nursing Classification Definitions

### 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 1976 hours of experience (inclusive of Annual Leave), having regard to the acquisition and use of skill described in the definitions contained in clause Schedule A - Classification Definitions and knowledge gained through experience in the practice settings over such a period.

#### A.1 **Nursing Assistants**

Nursing Assistants also otherwise known as Assistants in Nursing, provide nursing, care and other duties under the direction of a Registered Nurse or Enrolled Nurse. The primary role of Nursing Assistants in nursing and care contexts is to observe and report to their supervising nurse about the processes involved in delivering services and the outcomes of that intervention or service. Where specific nursing tasks or responsibilities have been appropriately delegated to the Nursing Assistant by the supervising nurse the Nursing Assistant undertakes accountability for meeting the standards set by professional nursing codes and organisational policies and protocols. This includes the Nursing Assistant making the supervising nurse aware of any impediment to carrying out the delegation.

#### A.2 **Nursing Care**

Nursing care means:

Nursing care carried out by Nursing Assistants in aged care and community care contexts is essentially a team effort where the goals of care are determined by the supervising nurse via the care plan for each individual and the policies and protocols of the employing organisation. Care includes attending to the bio-psycho-social needs of residents as well as ensuring that the environment of care and lifestyle activities is safe and conducive to the wellbeing of residents, visitors and other staff.

#### A.3 **Student enrolled nurse**

Student enrolled nurse means a student undertaking study to become an enrolled nurse.

#### A.4 **Enrolled nurses**

##### A.4.1 **Enrolled nurse—pay point 1**

- (a) Pay point 1 refers to the pay point to which an enrolled nurse (EN) has been appointed.
- (b) An employee will be appointed based on training and experience including:

- (i) having satisfactorily completed a hospital based course of training in nursing of not more than 12 months duration leading to enrolment as an EN; or
  - (ii) having satisfactorily completed a course of training of 12 months duration in a specified branch of nursing leading to enrolment on a register or roll maintained by a state/territory nurses registration board; and
  - (iii) having practical experience of up to but not more than 12 months in the provision of nursing care and/or services, and, the undertaking of in-service training, subject to its provision by the employing agency, from time to time.
- (c) Skill indicators
- (i) The employee has limited or no practical experience of current situations; and
  - (ii) The employee exercises limited discretionary judgment, not yet developed by practical experience.

#### A.4.2 Enrolled nurse—pay point 2

- (a) Pay point 2 refers to the pay point to which an EN has been appointed.
- (b) An employee will be appointed to this pay point based on training and experience including:
  - (i) having satisfactorily completed a hospital based course of general training in nursing of more than 12 months duration and/or 500 or more hours theory content or a course accredited at advanced certificate level leading to enrolment as an EN; or
  - (ii) not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for pay point 1; and
  - (iii) the undertaking of in-service training, subject to its provision by the employing agency, from time to time.
- (c) Skill indicators
 

The employee is required to demonstrate some of the following in the performance of their work:

  - (i) a developing ability to recognise changes required in nursing activity and in consultation with the RN, implement and record such changes, as necessary;
  - (ii) an ability to relate theoretical concepts to practice; and/or

- (iii) requiring assistance in complex situations and in determining priorities.

#### A.4.3 Enrolled nurse—pay point 3

- (a) Pay point 3 refers to the pay point to which an EN has been appointed.
- (b) An employee will be appointed to this pay point based on training and experience including:
  - (i) not more than one further year of practical experience in the provision of nursing care and/or services, in addition to the experience, skill and knowledge requirements specified for pay point 2; and
  - (ii) the undertaking of in-service training, subject to its provision by the employing agency, from time to time.
- (c) Skill indicators

The employee is required to demonstrate some of the following in the performance of their work:

- (i) an ability to organise, practise and complete nursing functions in stable situations with limited direct supervision;
- (ii) observation and assessment skills to recognise and report deviations from stable conditions;
- (iii) flexibility in the capacity to undertake work across the broad range of nursing activity and/or competency in a specialised area of practice; and/or
- (iv) communication and interpersonal skills to assist in meeting psycho-social needs of individuals/groups.

