



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Calvary Health Care Riverina Limited T/A Calvary Riverina Hospital
(AG2020/601)

CALVARY HEALTH CARE RIVERINA LTD AND THE NSWNMA, ANMF NSW BRANCH, NURSES AND MIDWIVES, ENTERPRISE AGREEMENT 2019

Health and welfare services

DEPUTY PRESIDENT CROSS

SYDNEY, 15 MAY 2020

Application for approval of the Calvary Health Care Riverina Ltd and the NSWNMA, ANMF NSW Branch, Nurses and Midwives, Enterprise Agreement 2019.

[1] An application has been made for approval of an enterprise agreement known as the *Calvary Health Care Riverina Ltd and the NSWNMA, ANMF NSW Branch, Nurses and Midwives, Enterprise Agreement 2019 (Agreement)*. The application was made pursuant to s.185 of the *Fair Work Act 2009 (Act)*. It has been made by Calvary Health Care Riverina Limited T/A Calvary Riverina 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. The undertakings are taken to be a term of the agreement.

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

[4] The Australian Nursing and Midwifery Federation New South Wales Branch (**Union**) 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) I note that the Agreement covers the Union.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 22 May 2020. The nominal expiry date of the agreement is 31 December 2022



DEPUTY PRESIDENT

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<AE508052 PR719380>

Annexure A

FAIR WORK COMMISSION

MATTER NO: AG2020/601

APPLICANT: Calvary Health Care Riverina Ltd

UNDERTAKINGS

I, Robin Haberecht, General Manager, give the following undertakings on behalf of the Applicant employer, in accordance with section 190 of the Fair Work Act 2009, in regard to the *Calvary Health Care Riverina Ltd and the NSWNMA, ANMF NSW Branch, Nurses and Midwives, Enterprise Agreement 2019 (Agreement)*:

1. Reference to the term "misconduct" in clauses 36(v) and 36(viii) in the Agreement are replaced with the phrase "serious misconduct".
2. Clause 31(iv)(c)(1) is to be deleted and Clause 31(iv)(a) is to be amended to delete the phrase "with responsibilities" and is as follows:

(a) An Employee, other than a casual Employee, in relation to a class of person set out subparagraph (2) of paragraph (c) of sub-clause (iv) who needs the Employee's care or support, shall be entitled to use, in accordance with this subclause, any current or accrued paid personal leave entitlement, for absences to provide care or support for such persons when they are ill/ injured, or who require care or support due to an unexpected emergency. Such leave may be taken for part of a single day.

3. Clause 31(iv)(c)(2)(iv) is to be replaced with the following:

(iv) a member of the Employee's household.

4. Clause 19(v) will be amended to include:

Provided that a casual AIN (with a Certificate III qualification):

- (i) with less than 3 years' experience, the Ordinary Rate will be that of an AIN 3rd year for ordinary hours between midnight Friday and midnight Saturday;*
- (ii) with less than 4 years' experience, the Ordinary Rate will be that of an AIN Thereafter for ordinary hours between midnight on Saturday and midnight on Sunday*

5. Clause 19(vii) will be amended to include the following new subclause (e):

(e) Notwithstanding subclause (d), for a casual Employee, the casual loading will be paid in addition to the 15% penalty rate.

6. Clause 23(iv)(d)(1) will be amended to include:

Provided that a casual AIN (with a Certificate III qualification) with less than 3 years' experience:

- (i) the Ordinary Rate will be an AIN 3rd Year, and;*
- (ii) the penalty rate applied for overtime:*
 - (1) after 2 hours on Monday to Saturday; or*
 - (2) on a Sunday;**will be 222% (in lieu of the casual loading).*

7. Clause 54(v)(b) will be amended (as underlined):

Service and continuity

The time an Employee is on leave to deal with family and domestic violence, which is

- (a) paid leave – does count as service for all purposes.*
- (b) unpaid leave – does not count as service but does not break the Employee's continuity of service (excepting that such unpaid leave will count as service in the express circumstances set out at ss.22(4) of the Fair Work Act 2009)*



Robin Haberecht
General Manager
Date: 8/05/20

CALVARY HEALTH CARE RIVERINA
AND THE NSWNMA, ANMF NSW Branch
NURSES AND MIDWIVES
ENTERPRISE AGREEMENT

2019

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.

ENTERPRISE AGREEMENT

1. ARRANGEMENT

The Agreement is arranged as follows:

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2. NAME OF THE AGREEMENT

This Agreement shall be called *Calvary Health Care Riverina Ltd and the NSWNMA, ANMF NSW Branch, Nurses and Midwives, Enterprise Agreement 2019* ('the Agreement').

3. COVERAGE

This Agreement shall cover:

- (i) Calvary Health Care Riverina Ltd (ABN 45 105 810 688); and
- (ii) Nursing and midwifery Employees employed by Calvary Health Care Riverina Ltd as classified in Clause 7 of this Agreement.

4. APPLICATION FOR COVERAGE

- (i) This Agreement is made under section 172 of the *Fair Work Act 2009* (Fair Work Act). The Employer will take the necessary steps to seek approval of this Agreement under section 186 of the Fair Work Act.
- (ii) The Employer will formally advise the Australian Nursing and Midwifery Federation New South Wales Branch (ANMF NSW Branch) when the Agreement is made in order for the ANMF NSW Branch to apply under section 183 of the Fair Work Act to be covered by the Agreement.
- (iii) It is the intention of this Agreement that the ANMF NSW Branch will be covered by this Agreement.

5. SCOPE AND DATE AND PERIOD OF OPERATION

- (i) This Agreement will commence operation from the 7th day after the Agreement is approved by Fair Work Commission ('FWC') and will remain in place until the nominal expiry date of 31 December 2022, or thereafter in accordance with the Fair Work Act.
- (ii) The parties agree that discussions shall commence for a new Agreement no later than six months prior to the expiry date of the Agreement.
- (iii) This Agreement shall contains all terms and conditions of employment for Calvary Health Care Riverina Ltd Employees engaged in classifications listed in Clause 7 of this Agreement.

6. POSTING OF THE AGREEMENT AND NES

A copy of this Agreement and the National Employment Standards ('NES') shall be displayed in a conspicuous and convenient place at the workplace so as to be easily read by all Employees.

7. DEFINITIONS

Unless the context otherwise indicates or requires the several expressions hereunder defined shall have the respective meanings assigned to them:

- (i) **"Advanced Enrolled Nurse"** means a person enrolled by NMBA as such, who holds an Advanced Diploma of Nursing, has specialist skills and five years or more post qualification experience, who is utilising those specialist skills in their role and who satisfies the local criteria. Local criteria will be established by the Employer.

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- (ii) **"Agreement"** means the Calvary Health Care Riverina Ltd and the NSWNMA, ANMF NSW Branch, Nurses and Midwives, Enterprise Agreement 2019
- (iii) **"Assistant in Nursing/Midwifery"** means a person, other than a registered nurse, student nurse or enrolled nurse, who is employed in nursing/midwifery duties in a hospital.
- (a) Undergraduate Nursing Student enrolled in the first year of a Bachelor of Nursing program: AIN/M 1st yr of experience; (commencing salary);
- (b) Undergraduate Nursing Student who has successfully completed the first year of a Bachelor of Nursing program: AIN/M 3rd yr of experience;
- (c) Undergraduate Nursing Student who has successfully completed the second year of a Bachelor of Nursing program: AIN/M 4th yr of experience
- (iv) **"Board"** means the Nursing and Midwifery Board of Australia ("NMBA") and shall also be taken to mean the Australian Health Practitioner Regulation Agency ("AHPRA").
- (v) **"Clinical Nurse/Midwifery Consultant"** means a registered nurse appointed as such to the position of, who has at least five years post-basic registration experience and who has in addition approved post-basic nursing/midwifery qualifications relevant to the field in which they are appointed or such other qualifications or experience deemed appropriate by the Employer.
- (vi) **"Clinical Nurse/Midwifery 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/Midwifery Educator shall cater for the delivery of clinical nurse/midwifery education in the ward/unit level only.
A nurse will achieve Clinical Nurse/Midwifery 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/Midwifery Specialist as a specialist resource and the Clinical Nurse/Midwifery Consultant in the primary role of clinical consulting, researching etc.
- (vii) **"Clinical Nurse/Midwifery Specialist Grade 1"** means a registered nurse with relevant post-basic qualifications and 12 months' experience working in the clinical area of his/her specified post-basic qualification, or a minimum of four years' post-basic registration experience, including three years' experience in the relevant specialist field and who satisfies the local criteria.
- (viii) **"Clinical Nurse/ Midwifery Specialist Grade 2"** means: a Registered Nurse/Midwifery appointed to a position classified as such with relevant post-registration qualifications and at least 3 years' experience working in the clinical area of their specified post-graduate qualification.

The Clinical Nurse / Midwifery Specialist Grade 2 classification encompasses the Clinical Nurse / Midwifery Specialist Grade 1 role criteria and is distinguished from a Clinical Nurse / Midwifery Specialist Grade 1 by the following additional role characteristics:

- Exercises extended autonomy of decision making;
- Exercises professional knowledge and judgement 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/unit/service; or

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- specialist clinical practice across a small or medium sized health facility/sector/service; or
 - primary case management of a complete episode of care; or
 - primary case management of a continuum of specialty care involving both inpatient and community based services; or
 - an authorised extended role within the scope of Registered Nurse/Midwifery practice.
- (ix) **"Day Worker"** means a worker who works their ordinary hours from Monday to Friday and who works their ordinary hours on such days between 6.00 am and 6.00 pm otherwise than as part of the shift system.
- (x) **"Director of Nursing"** (however titled) includes a registered nurse who is registered by the Employer with the NSW Department of Health as the person in charge of the hospital. There shall be only one person in the Hospital entitled to be classified as Director of Nursing or whatever title the Senior Nursing Administrator is known by at the Hospital.
- (xi) **"Employer"** means Calvary Health Care Riverina Ltd.
- (xii) **"Employee"** means an Employee of the Employer in the State of New South Wales employed in a classification set in this Agreement.
- (xiii) **"Enrolled Nurse – without medication qualification"** means a person registered by the Board as an enrolled nurse with the notation "does not hold a Board approved qualification in medicines administration".
- (xiv) **"Enrolled Nurse"** – means a person registered by the Board as an Enrolled Nurse approved to administer medications.
- (xv) **"Experience"** in relation to a student nurse, 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 a student nurse, 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 1976 hours of employment.
- (xvi) **"Fair Work Act"** means the *Fair Work Act 2009*, as amended from time to time.
- (xvii) **"FWC"** means the Fair Work Commission, the statutory body established under the Fair Work Act, or any successor organisation established under Commonwealth legislation which performs the functions of conciliation and arbitration.
- (xviii) **"Hospital"** means a private hospital and a day procedure centre as defined by the *Private Health Facilities Act 2007*.
- (xix) **"Immediate Family"** means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee.
- (1) **Spouse** includes a former spouse.
 - (2) **De facto partner** means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of

the same sex or different sexes) and includes a former de facto partner of the employee.

(3) **Child** includes an adult child, adopted child, step child, ex-nuptial child.

(xx) **"NES"** means the National Employment Standards under the Fair Work Act.

(xxi) **"Nurse/Midwifery 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/Midwifery Educator.

A Nurse/Midwifery 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/Midwifery Educator who holds relevant tertiary qualification in education or tertiary postgraduate specialist clinical nursing/midwifery qualifications shall commence on the 3rd year rate of the salary scale.

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

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

(xxii) **"Nursing/Midwifery 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/Midwifery Unit Manager Level 1"** whose responsibilities include:

- (A) 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.
- (B) 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.
- (C) 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/Midwifery 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/Midwifery Unit Manager Level 1. Such staff may also be appointed as the After Hours Nurse Manager for the Hospital.

