



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

St Luke's Care T/A St Luke's Hospital
(AG2018/3529)

ST LUKE'S CARE TRADING AS ST LUKE'S HOSPITAL AND AUSTRALIAN NURSING AND MIDWIFERY FEDERATION NSW BRANCH ENTERPRISE AGREEMENT 2018-2020

Health and welfare services

DEPUTY PRESIDENT COLMAN

MELBOURNE, 21 DECEMBER 2018

Application for approval of the St Luke's Care trading as St Luke's Hospital and Australian Nursing and Midwifery Federation NSW Branch Enterprise Agreement 2018-2020.

[1] An application has been made for approval of an enterprise agreement known as the *St Luke's Care trading as St Luke's Hospital and Australian Nursing and Midwifery Federation NSW Branch Enterprise Agreement 2018-2020* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by St Luke's Care T/A St Luke's Hospital. 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, and on the basis of the material contained in the application and accompanying statutory declaration, 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 being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) and based on the statutory declaration provided by the organisation, I note that the Agreement covers the organisation.

[5] The Agreement was approved on 21 December 2018 and, in accordance with s.54, will operate from 28 December 2018. The nominal expiry date of the Agreement is 30 June 2020.



DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<AE501237 PR703523>

Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2018/3529

Applicant:

St Luke's Care

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, David Ahem, Director, People & Culture for St Luke's Care give the following undertakings with respect to the St Luke's Care trading as St Luke's Hospital and Australian Nursing and Midwifery Federation NSW Branch Enterprise Agreement 2018 – 2020 ("the Agreement"):

1. I have the authority given to me by St Luke's Care to provide this undertaking in relation to the application before the Fair Work Commission.
2. St Luke's Care undertakes to amend Clause 6.18 to read:

6.18 The following criteria shall apply to, Registered Nurses (including Clinical Nurse Specialists) and Enrolled Nurses only, for the introduction of twelve (12) hour shifts:

3. St Luke's Care undertakes to amend the last paragraph of Clause 13.4 to read:

The foregoing paragraph shall apply to employees who work less than 38 hours per week, but Registered Nurses (including Clinical Nurse Specialists) and Enrolled Nurses shall not be entitled to be paid in addition any allowance prescribed by Clause 21 Part –Time, Casual and Temporary Employees, of this Agreement in respect of their employment between midnight on Friday and midnight on Sunday.

4. St Luke's Care undertakes to amend Clause 21.2 (v) to read:

(v) A casual employee who is required to and does work on a public holiday as defined in sub-clauses 22.2 and 22.3 of Clause 22, Annual Leave and Public Holidays, shall be paid for the time actually worked at the rate of double time and one-half, such payment in lieu of weekend and shift allowances which would otherwise be payable had the day not been a public holiday; provided that a casual Enrolled Nurse and Registered Nurse (including Clinical Nurse Specialists) shall not be entitled to be paid in addition the twenty-five percent (25%) loading prescribed in the subclause 21.2 (ii) in respect of such work.

5. In practise, there are no casual employees currently impacted by Clause 18 – Overtime. Should an Assistant in Nursing/Assistant in Midwifery/Trainee Enrolled

Nurse work a shift in excess of twelve (12) hours, they shall be paid overtime rates in addition to casual loading to ensure they are no worse off.

6. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



Signature

17 December 2018

Date

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.

**ST LUKE'S CARE
TRADING AS ST LUKE'S HOSPITAL**

AND

**AUSTRALIAN NURSING AND MIDWIFERY FEDERATION
NSW BRANCH**

ENTERPRISE AGREEMENT

2018-2020

PART A

1. Table of Contents

1. Table of Contents	2
2. Title.....	4
3. Parties	4
4. Duration	4
5. Definitions.....	4
6. Hours Of Work.....	11
7. Hours Of Work And Free Time Of Directors Of Nursing	14
8. Banking Of Hours	14
9. Rosters	15
10. Salaries	17
11. Recognition Of Service And Experience.....	18
12. Special Allowances.....	18
13. Penalty Rates For Shift Work And Weekend Work.....	20
14. Fares And Expenses	21
15. Telephone Reimbursement	22
16. Uniform And Laundry Allowances.....	22
17. Higher Grade Duty.....	23
18. Overtime	23
19. Payment And Particulars Of Salaries	25
20. Registration or Enrolment Pending.....	26
21. Part-Time, Casual And Temporary Employees	26
22. Annual Leave and Public Holidays	30
23. Annual Leave Loading.....	35
24. Long Service Leave.....	36
25. Compassionate Leave	38
26. Personal/Carer's Leave	40
27. Family Violence Leave	43
28. Staff Amenities	44
29. Escort Duty.....	45
30. Deputy Directors Of Nursing, Assistant Directors Of Nursing.....	45
31. Medical Examination Of Nurses	46
32. Domestic Work	46
33. Labour Flexibility.....	46
34. Termination Of Employment.....	47
35. Transfer of Business.....	48
36. Attendance At Meetings And Fire Drills	48
37. Resolution Of Disputes.....	49
38. Anti-Discrimination.....	49
39. Parental Leave	49
40. Remuneration Packaging & Superannuation.....	52
41. Introduction of Change and Consultation	56
42. Redundancy	59
43. No Extra Claims.....	63
44. National Employment Standards (NES)	63
45. Staffing Arrangements.....	64

46. Agreement Flexibility65

47. Disciplinary Matters67

48. Representative Leave.....67

49. Community Leave.....67

50. Continuing Professional Development for RNs and ENs.....69

51. Continuing Education Allowance70

52. Workplace Representatives.....71

PART B.....72

Table 1 – Monetary Rates72

Table 2 – Other Rates and Allowances76

Signature Page for St Luke’s Care trading as St Luke’s Hospital78

Signature Page for Australian Nursing and Midwifery Federation NSW Branch.....79

2. Title

This Agreement will be known as and referred to as the St Luke's Care trading as St Luke's Hospital and Australian Nursing and Midwifery Federation NSW Branch Enterprise Agreement 2018 – 2020 ('the Agreement').

3. Parties

This Agreement will be binding on:

- 3.1 St Luke's Care trading as St Luke's Hospital A.B.N 16 000 009 012 ("the employer") of 18 Roslyn Street, Potts Point NSW 2011.
- 3.2 Australian Nursing and Midwifery Federation New South Wales Branch (ANMF NSW Branch) (A.B.N 85 726 054 782) ('the Association') of 50 O'Dea Avenue Waterloo, New South Wales, 2017; and
- 3.3 Nursing employees employed in classifications listed in Table 1 – Salaries of Part B, Monetary Rates by St Luke's Hospital.

4. Duration

This Agreement shall come into operation from the 7th day after the Agreement is approved by the Fair Work Commission (FWC) and shall have a nominal expiry date of 30th June 2020.

5. Definitions

Where a term of this Agreement has a corresponding definition in the Act or the Regulations, the definition in the Act or the Regulations shall apply. Any such terms that are also defined in this Agreement are defined for the convenience only of the parties and shall be overridden to the extent of any inconsistency with the definition found in the Act or the Regulations.

For the purposes of this Agreement:

"Act" means the *Fair Work Act 2009* (as amended).

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

"Average Occupied Beds" means calculating the adjusted daily average of occupied beds of a hospital, each newly born baby shall count as one half patient and 700 outpatients per annum shall count as one occupied bed. The average shall be taken for the twelve months ended on the 30 June in each and every year and such average shall relate to the salary of the succeeding year.

"Board" means the Nursing and Midwifery Board of Australia and shall also be taken to mean a reference to the Australian Health Practitioner Regulation Authority as appropriate/applicable.

"Clinical Nurse Educator" means a registered nurse with relevant post registration certificate qualifications or experience deemed appropriate by the employer, who is required to implement and evaluate educational programmes at the ward/unit level. The Clinical Nurse Educator shall cater for the delivery of clinical nurse education in the ward/unit level only.

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

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

"Clinical Nurse Specialist – Grade 1" means a registered nurse with relevant post-basic qualifications and twelve (12) months' experience working in the clinical area of his/her specified post-basic qualification, or a minimum of four (4) years' post-basic registration experience, including three (3) years' experience in the relevant specialist field and who satisfies the local criteria.

"Clinical Nurse Specialist- Grade 2": The Clinical Nurse Specialist Grade 2 classification encompasses the Clinical Nurse Specialist Grade 1 role criteria and is distinguished from a Clinical Nurse Specialist Grade 1 by the following additional role characteristics outlined under Key Performance Indicators below. Any appointment to the role shall be for a closed period of twelve (12) months, at which time the Registered Nurse will be required to reapply for the role.

Eligibility for appointment to CNS Grade 2

Eligibility for appointment to the CNS Grade 2 role is contingent upon the Registered Nurse:

- understanding and acknowledging that their appointment is for a twelve (12) month period which a reapplication process on or before their twelve (12) month anniversary date in the role;
- having unconditional registration with AHPRA;
- completing no less than twelve (12) months' satisfactory service as a Clinical Nurse Specialist Grade 1 (one thousand nine hundred and seventy-six (1976) nominal hours of service, including paid leave);
- being a full-time or part-time employee;
- applying formally by way of a written (typed) application to Nursing Administration requesting to be considered for the role. The application **must** address the following criteria in order to be considered:
 - how their demonstrable clinical and non-clinical performance (citing examples) as a Registered Nurse in their current role as CNS Grade 1 will satisfactorily facilitate their transition to, and ongoing success in, the CNS Grade 2 position (must include examples where they meet the some or all of the criteria for a CNS 2 below in the execution of the current role as CNS 1);

- their commitment to meeting the criteria on an ongoing basis to maintain their position as CNS Grade 2;
- their demonstrable commitment to continuous improvement strategies regarding clinical care;
- their demonstrable skills and ability to maintain and enhance their relationships with other individuals and groups in the workplace.

CNS 2 – Key Performance Indicators

- exercises professional knowledge and judgment in providing complex care requiring advanced clinical skills and undertakes one of the following roles:
 - leadership in the development of nursing specialty clinical practice and service delivery in the ward or unit of the Hospital or specialist clinical practice across the Hospital or;
 - primary case management of a complete episode of care; or of primary case management of a continuum of specialty care in the Hospital; or an authorised extended role within the scope of Registered Nurse
- practices in accordance with the professions' Code of Ethics and best practice guidelines;
- demonstrable knowledge of policies and processes, both clinical and non-clinical;
- identifies and reports unsafe practice and response appropriately to ensure a safe outcome;
- engages effectively in ethical decision making;
- ensures confidentiality of information and actively promotes the same behaviour in others;
- recognises own knowledge base and scope of own competence;
- consults respectfully and pragmatically with senior nurses or other health care professionals when nursing care requires expertise beyond own competence;
- acknowledges and actively engages in research for the purpose of improving nursing outcomes;
- incorporates research findings into nursing practice;
- actively participates in unit based quality activities;
- interacts respectfully and considers the needs of others at all times;
- ability to identify and pragmatically resolve operational issues which might arise in the course of their practice;
- maintains an exemplary standard of behaviour at all times;
- maintains and enhances the self-esteem of others;

- exercises extended autonomy of decision making;
- provides for the comfort needs of individuals and groups;
- establishes, maintains and concludes caring, therapeutic and effective interpersonal relationships with individuals or groups;
- applies strategies to promote individual/team self-esteem in conjunction with the relevant departments;
- acts to maintain the dignity and integrity of individuals/groups;
- determines the progress of individuals or groups toward planned outcomes;
- revises nursing interventions in accordance with evaluation data and determines further outcomes in accordance with the Nurse Management team;
- carries out comprehensive and structured nursing assessment of individuals/groups:
 - utilising appropriate and accurate data;
 - accurately interpreting that data;
 - formulating a plan of care collaboratively in conjunction with the health care team;
- uses best practice and professional standards to assess the performance of self and other's;
- contributes to the learning experience and professional development of others including the support of, and engagement in the learning activities of others;

* NOTE: A Registered Nurses' twelve (12) month appointment to the role will be determined by the Director of Nursing – St Luke's Care or a member of the Executive, having regard to the above and the employees' performance generally. Registered Nurses who are appointed to the role must reapply to be considered for a further twelve (12) month appointment. To ensure continuity of appointment the written (typed) reapplication must be issued to Nursing Administration no less than one (1) month prior to the conclusion of their twelve (12) month anniversary date as a CNS 2, and must outline in detail (citing examples) how the Registered Nurse has met the criteria outlined above. A Registered Nurse who: fails to meet all of the criteria above as assessed by the Director of Nursing or the Executive; or fails to forward his or her reapplication to Nursing Administration in accordance with the said reapplication timeframe for any reason, will not be permitted to remain in the role of CNS 2 and will resume their pre-CNS Grade 2 role and will be paid at the applicable rate for that position at the conclusion the closed period of appointment (twelve (12) months) as a CNS 2. Any dispensation regarding the above conditions will be at the sole discretion of the Director of Nursing or the Executive and communicated in writing to the CNS 2.

"Clinical Nurse Consultant" means a registered nurse appointed as such to the position of, who's had at least five (5) years' post-basic registration experience and who has in addition approved post-basic nursing qualifications relevant to the field in

which they are appointed or such other qualifications or experience deemed appropriate by the employer.

"Day Worker" means a worker who works their ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6.00 am and before 10.00 am otherwise than as part of the shift system.

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

"Director of Nursing" includes a registered nurse who is registered by their employer with the Health Administration Corporation of New South Wales as the person in charge of the hospital. There shall be only one (1) person in each hospital entitled to be classified as Director of Nursing or whatever title the Senior Nursing Administrator is known as.

"Enrolled Nurse (EN)" means a nurse enrolled with the Board who is authorised to administer medications.

"Enrolled Nurse (without medication qualification)" means a nurse enrolled with the Board who has the following notation on their licence: "Does not hold Board-approved qualifications in administration of medications" attached to their enrolment.

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

For the purpose of determining the year of experience for part time or casual employment, a year of experience shall be one thousand nine hundred and seventy-six (1976) hours of employment.

"Hospital" means a private hospital as defined by the *Private Health Facilities Act 2007*.

"Industry of Nursing" means the industry of persons engaged and employed in New South Wales in the profession or occupation of nursing and employed in or in connection with private hospitals.

"NES" means the National Employment Standards.

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

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

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

A person appointed as the sole nurse educator for a hospital or group of hospital shall be paid at the third (3rd) year rate of the salary scale.

Incremental progression for Nurse Educators' shall be on completion of twelve (12) months' satisfactory service subject that progression shall not be beyond the third (3rd) year rate unless the person possesses the qualifications detailed in the two previous paragraphs. Persons appointed to the third (3rd) year rate by virtue of paragraphs three (3) and four (4) above shall progress to the fourth (4th) year rate after completion of twelve (12) months' satisfactory full time service.

"Nursing Unit Manager" means a registered nurse in charge of a ward or unit or group of wards or units in a hospital shall include:

(a) **"Nursing Unit Manager Level 1"** whose responsibilities include:

(1) Co-ordination of Patient Services

- Liaison with all health care disciplines for the provision of services to meet patient needs.
- The orchestration of services to meet patient needs after discharge.
- Monitoring catering and transport services.

(2) Unit Management

- Implementation of hospital policy.
- Dissemination of information to all personnel.
- Ensuring environmental safety.
- Monitoring the use and maintenance of equipment.
- Monitoring the supply and use of stock and supplies.
- Monitoring cleaning services.

(3) Nursing Staff Management

- Direction, co-ordination and supervision of nursing activities.
- Training, appraisal and counselling of nursing staff.
- Rostering and/or allocation of nursing staff.