#### A.4.4 Enrolled nurse—pay point 4

- (a) Pay point 4 refers to the pay point to which an EN has been appointed.
- (b) An employee will be appointed to this pay point based on training and experience including:
  - (i) not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for pay point 3; and
  - (ii) the undertaking of in-service training, subject to its provision by the employing agency, from time to time.
- (c) Skill indicators

The employee is required to demonstrate some of the following in the performance of their work:

- (i) speed and flexibility in accurate decision making;
- (ii) organisation of own workload and ability to set own priorities with minimal direct supervision;
- (iii) observation and assessment skills to recognise and report deviations from stable conditions across a broad range of patient and/or service needs; and/or
- (iv) communication and interpersonal skills to meet psychosocial needs of individual/groups.

#### A.4.5 Enrolled nurse—pay point 5

- (a) Pay point 5 refers to the pay point to which an EN has been appointed.
- (b) An employee will be appointed to this pay point based on training and experience including:
  - (i) not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for pay point 4; and
  - (ii) the undertaking of relevant in-service training, subject to its provision by the employing agency, from time to time.
- (c) Skill indicators

The employee is required to demonstrate some of the following in the performance of their work:

- (i) contributes information in assisting the RN with development of nursing strategies/improvements within the employee's own practice setting and/or nursing team, as necessary;
- (ii) responds to situations in less stable and/or changed circumstances resulting in positive outcomes, with minimal direct supervision; and
- (iii) efficiency and sound judgment in identifying situations requiring assistance from an RN.

#### A.4.6

- (a) **Enrolled Nurse (EN)** means a nurse enrolled with the Board and is authorised to administer medications. An Enrolled Nurse may be required to lead and/or supervise the work of others.

- (b) **Enrolled Nurse (with Notation)** means an Enrolled Nurse registered by the Board as an Enrolled Nurse with the notation “*does not hold a Board Approved qualification in medicines administration*”. An Enrolled Nurse with notation performs the duties and has the skills of an Enrolled Nurse however is not authorised to administer medication.

## A.5 Registered nurses

### A.5.1 Registered nurse—level 1 (RN1)

- (a) An employee at this level performs their duties:
  - (i) according to their level of competence; and
  - (ii) under the general guidance of, or with general access to a more competent registered nurse (RN) who provides work related support and direction.
- (b) An employee at this level is required to perform general nursing duties which include substantially, but are not confined to:
  - (i) delivering direct and comprehensive nursing care and individual case management to patients or clients within the practice setting;
  - (ii) coordinating services, including those of other disciplines or agencies, to individual patients or clients within the practice setting;
  - (iii) providing education, counselling and group work services orientated towards the promotion of health status improvement of patients and clients within the practice setting;
  - (iv) providing support, direction and education to newer or less experienced staff, including EN’s, and student EN’s and student nurses;
  - (v) accepting accountability for the employee’s own standards of nursing care and service delivery; and
  - (vi) participating in action research and policy development within the practice setting.

### A.5.2 Registered nurse—level 2 (RN2)

- (a) An employee at this level may be an RN, CNS or CNE:
  - (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.

- (b) In addition to the duties of an RN1, an employee at this level is required, to perform duties delegated by a nurse in a higher classification.

Duties of a Level 2 nurse will substantially include, but are not confined to:

- (i) delivering direct and comprehensive nursing care and individual case management to a specific group of patients or clients in a particular area of nursing practice within the practice setting;
  - (ii) providing support, direction, orientation and education to RN1's, EN's, student nurses and student EN's;
- (c) being responsible for planning and coordinating services relating to a particular group of clients or patients in the practice setting, as delegated by a nurse in a higher classification.
    - (i) acting as a role model in the provision of holistic care to patients or clients in the practice setting; and
    - (ii) assisting in the management of action research projects, and participating in quality assurance programs and policy development within the practice setting.

#### A.5.3 Registered nurse—level 3 (RN3)

- (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 that 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 consultant, Nurse manager or Nurse educator.