- (c) "Nursing/Midwifery 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/Midwifery Unit Manager Level 2.

(xxiii) "**Ordinary Rate**" means the rate of pay (hourly or weekly as applicable) set out at Appendix 1 as applicable to an Employee, , but not including any loadings, allowances, overtime, penalty rates, incentives, bonuses and other ancillary payments of a like nature, excepting the definition of ordinary rate set out at clause 19(ii) and clause 37(iii).

(xxiv) "**Perioperative Services Manager**" is appointed as such and is responsible for the management of all theatres. The wage rate payable to such persons is in accordance with the DDON rates specified at Appendix 1.

(xxv) "**Registered Nurse**" means a person registered by the Board as a Registered Nurses and/or Registered Midwife.

Where an enrolled nurse graduates as a registered nurse such nurse shall commence their employment as a Registered Nurse: RN 2nd year of experience.

(xxvi) "**Senior Nurse/Midwifery 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/Midwifery Educator.

A Senior Nurse/Midwifery Educator shall be responsible for one or more Nurse/Midwifery Educators in the planning, co-ordination, delivery, and evaluation of educational programmes such as post registration certificate courses, continuing nurse/midwifery 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 12 months' satisfactory service.

(xxvii) "**Service**" for the purpose of Clause 11, Wages, means service before or after the commencement of this Agreement in New South Wales or elsewhere as a nurse (specifically an AIN, Registered Nurse or Enrolled Nurse as applicable), 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 on and from January 1971 during which a registered nurse undertook a post-basic course whilst an Employee of and rendering service in an institution or hospital and such course is recognised by the Board or acceptable to the NSW Department of Health, provided that no more than three such courses shall count as service.

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

(xxix) "**Student Nurse**" means a person who is being trained to become an enrolled nurse in a hospital approved for this purpose by the Board.

(xxx) "**Superannuation Law**" means any requirement under the Superannuation Industry (Supervision) Act 1993 (Cth), Superannuation Industry (Supervision) Regulations

1994 (Cth), Superannuation Guarantee (Administration) Act 1992 (Cth), Superannuation Guarantee (Administration) Regulations 1993 (Cth), Superannuation Guarantee Charge Act 1992 (Cth), and any other present or future legislation which the Employer must comply with to satisfy its superannuation obligations to the Employees.

(xxxi) “**Union**” means the Australian Nursing and Midwifery Federation (ANMF) of which NSW is a Branch (ANMF NSW Branch). The NSWNMA is the commonly recognised reference in NSW.

8. RELATIONSHIP TO NATIONAL EMPLOYMENT STANDARDS

Entitlements in accordance with the NES are provided for under the Fair Work Act. Where this Agreement also has provisions regarding matters dealt with under the NES and the provisions in the NES set out in the Fair Work Act are more favourable to an Employee in a particular respect than those provisions, then the NES will prevail in that respect and the provisions dealing with that matter in this Agreement will have no effect in respect of that Employee. The provisions in this Agreement otherwise apply.

9. CONSULTATION REGARDING CHANGE

- (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

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- (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, which may be a Union 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.

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- (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).

10. DISPUTE RESOLUTION PROCEDURE

- (i) In the event of a dispute in relation to a matter arising under this Agreement or the NES in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the Employee or Employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the Employee or Employees concerned and more senior levels of management as appropriate.
- (ii) The above steps will take place within seven days, unless not reasonably practicable.
- (iii) A party to the dispute may appoint another person, organisation or association, which may be the Union, to accompany or represent them in relation to the dispute.
- (iv) If a dispute in relation to a matter arising under the Agreement or the NES is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the FWC for resolution by conciliation and, where the matter in dispute remains unresolved, arbitration.
- (v) It is a term of this Agreement that while the dispute resolution procedure is being conducted work shall continue according to the custom and practice before the grievance arose unless an Employee has a reasonable concern about an imminent risk to his or her health or safety. This clause is subject to any applicable health and safety legislation.
- (vi) If arbitration is necessary the FWC may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.
- (vii) For the avoidance of doubt, Employee grievances are included in the matters to be dealt with in accordance with the dispute resolution procedure of the Agreement.

11. WAGES

- (i) Wages will be determined as follows:-

Column 1	Column 2	Column 3
2.5%	2.5%	2.5%

- (ii) The wage increases in subclause (i) hereof shall be payable as follows:-
- (a) The amount shown in Column 1 shall be payable from the beginning of the first full pay period to commence on or after 1 January 2020.
- (b) The amount shown in Column 2 shall be payable from the beginning of the first full pay period to commence on or after 1 January 2021.
- (c) The amount shown in Column 3 shall be payable from the beginning of the first full pay period to commence on or after 1 January 2022.
- (iii) The allowances in Appendix 1, Table 2 –Allowances, shall be paid and increased in accordance with subclause (i) unless specified otherwise.

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- (iv) The wage increases provided in Appendix 1, Table 1 shall be absorbed into any payment made to the Employee beyond the minimum rates contained within this Agreement.
 - (v) Any further wage increase shall be at the discretion of the Employer, unless the rate of pay falls below the Modern Award rate, in such circumstances the rate of pay shall default to the minimum rate prescribed in accordance with the relevant Modern Award rate.

12. SUPERANNUATION

- (i) **Employer Contributions**
The Employer will make occupational superannuation contributions to the Employee's Fund (in accordance with subclause (ii) or (iii)) in accordance with Superannuation Law.
- (ii) **Superannuation Fund**
"The Fund" for the purpose of this Agreement shall mean:
 - (a) HESTA established and governed by a trust deed as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto; or
 - (b) An Employee may nominate an alternate complying fund to the fund specified at subclause (ii)(a) above.
- (iii) Upon commencement of employment, the Employer shall provide each Employee with a membership form for their preferred fund and will forward the completed membership forms for the worker's choice of fund within 28 days. In the event that the Employee had not completed an application form within 28 days, the Employer will forward contributions and Employee details to HESTA (**Default Fund**). The Default Fund offers a MySuper product.
- (iv) In addition to the Employer's statutory contributions to the Fund an Employee may make additional contribution from their salary, and on receiving written authorisation from the Employee the Employer must commence making contributions to the Fund in accordance with the Superannuation Law.
- (v) Superannuation fund payments will be made in accordance with trust fund deeds.
- (vi) Where an Employee salary packages their wages in accordance with this Agreement, superannuation shall be paid on the pre-packaged wages.

13. HOURS OF WORK AND FREE TIME OF EMPLOYEES OTHER THAN DIRECTORS OF NURSING

- (i) The ordinary hours of work for day workers, other than Directors of Nursing, exclusive of meal times, shall be 152 hours per 28 calendar days to be worked between 6.00am and 6.00pm Monday to Friday.
- (ii) The ordinary hours of work for shift workers, other than Directors of Nursing, exclusive of meal times, shall not exceed an average of 38 hours per week in each roster cycle.
- (iii)
 - (a) The hours of work prescribed in subclauses (i) and (ii) of this clause shall, where possible, be arranged in such a manner, that in each roster cycle of 28 calendar days each Employee shall not work their ordinary hours or work on more than nineteen days in the cycle, but this shall not apply to students in block.

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- (b) Notwithstanding the provision of paragraph (a) of this subclause, Employees may, with the agreement of the Employer work shifts of less than 8 hours each over 20 days in each cycle of 28 days.
 - (c) Provided that on the occasion of an Employee's written request, and with the consent of the Employer, a 9.5 day fortnight may be worked instead of the 19-day month.
 - (iv) Except where authorised by subclause (xix) of this clause:
 - (a) Each shift shall consist of no more than 10 hours on a shift (subject to subclause (xix) regarding 12 hour shifts);
 - (b) There will be a minimum break of 8 hours between each shift;
 - (c) An Employee shall not work more than 7 consecutive shifts unless the Employee so requests and the Director of Nursing agrees; and
 - (d) An Employee shall not work more than two (2) quick shifts in any period of 7 days. A quick shift is an evening shift which is followed by a morning shift.
 - (v) The Employer is to decide when Employees take their additional days off duty prescribed by subclause (iii) of this clause (as a consequence of the implementation of the 38 hour week). Where necessary the Employer must consult with the affected Employees to ascertain the Employees' preferences and must take any such preferences into account when arriving at a decision. Where practicable additional days off duty shall be consecutive with the rostered days off duty prescribed in subclause (xiv) of this clause.
 - (vi) Once set, the additional days off may not be changed except in accordance with the provisions of Clause 16, Rosters.
 - (vii) Where the Employer's decision (in accordance with subclause (v) of this clause) is that an Employee's additional days off be accumulated, no more than 6 days may be accumulated in any one year of employment. By mutual agreement this may be extended to no more than 12 days at any one time.
 - (viii) Except for breaks for meals the hours of duty each day shall be continuous.
 - (ix)
 - (a) Each Employee shall be allowed a break of not less than thirty minutes and not more than sixty minutes for each meal occurring on duty.
 - (b) Where practicable, Employees shall not be required to work more than 5 hours without a meal break. Provided that where practicable an Employee engaged to work for 5 hours or less in any one shift may elect not to take a meal break as otherwise provided for by this subclause without penalty to the Employer. The term 'where practicable' encompasses regard being paid to the service requirements of the Employer and OHS requirements.
 - (x) An Employee is entitled to take one 10 minute paid tea break in each four hours worked, provided that two separate ten-minute intervals (in addition to meal breaks) shall be allowed each Employee on duty during each ordinary shift of 8 or 10 hours as the case may be. Subject to agreement between the Employer and the Employee, such intervals may alternatively be taken as one twenty-minute interval, or by one 10-minute interval with the Employee allowed to proceed off duty 10 minutes before the completion of the normal shift finishing time. Such interval(s) shall count as working time.
 - (xi)
 - (a) Subclauses (ix) and (x) of this clause shall not apply to an Employee who, before going on night duty, is provided with a meal between 9.00 pm and 11.00 pm and

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- who is allowed two intervals of twenty minutes each during the period of night duty but such intervals shall count as working time and shall be paid for as such.
- (b) 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 for as such.
- (xii)
- (a) Except as provided for in paragraph (b) an Employee shall not be employed on night duty for a longer period than 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.
- (b) The provisions of paragraph (a) shall not apply to an Assistant Director of Nursing, a Nursing/Midwifery 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.
- (c) Moreover except in cases of emergency a student nurse shall not be employed on night duty for more than 10 weeks in any one year of training nor shall a student nurse who is sitting for his or her final examination be required to perform night duty during a period of at least two weeks prior to the respective examination or on the two nights following such examination.
- (xiii) An Employee changing from night duty to day duty or from day duty to night duty shall be free from duty during the twenty hours immediately preceding the commencement of the changed day.
- (xiv)
- (a) Each Employee shall be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 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 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.
- (b) An Employee, at her or his request, may be given free from duty time in one or more periods but no period shall be less than one full day.
- (c) For the purpose of this subclause "full day" means from midnight to midnight or midday to midday.
- (xv)
- (a) Employees may be required to remain on call. Any such time on call shall not be counted as time worked (except insofar as an Employee may take up actual duty in response to a call), but shall be paid for in accordance with Clause 18, 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.
- (b) 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.
- (xvi) All rostered time off duty occupied by a student nurse in attendance at lectures and demonstrations given in the course of instruction in the theory and practice of nursing
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or during the time necessarily occupied in attending at and sitting for prescribed examinations shall be deemed to be time worked.