- Development and/or implementation of new nursing practice according to patient need.
- (b) **"Nursing Unit Manager Level 2"** whose responsibilities in relation to patient services, ward or unit management and staff management are in excess of those of a Nursing Unit Manager Level 1.
- (c) **"Nursing Unit Manager Level 3"** whose responsibilities in relation to patient services ward or unit management and staff are in excess of those of a Nursing Unit Manager Level 2.

Ordinary pay of an employee includes in addition to the basic periodic rate of pay and any applicable over-agreement payments for ordinary hours of work. It does not include shift or weekend penalties.

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

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

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

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

"Service" for the purpose of Clause 11, Service, means service before or after the commencement of this Agreement in New South Wales or elsewhere as a registered nurse, provided that all service recognised prior to the commencement of this Agreement shall continue to be recognised.

To the foregoing shall be added any actual periods during which a registered nurse undertook a post-graduate course while an employee of and rendering service in an institution or hospital. Any such course must contribute to the practice of the registered nurse and be from an accredited tertiary institution. No more than three such courses shall count as service.

For the purpose of determining the year of service for part time or casual employment a year of service shall be one thousand nine hundred and seventy-six (1976) hours of employment. Only paid leave shall be counted as service.

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

"Union" means the Australian Nursing and Midwifery Federation New South Wales Branch.

“Workplace Representative” Workplace Representative means a person(s) nominated by an employee or employees to represent them in accordance with the provisions of this Agreement which may include the Union as defined.

6. Hours Of Work

- 6.1 The ordinary hours of work for day workers, exclusive of meal times, shall be one hundred and fifty two (152) hours per twenty-eight (28) calendar days to be worked Monday to Friday inclusive and to commence on such days at or after 6.00 am and before 10.00 am.
- 6.2 The ordinary hours of work for shift workers, exclusive of meal times, shall not exceed an average of thirty-eight (38) hours per week in each roster cycle.
- 6.3 (i) The hours of work prescribed in sub-clauses 6.1 and 6.2 of this clause shall, where possible, be arranged in such a manner, that in each roster cycle of twenty eight (28) calendar days each employee shall not work their ordinary hours or work on more than nineteen days in the cycle.
- (ii) Notwithstanding the provision of paragraph (i) of this sub-clause, employees may, with the agreement of the employer work shifts of less than eight (8) hours each over twenty (20) days in each cycle of twenty eight (28) days.
- (iii) Provided that on the occasion of an employee's written request, and with the consent of the employer, a nine and a half (9.5) day fortnight may be worked instead of the nineteen (19)-day month or
- (iv) the thirty eight (38) hours per week, may be arranged in order that an employee shall not be required to work his/her ordinary hours in more than five (5) days in one (1) week or ten (10) days in one fortnight.
- 6.4 Except where authorised by sub-clause 6.18, each shift shall consist of no more than ten (10) hours on a day shift or eleven (11) hours on a night shift with not less than nine (9) hours break between each shift; provided that an employee shall not work more than seven (7) consecutive shifts unless the employee so requests and the Director of Nursing agrees. An employee shall not work more than two (2) quick shifts in any period of seven (7) days.
- A quick shift is an evening shift which is followed by a morning shift.
- 6.5 The employer is to decide when employees take their additional days off duty prescribed by sub-clause 6.3 (as a consequence of the implementation of the thirty eight (38) hour week). Where necessary the employer must consult with the affected employees to ascertain the employees' preferences and must take any such preferences into account when arriving at a decision. Where practicable additional days off duty shall be consecutive with the rostered days off duty prescribed in sub-clause 6.14.
- 6.6 Once set, the additional days off may not be changed except in accordance with the provisions of Clause 9, Rosters.

- 6.7 Where the employer's decision (in accordance with sub-clause 6.5) is that an employee's additional days off be accumulated, no more than six (6) days may be accumulated in any one (1) year of employment. By mutual agreement this may be extended to no more than twelve (12) days at any one time.
- 6.8 Except for breaks for meals the hours of duty each day shall be continuous. Provided, that in the case of permanent part-time employees, an employer will consult with employees and if requested by the employee any nominated representative which may be a union representative, may request an exemption from this provision, and from sub-clause 6.4 with regard to the span of hours only, to enable an additional break of no more than 4 hours. In any event, the span of hours shall not exceed twelve (12) hours.
- 6.9 (i) Each employee shall be allowed a break of not less than thirty (30) minutes and not more than sixty (60) minutes for each meal occurring on duty.
- (ii) Where practicable, employees shall not be required to work more than five (5) hours without a meal break. Provided that where practicable an employee engaged to work for five (5) hours or less in any one (1) shift may elect not to take a meal break as otherwise provided for by this sub-clause without penalty to the employer. The term 'where practicable' encompasses regard being paid to the service requirements of the employer.
- 6.10 Two (2) separate ten (10)-minute intervals (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of eight (8) or ten (10) hours as the case may be. Subject to agreement between the employer and the employee, such intervals may alternatively be taken as one (1) twenty (20)-minute interval, or by one (1) ten (10)-minute interval with the employee allowed to proceed off duty ten (10) minutes before the completion of the normal shift finishing time. Such interval(s) shall count as working time.
- 6.11 (i) Sub-clauses 6.9 and 6.10 shall not apply to an employee who, before going on night duty, is provided with a meal between 9.00 pm and 11.00 pm and who is allowed two (2) intervals of twenty (20) minutes each during the period of night duty but such intervals shall count as working time and shall be paid for as such.
- (ii) Where an employee is required to change into a uniform or a specified type of garment at the employer's premises they shall be allowed ten minutes for such a purpose and such time shall be counted as working time and paid as such.
- 6.12 (i) Except as provided for in paragraph (ii) an employee shall not be employed on night duty for a longer period than eight (8) consecutive weeks. After having served a period of night duty an employee shall not be required to serve a further period on night duty until they have been off night duty for a period equivalent to the previous period on night duty.
- (ii) The provisions of paragraph (i) shall not apply to an Assistant Director of Nursing, a Nursing Unit Manager or a general nurse in charge, as the case may be, who is employed permanently in charge at night, nor to an

employee who requests to be employed on night duty and the Director of Nursing consents.

- 6.13 An employee changing from night duty to day duty or from day duty to night duty shall be free from duty during the twenty (20) hours immediately preceding the commencement of the changed day.
- 6.14(i) Each employee shall be free from duty for not less than two (2) full days in each week or four (4) full days in each fortnight or eight (8) full days in each twenty-eight (28) day cycle and no duties shall be performed by the employee on any of such free days except for overtime. Where practicable, days off shall be consecutive and shall not be preceded by an evening shift or a night shift unless an additional eight (8) hours are granted as sleeping time. An evening shift shall be one which commences at or after 1.00 pm and before 4.00 pm.
- (ii) An employee, at their request, may be given free from duty time in one (1) or more periods but no period shall be less than one (1) full day.
- (iii) For the purpose of this sub-clause "full day" means from midnight to midnight or midday to midday.
- 6.15(i) Employees may be required to remain on call. Any such time on call shall not be counted as time worked (except insofar as an employee may take up actual duty in response to a call), but shall be paid for in accordance with Clause 12, Special Allowances, of this Agreement: Provided, however, no employee shall be required to remain on call whilst on leave or on the day before entering upon leave.
- (ii) No employee shall be required to remain on call whilst on a rostered day off, nor on completion of the shift on the day preceding a rostered day off. This provision shall not apply where in special circumstances it is necessary for an employer to place staff on call on rostered days off or on completion of the shift on the day preceding a rostered day off in order to ensure the provision of services.
- 6.16 An employer shall not alter the period over which the ordinary hours of work of employees are balanced except upon giving one (1) months' notice of their intention to do so to affected employees and if requested by the employee any nominated representative which may be a union representative.
- 6.17 The provisions of paragraphs (i) and (ii) of sub-clause 6.12 and of sub-clause 6.13 and of paragraph (i) of sub-clause 6.14 of this Clause, shall not apply if the employee is required to perform duty to enable the nursing service of the employer to be carried on or where another employee is absent from duty on account of illness or in an emergency.
- 6.18 The following criteria shall apply to the introduction of twelve (12) hour shifts:
- (i) twelve (12) hour shifts will only be introduced in units where there has been full consultation with the staff affected and a majority of the staff

- affected agree to the introduction of the proposed twelve (12) hour shift system;
- (ii) any employee who does not wish to work under the twelve (12) hour shift system may work a mutually agreed alternative shift system in the unit affected or may transfer to another mutually agreed position within the facility with no loss of classification and contracted hours;
 - (iii) the span of hours must not exceed twelve and one-half (12.5) hours;
 - (iv) there must be a maximum of three (3) consecutive night shifts which include one (1) or more twelve (12) hour shifts;
 - (v) there must be a minimum break of eleven and one-half (11.5) hours rostered between each twelve (12) hour shift;
 - (vi) employees must be allowed either two (2) thirty (30) minutes or one (1) sixty (60) minutes meal break. In addition to the meal breaks employees must be allowed either two (2) ten (10) minute or one (1) twenty (20) minute paid tea break;
 - (vii) the employer must notify the employees and if requested, by the employer any nominated employee representatives which may be a union representative of the implementation of the twelve (12) hour shifts at least one month prior to commencing the new arrangements. The details of that notification must indicate the number of staff involved, the section of the hospital involved and the Agreement provisions which need to be overridden.
 - (viii) there must be an evaluation process at the completion of the first twelve (12) months, or sooner if the employer and affected employees agree. The evaluation process must involve representatives of employees and the employer. Aspects which are to be considered in the evaluation process are to include occupational health and safety data, sick leave patterns and the frequency of overtime.
 - (ix) the employees and if requested by the employee any nominated employee representative which may be a union representative are to be notified of the outcome of the evaluation process;
 - (x) nothing contained in this sub-clause shall prevent an individual employee and their employer reaching mutual agreement to that individual working twelve (12) hour shifts.

7. Hours Of Work And Free Time Of Directors Of Nursing

7.1 The hours of work and free time for a Director of Nursing shall be the same as all other employees regulated by this Agreement.

8. Banking Of Hours

8.1 A full time or part time employee may, by agreement made daily, weekly or fortnightly with their Nurse Unit Manager or DON:

- (i) work less than their daily, weekly or fortnightly rostered or contracted hours and work those hours at a later date; or
- (ii) work more than their daily, weekly or fortnightly rostered or contracted hours and take time off in lieu of payment, or may set off the additional hours worked against any owing under (i) above.

- 8.2 An employee who works less than their rostered or contracted hours shall be paid as if those hours had been worked during the relevant period, including payment for any weekend or shift penalties that would otherwise have been due for the time not worked.
- 8.3 An employee who works more than their rostered or contracted hours shall not receive payment for any weekend or shift penalties that would otherwise have been due for that extra time worked.
- 8.4 Time debited or credited under these arrangements shall all be at ordinary time, i.e. an hour for an hour.
- 8.5 An employee may not have more than seventy-six (76) hours in debit or credit at any point in time.
- 8.6 Employees who have hours in debit must be given first option to work additional hours prior to the use of casual employees.
- 8.7 The Hospital must keep detailed records of all hours credited and debited to employees under these arrangements. Employees must have full access to these records.
- 8.8 On termination of employment the employer must pay the employee for all hours in credit and may deduct from termination pay the value of any hours in debit.
- 8.9 Either party shall have the right to terminate an agreement under this Clause with two (2) weeks' notice.

9. Rosters

- 9.1 Rosters will be built to ensure that staffing levels and skill mix reflect the requirement to deliver high quality patient care and a safe working environment for nurses in accordance with Clause 45, Staffing Arrangements. The roster build will reflect meal breaks, training requirements, paid handover, professional standards such as ACORN and professional registration requirements such as Nursing and Midwifery Board of Australia's Code of Ethics and Code of Conduct for Nurses.
- 9.2 The ordinary hours of work for each employee, other than the Director of Nursing and casual employees, shall be displayed on a roster in a place conveniently accessible to employees.
- 9.3 The roster shall be displayed where practicable at least two (2) weeks prior, but in any event not less than one (1) week prior, to the commencing date of the first working period in the roster. Provided that in the case of a permanent part-time employee whose hours are balanced over four (4) weeks, the roster shall be displayed where practicable, at least four (4) weeks prior to the commencing date of the first working period in the roster but in any event not less than one (1) week prior, to the commencing date of the first working period in the roster.
- 9.4 Notwithstanding the foregoing provisions of this Clause, a roster may be altered at any time to enable the nursing service of the hospital to be carried on where

another employee is absent from duty on account of illness or in an emergency: Provided that where any such alteration involves an employee working on a day which would otherwise have been such employee's day off, the day off in lieu thereof shall be as mutually arranged.

- 9.5 Prior to the date of the changed shift, such change of roster shall be notified verbally or in writing to the employee concerned.
- 9.6 An employee may change their roster at short notice, with the agreement of their Nurse Unit Manager or Director of Nursing for any reasonable ground.
- 9.7 An employer may change an employee's roster at short notice, with the agreement of the employee, for any reasonable ground including unexpected situations and unforeseen fluctuations in patient dependency.
- 9.8 Where an employee is entitled to an additional day off duty in accordance with Clause 6, Hours of Work, of this Agreement, such day is to be shown on the roster of hours for that employee.
- 9.9 All rosters shall be retained for at least six (6) years.
- 9.10 Consultation about changes to rosters or hours of work
 - (i) Where the employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
 - (ii) The employer must:
 - (a) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (b) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
 - (c) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
 - (iii) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
 - (iv) These provisions are to be read in conjunction with other provisions in this Agreement concerning the scheduling of work and notice requirements.

10. Salaries

10.1 The minimum salaries per week shall be as set out in Table 1 - Salaries, of Part B, Monetary Rates. The minimum salaries shall be increased as follows:

- (i) 2.6% increase on the current rates effective from the first full pay period on or after 1 July 2017 (column 2);
- (ii) 3% from the first full pay period on or after 1 July 2018 (column 3);
- (iii) 3% from the first full pay period on or after 1 July 2019 (column 4).

10.2 The allowances as set out in Table 2 – Other Rates and Allowances, of Part B Monetary Rates shall be paid. The allowances shall be increased as follows:

- (i) 2.6% increase on the current rates from the first full pay period on or after 1 July 2017 (column 2);
- (ii) 3% increase from the first full pay period on or after 1 July 2018, with the exception of the In-charge Shift Allowance which will increase to \$30.00 (column 3);
- (iii) 3% increase from the first full pay period on or after 1 July 2019 (column 4).

Where an employee receives a rate of pay in excess of the rates set out in Table 1, the employee will maintain their above Agreement wage and will not be disadvantaged.

10.3 An Enrolled Nurse who is endorsed to administer medication will be classified and paid as an Enrolled Nurse from the commencement of the first full pay period following the issuing by the Board of their Letter of Endorsement to Administer Medication or Authority to Practice Certificate, Enrolled Nurse including Endorsement to Administer Medication, whichever is issued earlier. This provision will commence on or after the date of certification of this Agreement.

Provided that an Enrolled Nurse 1st year shall not progress to Enrolled Nurse 2nd year until completion of twelve (12) months' service at the 1st year rate (or for part time employees the full time equivalent of one thousand nine hundred and seventy-six (1,976) hours), and to the 3rd year rate until completion of twelve months' service at the 2nd year rate (or for part time employees the full time equivalent of one thousand nine hundred and seventy-six (1,976) hours), and so on throughout the scale.

10.4 In relation to the salaries of Deputy Director of Nursing and Director of Nursing, "beds" means adjusted daily average of occupied beds; in relation to the salary of Subsidiary Hospital Director of Nursing, "beds" means the adjusted daily average of occupied beds in the subsidiary hospital.