- (b) In addition to the duties of an RN2, an employee at this level will perform the following duties in accordance with practice settings and patient or client groups:
  - (i) Duties of a Clinical Nurse consultant will substantially include, but are not confined to:
    - A. providing leadership and role modelling, in collaboration with others including the Nurse manager and the Nurse educator, particularly in the areas of action research and quality assurance programs;

- B. staff and patient/client education;
  - C. staff selection, management, development and appraisal;
  - D. participating in policy development and implementation;
  - E. acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
  - F. delivering direct and comprehensive nursing care to a specific group of patients or clients with complex nursing care needs, in a particular area of nursing practice within a practice setting;
  - G. coordinating, and ensuring the maintenance of standards of the nursing care of a specific group or population of patients or clients within a practice setting; and
  - H. coordinating or managing nursing or multidisciplinary service teams providing acute nursing and community services.
- (ii) Duties of a Nurse manager will substantially include, but are not confined to:
- A. providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse educator, particularly in the areas of action research and quality assurance programs;
  - B. staff selection and education;
  - C. allocation and rostering of staff;
  - D. occupational health;
  - E. initiation and evaluation of research related to staff and resource management;
  - F. participating in policy development and implementation;
  - G. acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care);
  - H. being accountable for the management of human and material resources within a specified span of control, including the development and evaluation of staffing methodologies; and

- I. managing financial matters, budget preparation and cost control in respect of nursing within that span of control.
- (iii) Duties of a Nurse educator will substantially include, but are not confined to:
  - A. providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse manager, particularly in the areas of action research;
  - B. implementation and evaluation of staff education and development programs;
  - C. staff selection;
  - D. implementation and evaluation of patient or client education programs;
  - E. participating in policy development and implementation;
  - F. acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care); and
  - G. being accountable for the assessment, planning, implementation and evaluation of nursing education and staff development programs for a specified population.

#### A.5.4 Registered nurse—level 4 (RN4)

- (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 an Assistant director of nursing (clinical), Assistant director of nursing (management), or Assistant director of nursing (education).

- (b) Appointment at a particular grade at this level will depend upon the level of complexity associated with the duties described in this clause. In this connection the number of beds in a facility will be a relevant consideration.
- (c) In addition to the duties of an RN3, an employee at this level will perform the following duties:

- (i) Duties of an Assistant director of nursing (clinical) will substantially include, but are not confined to:
  - A. providing leadership and role modelling, in collaboration with others including the Assistant director of nursing (management) and Assistant director of nursing (education), particularly in the areas of selection of staff within the employee's area of responsibility;
  - B. provision of appropriate education programs, coordination and promotion of clinical research projects;
  - C. participating as a member of the nursing executive team;
  - D. contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
  - E. managing the activities of, and providing leadership, coordination and support to, a specified group of Clinical nurse consultants;
  - F. being accountable for the establishment, implementation and evaluation of systems to ensure the standard of nursing care for a specified span of control;
  - G. being accountable for the development, implementation and evaluation of patterns of patient care for a specified span of control;
  - H. being accountable for clinical operational planning and decision making for a specified span of control; and
  - I. being accountable for appropriate clinical standards, through quality assurance programs, for a specified span of control.
  
- (ii) Duties of an Assistant director of nursing (management) will substantially include, but are not confined to:
  - A. providing leadership and role modelling, in collaboration with others including the Assistant director of nursing (clinical) and Assistant director of nursing (education), particularly in the areas of selection of staff within the employee's area of responsibility;
  - B. coordination and promotion of nursing management research projects;
  - C. participating as a member of the nursing executive team;

- D. contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
  - E. managing the activities of, and providing leadership, coordination and support to, a specified group of Nurse managers;
  - F. being accountable for the effective and efficient management of human and material resources within a specified span of control;
  - G. being accountable for the development and coordination of nursing management systems within a specified span of control; and
  - H. being accountable for the structural elements of quality assurance for a specified span of control.
- (iii) Duties of an Assistant director of nursing (education) will substantially include, but are not confined to:
- A. providing leadership and role modelling, in conjunction with others including the Assistant director of nursing (clinical) and the Assistant director of nursing (management), particularly in the areas of selection of staff within the employee's area of responsibility;
  - B. coordination and promotion of nurse education research projects;
  - C. participating as a member of the nursing executive team, and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
  - D. managing the activities of, and providing leadership, coordination and support to a specific group of Nurse educators;
  - E. being accountable for the standards and effective coordination of education programs for a specified population;
  - F. being accountable for the development, implementation and evaluation of education and staff development programs for a specified population;

- G. being accountable for the management of educational resources including their financial management and budgeting control; and
- H. undertaking career counselling for nursing staff.

A.5.5 Registered nurse level 5—(RN5)

- (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 Director of nursing.