- (xvii) An Employer shall not alter the period over which the ordinary hours of work of Employees are balanced except upon giving one month's 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.
- (xviii) The provisions of paragraphs (a) and (b) of subclause (xii) and of subclause (xiii) and of paragraph (a) of subclause (xiv) 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.
- (xix) The following criteria shall apply to the introduction of 12 hour shifts:
 - (a) 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 12 hour shift system;
 - (b) any Employee who does not wish to work under the 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;
 - (c) the span of hours must not exceed 12.5 hours;
 - (d) there must be a maximum of three consecutive night shifts which include one or more 12 hour shifts;
 - (e) there must be a minimum break of 11.5 hours rostered between each 12 hour shift;
 - (f) Employees must be allowed either two 30 minutes or one 60 minutes meal break. In addition to the meal breaks Employees must be allowed either two 10 minute or one 20 minute paid tea break;
 - (g) the Employer must notify the Employees and if requested by the Employee any nominated Employee representatives which may be a Union representative of the implementation of the 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.
 - (h) there must be an evaluation process at the completion of the first 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.
 - (i) 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;
 - (j) nothing contained in this subclause shall prevent an individual Employee and their Employer reaching mutual agreement to that individual working 12 hour shifts.

(xx) **Accrued Days Off**

For the purpose only of providing care or support for a person in accordance with the Personal/ Carers Leave clause of this Agreement, and despite the provisions above, the following provisions shall apply:

- (a) An Employee may elect, with the consent of the Employer, to take an accrued day off at any time.

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- (b) An Employee may elect, with the consent of the Employer, to take accrued days off in part day amounts.
 - (c) An Employee may elect, with the consent of the Employer, to accrue some or all accrued 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.
 - (d) This subclause is subject to the Employer informing the affected Employees and if requested by the Employee any nominated representative which may be a Union representative of its intention to introduce an enterprise system of ADO flexibility, and providing a reasonable opportunity for the affected Employees and if requested by the Employees any nominated representative which may be a Union representative to participate in negotiations.

14. HOURS OF WORK AND FREE TIME OF DIRECTORS OF NURSING

This clause does not apply to part-time Employees.

- (i) The Director of Nursing (DON) shall be free from duty for not less than 9 days in each 28 consecutive days and such days free from duty may be taken in one or more periods.
- (ii) If any of the days mentioned in subclause (i) of this clause cannot be taken by reason of emergency, such day or days shall be given and taken within 28 days of becoming due.
- (iii) The DON shall, where practicable, inform the Employer giving not less than seven days' notice of the days he or she proposes to be free from duty; provided that such days shall be subject to the approval of the Employer, and such approval shall not be unreasonably withheld.

15. BANKING OF HOURS

- (i) A full time or part time Employee may, by agreement made daily, weekly or fortnightly with their Nurse/Midwifery Unit Manager or DON:
 - (a) work less than their daily, weekly or fortnightly rostered or contracted hours and work those hours at a later date; or
 - (b) 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.
- (ii) 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.
- (iii) 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 in accordance with the banking of hours provisions prescribed under this Clause.
- (iv) Time debited or credited under these arrangements shall all be at ordinary time, i.e. an hour for an hour.
- (v) An Employee may not have more than 76 hours in debit or credit at any point in time.

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- (vi) Employees who have hours in debit must be given first option to work additional hours prior to the use of casual Employees.
 - (vii) 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.
 - (viii) 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.
 - (ix) Either party shall have the right to terminate an agreement under this clause with two weeks' notice.

16. ROSTERS

- (i) 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.
- (ii) The roster shall be displayed where practicable at least three weeks prior, but in any event not less than two weeks prior, to the commencing date of the first working period in the roster.
- (iii) Notwithstanding the foregoing provisions of this clause, a roster may be altered at any time to enable the nursing service of the 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.
- (iv) Prior to the date of the changed shift, such change of roster shall be notified verbally or in writing to the Employee concerned.
- (v) An Employee may change their roster at short notice, with the agreement of their nurse/midwifery unit manager or Director of Nursing for any reasonable ground.
- (vi) 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.
- (vii) Where an Employee is entitled to an additional day off duty in accordance with Clause 13, Hours of Work and Free Time of Employees other than Directors of Nursing, of this Agreement, such day is to be shown on the roster of hours for that Employee.
- (viii) All rosters shall be retained for at least six years.
- (ix) Rosters will be written in accordance with Appendix 2 – Rostering Principles.

17. RECOGNITION OF SERVICE AND EXPERIENCE

- (i) 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.

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- (ii) From the time of commencement of employment the nurse has three months in which to provide documentary evidence to their Employer detailing any other 'service' or 'experience', as defined in Clause 7, 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.
 - (iii) Until such time as the nurse furnishes any such documentation contemplated in (ii) above the Employer shall pay the nurse at the level for which documentary evidence has been provided.
 - (iv) If within three 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.
 - (v) If a nurse provides documentary evidence of other previous service or experience not disclosed at the time of commencement after the said three 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.
 - (vi) A nurse who is working as a nurse for more than one organisation shall notify each Employer under this Agreement within one 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.
 - (vii) 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 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 month period the nurse shall be paid at the higher rate only from the date of proof.

18. SPECIAL ALLOWANCES

- (i) In charge Allowances
 - (a) A registered nurse in charge during the day, evening or night of a hospital having a daily average of occupied beds of less than 100 shall be paid, in addition to her or his appropriate salary, whilst so in charge, the sum set out in Item 1 of Table 2 Allowances, at Appendix 1, per shift.
 - (b) 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/Midwifery Unit Manager shall be paid, in addition to her or his appropriate salary whilst so in charge the sum set out in Item 2 of Table 2, per shift. This subclause shall only apply where the registered nurse is in charge of one or more other nurses in the ward or unit in question.
 - (c) A registered nurse who is designated to be in-charge of a ward or unit when the Nursing/Midwifery Unit Manager is not rostered for duty and who is also designated to be in-charge of a hospital with less than 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 Item 3 of Table 2. This subclause shall only apply where the registered nurse is in charge of one or more other nurses in the ward or unit in question.
 - (d) This subclause shall not apply to registered nurses holding classified positions of a higher grade than of a registered nurse.

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- (ii) On call
 - (a) An Employee required by his or her Employer to be on call otherwise than as provided in (ii)(b) and (ii)(c) hereof shall be paid the sum as set in Item 4 of Table 2 for each hour or part thereof with a minimum payment of eight hours at that rate.
 - (b) An Employee required to be on call on rostered days off shall be paid the sum as set in Item 5 of Table 2 for each hour or part thereof with a minimum payment of eight hours at that rate.
 - (c) The parties recognise the importance of Employees being afforded the opportunity to take a meal break, noting however that where an Employee is required and authorised by the Employer to remain on call during a meal break, such Employee shall be paid an allowance as set out in Item No 6 of Table 2.
 - (d) Where an Employee on call leaves the hospital and is recalled to duty, the Employee 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 shall be the rate set out in Item 13 of table 2. (These rates will be varied in accordance with ATO advice). The provisions of this paragraph shall apply to all Employees.
 - (e) The provisions of this paragraph shall apply to all classifications up to and inclusive of the Nurse Unit Manager classifications.
 - (iii) Radiographic Allowance
 - (a) Where the Director of Nursing is required by the hospital to perform radiographic duties they shall be paid in addition to their appropriate salary an allowance of the sum set out in Item 7 of Table 2 per week.
 - (b) The allowance prescribed by paragraph (a) of this subclause shall apply to an Employee who relieves the Director of Nursing for a period of one week or more.
 - (c) An Employee who is performing radiographic duties in the absence of the Director of Nursing for a period of less than one week shall be paid in addition to his or her appropriate salary a daily allowance of the sum set out in Item 8 of Table 2; provided that the maximum allowance per week payable in accordance with this paragraph shall not exceed the sum set out in Item 8 of Table 2.
 - (d) The allowance prescribed by this subclause shall be regarded as part of the salary for the purpose of this Agreement.
 - (e) Provided that the allowances provided for in this subclause shall only be paid to Employees who had been in receipt of the allowance prior to 1 July 1996.
 - (iv) Lead Apron Allowance
 - (a) An Employee required to wear a lead apron shall be paid an allowance of the sum set out in Item 9 of Table 2 for each hour or part thereof that they are required to wear the said apron.

19. PENALTY RATES FOR SHIFT WORK AND WEEKEND WORK

- (i) Employees, whether shift or day workers, working afternoon or night shift shall be paid the following percentages in addition to the Ordinary Rate for such shift: Provided that Employees who work less than 38 hours per week shall only be entitled to the additional rates where their shifts commence prior to 6.00 am or finish subsequent to 6.00 pm.

Afternoon shift commencing at 10.00 am and before 1.00 pm - 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 – 20%

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

- (ii) **"Ordinary Rate"** and **"ordinary time"** for the purposes of this clause will include amounts payable under Clause 11, Wages; and additional amounts under subclause (iii) of Clause 18, Special Allowances, as applicable. In the case of a casual Employee, the casual loading is paid in addition to the shift penalties set out at subclause (i), ie: where a 10% afternoon shift penalty applies, the casual Employee will receive the 10% shift penalty plus a casual loading of 25% (being a total penalty of 35%).
- (iii) For the purposes of this clause day, afternoon and night shifts shall be defined as follows:
"Day Shift" means a shift which commences at or after 6.00 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.
- (iv) 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 penalties prescribed in the subclause (i) of this clause and the casual loading prescribed at Clause 28. For clarity the shift penalties and casual loadings are not payable on the ordinary hours between midnight on Friday and midnight on Sunday, subject to subclause (v) of this clause.
- (v) Notwithstanding the prescribed arrangements for calculating the rate of pay for time worked on a Saturday or Sunday as prescribed in subclause (iv) of this clause, a casual AIN/M or Trainee Enrolled Nurse and engaged to work ordinary hours as set out in the below table will be paid the following penalties (in lieu of the casual loading):

<u>Classification</u>	<i>ordinary hours between midnight Friday and midnight Saturday, the employee will be paid a loading set out below, of the Ordinary Rate for the hours worked during this period</i>	<i>ordinary hours between midnight Saturday and midnight Sunday, all employees will be paid a loading set out below, of the Ordinary Rate for the hours worked during this period</i>
AIN/M or Trainee EN	<u>66% in addition to the Ordinary Rate</u>	<u>93% in addition to the Ordinary Rate</u>

- (vi) 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 29, Annual Leave and Public Holidays of this Agreement.
- (vii) (a) This subclause 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.

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- (b) This subclause 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.
 - (c) A nurse to whom this subclause applies shall not be entitled to an additional penalty rate payment for ordinary time worked prior to 6.00 pm on any week day.
 - (d) A nurse to whom this subclause applies shall be paid, in addition to their Ordinary Rate, a penalty payment at the rate of 15% for all ordinary time worked after 6.00 pm on any week day.

20. FARES AND EXPENSES

- (i) A student nurse sitting for an examination prescribed by the Board and required to travel from the home centre to an examination centre shall be paid by the Employer all fares necessarily incurred in such travelling, and if it is reasonably necessary for each student nurse to sleep away from such home centre the Employer shall pay in addition to the fares the cost of reasonable accommodation and meals. "Home Centre" means the town in which is situated the hospital at which such student nurse is employed.
- (ii) An Employee required to travel in the performance of duty shall be paid all reasonable out of pocket expenses (including fares).
- (iii) Fares within the meaning of this clause shall include only fares incurred in respect to travel within New South Wales.
- (iv) 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.
- (v) An Employee required and authorised to use their own motor vehicle in the course of their duties will be paid a motor vehicle allowance per kilometre as shown at item 14 in Table 2 Allowances.

21. UNIFORM AND LAUNDRY ALLOWANCES

- (i) Subject to subclause (iii) of this clause, sufficient, suitable and serviceable uniforms, including one pair of shoes per annum which shall be of a recognised acceptable standard for the performance of nursing duties, and one cardigan or jacket shall be supplied free of cost to each Employee required to wear a uniform. 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.
- (ii) 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.
- (iii)
 - (a) In lieu of supplying uniforms and shoes to an Employee, an Employer shall pay the said Employee the sum set out in Item 11 of Table 2 - Allowances, of Appendix 1, for uniforms and shoes per week.
 - (b) In lieu of supplying stockings or socks (not both) to an Employee an Employer shall pay the said Employee the relevant sum set out in Item 11 of Table 2 per week.
 - (c) In lieu of supplying a cardigan or jacket to an Employee an Employer shall pay the said Employee the sum set out in Item 11 of Table 2 per week.