10.5 The wage increase specified above are inclusive of any wage increases; determination or award of the Fair Work Commission or any other authorised tribunal or commission made during the period of this Agreement. Any increase in the Award rates of pay shall be absorbed into the wage rates paid under this

Agreement. Should the application of any increase awarded by the Fair Work Commission result in rates applicable to the employees that are greater than those applying in this Agreement, those rates will be applied in lieu of the above increase from the date specified by the Fair Work Commission .

11. Recognition Of Service And Experience

- 11.1 The employer shall notify each nurse in writing of the requirements of this Clause at the time of the nurse's commencement of employment. If the employer does not so notify the nurse then the requirements of this Clause shall not commence until the employer does so notify the nurse.
- 11.2 From the time of commencement of employment the nurse has three (3) months in which to provide documentary evidence to their employer detailing any other 'service' or 'experience', as defined in Clause 5, Definitions, not disclosed at the time of commencement. This evidence, in the absence of other documentary evidence may take the form of a statutory declaration.
- 11.3 Until such time as the nurse furnishes any such documentation contemplated in sub-clause 11.2 above the employer shall pay the nurse at the level for which documentary evidence has been provided.
- 11.4 If within three (3) months of commencing employment a nurse does provide documentary evidence of other previous service or experience not disclosed at the time of commencement, the employer shall pay the nurse at the appropriate rate as and from the date of commencement that would have been paid from that date had the additional evidence been provided at that time.
- 11.5 If a nurse provides documentary evidence of other previous service or experience not disclosed at the time of commencement after the said three (3) months period, the nurse shall be paid a rate appropriate for the previous service or experience then proved but only from the date of providing that evidence to the employer.
- 11.6 A nurse who is working as a nurse for more than one (1) organisation shall notify each employer under this Agreement within one (1) month of the end of each quarter of their hours of service or experience, as appropriate, worked with those other employers in the last quarter.
- 11.7 A nurse who is entitled to progress to the next year of service or experience (by reason of hours worked with other employers) as and from a particular date must provide documentary evidence of that entitlement within three (3) months of that entitlement arising. If that proof is so provided the nurse shall be paid at the higher rate as and from the particular date. If the documentary evidence is provided outside that three (3) month period the nurse shall be paid at the higher rate only from the date of proof.

12. Special Allowances

- 12.1(i) A registered nurse in charge during the day, evening or night of a hospital having a daily average of occupied beds of less than one hundred (100) shall be paid, in addition to their appropriate salary, whilst so in charge, the

sum set out in Table 2 - Other Rates and Allowances, of Part B Monetary Rates, per shift.

- (ii) A registered nurse in charge of a shift in a ward or unit during the day, evening or night in the absence of the Nursing Unit Manager shall be paid, in addition to their appropriate salary whilst so in charge the sum set out in Table 2 - Other Rates & Allowances, per shift. This sub-clause shall only apply where the registered nurse is in charge of one or more other nurses in the ward or unit in question.
 - (iii) A registered nurse who: is designated and agrees to be in charge of a hospital ward/unit; and is responsible for overseeing the work of one (1) or more nurses on that particular ward/unit will be entitled to receive the in-charge allowance outlined in paragraph (ii) of subclause 12.1 of this Clause for each shift so worked.
 - (iv) This sub-clause shall not apply to registered nurses holding classified positions of a higher grade than of a Registered Nurse/Clinical Nurse Specialist.
- 12.2(i) An employee required by their employer to be on call otherwise than as provided for in paragraph (ii) shall be paid the sum set out in Table 2 for each period of twenty four (24) hours or part thereof provided that only one (1) allowance shall be payable in any period of twenty four (24) hours.
- (ii) An employee required to be on call on rostered days off in accordance with sub-clause 6.15(b) of Clause 6, Hours of Work, shall be paid the sum set out in Table 2 for each period of twenty four (24) hours or part thereof provided that only one (1) allowance shall be payable in any period of twenty four (24) hours.
 - (iii) An employee who is directed to remain on call during a meal break shall be paid an allowance of the sum set out in Table 2 provided that no allowance shall be paid if, during a period of twenty four (24) hours including such period of on call, the employee is entitled to receive the allowance prescribed in 12.2(i) above. If an employee is recalled to duty during such meal break, they shall be paid at overtime rates for the total period of the meal break.
 - (iv) Where an employee on call leaves the hospital and is recalled to duty, they shall be reimbursed all reasonable fares and expenses actually incurred provided that where an employee uses a motor car in these circumstances the allowance payable per kilometre shall be the rate outlined in Table 2 – Other Rates and Allowances. The provisions of this paragraph shall apply to all employees.
 - (v) This sub-clause shall not apply to a Director of Nursing, Subsidiary Hospital Director of Nursing, Deputy Director of Nursing or Assistant Director of Nursing.
- 12.3(i) A registered nurse who is designated to be in-charge of a ward or unit when the Nursing Unit Manager is not rostered for duty and who is also

designated to be in-charge of a hospital with less than one hundred (100) beds during the day, evening or night on the same shift shall be paid an allowance per shift of the sum set out in Table 2- Other Rates & Allowances. This sub-clause shall only apply where the registered nurse is in charge of one or more other nurses in the ward or unit in question.

- (ii) This sub-clause shall not apply to registered nurses holding classified positions of a higher grade than of a Registered Nurse/Clinical Nurse Specialist.

13. Penalty Rates For Shift Work And Weekend Work

13.1 Employees working afternoon or night shift shall be paid the following percentages in addition to the ordinary rate for such shift: Provided that employees who work less than thirty-eight (38) hours per week shall only be entitled to the additional rates where their shifts commence prior to 6.00 am or finish subsequent to 6.00 pm.

Afternoon shift commencing at 10.00 am and before 1pm – 10%

Afternoon shift commencing at 1.00 pm and before 4.00 pm - 12.5%

Night shift commencing at 4.00 pm and before 4.00 am - 15%

Night shift commencing at 4.00 am and before 6.00 am - 10%

13.2 "**Ordinary rate**" and "**ordinary time**" shall not include any percentage addition by reason of the fact that an employee works less than 38 hours per week but shall include amounts payable under Clause 10, Salaries.

13.3 For the purposes of this Clause, day, afternoon and night shifts shall be defined as follows:

"**Day Shift**" means a shift which commences at or after 6.00 am and before 10.00 am.

"**Afternoon shift**" means a shift which commences at or after 10.00 am and before 4.00 pm.

"**Night Shift**" means a shift which commences at or after 4.00 pm and before 6.00 am on the day following.

13.4 Employees whose ordinary working hours include work on a Saturday and/or Sunday shall be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and one half and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three quarters. These extra rates shall be in substitution for and not cumulative upon the shift premiums prescribed in the sub-clause 13.1 of this Clause.

The foregoing paragraph shall apply to employees who work less than 38 hours per week, but such employees shall not be entitled to be paid in addition any

allowance prescribed by Clause 21. Part-time, Casual and Temporary Employees, of this Agreement in respect of their employment between midnight on Friday and midnight on Sunday.

13.5 The additional payments prescribed by this Clause shall not form part of the employee's ordinary pay for the purposes of this Agreement, except as provided in Clause 22, Annual Leave and Public Holidays, of this Agreement.

- 13.6(i) This sub-clause shall only apply to nurses who work an entire ordinary time shift in a discrete designated day procedure ward or unit which routinely functions between the hours of 7.00 am and 6.00 pm.
- (ii) This sub-clause shall not apply to any nurse whose employment commenced prior to 15 December 1994 and who has been employed on a continuous basis since that date.
- (iii) A nurse to whom this sub-clause applies shall not be entitled to an additional penalty rate payment for ordinary time worked prior to 6.00 pm on any week day.
- (iv) A nurse to whom this sub-clause applies shall be paid, in addition to their ordinary rate, a penalty payment at the rate of fifteen per cent (15%) for all ordinary time worked after 6.00 pm on any week day.

14. Fares And Expenses

14.1 An employee required to travel in the performance of duty shall be paid all reasonable out of pocket expenses (including fares).

- 14.2(i) An employee who is engaged for an indefinite period and who remains in the employment for at least six (6) months shall be reimbursed forward fares from the place of engagement; provided that the distance of normal travel there from to the employment exceeds forty (40) kilometres.
- (ii) An employee who is engaged for an indefinite period and who is dismissed within six (6) months for any reason other than misconduct or inefficiency shall be reimbursed forward fares from the place of engagement; provided that the distance of normal travel there from to the employment exceeds forty (40) kilometres; and shall also be reimbursed return fares to such place of engagement or the employee's immediate destination, whichever is the cheaper.

14.3 An employee who is engaged for a definite period and who completed the period of engagement or who is dismissed before completing such period for any reason other than misconduct or inefficiency shall be reimbursed also return fares to such place of engagement or to the employee's immediate destination, whichever is the cheaper.

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

14.5 An employee who claims reimbursement of fares, pursuant to this Clause, shall furnish to the employer, if so required, satisfactory proof that they have not received from another employer reimbursement in respect of those fares.

15. Telephone Reimbursement

If an employee is required, for the purpose of their employment, to be on call, the employee shall be reimbursed for all telephone calls made by the employee in responding to a call to the hospital, upon production of satisfactory evidence to the employer.

16. Uniform And Laundry Allowances.

16.1 Subject to sub-clause 16.3 of this Clause, sufficient, suitable and serviceable uniforms, including one (1) pair of shoes per annum which shall be of a recognised acceptable standard for the performance of nursing duties, and one (1) cardigan or jacket shall be supplied free of cost to each employee required to wear a uniform. An employee to whom a new uniform or part of a uniform has been issued who, without good reason, fails to return the corresponding article last supplied shall not be entitled to have such article replaced without payment therefore at a reasonable price.

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

16.3 (i) In lieu of supplying uniforms and shoes to an employee, an employer shall pay the said employee the sum set out in Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, for uniforms and the sum set out in Table 2 for shoes per week.

(ii) In lieu of supplying stockings to an employee an employer shall pay the said employee the sum set out in Table 2 per week

(iii) In lieu of supplying a cardigan or jacket to an employee an employer shall pay the said employee the sum set out in Table 2 per week.

(iv) If, in any hospital, the uniforms of an employee are not laundered at the expense of the hospital an allowance of the sum set out in Table 2 shall be paid to the said employee; provided that the payment of such laundry allowance shall not be made to any employee on absences exceeding one (1) week.

(v) Where the employer requires any employee to wear headwear, the hospital shall provide headwear free of charge to the employee.

(vi) In lieu of supplying socks to an employee the employer shall pay the said employee the sum set out in Table 2 per week.

(vii) The allowances referred to sub-clause 16.3 are also payable during any period of paid leave.

17. Higher Grade Duty

17.1 An employee who is called upon to relieve an employee in a higher classification or is called upon to act in a vacant position of a higher classification shall be entitled to receive for the period of relief or the period during which they act the minimum payment for such higher classification.

17.2 The provisions of sub-clause 17.1 shall not apply where the employee being relieved is absent from duty for a period of three (3) consecutive working days or less which have been rostered in advance, except where the duties of the higher position involve being in charge of the facility during the period in question.

17.3 Further, the provisions of sub-clause 17.1 shall not apply where a Director of Nursing is absent from duty for a period of three (3) working days or less for any reason other than Clause 7, Hours of Work and Free Time of Directors of Nursing.

18. Overtime

18.1 Subject to sub-clause 18.2 an employer may require an employee to work reasonable overtime

18.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.

18.3 For the purposes of sub-clause 18.2 what is unreasonable or otherwise will be determined having regard to:

- (i) the risk to the employee's health and safety;
- (ii) the employee's personal circumstances including any family and carer responsibilities;
- (iii) the needs of the facility;
- (iv) the notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and
- (v) any other relevant matter.

18.4(i) Subject to paragraph (ii) hereof all time worked by employees other than Director of Nursing in excess of the rostered daily ordinary hours of work shall be overtime and shall be paid for at the rate of time and one half for the first two (2) hours and double time thereafter in respect of each overtime shift worked or in respect of overtime worked prior to or at the conclusion of a normal shift. Provided that overtime worked on Sundays shall be paid for at the rate of double time and on public holidays at the rate of double time and one half.

- (ii) All time worked by permanent part time employees, in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the ward or section concerned shall be paid for at the rate of time and one half for the first two (2) hours and double time thereafter except that on Sundays such overtime shall be paid for at the rate of double time and on public holidays at the rate of double time and one half.

Time worked up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift in the ward or section concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.

- 18.5 An employee recalled to work overtime after leaving the employer's premises shall be paid for a minimum of four (4) hours work at the appropriate rate for each time so recalled. If the work required is completed in less than four (4) hours, the employee shall be released from duty provided that this sub-clause does not apply to a Director of Nursing.
- 18.6 An employee required to work overtime following on the completion of their normal shift for more than two (2) hours shall be allowed twenty (20) minutes for the partaking of a meal and a further twenty (20) minutes after each subsequent four (4) hours overtime. All such time shall be counted as time worked; provided that benefits of this sub-clause shall not apply to permanent part time employees, until the expiration of the normal shift for a majority of the full-time employees employed on that shift in the ward or section concerned.
- 18.7 An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four (4) hours shall be allowed twenty (20) minutes for the partaking of a meal and a further twenty (20) minutes after each subsequent four (4) hours' overtime; all such time shall be counted as time worked.
- 18.8 The meals referred to in sub-clauses 18.6 and 18.7 of this Clause shall be allowed to the employee free of charge. Where the hospital is unable to provide such meals, an allowance per meal of the sum set out in Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, shall be paid to the employee concerned.
- 18.9 Where an employee is required to work an overtime shift on their rostered day off, the appropriate meal breaks for that shift, as prescribed by Clause 6, Hours of Work shall apply.
- 18.10 If an employee is recalled to duty during a meal break, they shall be paid at overtime rates for the total period of the meal break.
- 18.11 An employee who works so much overtime:
- (i) between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least nine (9) consecutive hours off duty between these times; or
 - (ii) on a Saturday, a Sunday and a holiday, not being ordinary working days, or on a rostered day off without having had nine (9) consecutive hours off duty in the twenty-four (24) hours preceding their next day or shift; shall subject to this sub-clause, be released after completion of such overtime until they have had nine (9) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues to work without having such nine (9) consecutive hours off duty they shall be paid at double time of the appropriate rate applicable on such day until they are released from duty for such period

and they then shall be entitled to be absent until they have had nine (9) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

18.12 In lieu of receiving payment for overtime in accordance with this Clause, employees may be compensated by way of time off in lieu of overtime on the following basis:

- (i) Time off in lieu of overtime may be accrued within the calendar year of it being accrued at ordinary rates. An employee may request that any time in lieu accrued can be used during the Annual Christmas Shutdown in accordance with subclause 22.13 Annual Christmas Shutdown of Clause 22 Annual Leave, and the employer will agree to such a request.
- (ii) Where it is not possible for a nurse to take the time off in lieu of overtime within the calendar year that it was accrued, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
- (iii) Nurses cannot be compelled to take time off in lieu of overtime.
- (iv) Records of all time off in lieu of overtime owing to nurses and taken by nurses must be maintained by the employer.

19. Payment And Particulars Of Salaries

19.1 All salaries and other payments shall be paid weekly or fortnightly, provided that payment for any overtime worked may be deferred to the pay day next following the completion of the working cycle within which such overtime is worked, but for no longer; provided further that the payment of shift and weekend penalties relating to work performed in the second (2nd) week of a fortnightly roster period may be deferred to the pay day next following the completion of the working cycle within which such shifts were worked, but for no longer.