- (b) Appointment at a particular grade at this level will depend upon the level of complexity associated with the duties described in this clause. In this connection the number of beds in a facility will be a relevant consideration.
- (c) In addition to the duties of an RN4, an employee at this level will perform the following duties:
  - (i) being accountable for the standards of nursing care for the health unit and for coordination of the nursing service of the health unit;
  - (ii) participating as a member of the executive of the health unit, being accountable to the executive for the development and evaluation of nursing policy, and generally contributing to the development of health unit policy;
  - (iii) providing leadership, direction and management of the nursing division of the health unit in accordance with policies, philosophies, objectives and goals established through consultation with staff and in accordance with the directions of the Board of Directors of the health unit;
  - (iv) providing leadership and role modelling, in collaboration with others, particularly in the areas of staff selection, promotion of participative decision making and decentralisation of nursing management and generally advocating for the interests of nursing to the executive team of the health unit;
  - (v) managing the budget of the nursing division of the health unit;
  - (vi) ensuring that nursing services meeting changing needs of clients or patients through proper strategic planning; and

- (vii) complying, and ensuring the compliance of others, with the code of ethics and legal requirements of the nursing profession.

## Schedule B - Aged Care Classifications

### B.1 Aged care employee—level 1

Entry level:

An employee who has less than three months work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative tasks performed at this level are:

General and administrative services	Food services
General clerk Laundry hand Cleaner Assistant gardener	Food services assistant

### B.2 Aged care employee—level 2

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services	Food services	Personal care
General clerk/Typist (between 3 months and less than 1 years service) Laundry hand Cleaner Gardener (non-trade) Maintenance/Handyperson (unqualified) Driver (less than 3 ton)	Food services assistant	Personal care worker grade 1

### B.3 Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative tasks performed at this level are:

General and administrative services	Food services	Personal care
General clerk/Typist (second and subsequent years of service) Receptionist Pay clerk Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate	Cook	Personal care worker grade 2 Recreational/Lifestyle activities officer (unqualified) Physio Aide (unqualified)

### B.4 Aged care employee—level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- In the case of a Personal care worker, is required to hold a relevant Certificate III qualification.

Indicative tasks performed at this level are:

General and administrative services	Food services	Personal care
Senior clerk Senior receptionist Maintenance/Handyperson (qualified) Driver (3 ton and over) Gardener (trade or TAFE Certificate III or above)	Senior cook (trade)	Personal care worker grade 3 Physio Aide (qualified)

### B.5 Aged care employee—level 5

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services	Food services	Personal care
Secretary interpreter (unqualified)	Chef	Personal care worker grade 4 Personal Care Coordinator

### B.6 Aged care employee—level 6

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;

- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>
Maintenance tradesperson (advanced) Gardener (advanced)	Senior chef

### **B.7 Aged care employee—level 7**

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
Clerical supervisor Interpreter (qualified ) Gardener superintendent General services supervisor	Chef /Food services supervisor	Personal care worker grade 5

**Schedule C - Rates of Pay**

<b>Classification</b>	<b>First Pay Period after the date this agreement is made</b>	<b>First Pay Period after 1 July 2019</b>	<b>First Pay Period after 1 July 2020</b>
<b>Nursing Assistant</b>			
First year (1 <sup>st</sup> year AIN)	\$21.59	\$22.24	\$22.91
Second year (2 <sup>nd</sup> year AIN)	\$21.94	\$22.60	\$23.28
Third year (3 <sup>rd</sup> year AIN)	\$22.31	\$22.98	\$23.67
Thereafter and Cert III (4 <sup>th</sup> year AIN with cert 3)	\$23.03	\$23.72	\$24.43
<b>Enrolled Nurse</b>			
Pay Point 1	\$23.17	\$23.87	\$24.59
Pay Point 2	\$23.31	\$24.01	\$24.73
Pay Point 3	\$23.62	\$24.33	\$25.06
Pay Point 4	\$23.95	\$24.67	\$25.41
Pay Point 5	\$24.18	\$24.91	\$25.66
<b>Registered Nurse - level 1</b>			
Pay point 1 (1 <sup>st</sup> year)	\$29.70	\$30.59	\$31.51
Pay point 2 (2 <sup>nd</sup> year)	\$31.42	\$32.36	\$33.33
Pay point 3 (3 <sup>rd</sup> year)	\$32.33	\$33.30	\$34.30
Pay point 4 (4 <sup>th</sup> year)	\$33.27	\$34.27	\$35.30
Pay point 5 (5 <sup>th</sup> year & thereafter)	\$34.13	\$35.15	\$36.20
<b>Registered Nurse - level 2</b>			
Covers CNS and CNE	\$36.77	\$37.87	\$39.01
<b>Registered Nurse - level 3</b>			
Pay point 1	\$39.07	\$40.24	\$41.45
Pay point 2	\$40.14	\$41.34	\$42.58
Pay point 3	\$41.08	\$42.31	\$43.58
Pay point 4	\$42.14	\$43.40	\$44.70
Pay point 5	\$43.15	\$44.44	\$45.77
Pay point 6	\$44.16	\$45.48	\$46.84
Pay point 7	\$45.03	\$46.38	\$47.77
Pay point 8	\$46.48	\$47.87	\$49.31