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- (d) 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 Item 11 of 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 week.
 - (e) Where the Employer requires any Employee to wear headwear, the hospital shall provide headwear free of charge to the Employee.
 - (f) The allowances referred to subclause (iii) are also payable during any period of paid leave.

22. HIGHER GRADE DUTY

- (i) 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.
- (ii) The provisions of subclause (i) shall not apply where the Employee being relieved is absent from duty for a period of three 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.
- (iii) Further, the provisions of subclause (i) shall not apply where a Director of Nursing is absent from duty for a period of three working days or less for any reason other than Clause 14, Hours of Work and Free Time of Directors of Nursing.

23. OVERTIME

- (i) Subject to subclause (ii) an Employer may request that an Employee work reasonable overtime.
- (ii) An Employee may refuse to work overtime in circumstances where the working of such overtime would result in the Employee working hours which are unreasonable.
- (iii) For the purposes of subclause (ii) what is unreasonable or otherwise will be determined having regard to:
 - (a) the risk to the Employee's health and safety;
 - (b) the Employee's personal circumstances including any family and carer responsibilities;
 - (c) the needs of the facility;
 - (d) the notice (if any) given by the Employer of the overtime and by the Employee of his or her intention to refuse it; and
 - (e) any other relevant matter.
- (iv) Subject to paragraph (b) hereof all time worked by Employees other than Directors of Nursing in excess of the ordinary hours on any day or shift prescribed in clause 13(iv)(a) and (xix) are to be paid as follows:
 - (a) Full-time Employees
 - (1) Monday to Saturday (inclusive)—time and a half for the first two hours the Ordinary Rate and double time the Ordinary Rate thereafter;
 - (2) Sunday—double time the Ordinary Rate; and
 - (3) Public holidays—double time and a half the Ordinary Rate.
 - (b) Overtime rates under this clause will be in substitution for and not cumulative upon the shift and weekend penalties prescribed in clause 18 of this Agreement.

(c) Part-time employees

All time worked by part-time Employees in excess of:

- (1) their rostered ordinary shift (which may be up to 10 hours or 12 hours in accordance with Clause 13) provided that such hours are also in excess of the rostered daily ordinary full-time hours;
- (2) 76 hours in a fortnight
will be overtime and will be paid as prescribed in clause (iv).

(d) Casual Employees

Where a casual Employee is required by the Employer to work in excess of 10 hours in a day or 76 in a fortnight, the casual Employee will be paid for such excess hours at the rate of time and a half the Ordinary Rate for the first two hours and double time the Ordinary Rate thereafter. Provided that overtime worked on Sundays shall be paid for at the rate of double time the Ordinary Rate and on public holidays at the rate of double time and one half the Ordinary Rate. The overtime payments are in lieu of payment of the casual loading, subject to (d)(1).

- (1) The following classifications will be paid overtime rates as follows (in lieu of the casual loading):

<u>Classification</u>	<u>Overtime Monday to Saturday (inclusive)</u>	<u>Overtime Sunday</u>
AIN/ M or Trainee EN	166% of the Ordinary Rate for the first two hours and 221% of the Ordinary Rate thereafter	221% of the Ordinary Rate

- (v) The ordinary hours of work for Directors of Nursing shall be an average of thirty eight hours per week. A DON may perform reasonable additional ordinary hours however additional hours shall not, without payment of overtime at the rate of time and one half, exceed:

- (a) 43 hours in any week; or
- (b) 86 hours in any fortnight; or
- (c) 129 hours in any twenty one consecutive days; or
- (d) 172 hours in any twenty eight consecutive days.

- (vi) An Employee recalled to work overtime after leaving the Employer's premises shall be paid for a minimum of four hours work at the appropriate rate for each time so recalled. If the work required is completed in less than four hours, the Employee shall be released from duty provided that this subclause does not apply to a Director of Nursing.

- (vii) An Employee required to work overtime following on the completion of their normal shift for more than two hours shall be allowed twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hours overtime. All such time shall be counted as time worked; provided that benefits of this subclause shall not apply to 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.

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- (viii) An Employee recalled to work overtime after leaving the Employer's premises and who is required to work for more than four hours shall be allowed twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hour's overtime; all such time shall be counted as time worked.
- (ix) An Employee will be supplied with an adequate meal by the Employer or will be paid a meal allowance of \$13.29 in addition to any overtime payment as follows:
- (1) when overtime work exceeds one hour;
 - (2) Provided that where such overtime work exceeds four hours a further meal allowance of \$11.98 will be paid.
- The allowances set out above will not apply when an Employee who could reasonably return home for a meal within the meal break
- (x) Where an Employee is required to work an overtime shift on his or her rostered day off, the appropriate meal breaks for that shift, as prescribed by Clause 13, Hours of Work and Free Time of Employees Other Than Directors of Nursing shall apply.
- (xi) 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.
- (xii) Rest Period
- (a) An Employee (excluding theatre Employees referred to at subclause (xii)(b) of this clause) who works so much overtime:
- (1) between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times; or
 - (2) on a Saturday, a Sunday and a holiday, not being ordinary working days, or on a rostered day off without having had eight consecutive hours off duty in the twenty-four hours preceding their next day or shift;

shall, subject to this subclause, be released after completion of such overtime until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the Employer such an Employee resumes or continues to work without having such eight consecutive hours off duty they shall be paid at the applicable overtime rate or double time, whichever is the greater, until they are released from duty for such period and they then shall be entitled to be absent until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (b) In the case of a theatre Employee being recalled to undertake overtime, who works so much overtime:
- (1) 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 10 consecutive hours off duty between these times; or
 - (2) on a Saturday, a Sunday and a holiday, not being ordinary working days, or on a rostered day off without having had 10 consecutive hours off duty in the twenty-four hours preceding their next day or shift;

shall be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the Employer such an Employee resumes or continues to work without having such 10 consecutive hours off duty they shall be paid at the applicable overtime rate or double time, whichever is the greater, until they are released from duty for such period and they then shall be entitled to be absent

until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (xiii) 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:
 - (a) Time off in lieu of overtime must be taken within four months of it being accrued at the Ordinary Rate.
 - (b) Where it is not possible for a nurse to take the time off in lieu of overtime within the four month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
 - (c) Nurses cannot be compelled to take time off in lieu of overtime.
 - (d) Records of all time off in lieu of overtime owing to nurses and taken by nurses must be maintained by the Employer.
 - (e) On the termination of the Employee's employment, any accrued untaken time off in lieu will be paid out by the Employer at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
- (xiv) Time Off in Lieu of Payment for Overtime
 - (a) For the purpose only of providing care or support for a person in accordance with the Personal/ Carers Leave clause of this Agreement, and despite the provisions above, the following provisions shall apply.
 - (1) 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 12 months of the said election.
 - (2) 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.
 - (3) If, having elected to take time as leave in accordance with paragraph (1) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
 - (4) Where no election is made in accordance with the said paragraph (1), the Employee shall be paid overtime rates in accordance with the Agreement.
- (xv) Make-up time
 - (a) For the purpose only of providing care or support for a person in accordance with the Personal/ Carers Leave clause of this Agreement, and despite the provisions above, the following provisions shall apply.
 - (1) 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.
 - (2) 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.

24. PAYMENT AND PARTICULARS OF SALARIES

- (i) 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 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.

- (ii) Payment of Wages will be by electronic transfer into the Employee's nominated financial institution account at the end of each fortnightly pay period.
- (iii) On or prior to pay day the Employer shall provide to the Employee, particulars in writing accessible electronically, setting out full details of the wages the Employee is entitled to.
- (iv) Wherever practicable such payment shall be available for withdrawal by Employees on the designated pay day. Any other form of payment will be at the discretion of the Employer by agreement with the Employee.
- (v) Notwithstanding the provisions of subclause (ii) of this Clause, an Employee who has given or has been given the required notice of termination of employment, in accordance with Clause 36, Termination of Employment, of this Agreement, shall be paid all moneys 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 days thereafter.

25. REMUNERATION PACKAGING

- (i) Full time and part time Employees shall be offered remuneration packaging by the Employer. No Employee shall be compelled to enter into a salary packaging arrangement.

The Employee shall attract 85% of the tax benefit of the remuneration packaging arrangements. The Employer shall retain 15% of the tax benefit of the remuneration packaging arrangements. Effective on and from the first full pay period on or after 1 January 2022 the Employee will receive 100% of the tax benefit of the remuneration packaging arrangements.

Employees may exercise their right to continue to receive their applicable salary.

- (ii) Where the Employer offers remuneration packaging to an individual Employee, the Employer shall allow the Employee a period of no less than 21 days to seek independent advice on the terms of the proposed remuneration packaging.
- (iii) The terms and conditions of the 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) All agreement conditions, shall continue to apply;
 - (c) Employees will have their Superannuation Guarantee Contribution (SGC) calculated on their Agreement salary prior to the application of any remuneration packaging arrangements.
- (iv) A copy of the remuneration packaging agreement shall be made available to the Employee.
- (v) The Employee shall be entitled to inspect details of the payments made under the terms of this agreement.

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- (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 utilized, 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 rate the Employee would have been entitled to receive but for the remuneration packaging agreement.
 - (ix) One month's notice by either party is required for change or termination of a remuneration packaging agreement, unless the change or termination is brought about by legislation or an increase to salaries.
 - (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 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.

26. REGISTRATION OR ENROLMENT PENDING

- (i) A student nurse 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.
- (ii) 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 days after being so notified.
- (iii) They shall notify the Employer as soon as possible after they have so applied.

27. PART TIME EMPLOYMENT

- (i)
 - (a) A part-time Employee is one who is permanently appointed by the Employer to work a specified number of hours which are less than those prescribed for a full-time Employee.
 - (b) By agreement between Employer and Employee, the specified number of hours may be balanced over a week, a fortnight or on the request of the Employees and agreement of the Employer this may be four 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.

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- (c) An Employee whose hours are averaged over 4 weeks shall be paid each week or fortnight according to the Employee's average weekly or fortnightly hours as is appropriate.
 - (d) 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 weeks, not working in any one week in accordance with paragraph (b).
 - (ii) Part time Employees will be paid an hourly rate calculated on the basis of one thirty-eighth of the appropriate rate prescribed in Appendix 1 of this Agreement and, where applicable, one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 18, Special Allowances and Clause 41, Continuing Education Allowance, of this Agreement, with a minimum payment of 3 hours for each start, and one thirty-eighth of the appropriate allowances prescribed by Clause 21, Uniform and Laundry Allowances of this Agreement, but shall not be entitled to an additional day off or part thereof, as prescribed by subclauses (iii) and (v) of Clause 13, Hours of Work and Free Time of Employees Other Than Directors of Nursing.
 - (iii) Four weeks' Annual Leave will accrue per year of service. Annual leave will accrue progressively during a year of service according to the Employee's ordinary hours of work and accumulates from year to year. The provisions of subclauses (i)(c) and (v) to (xiii) of Clause 29, Annual Leave and Public Holidays, and Clause 30, Annual Leave Loading, of this Agreement will apply to Employees engaged under this clause. The remaining provisions of Clause 29, Annual Leave and Public Holidays will not apply.
 - (iv) A public holiday occurring on an ordinary working day will be allowed to Employees without loss of pay (payment for a public holiday not worked); provided that an Employee who is required to and does work on a public holiday will 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 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 Rate.
Such election shall be made on the commencement of employment and then on the anniversary date each year. The Employee may not alter such election during the year except with the agreement of the Employer. Where payment is made in lieu of leave in respect of time worked on a public holiday, payment shall be made for a minimum of four hours work, and any balance of the day or shift not worked shall be paid at the Ordinary Rate.
 - (v) Provided that a part-time Employee who works a variable roster (for clarity this does not include any part-time Employee that works a fixed roster) may be entitled to receive benefits as per this subclause for a particular public holiday not worked. The Hospital will determine whether there is an entitlement to payment for a public holiday not worked by reviewing the roster pattern of the Employee over the preceding six months. If the rosters show that the Employee has worked 50% or more of the days on which the public holiday falls, the Employee will be entitled to receive payment for the public holiday not worked.
 - (vi) To the leave prescribed by subclause (iv) of this clause there will be added one working day for each public holiday or one half working day for each half public holiday which occurs on what would have been an ordinary working day during a period of annual leave.