19.2 Employees shall have their salary paid into one (1) account with a bank or other financial institution in New South Wales as nominated by the employee. Wages may be initially deposited into the hospital's own local bank and transferred to each employee's requested financial institution. Salaries shall be deposited by hospitals in sufficient time to ensure that wages are available for withdrawal by employees by no later than pay day, provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions, but in such cases facilities shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.

19.3 Notwithstanding the provisions of sub-clause 19.2 of this Clause, an employee who has given or has been given the required notice of termination of employment, in accordance with Clause 34, Termination of Employment, of this Agreement, shall be paid all monies due to them prior to ceasing duty on the last day of employment.

Where an employee is summarily dismissed or their services are terminated without due notice, any monies due to them shall be paid as soon as possible

after such dismissal or termination but in any case not more than three (3) days thereafter.

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

20. Registration or Enrolment Pending

20.1 A student who has completed the course of training prescribed by the Board and applied for registration or enrolment shall, upon registration or enrolment, be paid as from the date of application for registration or enrolment the salary to which they would have been entitled if registered or enrolled.

20.2 A nurse or enrolled nurse who has trained outside New South Wales shall be paid as a registered nurse or enrolled nurse as and from the date they are notified that they are eligible for registration or enrolment as a registered nurse or enrolled nurse provided that they make application for registration within seven (7) days after being so notified.

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

21. Part-Time, Casual And Temporary Employees

21.1 PART I - Permanent Part-time Employees

- (i) A permanent part-time employee is one who is permanently appointed by the hospital to work a specified number of hours which are less than those prescribed for a full-time employee.
- (ii) By agreement between employer and employee, the specified number of hours may be balanced over a week, a fortnight or four (4) weeks. Provided that the average weekly hours shall be deemed to be the specified number of hours for the purposes of accrual of annual leave.
- (iii) An employee whose hours are averaged over four (4) weeks shall be paid each week or fortnight according to the employee's average weekly or fortnightly hours as is appropriate.
- (iv) Provided further that there shall be no interruption to the continuity of employment merely by reason of an employee, whose hours are balanced over a fortnight or over four (4) weeks, not working in any one (1) week in accordance with paragraph (ii).
- (v) Permanent part time employees shall be paid an hourly rate calculated on the basis of one thirty-eighth (1/38) of the appropriate rate prescribed by Clause 10, Salaries, of this Agreement and, where applicable, one thirty-eighth (1/38) of the appropriate allowance or allowances prescribed by Clause 12, Special Allowances, of this Agreement, with a minimum payment

of four (4) hours for each start, and one thirty-eighth (1/38) of the appropriate allowances prescribed by Clause 16, Uniform and Laundry Allowances of this Agreement, but shall not be entitled to an additional day off or part thereof, as prescribed by sub-clauses 6.3 and 6.5 of Clause 6, Hours of Work.

- (vi) Four (4) weeks' Annual Leave on ordinary pay is to be granted per annum. The provisions of sub-clauses 22.2 and 22.6 to 22.14 of Clause 22, Annual Leave and Public Holidays, and Clause 23, Annual Leave Loading, of this Agreement shall apply to employees engaged under Part I of this Clause. The remaining provisions of Clause 22, Annual Leave and Public Holidays shall not apply.
- (vii) Where an employee has any period of permanent part-time employment during any twelve (12) months qualifying period for annual leave, payment for such annual leave shall be calculated on the basis of the proportion that the average number of hours worked each week bears to thirty-eight (38) hours.
- (viii) A public holiday occurring on a day on which the employee would normally be rostered to work shall be allowed to employees without loss of pay; provided that an employee who is required to and does work on a public holiday shall have one (1) day or one half (1/2) day, as appropriate, added to their period of annual leave and be paid at the rate of one half (1/2) time extra to the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday. In lieu of adding to annual leave under this paragraph an employee may elect to be paid for the time actually worked at the rate of time and one half in addition to their ordinary weekly rate.

Such election shall be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of time worked on a public holiday, payment shall be made for a minimum of four (4) hours work, and any balance of the day or shift not worked shall be paid at ordinary rates.

- (ix) To the leave prescribed by sub-clause 21.1(viii) of this Clause there shall be added one (1) working day for each public holiday or one half (1/2) working day for each half public holiday which occurs on what would have been an ordinary working day during a period of annual leave.
- (x) For the purpose of Part I of this Clause the following are to be public holidays, in accordance with the *NSW Public Holidays Act 2010*, namely: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, Queen's Birthday, Local Labour Day, Christmas Day, Boxing Day and any other day duly proclaimed and observed as a public holiday within the area in which the hospital is situated.
- (xi) In addition to those public holidays prescribed in sub-clause 21.1(x) of this Clause, there shall be an extra public holiday each year. This additional

day's holiday will occur on the August Bank Holiday or on a date agreed by the respective employees and if requested by the employee any nominated representative which may be a union representative. This additional day may be taken by agreement between Christmas and New Year, provided that such day is placed between Monday to Friday (inclusive) which is not gazetted as a public holiday.

- (xii) The foregoing does not apply in areas where, in each year:
 - (a) a day in addition to the ten (10) named public holidays specified in sub-clause 21.1(x) of this Clause is proclaimed and observed as a public holiday; or
 - (b) two (2) half (1/2) days in addition to the ten (10) named public holidays specified in sub-clause 21.1(x) of this Clause are proclaimed and observed as half public holidays.
- (xiii) In areas where in each year one half (1/2) day in addition to the ten (10) named public holidays specified in sub-clause 21.1(x) of this Clause is proclaimed and observed as a half public holiday, for the purposes of this Agreement the whole day is to be regarded and observed as a public holiday, and no additional public holiday which would otherwise apply as a result of this sub-clause will be observed.
- (xiv) Employees engaged under Part I of this Clause shall be entitled to all other benefits of this Agreement not otherwise expressly provided for herein in the same proportion as their ordinary hours of work bear to full-time hours.
- (xv) Where the employee is regularly working more than their specified number of contracted hours they may request their contracted hours are reviewed by the Manager. The Manager will not unreasonably reject the request. The Manager will take into account that the hours worked in the following circumstances will not be incorporated into to any adjustment made:
 - (a) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, parental leave, workers compensation; and
 - (b) if the increase in hours is due to a temporary increase in hours only due, for example, to specific needs of a resident or patient.
 - (c) Any adjusted contracted hours resulting from a review by the employer should however, be such as to readily reflect roster cycles and shift configurations utilised in the workplace.

21.2 PART II - Casual Employees

- (i) A casual employee is one engaged on an hourly basis otherwise than as a permanent part-time or full-time employee.

- (ii) A casual employee shall be paid an hourly rate calculated on the basis of one thirty-eighth (1/38) of the appropriate rate, prescribed by Clause 10, Salaries, of this Agreement and where applicable one thirty-eighth (1/38) of the appropriate allowance or allowances prescribed by Clause 12, Special Allowances, of this Agreement plus twenty-five per cent (25%) thereof, with a minimum payment of four (4) hours for each start, and one thirty-eighth (1/38) of the appropriate allowances prescribed by Clause 16, Uniform and Laundry Allowances, of this Agreement.
- (iii) With respect to a casual employee the provisions of Clause 30, Deputy Directors of Nursing, Assistant Directors of Nursing; Clause 7, Hours of Work and Free Time of Directors of Nursing; Clause 9, Rosters; Clause 18, Overtime; Clause 22, Annual Leave and Public Holidays and Clause 14, Fares and Expenses of this Agreement, shall not apply. Further, casual employees shall not be entitled to an additional day off or part thereof as prescribed by sub-clauses 6.3 and 6.5 of Clause 6, Hours of Work.
- (iv) In accordance with the NES, casual employees have no entitlement to annual leave or paid personal carer's / compassionate leave.
- (v) A casual employee who is required to and does work on a public holiday as defined in sub-clauses 22.2 and 22.3 of Clause 22, Annual Leave and Public Holidays, shall be paid for the time actually worked at the rate of double time and one-half such payment being in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday; provided that a casual employee shall not be entitled to be paid in addition the twenty-five per cent (25%) loading prescribed in sub-clause 21.2(ii) in respect of such work.
- (vi) For the entitlement to payment in respect of long service leave, see the *Long Service Leave Act 1955*.
- (vii) A casual employee who has been rostered on a regular and systematic basis over twenty-six (26) weeks (provided that the rostering pattern has not resulted in coverage for extended absences such as maternity leave, long service leave, workers' compensation leave and extended personal/carer's leave) may request conversion to permanent employment and the employer may consent to, or refuse the request, but shall not unreasonably refuse.

21.3 PART III - Temporary Employees

- (i) A temporary employee is one engaged for a set period not exceeding thirteen (13) weeks.
- (ii) A temporary employee shall be paid, in addition to all rates and allowances to which the said employee is entitled under this Agreement, an allowance equal to ten (10) per cent of the rates prescribed for their classification by Clause 10, Salaries, of this Agreement, provided that this sub-clause shall cease to apply upon:

- (a) The said period of engagement being extended after the said period of thirteen (13) weeks;
- (b) The employer and the employee agreeing during the said period of thirteen (13) weeks, that the employee shall be employed on a permanent part-time or full-time basis.
- (iii) For entitlement to payment in respect of annual leave, refer to Clause 22, Annual Leave and Public Holidays. For the purposes of this Clause "transitional date" means the first pay period commencing on or after 1 March 1997.

22. Annual Leave and Public Holidays

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

- Five (5) weeks for all employees identified as shiftworkers; and
- Four (4) weeks for all other employees.

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

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

This definition is to be used only to calculate the minimum entitlement available to employees. Where 'shift worker' is used elsewhere in this Agreement it has the meaning in Clause 5 Definitions.

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

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

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

22.3(i) An employee to whom paragraph (i) of sub-clause 22.2 applies and who is required to and does work on a public holiday shall be paid, in addition to the appropriate ordinary weekly rate of pay, at the rate of one half time extra for the time actually worked on such holiday. Such payment shall be in lieu

of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday.

- (ii) To leave prescribed by paragraph (i) of sub-clause 22.2 there shall be added one working day or one half working day for each special public holiday or half public holiday (not being one of the eleven (11) specifically named public holidays prescribed by sub-clause 22.4, or a special day proclaimed in lieu of any of them) which may occur during the qualifying period for annual leave or during the period of annual leave.
- (iii) A public holiday occurring on a day that the employee would normally work shall be allowed to employees covered by paragraph (ii) of sub-clause 22.2 on full pay; provided that an employee who is required to and does work on a public holiday shall have one day or one half day, as appropriate, added to their period of annual leave and be paid at the rate of one half time extra for the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday. In lieu of adding to annual leave under this paragraph an employee may elect to be paid for the time actually worked at the rate of time and one half in addition to their ordinary weekly rate. Such election shall be made on the commencement of employment and then on the anniversary date each year.

The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of the time worked on a public holiday payment shall be made for a minimum of four (4) hours work, and any balance of the day or shift not worked shall be paid at ordinary rates.

- (iv) Where a public holiday falls on a rostered day off of a shift worker as defined in Clause 5, Definitions, of this Agreement, and who receives four (4) weeks annual leave in accordance with paragraph (ii) of sub-clause 22.2 of this Clause, such shift worker shall be paid one (1) day's pay in addition to the weekly rate or if the employee so elects shall have one (1) day added to the period of annual leave.
- (v) To the leave prescribed by paragraph (ii) of sub-clause 22.2 there shall be added one (1) working day for each public holiday or one half (1/2) working day for each half (1/2) public holiday which occurs on what would have been an ordinary working day during a period of annual leave; provided that in the case of a shift worker referred to in paragraph (iv) of this sub-clause the provision of this paragraph shall apply to any public holidays falling during the period of annual leave.

22.4 For the purpose of this sub-clause the following are to be public holidays, in accordance with the *NSW Public Holidays Act 2010*, namely: New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, Anzac Day, Queen's Birthday, Local Labour Day, Christmas Day, Boxing Day and any other day duly proclaimed and observed as a public holiday within the area in which the hospital is situated.

- 22.5(i) In addition to those public holidays prescribed in sub-clause 22.4 of this Clause, employees are entitled to an extra public holiday each year. Such public holiday will occur
- (a) on the August Bank Holiday; or
 - (b) on a date which is agreed upon by the respective employees and if nominated by the employee, the employee's nominated representative which may be a union representative;
 - (c) as an additional public holiday between Christmas and the first week of the following calendar year; provided that such day is placed between Monday to Friday (inclusive) which is not gazetted as a public holiday.

The foregoing does not apply in areas where in each year:

- 1. a day in addition to the public holidays specified in sub-clause 22.4 is proclaimed and observed as a public holiday; or
 - 2. two (2) half (1/2) days in addition to public holidays specified in sub-clause 22.3 are proclaimed and observed as half public holidays.
- (ii) In areas where in each year only one half (1/2) day in addition to the public holidays specified in sub-clause 22.4 is proclaimed and observed as a half (1/2) public holiday for the purposes of this Agreement the whole day is to be regarded and observed as a public holiday and no additional public holiday which would otherwise apply as a result of this sub-clause will be observed.
- (iii) The public holiday entitlement explained in sub-clauses 22.4 and 22.5 is inclusive of the NES provisions i.e. the extra public holiday referred to in these clauses is not in addition to the public holidays provided for by the NES.

22.6(i) **Taking of Annual Leave** – An employee is entitled to take an amount of annual leave during a particular period if:

- (a) at least that amount if annual leave is credited to the employee; and
 - (b) the employer has authorised the employee to take the annual leave during that period.
- (ii) An employee will request annual leave, in writing, at least two (2) weeks prior to the date on which the leave would commence.
- (iii) Credit of time towards an allocated day off duty shall not accrue when an employee is absent in accordance with sub-clause 22.2 of this Clause. Employees entitled to allocated days off duty in accordance with Clause 6, Hours of Work of this Agreement shall accrue credit towards an allocated day off duty in respect of each day those employees are absent on additional annual leave in accordance with sub-clauses 22.3(ii) and sub-clause 22.3(iii) of the Agreement.

22.7 Annual leave shall be taken in an amount and at a time which is approved by the employer subject to the operational requirements of the workplace. The employer shall not unreasonably withhold or revoke such approval.

22.8 **Extensive accumulated annual leave:** An employee must take an amount of annual leave during a particular period if:

- (a) the employee is directed to do so by the employer. The employer shall give the employee at least one (1) months' notice. Provided that, where an employee makes a written request to take annual leave which has not been approved by the employer, that employee shall not be directed to take annual leave for a period of twelve (12) months after that request;
- (b) at the time that the direction is given, the employee has annual leave credited to them of more than one-thirteenth ($1/13$) of the number of ordinary hours worked by the employee for the employer during the period of one hundred and four (104) weeks ending at the time that the direction is given; and
- (c) the amount of annual leave that the employee is directed to take is less than, or equal to, one-quarter ($1/4$) of the amount of credited annual leave of the employee at the time that the direction is given.

22.9(i) Each employee before going on leave shall be paid for the period of the leave at the ordinary rate of salary to which they are entitled under this Agreement. Where an employee has any period of permanent part-time employment during any twelve (12) month qualifying period for annual leave, payment for such annual leave shall be calculated on the basis of the proportion that the average number of hours worked each week bears to thirty-eight (38) hours.

- (ii) An employee to whom paragraph (i) of sub-clause 22.2 applies shall be paid during the first twenty eight (28) consecutive days whilst on annual leave their ordinary rate of salary plus shift allowances and weekend penalties relating to ordinary time the employee would have worked if they had not been on annual leave; additional annual leave accrued under sub-clause 22.12 attracts shift allowances and weekend penalties relating to ordinary time the employee would have worked if they had not been on annual leave; provided that the provisions of the preceding paragraphs of this sub-clause shall not apply to public holidays which occur during a period of annual leave or days which have been added to annual leave in accordance with paragraph (ii) of sub-clause 22.3 and sub-clause 25.4 of this Clause.