<b>Classification</b>	<b>First Pay Period after the date this agreement is made</b>	<b>First Pay Period after 1 July 2019</b>	<b>First Pay Period after 1 July 2020</b>
<b>Registered Nurse - level 4</b>			
Grade 1	\$44.27	\$45.60	\$46.97
Grade 2	\$47.44	\$48.86	\$50.33
Grade 3	\$50.21	\$51.72	\$53.27

<b>Aged Care Classifications</b>	<b>First Pay Period after the date this agreement is made</b>	<b>First Pay Period after 1 July 2019</b>	<b>First Pay Period after 1 July 2020</b>
Aged Care Employee Level 1 – Entry Level	\$20.02	\$20.62	\$21.24
Aged Care Employee Level 2	\$20.85	\$21.48	\$22.12
Aged Care Employee Level 3	\$21.67	\$22.32	\$22.99
Aged Care Employee Level 4	\$21.93	\$22.59	\$23.27
Aged Care Employee Level 5	\$22.67	\$23.35	\$24.05
Aged Care Employee Level 6	\$23.90	\$24.62	\$25.36
Aged Care Employee Level 7	\$24.33	\$25.06	\$25.81

## Schedule D - Allowances

Item	Allowance	Clause Number	First Pay Period after the date this agreement is made	First Pay Period after July 2019	First Pay Period after July 2020
1	Uniform Allowance when uniform is not supplied (non nursing classifications)				
	Per shift	18.1(b)	\$1.47	\$1.51	\$1.56
	Per week	18.1(b)	\$7.45	\$7.68	\$7.91
2	Laundry Allowance (Aged Care Classifications)				
	Per shift or part thereof	18.1(c)	\$0.38	\$0.39	\$0.41
	Per week	18.1(c)	\$1.78	\$1.83	\$1.89
3	Uniform Allowance (Nursing Classifications)				
	Uniforms	18.2(b)	\$6.45	\$6.64	\$6.84
	Shoes	18.2(c)	\$2.01	\$2.07	\$2.13
	Cardigan	18.2(c)	\$1.94	\$1.99	\$2.05
	Stockings	18.2(c)	\$3.35	\$3.45	\$3.55
	Socks	18.2(c)	\$0.66	\$0.68	\$0.70
8	Laundry Allowance (Nursing Classifications)	18.2(d)	\$5.38	\$5.54	\$5.70
9	Meal Allowance when no meal is provided				
	When required to work more than one hour beyond usual finishing time	18.3(a)(i)	\$12.84	\$13.23	\$13.62
10	When overtime exceeds work exceeds four hours	18.3(a)(ii)	\$11.56	\$11.91	\$12.27
	On Call Allowance (Nursing classifications only)				
11	Between rostered shifts Monday to Friday	18.4(a)(i)	\$20.72	\$21.34	\$21.98
12	Between rostered shifts or on a Saturday	18.4(a)(ii)	\$31.21	\$32.15	\$33.11
13	Between rostered shifts or ordinary hours on a Sunday, public holiday or a day when not rostered to work	18.4(a)(iii)	\$36.41	\$37.50	\$38.63
14	Travel allowance	18.5(a)	\$0.80	\$0.83	\$0.85