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- (vii) For the purpose of this clause the following are to be public holidays, viz: New Year's Day, Australia Day, Good Friday, Easter Saturday, 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 for the whole of NSW or within the area in which the Hospital is situated.
 - (viii) In addition to those public holidays prescribed in subclause (vi) of this clause, there will 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.
 - (ix) The foregoing does not apply in areas where, in each year:
 - (a) a day in addition to the ten named public holidays specified in subclause (vi) of this clause is proclaimed and observed as a public holiday; or
 - (b) two half days in addition to the ten named public holidays specified in subclause (vi) of this clause are proclaimed and observed as half public holidays.
 - (x) In areas where in each year one half day in addition to the ten named public holidays specified in subclause (vi) 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 subclause will be observed.
 - (xi) Employees engaged under 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.
 - (xii) Where the Employee is regularly working more than their specified contract hours they may request that their contracted hours are reviewed by their Manager. The Manager will formally respond to the request by the Employee stating the reasons if the request is not agreed to. The Manager will not unreasonably reject the request. The Manager will also take into account that the hours worked in the following circumstances will not be incorporated 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, maternity leave, workers compensation; and
 - (b) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident or client.
 - (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 at the workplace.

28. 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 of the appropriate rate, prescribed by Clause 11, Wages, of this Agreement and where applicable one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 18, Special Allowances of this Agreement plus 25 per centum thereof, with a minimum payment of 3 hours for each start, and one thirty-eighth of

the appropriate allowances prescribed by Clause 21, Uniform and Laundry Allowances, and Clause 41, Continuing Education Allowance, of this Agreement.

- (iii) With respect to a casual Employee the provisions of Clause 14, Hours of Work and Free Time of Directors of Nursing; Clause 16, Rosters; and Clause 29, Annual Leave and Public Holidays shall not apply. Further, casual Employees shall not be entitled to an additional day off or part thereof as prescribed by subclauses (iii) and (v) of Clause 13, Hours of Work and Free Time of Employees Other Than Directors of Nursing.
- (iv) In accordance with the Fair Work Act casual Employees have no entitlement to annual leave.
- (v) A casual Employee who is required to and does work on a public holiday as defined in sub-clauses (iii) and (iv) of Clause 29, 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 casual loading prescribed in subclause (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) Casual Conversion
 - (a) A casual Employee who has been rostered on a regular and systematic basis over a period of 6 months has the right to request conversion to permanent employment:
 - (1) on a full time contract where the Employee has worked on a full time basis throughout the period of casual employment; or
 - (2) on a permanent part time contract where the Employee has worked on a permanent part time basis throughout the period of casual employment. Such contract would be on the basis of the same number of hours as previously worked, unless other arrangements are agreed between the Employer and the Employee.
 - (b) The Employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request.
 - (c) Casual conversions will not apply where a casual covered absences of permanent staff that are expected to return to work.

29. ANNUAL LEAVE AND PUBLIC HOLIDAYS

- (i) Annual leave shall accrue progressively during a year of service according to the Employee's ordinary hours of work and accumulates from year to year.
 - (a) Full time Employees required to work on a seven (7) day basis – will accrue six (6) weeks annual leave per annum. This encompasses the additional week of annual leave to which shiftworkers are entitled in accordance with the NES.
 - (b) All other Employees – four (4) weeks annual leave per annum.
 - (c) In addition to the leave prescribed at subclause (i)(b) above and 27 (iii), theatre staff that are required to be on call shall be entitled to receive additional annual leave for being on call. For every hour on call the Employee will receive 0.0359 hours additional leave up to a total of 38 hours additional leave per annum. No annual leave loading applies to this extra leave.
 - (d) For the purposes of the NES, a shiftworker is defined as an Employee who:

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- is regularly rostered over seven days of the week; and
 - regularly works on weekends.

(ii)

- (a) An Employee to whom paragraph (a) of subclause (i) applies and who is required to and does work on a public holiday shall be paid, in addition to the appropriate ordinary weekly rate of pay, at the rate of one half time extra for the time actually worked on such holiday. Such payment shall be in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday.
- (b) To leave prescribed by paragraph (a) of subclause (i) 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 ten (10) specifically named public holidays prescribed by subclause (iii) of this clause, 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.
 - (1) Where a seven day shift worker is required to work hours on a public holiday not listed they can make a choice between the following arrangements
 - to be paid 250% of their Ordinary Rate: or
 - to be paid 150% of their Ordinary Rate and be entitled to an additional day of annual leave in compensation.
- (c) A public holiday occurring on an ordinary working day shall be allowed to Employees covered by paragraph (b) of subclause (i) on full pay; provided that an Employee who is required to and does work on a public holiday shall have one day or one half day, as appropriate, added to their period of annual leave and be paid at the rate of one half time extra for the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday. In lieu of adding to annual leave under this paragraph an Employee may elect to be paid for the time actually worked at the rate of time and one half in addition to their ordinary weekly rate. Such election shall be made on the commencement of employment and then on the anniversary date each year.

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

- (d) Where a public holiday falls on a rostered day off of a shift worker as defined in Clause 7, Definitions, of this Agreement, and who receives four (4) weeks annual leave in accordance with paragraph (b) of subclause (i) of this clause, such shift worker shall be paid one day's pay in addition to the weekly rate or if the Employee so elects shall have one day added to the period of annual leave.
- (e) To the leave prescribed by paragraph (b) of subclause (i) there shall be added one working day for each public holiday or one half working day for each half public holiday which occurs on what would have been an ordinary working day during a period of annual leave; provided that in the case of a shift worker referred to in paragraph (d) of this subclause the provision of this paragraph shall apply to any public holidays falling during the period of annual leave.

(iii) For the purpose of this subclause the following are to be public holidays, viz: New Year's Day, Australia Day, Good Friday, Easter Saturday, 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 for the whole of NSW or within the area in which the hospital is situated.

(iv)

- (a) In addition to those public holidays prescribed in subclause (iii) of this clause, Employees are entitled to an extra public holiday each year. Such public holiday will occur
- (1) on the August Bank Holiday; or
 - (2) on a date which is agreed between the Employer and Employees and if requested by the Employees any nominated representative which may be a Union representative;
 - (3) as an additional public holiday between Christmas and New 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 ten (10) named public holidays specified in subclause (i) is proclaimed and observed as a public holiday; or
 - (2) two half days in addition to the ten (10) named public holidays specified in subclause (i) are proclaimed and observed as half public holidays.
- (b) In areas where in each year only one half day in addition to the ten (10) named public holidays specified in subclause (iii) 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 subclause will be observed.

(v)

- (a) **Taking of Annual Leave** – An Employee is entitled to take an amount of annual leave during a particular period if:
- (1) at least that amount if annual leave is credited to the Employee; and
 - (2) the Employer has authorised the Employee to take the annual leave during that period.
- (b) Credit of time towards an allocated day off duty shall not accrue when an Employee is absent in accordance with subclause (i) of this clause. Employees entitled to allocated days off duty in accordance with Clause 13, Hours of Work and Free Time of Employees Other Than Directors of Nursing, of this Agreement shall accrue credit towards an allocated day off duty in respect of each day those Employees are absent on additional annual leave in accordance with subclauses (ii)(b) and subclause (ii)(c) of the Agreement.

- (vi) 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.

(vii) Excessive accumulated annual leave:

- (a) Where an Employee has accrued:
- (1) more than 8 weeks' paid annual leave (for Employees who receive 4 weeks a year annual leave, prorated for part time Employees); or
 - (2) more than 10 weeks' paid annual leave (for Employees who receive more than 4 weeks annual leave a year, prorated for part time Employees);
- such Employee has an excessive leave accrual (**Excess Leave**). Notwithstanding the provisions of this subclause, the Employer may direct an Employee to take a period of annual leave in accordance with subclause 29(xiii).
- (b) In the circumstances of Excess Leave, the Employer may direct the Employee to take a period of annual leave (**Direction**) by giving not less than 8 weeks and

not more than 12 months' notice to the Employee (**Notice**), subject to the following:

- (1) the Employee will first be given a reasonable opportunity to submit a plan to reduce their total annual leave accrued balance to not more than six weeks within a period of six months (**leave reduction plan**);
 - (2) the Employer will not unreasonably refuse to agree to an Employee's annual leave reduction plan which includes saving leave for an extended vacation within an agreed period. The agreement is to be in writing and signed by both the Employer and Employee.
 - (3) the Direction cannot require an Employee to take less than a week's leave or result in the Employee being directed to reduce the accrued leave to less than six weeks.
- (c) If an Employee has genuinely tried to reach agreement with an Employer under clause (a) but agreement is not reached (including because the Employer refuses to confer), the Employee may give a written notice to the Employer requesting to take one or more periods of paid annual leave.
- (d) However, an Employee may only give a notice to the Employer under paragraph (b) if:
- (1) the Employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
 - (2) the Employee has not been given a direction under clause (a) that, when any other paid annual leave arrangements are taken into account, would eliminate the Employee's excessive leave accrual.
- (e) A notice given by an Employee under paragraph (b) must not:
- (1) if granted, result in the Employee's remaining accrued entitlement to paid annual leave being less than 6 weeks; or
 - (2) provide for the Employee to take any period of paid annual leave of less than one week; or
 - (3) provide for the Employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (4) be inconsistent with any leave arrangement agreed by the Employer and Employee.
- (f) The Employer must grant paid annual leave requested by a notice under paragraph (b).
- (viii)
- (a) Each Employee shall be paid for the period of the leave at the Ordinary Rate of salary to which the Employee is entitled under this Agreement. Employees may request that before going on leave, such leave be paid in advance, otherwise the leave will be paid in the normal pay fortnights for the period of such leave. Where an Employee has any period of permanent part-time employment during any 12 month qualifying period for annual leave, payment for such annual leave shall be calculated on the basis of the proportion that the average number of hours worked each week bears to 38 hours.
 - (b) An Employee to whom paragraph (a) of subclause (i) applies shall be paid during the first twenty eight (28) consecutive days whilst on annual leave her or his Ordinary Rate plus shift penalties and weekend penalties relating to ordinary time the Employee would have worked if they had not been on annual leave; additional annual leave accrued under subclause (xi) attracts shift penalties and weekend penalties relating to ordinary time the Employee would have worked if they had not been on annual leave; provided that the provisions of the preceding paragraphs of this subclause shall not apply to public holidays which occur

during a period of annual leave or days which have been added to annual leave in accordance with paragraph (b) of subclause (ii) and subclause (iv) of this clause.

(ix) Cashing out of Annual Leave

(a) Upon receipt of a written request by an Employee, by way of separate written agreement, the Employer may authorise the Employee in writing to receive pay in lieu of an amount of annual leave.

- (1) Paid annual leave must not be cashed out if the cashing out would result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
- (2) Where an Employee forgoes an entitlement to take an amount of annual leave, the Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has forgone.

(x) Where the employment of an Employee ends, the Employee shall be entitled to receive, in addition to all other amounts due, payment for any accrued untaken annual leave and any applicable leave loading.