22.10 **Cashing out of Annual Leave**

Annual leave credited to an employee may be cashed out, subject to the following conditions:

- (i) the employee must elect in writing to receive payment in lieu of an amount of annual leave on each occasion on which annual leave is cashed out;
- (ii) after cashing out the employee's remaining accrued entitlement to paid annual leave must be no less than four (4) weeks;
- (iii) the employer has agreed to the employee cashing out the annual leave; and

- (iv) the employee must be paid at least the full amount that would have been payable to the employee had they taken the leave that they had forgone.

22.11 Where the employment of an employee is terminated the employee shall be entitled to receive, payment for all accrued annual leave together with payment for any days added to annual leave in accordance with sub-clause 22.3 of this Clause, and in calculating such payment no deduction is to be made for accommodation or board.

22.12(i) In addition to leave prescribed by sub-clause 22.2 employees who work their ordinary hours on Sundays and/or Public Holidays are entitled to receive additional annual leave as follows:

Number of ordinary shifts worked on Sundays and/or Public Holidays during a qualifying period of employment for annual leave purposes	Additional Annual Leave
4 – 10	1 Day
11 – 17	2 Days
18 – 24	3 Days
25 – 31	4 Days
32 or more	5 Days

Provided that an employee may elect to be paid when proceeding on annual leave an amount equivalent to the value of their additional leave entitlement in lieu of taking the annual leave. Such election is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during the currency of that year of employment.

- (ii) On termination of employment employees are to be paid for any accrued untaken annual leave including that due under this sub-clause and under sub-clause 22.11.

22.13 Annual Leave and Service

A period of paid annual leave does not break an employee’s continuity of service and annual leave counts as service for all purposes.

22.14 Annual Christmas Shutdown

- (i) The employer may specify an annual Christmas shut down provision for a part, or a whole of the hospital. In the event of invoking the annual Christmas shutdown, the employer must give at least three (3) month’s notice of the date(s) of the shut-down. In the case of an employee who commences employment within the three (3) months of the annual Christmas shutdown, notice must be given on the day the employee commences employment.
- (ii) Where an employee has an entitlement to annual leave in excess of the annual Christmas shut-down period, they must be given and must take, the whole of their annual leave, or by agreement between the employer and the

employee, they must take part of their annual leave for a period of not less than the shutdown and postpone the balance to a time to be agreed.

- (iii) Where the employee has an entitlement to annual leave which is less than the period of the annual Christmas shut down, they must be given and take the whole of the leave outstanding and must be given and take leave without pay for the balance of the shutdown period. By mutual agreement, annual leave may be taken in advance
- (iv) Provided that where an employee has accrued time in lieu in accordance with the provisions in subclause 18.12 of Clause 18 Overtime, an employee may request that such time in lieu is used during Annual Christmas Shutdown and the employer will agree to such a request.
- (v) In addition, an employee who has accrued Additional Days Off (ADO's) may, by mutual agreement between the employer and employee, take these and be paid for such during the annual Christmas shutdown in addition to any annual leave which may be accrued.

22.15 Annual Leave Approvals

- (i) The employer will use best endeavours to respond to all requests for annual and long service leave within five (5) business days of their receipt by the Director, Hospital and Clinic, except where requests relate to the Christmas/New Year period, where it may be necessary to delay approvals to ensure adequate time to consider requests from multiple employees.
- (ii) Within four (4) weeks of their receipt by the Director, Hospital and Clinic, the employer will make a determination in respect of all Christmas/New Year leave applications, or in the event a determination cannot be made within that timeframe, will notify the staff member applying for leave of any deferral of a decision. To ensure equity in allotting leave at Christmas/New Year, the employer will establish a cut-off date for applications and will advise all staff accordingly. The employer shall not unreasonably withhold or revoke such approval.

23. Annual Leave Loading

23.1 Before an employee is given and takes an annual holiday, or where by agreement between the employer and the employee the annual holiday is given and taken in more than one (1) separate period, then before each of such separate periods the employer shall pay the employee a loading determined in accordance with this Clause.

23.2 The loading is payable in addition to the pay for the period of holiday given and taken due to the employee under sub-clauses 22.2(ii) and 22.3(iii) of Clause 22, Annual Leave and Public Holidays, of this Agreement, or in the case of part-time employees for the period of holiday given and taken and due to the employee.

23.3 The loading is to be calculated in relation to any period of annual holiday to which the employee becomes or has become entitled since 31 December 1973 and

which commences on or after 11 July 1974 or, where such a holiday is given and taken in separate periods, then in relation to each such separate period.

23.4 The loading is the amount payable for the period or the separate periods, as the case may be, stated in sub-clause 23.3 of the rate per week of seventeen and one-half per cent (17½%) of the appropriate ordinary weekly time rate of pay prescribed by this Agreement for the classification in which the employee was employed immediately before commencing by the employee's annual holiday.

23.5 No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if the employment of such an employee continues until the day when the employee would have become entitled under the said Clause 22, Annual Leave and Public Holidays to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with sub-clause 23.4 of this Clause applying the Agreement rates and wages payable on that day. This sub-clause applies where an annual holiday has been taken wholly or partly in advance.

23.6 No loading is payable on the additional annual leave as set out in subclause 22.12 of Clause 22 Annual Leave, of this Agreement

23.7 When the employment of an employee is terminated by their employer, and at the time of termination the employee has not been given and has not taken the whole of an annual holiday to which they became entitled, they shall be paid a loading calculated in accordance with sub-clause 23.4 of this Clause of the period not taken.

23.8 This Clause extends to an employee who is given and takes an annual holiday and who would have worked as a shift worker if the employee had not been on holidays; provided that, if the amount to which the employee would have been entitled by way of shift work allowances and weekend penalty rates to the ordinary time (not including time on a public or special holiday) which the employee would have worked during the period of the holiday exceeds the loading calculated in accordance with this Clause, then that amount shall be paid to the employee in lieu of the loading.

24. Long Service Leave

24.1 For long service leave falling due prior to 20th February 1981, see *Long Service Leave Act 1955*.

24.2 For long service leave falling due after 20th February 1981 the following provisions shall apply:

- (i) Every employee after ten (10) years' continuous service with the same employer shall be entitled to two (2) months' long service leave on full pay; after fifteen (15) years' continuous service to an additional one (1) month's long service leave on full pay; and for each five (5) years' continuous service thereafter to an additional one and one half (1 ½) months' long service leave on full pay. Such leave shall be taken at a time to be mutually arranged between the employer and the employee.

- (ii) An employee after 5 years continuous employment with St Luke's Care may access accrued long service leave and shall be entitled to one month's long service leave on full pay or two months' pay at half pay. The employer shall not unreasonably withhold consent.
- (iii) Where the service of an employee with at least five (5) years' service is terminated, the employee shall be entitled for five (5) years' service to one (1) month's long service leave on full pay and for service after five (5) years to a proportionate amount of such leave on full pay calculated on the basis of two (2) months' long service leave for ten (10) years' service.

24.3 Where an employee has acquired a right to long service leave under sub-clause 24.2 of this Clause, then and in every such case:

- (i) If before such leave has been entered upon the employment of such employee has been terminated such employee shall be entitled to receive the monetary value of the leave to which such employee has been entitled computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment.
- (ii) If such employee dies before entering upon such long service leave, or if after having entered upon the same dies before its termination, any accrued long service leave will be paid out in accordance with Section 4 (Long Service Leave) subsection (5)(b) of the Long Service Leave Act 1955 (NSW). This provision provides that:

"Where a worker dies and any long service leave:

(1) to which the worker was entitled has not been taken; or

(2) accrued upon termination of the services of the worker by reason of the worker's death and has not been taken,

the employer shall upon request by the worker's personal representative pay to the worker's personal representative in full the ordinary pay that would have been payable to the worker in respect of long service leave less any amount already paid to the worker in respect of that leave."

- (iii) For the purpose of this Clause:
 - a. Continuous service in the same hospital prior to the coming into force of this award shall be taken into account.
 - b. One (1) month equals four and one-third (4 1/3) weeks.
 - c. Continuous service shall be deemed not to have been broken by:
 - i. any period of absence on leave without pay not exceeding six (6) months;
 - ii. absence of an employee from the hospital whilst a member of the Defence Forces of the Commonwealth in time of war.
- (iv) Where the employee has been granted a period of long service leave prior to the coming into force of this agreement the amount of such leave shall be debited against the amount of leave due under this agreement.
- (v) Any period(s) of part-time employment with the same employer shall count towards long service leave as provided for in paragraph 24.2(i) of this Clause. Such long service leave shall be paid for on the basis of the proportion that the average number of hours worked per week bears to thirty-eight (38) hours.
- (vi) Where an employee has accrued a right to an allocated day off duty on pay prior to entering a period of long service leave such day shall be taken on the next working day immediately following the period of long service leave. An employee returning to duty from long service leave shall be given the next

allocated day off duty in sequence irrespective of whether sufficient credits have been accumulated or not.

24.4 Long Service Leave Approvals

- (i) The employer will use best endeavours to respond to all requests for long service leave within five (5) business days of their receipt by the Director, Hospital and Clinic, except where requests relate to the Christmas/New Year period, where it may be necessary to delay approvals to ensure adequate time to consider requests from multiple employees.
- (ii) Within four (4) weeks of their receipt by the Director, Hospital and Clinic, the employer will make a determination in respect of all Christmas/New Year leave applications, or in the event a determination cannot be made within that timeframe, will notify the staff member applying for leave of any deferral of a decision. To ensure equity in allotting leave at Christmas/New Year, the employer will establish a cut-off date for applications and will advise all staff accordingly. The employer shall not unreasonably withhold or revoke such approval.

25. Compassionate Leave

25.1 Entitlement to compassionate leave

In accordance with the NES, an employee is entitled to two (2) days of compassionate leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household:

- (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 serious threat to his or her life; or
- (iii) dies.

Where the employee is involved in funeral arrangements, travelling etc., leave may be allowed for up to three (3) days for each permissible occasion.

25.2 For the purposes of this Clause, immediate family means:

- (i) a spouse of the employee, including a former spouse of the employee; or
- (ii) a de facto partner of the employee which:
 - (a) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
 - (b) includes a former de facto partner of the employee (including a partner of the same sex); or

- (iii) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto partner (including a partner of the same sex) of the employee; or
- (iv) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
 - (a) "relative" means a person related by blood, marriage or affinity;
 - (b) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
 - (c) "household" means a family group living in the same domestic dwelling.

25.3 Taking compassionate leave

- (i) An employee may take compassionate leave for a particular permissible occasion if the leave is taken:
 - (a) to spend time with the member of the employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in subclause 25.1; or
 - (b) after the death of the member of the employee's immediate family or household referred to in subclause 25.1.
- (ii) An employee may take compassionate leave for a particular permissible occasion as:
 - (a) a single continuous period; or
 - (b) separate periods of one (1) day each; or
 - (c) any separate periods to which the employee and the employer agree.
- (iii) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

25.4 Payment for compassionate leave (other than for casual employees)

- (i) If an employee, other than a casual employee, takes a period of compassionate leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period. For casual employees, compassionate leave is unpaid leave.
- (ii) The employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this Clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

25.5 Other Circumstances

- (i) The above principles are not intended to codify completely purposes for which compassionate leave with pay may be allowed. The element of unforeseen emergency could be present in other situations, eg. floods and bushfires, which clearly prevent attendance for duty.

- (ii) In view of the purpose for which compassionate leave is intended, it is not possible to prescribe a precise limitation of the amount of leave to be granted in a given period. It is suggested, however, that only under the most exceptional circumstances should leave exceeding a total of three (3) days be granted to an employee in any year other than in accordance with sub-clause 25.1.
- (iii) Where an employee is forced to absent themselves other than in accordance with sub-clause 25.1 or in circumstances that do not reasonably constitute an unforeseen emergency, the employee can cover such an absence by applying for leave with pay or, if the employee so desires, taking annual leave.

26. Personal/Carer's Leave

26.1 The National Employment Standard (NES)

- (i) Employees are entitled to personal leave in accordance with the provisions of the NES.
- (ii) Casual employees have no entitlement to paid personal/carers' leave, but do have an entitlement to unpaid carer's leave.

26.2 Meaning of Personal/Carer's Leave

Personal/carers' leave is either:

- (i) paid leave (**sick leave**) taken by an employee because of a personal illness, or injury, of the employee; or
- (ii) paid or unpaid leave (**carer's leave**) taken by an employee to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
 - (a) a personal illness, or injury, of the member; or
 - (b) an unexpected emergency affecting the member.
- (iii) immediate family is defined as:
 - (a) a spouse of the employee; or
 - (b) a de facto partner of the employee which:
 - (1) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
 - (2) includes a former de facto partner of the employee (including a partner of the same sex); or
- (iv) 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

(v) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:

- (a) "relative" means a person related by blood, marriage or affinity;
- (b) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
- (c) "household" means a family group living in the same domestic dwelling.

26.3 Accrual of Paid Personal/Carer's Leave

- (i) For each year of service with their employer, an employee is entitled to ten (10) days of paid personal/carers' leave.
- (ii) An employee's entitlement to paid personal/carers' leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.
- (iii) No payment will be made in lieu of accumulated personal/carers' leave.
- (iv) Casual employees have no entitlement to paid personal/carers' leave.

26.4 Payment of Paid Personal/Carer's Leave

- (i) If, in accordance with Clause 26, an employee takes a period of paid personal/carers' 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.

26.5 Employee taken not to be on paid personal / carer's leave on public holiday

- (i) If the period during which an employee takes paid personal/carers' 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/carers' leave on that public holiday.

26.6 Unpaid Carer's Leave

- (i) An employee is entitled to a period of up to two (2) days unpaid carer's leave for each permissible occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support during such a period because of:
 - (a) a personal illness, or personal injury, of the member; or
 - (b) an unexpected emergency affecting the member.
- (ii) This entitlement extends to casual employees and the employer agrees not to fail to re-engage a casual employee because the employee accessed the

entitlements provided for in this sub-clause. The rights of the employer to engage or not to engage a casual employee are otherwise not affected.

- (iii) An employee is entitled to unpaid carer's leave for a particular occasion only if the employee cannot take an amount of paid personal/carer's leave.

26.7 Taking of Personal/Carer's Leave and Compassionate Leave

- (i) An employee is entitled to use their personal/carer's and compassionate leave in accordance with the NES
- (ii) **Notice:** To be entitled to personal/carers or compassionate leave, an employee must give the employer notice as soon as reasonably practicable (which may be at a time before or after the sick leave has started) that the employee is (or will be) absent from their employment.

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

- (iii) **Documentary Evidence:** An employee who has given their employer notice of the taking of personal/carer's leave or compassionate leave, if required by the employer, give the employer evidence that would satisfy a reasonable person that:
 - (a) if it is paid personal/carer's leave—the leave is taken for a reason specified in sub-clause 26.2; or
 - (b) if it is unpaid carer's leave—the leave is taken for a permissible occasion in circumstances specified in sub-clause 26.6; or
 - (c) if it is compassionate leave—the leave is taken for a permissible occasion in circumstances specified in Clause 25.

26.8 Time Off in Lieu of Payment for Overtime

- (i) For the purpose only of providing care and support for a person in accordance with sub-clause 26.2 of this Clause, and despite the provisions of Clause 18, Overtime, the following provisions shall apply.
- (ii) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within twelve (12) months of the said election.
- (iii) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is, an hour for each hour worked.
- (iv) If, having elected to take time as leave in accordance with paragraph (i) of this sub-clause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of twelve (12) month period or on termination.
- (v) Where no election is made in accordance with the said paragraph (i), the employee shall be paid overtime rates in accordance with the Agreement.