Item	Allowance	Clause Number	First Pay Period after the date this agreement is made	First Pay Period after 1 July 2019	First Pay Period after 1 July 2020
	Continuing education allowance				
15	RN - post grad certificate in clinical field	18.6(g)	\$16.38	\$16.87	\$17.38
16	RN - post grad diploma or degree in clinical field	18.6(h)	\$27.30	\$28.12	\$28.96
17	RN - relevant master's degree or doctorate in clinical field	18.6(i)	\$32.75	\$33.73	\$34.74
18	EN - certificate IV qualification in a clinical field	18.6(j)	\$10.92	\$11.25	\$11.59
19	RN – in charge of facility of less than 100 beds on day, evening or night	18.7(a)	\$19.51	\$20.10	\$20.70
20	RN – in charge of facility of more than 100 beds on day, evening or night	18.7(a)	\$31.44	\$32.38	\$33.35
21	RN in charge of a shift in a section of a facility	18.7(b)	\$19.51	\$20.10	\$20.70
22	Team Leader (AIN)	18.7(d)	\$10.96 per week	\$11.29 per week	\$11.63 per week
	Leading Hand Allowance (Aged Care Classifications only)				
23	- in charge of 2 - 5 employees	18.8	\$23.54	\$24.25	\$24.98
24	- in charge of 6 - 10 employees	18.8	\$33.59	\$34.60	\$35.64
25	- in charge of 11 - 15 employees	18.8	\$42.40	\$43.67	\$44.98
26	- in charge of 16 or more employees	18.8	\$51.83	\$53.38	\$54.98
	Nauseous work allowance (Aged Care Classifications only)				
27	- per hour or part thereof	18.9(a)	\$0.44	\$0.45	\$0.46
28	- minimum per week	18.9(a)	\$2.38	\$2.45	\$2.52
29	On call during meal break	30.1(c)	\$13.14	\$13.53	\$13.94

**Durham Green (Aged Care), NSWNMA-ANMF NSW Branch and HSU NSW  
Branch Enterprise Agreement 2018 - 2021**

**Signature Page on Behalf of:  
Durham Green Manor Pty Ltd**

Dated this **22<sup>nd</sup>** day of **May** 2018



Signature  
Mr Maurice Tulich  
25 Tulich Avenue Prestons NSW 2170



Signature of Witness  
Miss Dina Makdasy

As a Director of Durham Green Manor Pty Ltd Mr Tulich is authorised to sign on behalf of the employer

*Brett Holmes*

Brett Howard Holmes  
Branch Secretary  
Australian Nursing and Midwifery Federation  
New South Wales Branch  
50 O'Dea Ave  
WATERLOO NSW 2017

*Margaret Potts*

WITNESS  
Margaret Mary Potts  
50 O'Dea Ave, Waterloo

*Coral Levett*

Coral Vicky Levett  
President  
Australian Nursing and Midwifery Federation  
New South Wales Branch  
50 O'Dea Ave  
WATERLOO NSW 2017

*Margaret Potts*

WITNESS  
Margaret Mary Potts  
50 O'Dea Ave, Waterloo

*Authority to sign Agreement on behalf of employees is in accordance with Rule 40 of the Rules of the Australian Nursing and Midwifery Federation and as bargaining representative in accordance with the Fair Work Act 2009.*

Signed for and on behalf of the HSU, New South Wales Branch, as a bargaining representative, by its duly authorised officer:



Gerard Hayes

Secretary

HSU New South Wales Branch

Level 2, 109 Pitt Street

SYDNEY NSW 2000



WITNESS

Toby Warnes

Solicitor

Level 2, 109 Pitt Street

SYDNEY NSW 2000

*Authority to sign Agreement on behalf of employees is in accordance with Rule 40 of the Rules of the Health Services Union.*

**IN THE FAIR WORK COMMISSION**

FWC Matter No:  
**AG2018/2224**

Applicant:  
**Durham Green Manor Pty Ltd**

Section 185 – Application for approval of a single enterprise agreement

**Undertaking – Section 190**

I, Vitas Tulich, General Manager, of Durham Green Manor Pty Ltd (**Facility**), give the following undertakings with respect to the Durham Green (Aged Care), NSWNMA-ANMF NSW Branch & HSU NSW Branch Enterprise Agreement 2018 - 2021 (**Agreement**):

1. I have the authority given to me by the board of the Facility to provide these undertakings with respect to the application before the Fair Work Commission (**Commission**).

Public Holidays

2. Notwithstanding Clause 35.1 of the Agreement, an employee who has agreed to work their ordinary hours on a public holiday and is then absent on that day will be entitled to payment at their base rate of pay for their ordinary hours of work in accordance with section 116 of the Fair Work Act 2009.

These undertakings are provided on the basis of queries raised by the Commission in the application before the Commission.

Signature: 

Date: 9/10/2018