(xi)

(a) In addition to the annual leave prescribed by subclause (i) and clause 27(iii), 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

- (1) Provided that, in the case of a part-time Employee, such Employee shall be entitled to additional annual leave in accordance with:
- subclause (a) above; or
 - the definition of a shiftworker (for the purposes of the additional week of annual leave provided by the NES), specifically where the Employee is regularly rostered over 7 days of the week and regularly works on weekends;
- whichever gives rise to the greater leave entitlement for the part time Employee.

(b) On termination of employment Employees are to be paid for any untaken annual leave due under this subclause together with payment for any leave in respect of an uncompleted year of employment calculated in accordance with this subclause together with payment for any untaken annual leave due in accordance with subclause (x).

(xii) Annual Leave and Service

A period of annual leave does not break an Employee's continuity of service and annual leave counts as service for all purposes.

(xiii) Annual leave during close down periods

The Employer may temporarily close a part or whole of the hospital not more than once every 12 months for a period not exceeding three weeks. During such a close down, an Employee may be required to take paid annual leave during part or all of this period. Where an Employee does not have sufficient accrued annual leave for this period, they may take a combination of annual leave in advance up to a maximum of 1 week with the remainder of the period being leave without pay.

The Employer will give a minimum of two months' notice in writing of the temporary closure to the affected Employees.

An Employee, instead of taking annual leave or annual leave in advance and unpaid leave, may elect to utilise the following alternative options for dealing with the shutdown:

- (a) by mutual agreement an Employee may elect to be temporarily reassigned to another part of the hospital. During any such agreed temporary re-assignment, the Employee will be covered by the relevant classification and the conditions applicable in this agreement; and/or
- (b) an Employee may elect to bank hours and/or accrued time off in lieu for the purpose of covering likely shutdown period. Where an Employee proposes to bank hours or accrued time off in lieu to cover the shutdown period, the Employer will agree to such arrangements wherever possible; and/or
- (c) an Employee may seek to take another form of leave during a period of close down including a period of leave without pay.

30. ANNUAL LEAVE LOADING

- (i) 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 separate period, then before each of such separate periods the Employer shall pay the Employee the applicable annual leave loading determined in accordance with this clause.
- (ii) The loading is payable in addition to the pay for the period of holiday given and taken due to the Employee under subclauses (i)(b) and (ii)(c) of Clause 29, 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.
- (iii) The loading is the amount payable for the period or the separate periods, as the case may be, of the rate per week of 17½% of the appropriate ordinary weekly 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 together with any allowances prescribed by subclause (iii) of Clause 18, Special Allowances, of this Agreement.
- (iv)
 - (a) When the employment of an Employee is terminated by his/her 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 he/she became entitled, he shall be paid a loading calculated in accordance with subclause (iii) of the period not taken.
- (v) An Employee entitled to accrue annual leave is entitled to receive shift penalties or leave loading whichever the greater at the time of taking leave. Where shift penalties are paid, they will include those penalties the Employee would have received if they were not on leave for the period of annual leave.

31. PERSONAL/ CARERS LEAVE

- (i) Subject to the following limitations and conditions, an Employee (excluding a casual Employee) is entitled to accrue paid personal/ carer's leave in accordance with the NES.
 - (a) An Employee shall not be entitled to paid personal leave for any period in respect of which such Employee is entitled to workers' compensation; provided, however, that an Employer will, if requested by an Employee, pay to an Employee who has personal/ carer's leave entitlement under this clause the difference between the amount received as workers' compensation and ordinary pay as defined in Clause 19, Penalty Rates for Shift Work and Weekend Work. The Employee's personal/ carer's leave entitlement under this clause shall, for each week during which such difference is paid, be reduced by that proportion of 38 hours which the difference paid bears to full pay.
 - (b) All periods of personal illness/ injury will be certified by a registered health practitioner. The Employer may dispense with the requirements of a medical certificate when the absence does not exceed two consecutive days or where, in the Employer's opinion, the circumstances are such as not to warrant such requirement.
 - (c) Each Employee will notify the Employer of an absence from work due to illness or injury prior to the commencement of her/his rostered shift or as soon as practicable thereafter and will, as far as possible, inform the Employer of the estimated duration of the absence.
- (ii) The Employer will not change the rostered hours of an Employee fixed by the roster or rosters applicable to the fourteen days immediately following the commencement of sick leave merely by reason of the fact that they are on personal sick leave.
- (iii) If the period during which the Employee takes paid annual leave or long service leave includes a period where the Employee is eligible for paid personal/carers leave (**Personal Leave Absence**), the Employee is not taken to be on paid annual leave or long service leave for the period of that Personal Leave Absence but on paid personal leave, subject to:
 - (a) the provision of a medical certificate (or in the case of carer's leave, evidence in accordance with clause (iv)(b)); and
 - (b) in the case of long service leave only, the Personal Leave Absence is one week or more.
- (iv) Carers Leave
 - (a) An Employee, other than a casual Employee, with responsibilities in relation to a class of person set out subparagraph (2) of paragraph (c) of sub-clause (iv) who needs the Employee's care or support, shall be entitled to use, in accordance with this subclause, any current or accrued paid personal leave entitlement, for absences to provide care or support for such persons when they are ill/ injured, or who require care or support due to an unexpected emergency. Such leave may be taken for part of a single day.
 - (b) Documentary evidence for personal/carers leave purposes: in accordance with the Fair Work Act, the Employee shall, if required by the Employer provide documentary evidence in relation to a period of carer's leave taken or to be taken by the Employee to provide care or support to a member of the Employee's immediate family or a member of the Employee's household. The Employee shall, if required,
 - (1) establish either by production of satisfactory documentary evidence, the relationship of the person requiring care or support to the Employee, the reasons for taking such leave and the estimated length of absence, or

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- (2) establish by production of documentation acceptable to the Employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care or support by the Employee.
 - (c) The entitlement to use personal sick leave in accordance with this subclause is subject to:
 - (1) the Employee being responsible for the care or support of the person concerned; and
 - (2) the person concerned being:
 - (i) a spouse of the Employee (includes former spouse); or
 - (ii) a de facto partner, means a person who, although not legally married to the Employee, lives with the Employee in a relationship as a couple on a genuine domestic basis (whether the Employee and the person are of the same sex or different sexes) and includes a former de facto partner of the Employee; 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 spouse 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 or defacto status has to blood relatives of the other; and
 - (c) "household" means a family group living in the same domestic dwelling.
 - (d) An Employee shall, wherever practicable, give the Employer notice prior to the absence of the intention to take leave, the name of the person requiring care or support and their relationship to the Employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the Employee to give prior notice of absence, the Employee shall notify the Employer by telephone of such absence at the first opportunity on the day of absence.
 - (e) Unpaid personal/ carer's leave
Where an Employee, including casual Employees, has exhausted all paid personal/ carer's leave entitlements, they are entitled to take unpaid personal/ carer's leave to provide care or support for members of their immediate family or household who are ill/ injured or who require care or support due to an unexpected emergency. The Employer and the Employee shall agree on the period. In the absence of agreement, the Employee is entitled to take up to two days per occasion, provided the requirements of personal/carers leave sub clause (iv)(b) are met.

32. LONG SERVICE LEAVE

- (i) For long service leave falling due prior to 20th February 1981, see *Long Service Leave Act 1955*.
- (ii) For long service leave falling due after 20th February 1981 the following provisions shall apply:
 - (a)

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- (1) Every Employee after ten years' continuous service with the same Employer shall be entitled to two months' long service leave on full pay; after fifteen years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one half months' long service leave on full pay. Such leave shall be taken at a time to be mutually arranged between the Employer and the Employee.
 - (2) Where the service of an Employee with at least five years' service is terminated, the Employee shall be entitled for five years' service to one month's long service leave on full pay and for service after 5 years to a proportionate amount of such leave on full pay calculated on the basis of 2 months' long service leave for 10 years' service.
- (b) Where an Employee has acquired a right to extended leave under subclause (a) of this clause, then and in every such case:
- (1) 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.
 - (2) If such Employee dies before entering upon such extended leave, or if after having entered upon the same dies before its termination, his/her partner, or in the case of a partner leaving children his/ her children or their guardians or other dependent relatives or their legal representatives, shall be entitled to receive the monetary value of the leave not taken or not completed, as the case may be, and computed at the rate of salary which the Employee had been receiving at the time of death.
- (c) For the purpose of this clause:
- (1) Continuous service in the same hospital prior to the coming into force of this Agreement shall be taken into account.
 - (2) One month equals four and one-third weeks.
 - (3) Continuous service shall be deemed not to have been broken by:
 - (i) any period of absence on leave without pay not exceeding six months;
 - (ii) absence of an Employee from the hospital whilst a member of the Defence Forces of the Commonwealth in time of war.
- (d) Where any Employee has been granted a period of long service leave prior to the coming into force of this Agreement the amount of such leave shall be debited against the amount of leave due under this Agreement.
- (e) Any period(s) of part-time employment with the same Employer shall count towards long service leave as provided for in paragraph 2(a) 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 38 hours.
- (f) Where an Employee has accrued a right to an allocated day off duty on pay prior to entering a period of long service leave such day shall be taken on the next working day immediately following the period of long service leave.

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.

33. COMPASSIONATE LEAVE

- (i) An Employee is entitled to 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:
 - (a) contracts or develops a personal illness that poses a serious threat to his or her life; or

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- (b) sustains a personal injury that poses a serious threat to his or her life; or
 - (c) dies.
 - (ii) 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 (i); or
 - (b) after the death of the member of the Employee's immediate family or household referred to in subclause (i).
 - (iii) An Employee may take compassionate leave for a particular permissible occasion as a single continuous 2 day period; or 2 separate periods of 1 day each; or any separate periods to which the Employee and the Employer agree.
 - (iv) 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.
 - (v) If, in accordance with this Clause, an Employee, other than a casual Employee, takes a period of compassionate leave, the Employer must pay the Employee at the Employee's Ordinary Rate for the Employee's ordinary hours of work in the period. For casual Employees, compassionate leave is unpaid leave.
 - (vi) The Employee, if required by the Employer, shall supply relevant evidence of the requirement for such leave.

34. PATIENT DUTY

- (i) 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.
- (ii) All reasonable out-of-pocket expenses shall be reimbursed.
- (iii) Rostered time shall be paid as such even though an Employee may be travelling, in hotel/motel accommodation, or waiting for transport.
- (iv) In respect of non-rostered time not spent in nursing duties:
 - (a) Periods in hotel/motel accommodation or waiting for transport shall not be counted as working time;
 - (b) Periods in travelling shall count as working time.

35. MEDICAL EXAMINATION OF NURSES

On commencement of employment the Employee shall be notified of the availability of the following provisions which the Employer shall provide at the request of the Employee:

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

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- (2) where the Mantoux test is positive (otherwise than as a result of BCG vaccination), referral to a chest clinic for assessment.
 - (c) A Mantoux test annually to -
 - (1) previously Mantoux-negative nursing staff;
 - (2) nursing staff whose Mantoux reaction has been converted by BCG vaccination.
 - (d) A chest x-ray annually to nursing staff whose Mantoux reaction is positive (otherwise than as a result of BCG vaccination).
 - (e) Where a nurse has been caring for open tuberculosis cases, a PA chest x-ray examination of the nurse one year after completion of employment.
- (ii) For protection against other communicable diseases:
 - (a) where a nurse has not had a complete course of immunisation against diphtheria, tetanus, poliomyelitis, measles, mumps and hepatitis, immunisation against those diseases;
 - (b) booster immunisation against tetanus at 10-year intervals;
 - (c) a rubella antibody test and, where a nurse has a negative result, rubella immunisation.
 - (iii) For protection against radiation exposure, nurses required to work in close proximity to a source of ionising radiation should be provided with a film badge or personal radiation dosimeter, and a record should be maintained of the radiation exposure measured by such film badge or dosimeter.
 - (iv) The costs involved in the various screening and protection procedures should be borne by the Employer.