26.9 Make-up time

- (i) An employee may elect, with the consent of their employer, to work "make-up time", under which the employee takes time off ordinary hours, and works

- those hours at a later time, during the spread of ordinary hours provided in the Agreement at the ordinary rate of pay.
- (ii) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

26.10 Rostered Days Off

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
- (iv) This sub-clause is subject to the employer informing the affected employees and their workplace representatives of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the affected employees and their workplace representatives to participate in negotiations.

26.11 Personal/Carer's Leave and Service

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

27. Family Violence Leave

- (i) General Principle

The employer recognises that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. The employer is committed to providing help and support to staff experiencing family violence.

- (ii) Definition of Family Violence

The employer accepts the definition of family violence as stipulated in the relevant state legislation. Family violence includes physical, sexual, financial, verbal or emotional abuse by a family member or household (current or former).

- (iii) General Measures

- (a) Proof of current family violence may be required and can be in the form an agreed document issued by the Police Service, a Court, a Doctor, district nurse, maternal and child health care nurse, a Family Violence Support Service or Lawyer.
 - (b) All personal information concerning family violence will be kept confidential by the employer.
 - (c) An employee experiencing family violence may raise the issue with their immediate supervisor
- (iv) Leave
- (a) An employee experiencing family violence will have access to their accrued personal leave and two (2) days of paid leave per annum for medical appointments, legal proceedings court appearances, counselling, relocation or to make other safety arrangements upon approval of the Director, Hospital and Clinic.
 - (b) An employee will also have access to their accrued personal leave and in the event the employee has exhausted their personal leave entitlement, further leave may be provided at the absolute discretion of the employer.
- (v) Individual Support
- (a) In order to provide support to an employee experiencing family violence and to provide a safe work environment to all employees, the employer will approve, subject to operational requirements a, subject to operational requirements, consider any reasonable request from an employee experiencing family violence providing the request is reasonable in all the circumstances:
 - (1) changes to their span of hours or pattern or hours and/or shift patterns;
 - (2) job redesign or changes to duties within their skills and capabilities;
 - (3) relocation to suitable employment within the workplace;
 - (4) a change to their telephone number or email address to avoid harassing contact; and or
 - (5) Any other appropriate measures including those available under existing provisions for family friendly and flexible work arrangements.
 - (6) An employee experiencing family violence will be offered a referral to the relevant local resources and will be provided access to the Employee Assistance Program (EAP).

28. Staff Amenities

The employer shall provide for the use of employees:

28.1A suitable changing room and adequate washing and toilet facilities;

28.2A locker fitted with lock and key or other suitable place for the safe keeping of clothing and personal effects of such employee;

28.3An employer shall provide for an employee morning and afternoon tea, supper and early morning tea (which shall include tea or coffee together with milk and sugar) when the employee is on duty, at times appropriate for the partaking thereof, and shall provide also for such an employee, who requires them, meals of a reasonable standard, which fall due during the duty period, and for such meals so provided may make a charge, provided that the charge for breakfast shall be the sum set out in Table 2 - Other Rates and Allowances, of Part B, Monetary Rates and the sum set out in Table 2 for other meals.

29. Escort Duty

29.1 Periods during which an employee, other than Director of Nursing, is engaged in nursing duties, viz, in attendance on a patient, shall be paid as working time under this Agreement. Where applicable, overtime shall be payable.

29.2 All reasonable out-of-pocket expenses shall be reimbursed.

29.3 Rostered time shall be paid as such even though an employee may be travelling, in hotel/motel accommodation, or waiting for transport.

29.4 In respect of non-rostered time not spent in nursing duties:

- (i) Periods in hotel/motel accommodation or waiting for transport shall not be counted as working time;
- (ii) Periods in travelling shall count as working time.

30. Deputy Directors Of Nursing, Assistant Directors Of Nursing

30.1 The following appointments shall be made in hospitals with adjusted daily averages of occupied beds as specified hereunder:

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

- (i) the Registered Nurses at the hospital are all given the same duties and no Registered Nurse is delegated Deputy Director of Nursing duties; and
- (ii) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.

Forty (40) beds and over but less than seventy-five (75) beds – a Deputy Director of Nursing except where

- (i) at least two (2) full time equivalent Nursing Unit Managers are employed; and
- (ii) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.

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

30.2 Appointments under sub-clause 30.1 of this Clause, shall be made within two (2) calendar months of the date this Agreement becomes operative and thereafter within two (2) calendar months of the occurrence of a vacancy. In default of appointment within the said period of two (2) calendar months of the occurrence of a vacancy, the registered nurse employed as such or in a higher classification who has customarily relieved, in the vacant position, or if no one has so customarily relieved, the registered nurse employed in the same or the next senior classification at the hospital, shall be deemed to be appointed until such time as another appointment is made by the hospital.

31. Medical Examination Of Nurses

31.1 Medical examination of employees will be in accordance with St Luke's Care policy as varied from time.

31.2 The employer will pay all the costs involved in the various screening and protection procedures.

32. Domestic Work

32.1 Except as hereinafter provided, nurses, enrolled nurses and assistants-in-nursing shall not be required to perform, as a matter of routine, the following duties, viz: washing, sweeping, polishing and/or dusting of floors, walls or windows of wards, corridors, annexes, bathrooms or verandas, nor any duties which are generally performed by classifications other than nursing staff: but this provision shall not preclude the employment of nurses, enrolled nurses and assistants-in-nursing on any of such duties in an isolation block or where the performance of those duties involves disinfection.

32.2 Nothing in sub-clause 32.1 shall preclude an enrolled nurse or an assistant-in-nursing from being required to perform all or any of the specified duties during the first thirteen (13) weeks of training or experience, as the case may be.

32.3 Nothing in sub-clause 32.1 shall preclude any employee from being required to perform all or any of the specified duties at any time when domestic staff is not available to perform them; provided that the employer has made all reasonable efforts to obtain domestic staff.

33. Labour Flexibility

33.1 An employer may direct an employee to carry out duties as are within the limits of the employee's skill, competence and training. Such duties may include work which is incidental or peripheral to the employee's main tasks provided that such duties are not designed to promote deskilling nor are inconsistent with Clause 32, Domestic Work.

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

34. Termination Of Employment

34.1 Employment, other than of a casual, will be terminated only by appropriate notice on either side or by the payment by the employer or forfeiture by the employee of wages in lieu of notice. Provided that employment may be terminated by part of the period of notice specified, and part payment or forfeiture, in lieu of the period of notice specified.

34.2 Notice of termination by the employer:

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

(b) A Director of Nursing shall be entitled to four weeks' notice.

(ii) Employees (other than casuals) aged 45 years or older will be entitled to an additional one week's notice if the employee has completed at least two years continuous service for the employer at the end of the day the notice is given.

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

34.3 Notice by employee -

(i) Subject to sub-clauses 34.3 (ii) and (iii) employees shall give the employer two (2) weeks' notice of termination in writing.

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

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

34.4 Upon the termination of the services of an employee, the employer shall furnish the employee with a written statement, surely signed by or on behalf of the employer, setting out the period of the employment and the capacity in which the employee was employed.

34.5 Employees who have accrued additional days off duty pursuant to sub-clause 6.7 of Clause 6, Hours of Work, shall be paid for such accrued time at ordinary rate of pay upon termination.

35. Transfer of Business

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

36. Attendance At Meetings And Fire Drills

36.1 Any employee required to work outside the ordinary hours of work in satisfaction of the requirements of fire safety and emergency response procedures required

by the *Private Health Facilities Regulations 2010* shall be entitled to be paid the "ordinary rate" for the actual time spent in meeting such requirements. In lieu of receiving payment employees may, with the agreement of the employer, be permitted to be free from duty for a period of time equivalent to the period spent in attendance on such duties. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.

36.2 Any employee required to attend Occupational Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, if such meetings are held outside the ordinary hours of work, be entitled to receive payment at the "ordinary rate" for the actual time spent in attendance at such meetings. In lieu of receiving payment, employees may with the agreement of the employer be permitted to be free from duty for a period of time equivalent to the period spent in attendance at such meetings. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.

36.3 For the purposes of this clause "ordinary rate" shall include amounts payable under Clause 10, Salaries, and Clause 12, Special Allowances, sub-clauses 12.1 and 12.2, of this Agreement; plus, where appropriate, the casual loading prescribed in Clause 21, Part-time, Casual and Temporary Employees of this Agreement for employees engaged otherwise than as a full-time or permanent part-time employee.

37. Resolution Of Disputes

37.1 In the event of a dispute about any matter, except the actual termination of employment, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

37.2 The parties agree that disputes in relation to requests for reasonable working arrangements and extending a period of unpaid parental leave may be dealt with under the terms of this clause.

37.3 An employer or employee may appoint another person or the Union to accompany and/or represent them for the purposes of this Clause.

37.4 If a dispute is unable to be resolved at the workplace, and all appropriate steps under sub-clause 37.1 have been taken, a party to the dispute may refer the dispute to FWC or other statutory tribunal.

37.5 Where the matter in dispute remains unresolved, the FWC or other statutory tribunal may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.

37.6 The parties agree that the FWC or other statutory tribunal shall have the power to do all such things as are necessary for the just resolution of the dispute including mediation, conciliation and arbitration.

- 37.7 The FWC or other statutory tribunal shall be provided access to the workplace to inspect or view any work, material, machinery, appliance, article, document or other thing or interview any employee who is usually engaged in work at the workplace.
- 37.8 The parties agree that the FWC or other statutory tribunal may give all such directions and do all such things as are necessary for the just resolution, remedy and determination of the dispute.
- 37.9 Subject to any review of the FWC or other statutory tribunal's decision or direction relating to the dispute, the decision or direction shall be accepted by all affected parties as a settlement of the dispute and shall be implemented by them.
- 37.10 The parties agree to confer immunity on the FWC or other statutory tribunal for all matters relating to the dispute resolution between the parties.
- 37.11 While the dispute resolution procedure is being conducted, the status quo must remain and work must continue in accordance with this agreement and the Act. Subject to applicable occupational health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

38. Anti-Discrimination

It is the intention of the parties bound by this Agreement to achieve the object in Section 351 of the *Fair Work Act 2009* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, colour, sex, sexual preference, age, marital status, physical or mental disability, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, homosexuality, transgender identity and age.

39. Parental Leave

- 39.1 Parental Leave entitlements are governed by the National Employment Standards.
- 39.2 Eligible employees who are the primary carer of a newborn or adopted child get up to 18 weeks' leave paid at the national minimum wage under the Australian Government Paid Parental Leave Scheme.
- 39.3 An employee entitled to parental leave in accordance with the National Employment Standards is also eligible for employer paid parental leave in addition to the Australian Government Paid Parental Leave Scheme outlined in subclause 39.4(v)
- 39.4 (i) The entitlements of employees to parental leave are governed by the National Employment Standards (the NES) as detailed in the *Fair Work Act 2009*. The following provisions shall also apply in addition to those set out in the NES:

The Basic Entitlement

- (a) After 12 months continuous service parents are entitled to a combined total of 52 weeks (paid and unpaid) parental leave on a shared basis in relation to the birth of a child of the employee, or the employee's spouse or de facto partner or same sex partner or the placement of a child with the employee for adoption.
- (b) Parents may simultaneously take up to eight weeks leave.
- (c) Return to work after parental leave:
 - (1) An employee returning to work after a period of parental leave is entitled to be employed in:
 - (i) the position held by the employee immediately before proceeding on that leave, or
 - (ii) if the employee worked part-time or on a less regular casual basis because of the pregnancy before proceeding on maternity leave—the position held immediately before commencing that part-time work or less regular casual work, or
 - (iii) if the employee was transferred to a safe job before proceeding on maternity leave—the position held immediately before the transfer.
 - (2) If the position no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position as nearly as possible comparable in status and pay to that of the employee's former position.
 - (3) In this section, a reference to employment in a position includes, in the case of a casual employee, a reference to work for an employer on a regular and systematic basis.
- (d) Transfer to a safe job
 - (1) This section applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or new born child. The assessment of such a risk is to be made on the basis of a medical certificate supplied by the employee and of the obligations of the employer under the *Work Health and Safety Act 2011 (NSW)*.
 - (2) The employer is to temporarily adjust the employee's working conditions or hours of work to avoid exposure to that risk.
 - (3) If such an adjustment is not feasible or cannot reasonably be required to be made, the employer is to transfer the employee to other appropriate work that:
 - (i) will not expose her to that risk, and

(ii) is as nearly as possible comparable in status and pay to that of her present work.

(4) If there is no appropriate safe job available, and the employee is entitled to unpaid parental leave then the employee is entitled to take paid 'no safe job leave' for the risk period, and be paid at their base rate of pay for ordinary hours of work for as long as is necessary to avoid exposure to that risk, as certified by a medical practitioner.

(ii) An employer must not fail to re-engage a regular casual employee because:

(a) the employee or employee's spouse, defacto or same sex partner is pregnant; or

(b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

(iii) **Right to request**

(a) An employee entitled to parental leave may request the employer to allow the employee:

(1) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;

(2) to return from a period of parental leave on a part-time basis whilst the child is of school age or younger;

to assist the employee in reconciling work and parental responsibilities.

(b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made pursuant to subclause (iii) Right to Request must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request pursuant to subclause (iii) Right to Request such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

(iv) **Communication during parental leave**

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
- (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a) of this subclause.

(v) **Paid Parental Leave**

- (a) An employee who commences parental leave (primary carer) will be entitled to either:
- (1) twelve (12) weeks paid parental leave which shall be inclusive of her parental leave entitlement to be paid at the commencement of the parental leave period; or
 - (2) At the request of the employee, twenty four (24) weeks paid parental leave at half pay.

The period of paid parental leave will be based on average hours worked in the preceding 12 months prior to proceeding on parental leave.

- (b) An employee who is secondary carer (partner) leave will be paid one week leave at the ordinary rate of pay.
- (c) the employer will pay the superannuation guarantee levy on the employer paid parental leave.

40. Remuneration Packaging & Superannuation

40.1 PART 1 – Remuneration Packaging

- (i) No employee or employer shall be compelled to enter into a remuneration packaging arrangement.
- (ii) Where an employer makes a decision to offer remuneration packaging the employer shall provide details of the proposed remuneration packaging to

the Association twenty-eight (28) days before the introduction of the proposal. Where a private hospital already has remuneration packaging in place prior to the operation of this Clause, they shall be deemed to have complied and are not required to notify the Association in accordance with this sub-clause.

- (iii) The terms and conditions of a package offered to an employee shall not, when viewed objectively, be less favourable than the entitlements otherwise available under the Agreement and shall be subject to the following provisions:
 - (a) The employer shall ensure that the structure of any package complies with taxation and other relevant laws.
 - (b) Employees will have the Superannuation Guarantee Contribution (SGC) calculated on their Agreement salary prior to the application of any remuneration packaging arrangements.
- (iv) A copy of the agreement shall be made available to the employee.
- (v) The employee shall be entitled to inspect details of payments made under the terms of this agreement.
- (vi) The configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer.
- (vii) Where at the end of the Fringe Benefit Tax year the full amount allocated to a specific benefit has not been utilised, it will be paid as salary, which will be subject to appropriate taxation requirements. By agreement between the employer and the employee, any unused benefit may be carried forward to the next period on the basis that any FBT obligation is accepted by the employee.
- (viii) In the event that the employer ceases to attract exemption from payment of Fringe Benefit Tax, the employer may terminate all remuneration packaging arrangements and the employee's salary will revert to the applicable Agreement classification rate the employee would have been entitled to receive but for the remuneration packaging agreement.
- (ix) One (1) months' notice by either party is required for change or termination of a remuneration packaging agreement, unless the change or termination is brought about by legislation or an increase to the Agreement wage.
- (x) In the event that the employee ceases to be employed by the employer this agreement will cease to apply as at the date of termination. Benefits not paid on or before the date of termination shall be treated as salary and the appropriate tax deducted.
- (xi) Pay increases granted to employees in accordance with this Agreement shall also apply to employees subject to remuneration packaging arrangements.
- (xii) Any allowance, penalty rate, overtime, payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall

be calculated by reference to the salary which would have applied to the employee in the absence of any remuneration packaging arrangements.

- (xiii) The parties agree that Private Hospitals who are a party to this Agreement who have an existing remuneration or salary packaging arrangements in place at the time this Agreement is approved shall continue to apply that arrangement for the duration of this Agreement.

40.2 PART 2 – Superannuation

(i) **Definitions**

- (a) "Default fund" means the Health Employees' Superannuation Trust Australia (H.E.S.T.A.) which offers a MySuper product.

Should an employee fail to nominate a fund, the employer will choose the above approved fund's MySuper product as the default fund into which contributions shall be paid under this Agreement.

- (b) "Complying regulated fund" means a superannuation fund that is regulated under the Superannuation Industry (Supervision) Act 1993 and has been issued with a Certificate of Compliance by the Australian Prudential Regulation Authority.

- (c) "Ordinary-time earnings" means remuneration for an employee's weekly number of hours of work, excluding overtime hours, calculated at the ordinary-time rate of pay, including the following:

- (1) Monday to Friday shift premiums for ordinary hours of work;
- (2) Weekend shift premiums for ordinary hours of work;
- (3) Public holiday loadings;
- (4) Any percentage addition payable to casual employees for ordinary hours or work;
- (5) Ordinary time allowances (not including expense related allowances);
- (6) Payments made above the base rate for ordinary hours of work.

- (d) "Qualified employee" means:

- (1) a full-time or part-time employee who has completed at least four (4) weeks' service in the industry of nursing. Provided that once this period has elapsed, payments shall be made for the entire period of service with the employer;
- (2) a casual employee who has earned in excess of two thousand dollars (\$2,000.00) ordinary-time earnings during their employment with an

employer in the course of any one year (1 July to 30 June). Provided further that any casual employee who is deemed to be a qualified employee prior to 8 July 1997 will continue to be qualified.

40.3 Superannuation Legislation

- (i) The subject of superannuation is dealt with extensively by federal legislation including the Superannuation Guarantee (Administration) Act 1992, The Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993, and the Superannuation (Resolution of Complaints) Act 1993. This legislation, as varied from time to time, shall govern the superannuation rights and obligations of the parties.

40.4 Contributions

- (i) For qualified employees the employer shall, in respect of each employee, pay a sum equal to the Superannuation Guarantee legislation, as amended from time to time, of the employee's gross ordinary time earnings into a complying fund. Such contributions shall be remitted to the complying fund on a monthly basis. With respect to casual employees, contributions shall be remitted at the time that employees receive their annual group certificates
- (ii) An employee may nominate one complying fund to which all Agreement and statutory superannuation contributions shall be paid, subject to employer approval of the fund nominated by the employee. Provided that the employer shall not unreasonably withhold agreement unless it establishes good and proper reasons for the withholding of the agreement.
- (iii) Where no such nomination is made before any such contributions become payable, the contributions referred to in this clauses will be paid to the default fund for that place of employment.
- (iv) The employer will pay SGL on employer paid parental leave for eligible primary and secondary carers as defined in Clause 39(v), Paid Parental Leave.

40.5 Salary Sacrifice to Superannuation

- (i) Salary Sacrifice to Superannuation means the option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre-tax dollars) under the parent awards. This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- (ii) Salary sacrifice to superannuation shall be offered to employees by mutual agreement between the employee and employer.
- (iii) Such election must be made prior to the commencement of the period of service to which the earnings relate.
- (iv) One (1) change of a sacrificed amount will be permitted in an employee's anniversary year, which is twelve (12) months from the date of

commencement of employment, without incurring an administration charge of fifty dollars (\$50). Changing from full-time to part-time or part-time to full-time employment will not be classified as a change for administration charge purposes.

- (v) The amount sacrificed must not exceed any relevant superannuation guarantee contribution limit.
- (vi) The sacrificed portion of salary reduces the salary subject to PAYG Taxation deductions.
- (vii) Any allowance, penalty rate, overtime payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post salary sacrificed amount.
- (viii) Salary sacrifice arrangements can be cancelled by either the employer or employee at any time provided either party gives one (1) months' notice. The employer has the right to withdraw from offering salary sacrifice to employees without notice if there is any alteration to relevant Australian Taxation legislation.
- (ix) Contributions payable by the employer in relation to the Superannuation Guarantee Legislation shall be calculated by reference to the salary which would have applied to the employee under this Agreement in the absence of any salary sacrifice.
- (x) Employers will not use any amount that is salary sacrificed by an employee to negate contributions payable under the Superannuation Guarantee Legislation.
- (xi) The employee shall have the portion of payable salary that is sacrificed paid as additional employer superannuation contributions into the same superannuation fund that receives the employer's SGC contributions.
- (xii) Nothing in this Clause shall affect the right of an employer to maintain alternate arrangements with respect to salary sacrifice for employees.

41. Introduction of Change and Consultation

- (i) 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

- (ii) For a major change referred to in paragraph (i)(a):
 - (a) the employer must notify the relevant employees of the decision to introduce the major change; and
 - (b) subclauses (iii) to (ix) apply.
- (iii) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (iv) 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.
- (v) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (1) the introduction of the change; and
 - (2) the effect the change is likely to have on the employees; and
 - (3) 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:
 - (1) all relevant information about the change including the nature of the change proposed; and
 - (2) information about the expected effects of the change on the employees; and
 - (3) any other matters likely to affect the employees.
- (vi) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (vii) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (viii) 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 (ii)(a) and subclauses (iii) and (v) are taken not to apply.

(ix) 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

(x) For a change referred to in paragraph (i)(b):

- (a) the employer must notify the relevant employees of the proposed change; and
- (b) subclauses (xi) to (xv) apply.

(xi) The relevant employees may appoint a representative for the purposes of the procedures in this term.

(xii) 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.

(xiii) 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:

- (1) all relevant information about the change, including the nature of the change; and
 - (2) information about what the employer reasonably believes will be the effects of the change on the employees; and
 - (3) 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).
- (xiv) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (xv) The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- (xvi) In this term:

relevant employees means the employees who may be affected by a change referred to in subclause (i).

42. Redundancy

42.1 (i) In accordance with the NES provisions in section 123 of part 2-2 of the Act, the following employees are exempted from this Clause:

- (a) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
 - (b) an employee whose employment is terminated because of serious misconduct;
 - (c) a casual employee;
 - (d) 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;
 - (e) an employee prescribed by the regulations as an employee to whom Division 11 of part 2-2 of the Act does not apply.
- (ii) Sub-clause 42.1(i)(a) 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.

42.2 Discussions Before terminations

- (i) Where the employer has made a decision that they no longer wish the job an employee has been doing to be done by anyone and pursuant to sub-clause 41.1(i)(a), and that decisions may lead to the termination of employment, the

employer shall hold discussions with the employees directly affected and their workplace representatives.

- (ii) The discussions shall take place as soon as practicable after the employer has made a definite decision which will invoke the provisions of sub-clause 42.2(i) and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.
- (iii) For the purpose of the discussion the employer shall, as soon as practicable, provide to the employees concerned and if requested by the employee, any nominated employee representative which may be a union representative, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

42.3 Termination of Employment

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

This sub-clause sets out the notice provisions to be applied to terminations by the employer for reasons arising from production, programme, organisation or structure in accordance with subparagraph 42.1(i)(a):

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

<u>Period of continuous service</u>	<u>Period of notice</u>
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over forty-five (45) years of age at the time of the giving of the notice, with not less than two (2) years continuous service, shall be entitled to an additional week's notice.

- (c) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (ii) Notice for Technological Change –

This sub-clause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance subparagraph 42.1 (i) (a):

- (a) In order to terminate the employment of an employee the employer shall give to the employee three (3) months' notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (c) The period of notice required by this sub-clause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, or any Act amending or replacing the Act and Clause 22, Annual Leave and Public Holidays.

(iii) Time Off During the Notice Period -

- (a) During the period of notice of termination given by the employer, an employee shall be allowed up to one (1) days' time off without loss of pay during each week of notice, to a maximum of five (5) weeks, for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one (1) day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent.

(iv) Employee Leaving During the Notice Period –

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this Clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstance the employee shall not be entitled to payment in lieu of notice.

(v) Statement of Employment –

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

(vi) Notice to Centrelink –

Where a decision has been made to terminate the employment of employees, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(vii) Centrelink Employment Separation Certificate –

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.

(viii) Transfer to Lower Paid Duties –

Where an employee is transferred to lower paid duties, for reasons set out in subparagraph 42.2 (i) Redundancy – Discussions before termination the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, and the employer may at the employer's option make payment in lieu thereof of an amount equal to the difference between the former ordinary-time rate of pay and the new ordinary-time rate for the number of weeks' notice still owing.

42.4 Severance Pay

(i) Where the employment of an employee is to be terminated, the employer shall pay the following severance pay in respect of a continuous period of service.

(a) If an employee is under forty-five (45) years of age, the employer shall pay in accordance with the following scale:

<u>Years of Service</u>	<u>Entitlement</u>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

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

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

(c) "Week's pay" means the all-purpose rate of pay for the employee concerned at the date of termination. For the purposes of this clause, in addition to the ordinary rate of pay and over-agreement payments, all allowances, penalties or shift payment to which the nurse would be entitled shall form part of an employee's "week's pay". For the purpose of this subparagraph the following allowances in Clause 12 Special Allowances shall form part of the employee's "week's pay";

paragraph (i) and (ii) of sub-clause 12.1; paragraphs (i) and (iii) of sub-clause 12.2; and paragraph (i) of sub-clause 12.3.

(d) A "week's pay" for a particular employee shall be determined according to the average week's pay received by the employee in the period immediately prior to their last date of employment equal to the number of weeks of severance pay to which the employee is entitled under subparagraphs (a) and (b) of paragraph (i) this sub-clause.

(e) The employer shall also pay the following amounts to any employee terminated pursuant to this clause:

- (1) Pro rata long service leave; and
- (2) Accrued annual leave.

(ii) Incapacity to Pay

Subject to an application by the employer and further order of the Fair Work Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subparagraphs (a) and (b) of paragraph (i) of this sub-clause.

The Fair Work Commission shall have regard to such financial and other resources of the employer concerned as the Fair Work Commission thinks relevant, and the probable effect paying the amount of severance pay in the said sub-clause (i) will have on the employer.

(iii) Alternative Employment

Subject to an application by the employer and further order of the Fair Work Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (i) of this sub-clause if the employer obtains acceptable alternative employment for an employee.

42.5 Grievance Procedure

Refer to Clause 37, Resolution of Disputes contained in this Agreement.

43. No Extra Claims

The parties agree not to pursue any extra claims except where provided for under this Agreement, Further, this provision will not apply to any improvements in conditions that may arise from any consolidation of St Luke's Hospital policies.

44. National Employment Standards (NES)

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

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

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

45. Staffing Arrangements

45.1 The Employer is committed to ensure that staffing levels are appropriate to provide for high quality patient care delivery and a safe working environment for nurses. The employer will maintain a balanced workload through levels of staffing and skill mix in recognition of the adverse effects that excessive workloads may have on employee/s and the quality of patient care.

Staffing levels will be determined in consideration of the following:

- (i) the clinical assessment of patient acuity;
- (ii) skill mix and specialisation;
- (iii) geography and facility layout;
- (iv) the maintenance of safe working conditions in accordance with relevant guidelines and statutory Workplace Health and Safety legislation;
- (v) professional nursing standards for example ACORN standards and obligations arising from professional registration such as Nursing and Midwifery Board of Australia Code of Ethics, and Code of Conduct for Nurses;
- (vi) patient movements ;
- (vii) access to training, including e-learning

45.2 To ensure that employee concerns involving excessive workloads are effectively dealt with by the employer the following procedures must be applied:

- (i) In the first instance, employee/s must discuss the issue with their immediate supervisor and, where appropriate, explore solutions.
- (ii) If a solution cannot be identified and implemented, the matter must be referred to an appropriate senior manager for further discussion.
- (iii) If a solution still cannot be identified and implemented, the matter must be referred to the Director of Nursing for further discussion.
- (iv) The outcome of the discussions at each level and any proposed solutions must be recorded in writing and fed back to the effected employees.

45.3 The employer agrees that any matter of excessive workload that is referred to the attention of the appropriate senior manager will be dealt with expeditiously. The employer will respond within 48 hours to the issues raised. Where a

response requires additional time, the employer will acknowledge receipt of the issue raised and respond within 72 hours.

- 45.4 **Replacement of absences:** The employer will ensure that the backfilling of any position will be undertaken by appropriately qualified and/or experienced staff, taking account of operational and legislative requirements to ensure that patients receive high quality and continuity of care.
- 45.5 **Replacement of vacancies:** The employer will ensure that vacant positions will be filled with appropriately qualified and/or experienced permanent staff where practicable.
- 45.6 Where agreement cannot be reached, the parties may exercise their rights pursuant to Clause 37 Resolution of Disputes.

46. Agreement Flexibility

- (i) 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:
 - (1) arrangements about when work is performed;
 - (2) overtime rates;
 - (3) penalty rates;
 - (4) allowances;
 - (5) 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.
- (ii) 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.
- (iii) 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 eighteen (18) years of age, signed by a parent or guardian of the employee; and

(d) includes details of:

(1) the terms of the enterprise agreement that will be varied by the arrangement; and

(2) how the arrangement will vary the effect of the terms; and

(3) 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

(4) states the day on which the arrangement commences.

(iv) The employer must give the employee a copy of the individual flexibility arrangement within fourteen (14) days after it is agreed to.

(v) The employer or employee may terminate the individual flexibility arrangement:

(a) by giving no more than twenty-eight (28) days written notice to the other party to the arrangement; or

(b) if the employer and employee agree in writing — at any time.

47. Disciplinary Matters

(i) In all dealings with employees, which may lead to a disciplinary outcome, including termination, the employer commits to the principles of procedural fairness, natural justice and the right to a union representative.

(ii) An employee required to attend a disciplinary meeting will be entitled to ordinary pay for the duration of the meeting.

48. Representative Leave

(i) Leave required by nominated Workplace Representative/Union Delegate to attend trade union and union delegate courses/ seminars shall be as follows:

(a) To a maximum of three (3) days per year (from 1 January to 31 December each year) for the totality of all applications of trade union, union delegate training leave and attending NSWNA conferences, provided that:

(1) two (2) weeks' notice is provided in writing by the employee outlining the purpose and the duration of the leave requested;

(2) the taking of leave is arranged having regard to the operational requirements of the employer;

(3) this leave shall be unpaid leave.

- (ii) The Association will advise St Luke's Hospital of the employee it recognises as the workplace representative on a two (2) yearly basis.
- (iii) Leave of absence granted pursuant to this Clause shall count as service for all purposes of this Agreement

49. Community Leave

49.1 Entitlement to be absent from employment for engaging in eligible community service activity

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

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

49.2 Meaning of *eligible community service activity*

- (i) Each of the following is an ***eligible community service activity***.
 - (a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
 - (b) a voluntary emergency management activity (see 49.2 (ii)); or
 - (c) an activity prescribed as an eligible community activity by regulations made in accordance with section 109 (4) of the Fair Work Commission Act 2009.
- (ii) An employee engages in a ***voluntary emergency management activity*** if, and only if:
 - (a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and
 - (b) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
 - (c) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
 - (d) either:
 - (1) the employee was requested by or on behalf of the body to engage in the activity; or
 - (2) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.