36. TERMINATION OF EMPLOYMENT

Notice of termination by the Employer

- (i) In order to terminate the employment of the Employee, where employed on a full-time or part-time basis, the Employer shall give to the Employee the period of notice specified in the table below:

Period of continuous service	Period of notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- (ii) In addition to this notice, where the Employee is over 45 years of age at the time of the giving of the notice with not less than two years continuous service, they will be entitled to an additional week's notice.
- (iii) Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the Employer payment for the remainder of the period of notice.
- (iv) In calculating any payment in lieu of notice, the wages the Employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.
- (v) The period of notice in this Clause shall not apply in the case of dismissal for misconduct, or in the case of casual Employees or Employees engaged for a specific period of time or for a specific task or tasks.

Notice of termination by the Employee

- (vi) The notice of termination required to be given by the Employee is the same as that required of the Employer, save and except that there is no requirement on the Employee to give additional notice based on the age of the Employee concerned.
- (vii) If the Employee fails to give notice the Employer has the right to withhold monies due to the Employee to a maximum amount equal to the ordinary time rate of pay for the period of notice, subject to the requirements set out at s324(1)(b) of the Fair Work Act.

Instant dismissal

- (viii) The Employer shall have the right to dismiss the Employee without notice for conduct that justifies instant dismissal including but not limited to neglect of duty or misconduct and in such cases the wages including any pro-rata accrued legal entitlements shall be paid up to the time of dismissal only.

Discussions prior to termination

- (ix) Prior to determining whether to terminate the employment of an Employee on the grounds other than would justify summary dismissal, the Employer shall:
 - (a) inform the Employee that the termination of their employment is being considered; and
 - (b) advise the Employee of the reasons for possible termination; and
 - (c) provide the Employee with an opportunity to respond to any allegations regarding their conduct or performance and to show cause why their employment should not be terminated.
- (x) An Employee shall be given reasonable time to respond, and shall be provided with details of any relevant material. An Employee who wishes to be represented may, at the request of the Employee, be represented by a representative of the Employee's choice, which may be a Union representative.
- (xi) Any request by the Employee to meet and discuss the matter shall not be unreasonably refused.

37. ATTENDANCE AT MEETINGS AND FIRE DRILLS

- (i) Any Employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety practices (fire drill and evacuation procedures) contained from time to time within the Private Health Facilities Act 2007, and the regulations made there under, shall be entitled to be paid the "Ordinary Rate" for the actual time spent in attendance at such practices. 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.
- (ii) 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, subject to the following:

- (a) In the case of AIN/ M or Trainee Enrolled Nurse where such meetings/ drills are undertaken outside the Employee's rostered ordinary hours, up to 10 hours of such attendances per year may be paid at the Ordinary Rate. Such attendances that fall outside an Employee's rostered ordinary hours and are in excess of 10 hours per year will be paid at the applicable overtime penalty rate.
- (iii) For the purposes of this clause "Ordinary Rate" shall be the Ordinary Rate (as defined in Clause 7) plus additional payments, as applicable, under Clause 18, Special Allowances, subclauses (i) and (ii), of this Agreement and the 25% casual loading in Clause 28(ii) - Casual Employees,.

38. NURSING WORKLOADS

- (i) The Employer has a responsibility to provide reasonable workloads for nurses.
- (ii) Reasonable workload principles
The following principles shall be applied in determining or allocating a reasonable workload for a nurse:
 - (a) the workload assessment, will take into account demand by way of clinical assessment, including acuity; skill mix, including specialisation where relevant; and geographical and other local requirements/ resources;
 - (b) the work performed by the Employee will be able to be satisfactorily completed within the ordinary hours of work assigned to the Employee in their roster cycle;
 - (c) the work will be consistent with the duties within the Employee's classification description and at a professional standard so that the care provided or about to be provided to a patient or client shall be adequate, appropriate and not adversely affect the rights, health or safety of the patient, client or nurse;
 - (d) the workload expected of an Employee will not be unfair or unreasonable having regard to the skills, experience and classification of the Employee for the period in which the workload is allocated;
 - (e) an Employee will not be allocated an unreasonable or excessive nursing workload or other responsibilities except in emergency or extraordinary circumstances of an urgent nature;
 - (f) an Employee shall not be required to work an unreasonable amount of overtime; and
 - (g) an Employee's workload will not prevent reasonable and practicable access to Learning and Development Leave, together with 'in-house' courses or activities, and mandatory training and education.
- (iii) Such matters may be raised through staff meetings or the Consultative Committee. The Employer will provide information to allow informed discussion and problem solving. Such information will include but not be limited to patient numbers and staffing by classification per shift per ward/unit.
- (iv) Filling Vacancies
All rostered and unplanned leave will be replaced with a nurse/midwife of at least the same classification level wherever reasonably practicable.
- (v) Monitoring staffing at ward/unit meetings

Staffing is an agenda item for all unit/ward meetings and is to be reviewed collaboratively. Such meetings should normally occur monthly and are the forum to receive feedback on the progress of any particular Issue regarding staffing. These meetings will be minuted with the minutes displayed in a prominent place.

(vi) Resolving staffing issues

- (a) Should any nurse/midwife or group of nurses/midwives in any one ward or unit feel the workloads are unreasonably heavy, on a regular basis, then they have a responsibility to discuss their concerns with their nurse/midwife unit manager (NUM). The NUM or After Hours Coordinator shall investigate any issue that is raised and provide a response to the issues, where possible, within 48 hours.
- (b) If the NUM is unable to resolve the workload issue or respond within this period, the issue is to be referred to the Director of Nursing (DON). The Employee may be represented by any nominated Employee representative which may be a union representative.
- (c) It is the intent of the parties that the issue be initially dealt with as close to the source as possible, with graduated steps for further discussion and resolution at higher authority levels where necessary. If the matter is not settled within a reasonable period of time, the Employee (or their nominated Employee representative) may utilise the dispute settlement procedure of this Agreement.

(vii) Process to adjust staffing

- (a) This process is designed to deal with situations where a NUM considers staffing to be less than optimal to meet the care needs of every patient. This may be as a consequence of a range of factors, including unscheduled admissions, increasing patient acuity or unplanned leave absences.
- (b) When the NUM (or nurse/midwife delegate with responsibility for the ward/unit) considers additional nursing hours should be provided in order to meet clinical needs, they will inform their immediate supervisor.
- (c) Where it is determined to backfill an absence, the default position is to fill the absence with a nurse/midwife of the same classification as the absent nurse/midwife, wherever reasonably practicable.
- (d) They will collaboratively consider a solution(s) including, but not limited to the following options:
 - (1) Deployment of appropriately skilled nurses/midwives from other wards/units;
 - (2) Additional hours for part-time staff;
 - (3) Engagement of casual or agency nursing/midwifery staff;
 - (4) Overtime;
 - (5) Prioritisation of nursing activities on the ward/unit;
 - (6) Reallocation of patients.

The decision is to be made as soon as practicable after the issue is identified and recorded in writing (which may be by electronic means) for review.

(viii) Disputes

Any dispute will be settled in accordance with Clause 10, Dispute Resolution Procedure.

39. PARENTAL LEAVE

- (i) The entitlements of Employees to parental leave are governed by the National Employment Standards ("NES"). An Employee is eligible for parental leave in accordance with the requirements set out in the NES (**Eligible Employee**). The following provisions apply to Eligible Employees and apply in addition to those set out in the NES:

The Basic Entitlement

- (a) An Eligible Employee is entitled to 12 months of unpaid parental leave if: the leave is associated with:
 - (1) the birth of a child of the Employee or the Employee's spouse or de facto partner; or
 - (2) the placement of a child with the Employee for adoption; and
 - (3) the Employee has or will have responsibility for the care of the child.
- (b) Concurrent unpaid parental leave for an Employee couple must not be longer than 8 weeks in total and may be taken in separate periods, but unless agreed by the Employer, each period must not be shorter than 2 weeks. Such leave, unless agreed to by the Employer, must not start before the date of birth of the child (birth related leave) or, in the case of adoption, the day of placement of the child.
- (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.
 - (referred to as the **Pre-parental leave position**)
 - (2) If the position no longer exists, the Employee is entitled to be employed in an available position for which the Employee is qualified and suited nearest in status and pay to the Pre-parental leave 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 Employee is fit for work but continuing in the present work is, because of pregnancy or breastfeeding, a risk to the health or safety of the Employee or of her unborn or new born child during a stated period (**Risk Period**). The assessment of such a risk is to be made on the basis of a medical certificate supplied by the Employee.
 - (2) Subject to subclause (d)(1), the Employer is to temporarily adjust the Employee's working conditions or hours of work to avoid exposure to that risk for the Risk Period.
 - (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 (**Appropriate safe job**) for the Risk Period. An Appropriate safe job has the same ordinary hours of work as the Employee's present position or a different number of ordinary hours agreed to by the Employee. The Appropriate safe job:

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- (i) will not expose the Employee to that risk, and
 - (ii) presents no other change to the Employee's terms and conditions of employment.
 - (ii) An Employer must not fail to re-engage a regular casual Employee because:
 - (a) the Employee or Employee's spouse 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 until the child reaches school age;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 subparagraph (1) of paragraph (a) of subclause (iii) Right to Request and subparagraph (2) of paragraph (a) of subclause (iii) Right to Request of this clause must be recorded in writing.
 - (d) Request to return to work part-time
Where an Employee wishes to make a request pursuant subparagraph (2) of paragraph (a) of subclause (iii) Right to Request of this Clause 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 all reasonable steps to:
 - (1) make information available in relation to any significant effect the change will have on the status or responsibility level, pay or location 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, pay or location 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.

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- (v) Paid Parental Leave
- (a) Permanent full-time and part-time Employees who will have completed at least 12 months continuous service with the Employer immediately before the date of birth or the expected date of the birth of the child are entitled to 15 weeks' paid parental leave.
- (1) The amount of paid leave provided in this Agreement shall not be reduced in terms of its monetary value by the Commonwealth Government's scheme of publicly funded paid parental leave (however titled or styled). For the avoidance of doubt the value of the paid parental leave provided under this Agreement will be in addition to the value of the leave provided by the Commonwealth scheme.
- (b) Permanent full-time and part-time Employees who will have completed at least 12 months continuous service with the Employer immediately before the date of birth or the expected date of the birth of the child are entitled to two week's paid paternity leave/non-primary caregiver leave at the Employee's Ordinary Rate.
- (c) Payment for parental leave shall be calculated on the Employee's Ordinary Rate. Payment for part time Employees shall be calculated on:
- (1) the Employee's contracted hours immediately prior to the commencement of the Parental Leave; or
- (2) the average weekly hours worked during the completed period of service in the last 12 months (or lesser period if the Employee has less than 12 months service) immediately prior to the commencement of the Parental Leave;
- whichever is the greater.
- Payment for parental leave shall be made at the time that the leave is taken.
- (d) For avoidance of doubt, where an Employee (excluding a casual Employee) has:
- (1) completed at least the 12 months continuous service referred to at (v)(a) or (b); and
- (2) has not had a break in their service with the Employer (eg: In accordance with the NES, a period of paid or unpaid parental leave does not break an Employee's period of service. A break in service may include a resignation or termination of the Employee's employment); and
- (3) has met the other necessary eligibility requirements set out in this clause;
- the Employee will not be required to complete a further 12 months' continuous service period in order to be entitled to a second or subsequent parental leave payment in accordance with this clause.
- (e) An Employee, (excluding a casual Employee) will accrue paid leave entitlements, specifically annual leave and personal/carer's leave for the paid period of parental leave.