(iii) A **recognised emergency management body** is:

- (a) a body, or part of a body, that has a role or function under a plan that:
 - (1) is for coping with emergencies and/or disasters; and
 - (2) is prepared by the Commonwealth, a State or a Territory; or
- (b) a fire-fighting, civil defence or rescue body, or part of such a body; or
- (c) any other body, or part of a body, a substantial purpose of which involves:
 - (1) securing the safety of persons or animals in an emergency or natural disaster; or
 - (2) protecting property in an emergency or natural disaster; or
 - (3) otherwise responding to an emergency or natural disaster; or
- (d) a body, or part of a body, prescribed by the regulations made in accordance with the Fair Work Act 2009;

but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one (1) or more employees to be absent from their employment under this clause.

49.3 **Notice and evidence requirements**

- (i) An employee who wants an absence from their employment to be covered by this Clause must give their employer notice of the absence.
- (ii) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the absence has started); and
 - (b) must advise the employer of the period, or expected period, of the absence.
- (iii) An employee who has given their employer notice of an absence under 49.3 (i) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.
- (iv) An employee's absence from their employment is not covered by Clause 49 unless the employee complies with sub-clause 49.3.

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

- (i) This section applies if:
 - (a) in accordance with Clause 49, an employee is absent from their employment for a period because of jury service; and
 - (b) the employee is not a casual employee.
- (ii) Subject to 49.4 (iii), (iv) and (v), 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.
- (iii) The employer may require the employee to give the employer evidence that would satisfy a reasonable person:

- (a) that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
 - (b) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the employee for the period.
- (iv) If, the employer requires the employee to provide evidence in accordance with 49.4 (iii):
 - (a) the employee is not entitled to payment under 49.4 (ii) unless the employee provides the evidence; and
 - (b) if the employee provides the evidence—the amount payable to the employee under 49.4 (ii) is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.
- (v) If an employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than ten (10) days in total:
 - (a) the employer is only required to pay the employee for the first ten (10) days of absence; and
 - (b) the evidence provided in response to a requirement under subsection (iii) need only relate to the first ten (10) days of absence; and
 - (c) the reference in 49.4 (iv) to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first ten (10) days of absence.
- (vi) **Jury service pay** means an amount paid in relation to jury service under a law of the Commonwealth, a State or a Territory, other than an amount that is, or that is in the nature of, an expense-related allowance.
- (vii) **Jury service summons** means a summons or other instruction (however described) that requires a person to attend for, or perform jury service.

50. Continuing Professional Development for RNs and ENs

- (i) St Luke's Care recognises that training/education is essential for the maintenance and development of nursing practice. St Luke's Care will continue to provide and support training/education opportunities where possible.
- (ii) The responsibility for staff development is shared between employees and the employer. Employees are expected to participate in professional skill development to ensure that they perform at a standard consistent with nursing competencies relevant to their classification and registration.
- (iii) On the basis of assessed needs, a range of programs/topics relevant to nursing care delivery will be provided by the employer and nurses are encouraged to attend.
- (iv) The provision of mandatory training is the responsibility of the employer. Attendance at mandatory training sessions provided by the employer is the responsibility of the employee and will be conducted with in paid time.

- (v) The employer will provide a comprehensive education programme (training and resources) to allow all nursing staff members to complete their ongoing CPD requirements within paid time.
- (vi) The employer will allocate sufficient hours within staff rosters to allow all staff to complete mandatory training (which may include e-learning) and undertake such training within paid time as is reasonably deemed necessary to maintain an appropriate level of competency for their designated role.

51. Continuing Education Allowance

- (i) An employee employed in the classification of Registered Nurse (years one (1) to eight (8)), Clinical Nurse Specialist/Educator, who satisfies the employer that they are engaged in clinical work for more than fifty per cent (50%) of their time who holds a continuing education qualification in a clinical field, in addition to the qualification leading to registration, shall be paid a continuing education allowance, subject to the following conditions set out below:
 - (a) the allowance is only payable where the recognised qualification is accepted by the employer to be directly relevant to the specialist field outlined in subclause (e);
 - (b) an employee holding more than one (1) relevant qualification is only entitled to one (1) allowance, being the allowance of the highest monetary value;
 - (c) the employee claiming entitlement to a qualification allowance must provide evidence to the employer that they hold that qualification;
 - (d) An allowance shall be absorbed into any over Agreement rate being paid to an employee;
 - (e) An allowance shall only be payable in the following clinical fields: Orthopaedics, Rehabilitation, Perioperative nursing, Anaesthetics and Recovery, Surgical nursing, Infection Control and Paediatrics.
 - (f) Any such additional clinical specialties in addition to those areas prescribed in subclause (e) may be agreed at the absolute discretion of the employer.
- (ii) Subject to the provisions of subclause (i), an employee who holds a recognised post-graduate certificate in a clinical field listed in subclause (e) shall be paid an allowance of an amount set out in Table 2 – Other Rates and Allowances, of Part B, Monetary Rates.
- (iii) Subject to the provisions in subclause (i) of this Clause, an employee who holds a recognised post-graduate diploma or degree listed in subclause (e) (other than an undergraduate nursing degree) shall be paid an allowance of an amount set out in Table 2– Other Rates and Allowances.

- (iv) The above allowances are not to be included in the employee's ordinary rate of pay. The allowances are not payable during periods of paid leave taken by an employee, but they will be paid on ADO's.
- (v) Any dispute which arises concerning the eligibility for payment of a Continuing Education Allowance shall be dealt with in accordance with the Resolution of Disputes clause.

52. Workplace Representatives

- (i) Recognised workplace representatives will be provided with reasonable access to telephone, internet, email, facsimile, photocopying, notice boards and meeting facilities (where available) for the purpose of carrying out work as a recognised workplace representative including, consulting with workplace colleagues and their union.

PART B

Table 1 – Monetary Rates

		Column 1	Column 2	Column 3	Column 3
Classification		1 July 2016	2.6% increase from First Pay Period to commence on or after 1 July 2017	3%-Increase from First Pay Period to commence on or after 1 July 2018	3% Increase from First Pay Period to commence on or after 1 July 2019
Assistant in Nursing, Assistant in Midwifery and Trainee Enrolled Nurse					
18 Years of age and over	1st year experience	796.21	816.91	841.42	866.66
	2nd year experience	821.70	843.06	868.36	894.41
	3rd year experience	847.45	869.48	895.57	922.44
	4th year and thereafter	874.04	896.77	923.67	951.38
Enrolled Nurse – Without Medication Qualification					
	1st year	977.25	1002.66	1032.74	1063.72
	2nd year	998.69	1024.66	1055.40	1087.06
	3rd year	1020.27	1046.80	1078.20	1110.55
	4th year	1042.08	1069.17	1101.25	1134.29
	Thereafter	1063.66	1091.32	1124.05	1157.78
Enrolled Nurse					
	1st year	996.86	1022.78	1053.46	1085.07
	2nd year	1018.79	1045.28	1076.64	1108.94
	3rd year	1040.62	1067.68	1099.70	1132.70
	4th year	1062.92	1090.56	1123.27	1156.97
	Thereafter	1084.98	1113.19	1146.59	1180.99
Nurse undergoing pre-registration training		955.42	980.26	1009.67	1039.96
Registered Nurse					

	1st year	1108.14	1136.95	1171.06	1206.19
	2nd year	1168.45	1198.83	1234.79	1271.84
	3rd year	1228.75	1260.70	1298.52	1337.47
	4th year	1293.23	1326.85	1366.66	1407.66
	5th year	1357.46	1392.75	1434.54	1477.57
	6th year	1421.68	1458.64	1502.40	1547.48
	7th year	1494.61	1533.47	1579.47	1626.86
	8th year	1556.26	1596.72	1644.62	1693.96
Clinical Nurse Specialist – Grade 1		1619.63	1661.74	1711.59	1762.94
Clinical Nurse Specialist – Grade 2		1684.41	1728.20	1780.05	1833.45
Clinical Nurse Educator		1619.63	1661.74	1711.59	1762.94
Nurse/Midwifery Educator					
	1st year	1796.62	1843.33	1898.63	1955.29
	2nd year	1847.24	1895.27	1952.13	2010.69
	3rd year	1892.59	1941.80	2000.05	2060.06
	4th year	1991.26	2043.03	2104.32	2167.45
Clinical Nurse Consultant		1991.26	2043.03	2104.32	2167.45
Nursing Unit Manager					
Level I		1952.16	2002.92	2063.00	2124.89
Level II		2044.83	2098.00	2160.94	2225.76
Level III		2099.61	2154.20	2218.83	2285.39
Senior Nurse/Midwifery Educator					
	1st year	2039.56	2092.59	2155.37	2220.03
	2nd year	2081.47	2135.59	2199.66	2265.65
	3rd year	2151.09	2207.02	2273.23	2341.43
Assistant Director of Nursing – 100 beds & over		2100.35	2154.96	2219.61	2286.20
Deputy Director of Nursing					
Less than 100 beds		2044.83	2098.00	2160.94	2225.76
100 beds, less than 200 beds		2100.36	2154.97	2219.62	2286.21
Director of Nursing					
Less than 25 beds		2107.34	2162.13	2226.99	2293.80
25 beds, less than 50 beds		2231.25	2289.26	2357.94	2428.68
50 beds, less than 75 beds		2279.79	2339.06	2409.24	2481.51
75 beds, less than 100 beds		2326.98	2387.48	2459.11	2532.88

100 beds, less than 150 beds		2394.02	2456.26	2529.95	2605.85
150 beds, less than 200 beds		2473.81	2538.13	2614.27	2692.70

PART B

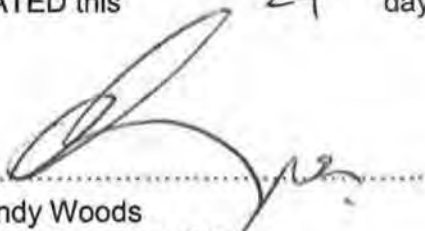
Table 2 – Other Rates and Allowances

Salary Related Allowances	Clause	Column 1 2016	Column 2 2.6 % Increase from First Pay Period to commence after 1 July 2017	Column 3 3% Increase from First Pay Period to commence on or after 1 July 2018	Column 4 3% Increase from First Pay Period to commence on or after 1 July 2019
In charge of hospital, evening or night shift	12.1(i)	\$27.07 per shift	\$27.77 per shift	\$30.00 per shift	\$30.90 per shift
In charge of ward/unit in absence of NUM	12.1(ii) and (iii)	\$27.07 per shift	\$27.77 per shift	\$30.00 per shift	\$30.90 per shift
In charge of ward/unit & hospital	12.3(i)	\$55.08	\$56.51 per shift	\$58.21 per shift	\$59.95 per shift
On call	12.2 (i)	\$24.35 per 24 hours or part thereof	\$24.98 per 24 hours or part thereof	\$25.73 per 24 hours or part thereof	\$26.50 per 24 hours or part thereof
On call on rostered days off	12.2 (ii)	\$48.06 per 24 hours or part thereof	\$49.31 per 24 hours or part thereof	\$50.79 per 24 hours or part thereof	\$52.31 per 24 hours or part thereof
On call during meal break	12.2 (iii)	\$13.51	\$13.86	\$14.28	\$14.71
Meal on overtime	18.8	\$20.99 per meal	\$21.54 per meal	\$22.18 per meal	\$22.85 per meal
Uniform and laundry allowances:					
Uniform	16.3(i)	\$7.39 per week	\$7.58 per week	\$7.81 per week	\$8.04 per week
Shoes	16.3 (i)	\$2.28 per week	\$2.34 per week	\$2.41 per week	\$2.48 per week
Cardigan or Jacket	16.3 (iii)	\$2.23 per week	\$2.29 per week	\$2.36 per week	\$2.43 per week
Stockings	16.3 (ii)	\$3.82 per week	\$3.92 per week	\$4.04 per week	\$4.16 per week
Socks	16.3 (vi)	\$0.76 per week	\$0.78 per week	\$0.80 per week	\$0.83 per week
Laundry	16.3 (iv)	\$6.13 per week	\$6.29 per week	\$6.48 per week	\$6.67 per week

Staff Amenities:					
Breakfast	28.3	\$4.27 per meal	\$4.38 per meal	\$4.51 per meal	\$4.65 per meal
Other meals	28.3	\$7.77 per meal	\$7.97 per meal	\$8.21 per meal	\$8.46 per meal
Kilometre Allowance		\$0.86c per/km	\$0.88c per/km	\$0.91c per/km	\$0.94c per/km
Post Graduate Certificate	51 (ii)	\$20.07 per week	\$20.59 per week	\$21.21 per week	\$21.85 per week
Post Graduate Diploma/Degree	51 (iii)	33.44 per week	34.31 per week	\$35.34 per week	\$36.40 per week

Signature Page for St Luke's Care trading as St Luke's Hospital

DATED this 24 day of JULY 2018



Cindy Woods
Chief Executive Officer
St Luke's Care
Authorised to sign on behalf of
St Luke's Hospital

18 Roslyn Street,
POTTS POINT NSW 2011

(Address)



Witness

SHARA TRAN
18 ROSLYN STREET
POTTS POINT NSW 2011

(Name and address of witness)

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.

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2018/3529

Applicant:

St Luke's Care

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, David Ahern, Director, People & Culture for St Luke's Care give the following undertakings with respect to the St Luke's Care trading as St Luke's Hospital and Australian Nursing and Midwifery Federation NSW Branch Enterprise Agreement 2018 – 2020 ("the Agreement"):

1. I have the authority given to me by St Luke's Care to provide this undertaking in relation to the application before the Fair Work Commission.
2. St Luke's Care undertakes to amend Clause 6.18 to read:

6.18 The following criteria shall apply to, Registered Nurses (including Clinical Nurse Specialists) and Enrolled Nurses only, for the introduction of twelve (12) hour shifts:

3. St Luke's Care undertakes to amend the last paragraph of Clause 13.4 to read:

The foregoing paragraph shall apply to employees who work less than 38 hours per week, but Registered Nurses (including Clinical Nurse Specialists) and Enrolled Nurses shall not be entitled to be paid in addition any allowance prescribed by Clause 21 Part –Time, Casual and Temporary Employees, of this Agreement in respect of their employment between midnight on Friday and midnight on Sunday.

4. St Luke's Care undertakes to amend Clause 21.2 (v) to read:

(v) A casual employee who is required to and does work on a public holiday as defined in sub-clauses 22.2 and 22.3 of Clause 22, Annual Leave and Public Holidays, shall be paid for the time actually worked at the rate of double time and one-half, such payment in lieu of weekend and shift allowances which would otherwise be payable had the day not been a public holiday; provided that a casual Enrolled Nurse and Registered Nurse (including Clinical Nurse Specialists) shall not be entitled to be paid in addition the twenty-five percent (25%) loading prescribed in the subclause 21.2 (ii) in respect of such work.

5. In practise, there are no casual employees currently impacted by Clause 18 - Overtime. Should an Assistant in Nursing/Assistant in Midwifery/Trainee Enrolled

Nurse work a shift in excess of twelve (12) hours, they shall be paid overtime rates in addition to casual loading to ensure they are no worse off.

6. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line that curves downwards at the end.

Signature

17 December 2018

Date