40. REDUNDANCY

- (i) Redundancy
- (a) Discussions Before terminations
- (1) Where the Employer has made a decision that they no longer wish the job an Employee has been doing to be done by anyone, and that decisions may lead to the termination of employment, the Employer shall consult with affected Employees in accordance with the consultation regarding change provisions of this Agreement.
- (ii) Termination of Employment
- (a) Notice for Changes in Production, Programme, Organisation or Structure

This subclause sets out the notice provisions to be applied to terminations by the Employer for reasons arising from production, programme, organisation or structure in accordance with the consultation regarding change provisions of this Agreement:

- (1) 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

- (2) In addition to the notice above, Employees over 45 years of age at the time of the giving of the notice, with not less than two years continuous service, shall be entitled to an additional week's notice.
- (3) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(b) Notice for Technological Change –

This subclause sets out the notice provisions to be applied to terminations by the Employer for reasons arising from "technology" in accordance with the consultation regarding change provisions of this Agreement:

- (1) In order to terminate the employment of an Employee the Employer shall give to the Employee three months' notice of termination.
- (2) 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.
- (3) The period of notice required by this subclause 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 29, Annual Leave and Public Holidays.

(c) Time Off During the Notice Period -

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

(d) Employee Leaving During the Notice Period –

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

(e) Statement of Employment –

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

(f) Notice to Centrelink –

Where a decision has been made to terminate the employment of Employees, the Employer shall notify Centrelink thereof as soon as possible giving relevant

information including the number and categories of the Employees likely to be affected and the period over which the terminations are intended to be carried out.

(g) Centrelink Employment Separation Certificate –

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

(h) Transfer to Lower Paid Duties –

Where an Employee is transferred to lower paid duties, for reasons set out in subparagraph (1) of paragraph (a) of subclause (ii) Redundancy – Discussions before termination the Employee shall be entitled to the same period of notice of transfer as the Employee would have been entitled to if the Employee's employment had been terminated, and the Employer may at the Employer's option make payment in lieu thereof of an amount equal to the difference between the former ordinary-time rate of pay and the new ordinary-time rate for the number of weeks' notice still owing.

(iii) Severance Pay

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

(1) If an Employee is under 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

(2) Where an Employee is 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

(3) "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 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 18 Special Allowances shall form part of the Employee's "week's pay"; paragraph (a) and (b) of subclause (i); paragraphs (a) and (c) of subclause (ii); and paragraph (a) of subclause (v).

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- (4) 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 (1) and (2) of paragraph (a) this subclause.
 - (5) The Employer shall also pay the following amounts to any Employee terminated pursuant to this clause:
 - (a) Pro rata long service leave; and
 - (b) Accrued annual leave.
 - (b) Incapacity to Pay
Subject to an application by the Employer and further order of FWC an Employer may pay a lesser amount (or no amount) of severance pay than that contained in subparagraphs (1) and (2) of paragraph (a) of this subclause.

FWC shall have regard to such financial and other resources of the Employer concerned as FWC thinks relevant, and the probable effect paying the amount of severance pay in the said subclause (a) will have on the Employer.
 - (c) Alternative Employment
Subject to an application by the Employer and further order of the FWC, an Employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) of this subclause if the Employer obtains acceptable alternative employment for an Employee.
 - (iv) Grievance Procedure
Refer to Clause 10, Dispute Resolution Procedure contained in this Agreement.

41. CONTINUING EDUCATION ALLOWANCE

- (i) An Employee employed in the classification of Registered Nurse/Midwife (years 1 to 8), Clinical Nurse Specialist/Clinical Midwife Specialist, Clinical Nurse Consultant, Nursing/Midwifery Unit Manager, Nurse/Midwife Manager Grade 1, Nurse/Midwife Manager Grade 2 or Nurse/Midwife Manager Grade 3 and above (who satisfies the Employer that the Employee is engaged in clinical work for more than 50% of her/his 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 qualification is accepted by the Employer to be directly relevant to the competency and skills used by the nurse/midwife in the duties of the position;
 - (b) an Employee holding more than one relevant qualification is only entitled to one 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.
- (ii) Subject to the provisions in subclause (i) of this clause, an Employee who holds a post-registration hospital certificate as recognised by the Employer and relevant to the Employee's current role shall be paid an allowance per week as stated in Appendix 1.

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- (iii) Subject to the provisions in subclause (i) of this clause, an Employee who holds a post-graduate certificate shall be paid an allowance per week as stated in Appendix 1.
 - (iv) Subject to the provisions in subclause (i) of this clause, an Employee who holds a post-graduate diploma or degree (other than an undergraduate nursing degree) shall be paid an allowance per week as stated in Appendix 1.
 - (v) Subject to the provisions in subclause (i) of this clause, an Employee who holds a Masters degree or doctorate shall be paid an allowance per week as stated in Appendix 1.
 - (vi) An enrolled nurse, who holds a relevant Certificate IV or equivalent continuing education qualification in a clinical field, or Advanced Diploma of Nursing (Enrolled Nursing) in addition to the qualification leading to enrolment, shall be paid a continuing education allowance, subject to the following conditions set out below:
 - (a) the allowance is only payable where the qualification is accepted by the Employer to be directly relevant to the competency and skills used by the enrolled nurse in the duties of the position;
 - (b) an Employee holding more than one relevant qualification is only entitled to one 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.
 - (vii) Subject to the provisions in subclause (vi) of this clause, an enrolled nurse who holds a Certificate IV qualification shall be paid an allowance per week as stated in Appendix 1.
 - (viii) Subject to the provisions in subclause (vi) of this clause, an enrolled nurse who holds an Advanced Diploma of Nursing (Enrolled/Division 2 Nursing) qualification shall be paid an allowance per week as stated in Appendix 1.
 - (ix) A Clinical Nurse Educator/Clinical Midwife Educator who holds a post graduate diploma, degree, Masters or Doctorate in education or a clinical field in addition to the qualification leading to registration, or a Clinical Nurse Specialist/Clinical Midwife Specialist Grade 2 or a Clinical Nurse Consultant who holds a post graduate diploma, degree, Masters or Doctorate 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 qualification is accepted by the Employer to be directly relevant to the competency and skills used by the registered nurse/midwife in the duties of the position;
 - (b) an Employee holding more than one relevant qualification is only entitled to one 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.
 - (x) Subject to the provisions in subclause (viii) of this clause, a Clinical Nurse Educator/Clinical Midwife Educator who holds a post graduate diploma, degree, Masters or Doctorate in education or a clinical field, or a Clinical Nurse Specialist/Clinical Midwife Specialist Grade 2 or Clinical Nurse Consultant who holds a post graduate diploma, degree, Masters or Doctorate in a clinical field, shall be paid the relevant allowance as stated in Appendix 1 (Post Graduate Diploma or Degree) the relevant allowance as stated in Appendix 1 (Masters Degree or Doctorate) per week.

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- (xi) The above allowances are not to be included in the Employee's Ordinary Rate. The allowances are payable during periods of paid leave taken by an Employee.
 - (xii) Where a dispute arises concerning the eligibility for payment of a Continuing Education Allowance that is not resolved by the process contained in subclauses (i) to (ii) of clause 10, Dispute Resolution Procedure, discussions between the parties must occur prior to referral to the FWC for determination.

42. STUDY/ PROFESSIONAL DEVELOPMENT LEAVE

- (i) Each full time nurse (pro rata, for part time nurse) may make application to the Employer in order to access study/ professional development leave. Each application will be assessed on its merits in the context of the applicability of the conference/ seminar, the number of other similar applications and the resources available to the Employer. An Employee may apply to the Employer for paid leave above 24 hours per year for the purposes of attendance at approved conferences/seminars, however, approval of any paid leave above 24 hours paid leave per year is at the discretion of the Employer.
- (ii) In accordance with subclause (i) above the Employee may apply to the Employer in order to access up to 24 hours paid leave per year for the purposes of attendance at approved conferences/ seminars.
- (iii) The time and manner of taking any such approved leave under this provision is to be mutually agreed between the Employer and the Employee and the course and means of dissemination of conference/seminar information is to be approved by hospital management. Should mutual agreement not be possible on repeated occasions this matter is to be referred to the Director of Nursing or their delegate for resolution under the dispute resolution process.
- (iv) Reasonable travel, accommodation and registration costs may be paid by the Employer, when the Employer approves the Employee's attendance at the conference/seminar.
- (v) All staff granted conference/seminar leave will be required to provide an in-service to other staff on the learning from the leave and to provide a report to the Director of Nursing on the learning's from the conference/seminar.

43. FLEXIBILITY ARRANGEMENT

- (i) The Employer and Employees covered by this 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 Employer and the individual Employee must have genuinely made the agreement without coercion or duress.
- (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; and
 - (b) are not unlawful terms under section 194 of the Fair Work Act; and

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- (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 18 years of age, signed by a parent or guardian of the Employee; and
 - (d) includes details of:
 - (1) the terms of the 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
 - (e) states the day on which the arrangement commences.
 - (iv) The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
 - (v) The Employer or Employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the Employer and Employee agree in writing — at any time.

44. REPRESENTATIVE LEAVE

- (i) Leave to attend trade union and union delegate courses/ seminars shall be as follows:
 - (a) To a maximum of three (3) days per year (1 January to 31 December) for the totality of all applications of paid trade union, union delegate training leave, attendance at Union conferences, meetings and courses provided that:
 - (1) The scope, content and level of the courses are directed to the enhancement of the operation of the settlement of dispute procedures;
 - (2) That two (2) weeks' notice is provided to the Employer;
 - (3) The approval of leave must have regard to the operational requirements of the Employer;
 - (4) This leave shall be paid at the ordinary time rate of pay.
- (ii) Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

45. PAID EMERGENCY SERVICES LEAVE

In addition to the unpaid community service leave set out in the NES, at the discretion of the Employer, whose discretion will be exercised on the basis of operational requirements and what is reasonable in a particular circumstance, the Employer will facilitate an Employee who is a member of a voluntary emergency relief organisation such as the Rural Fire Services, Red Cross, St John Ambulance and the State Emergency Services to be released from normal duty without loss of pay (up to a maximum of three shifts per year) to assist in regard to a critical incident where a local emergency situation arises that requires the attendance of the Employee.

46. CEREMONIAL LEAVE

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

47. JURY SERVICE

- (i) An Employee other than a casual Employee, required to attend for jury service during his or her ordinary working hours shall be reimbursed by the Employer an amount equal to the difference between the amount paid in respect of his or her attendance for such jury service and the amount of ordinary salary the Employee would have received in respect of the ordinary time the Employee would have worked had the Employee not been on jury service. The period of payments of jury service shall be limited to the period prescribed under relevant State Legislation.
- (ii) An Employee shall notify his or her Employer as soon as possible of the date upon which the Employee is required to attend for jury service. Further the Employee shall give his or her Employer proof of his or her attendance at the court, the duration of such attendance and the amount received in respect of such jury service.

48. CONSULTATIVE COMMITTEE

The Consultative Committee (CC) is made up of equal numbers of representatives of management and nurses. The CC will have agreed terms of reference and have arrangements for the timely provision of information and recording of minutes.

49. DOMESTIC WORK

Nurses, student nurses, enrolled nurses and assistants-in-nursing shall not be required to perform domestic work as a matter of routine.

50. LABOUR FLEXIBILITY

- (i) 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 49, Domestic Work.
- (ii) 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.

51. PURCHASED LEAVE

- (i) Purchased leave is where Employees have planned absences of two weeks of leave which is funded by salary deductions spread evenly over the year. This allows Employees to continue to receive pay during such leave.
- (ii) Purchased leave must be utilised within the twelve months in which it is purchased. Purchased leave will only be approved for the amount of credit that an Employee has in respect to the purchased leave.
- (iii) Purchased leave counts as service for all purposes.
- (iv) Applications for purchased leave must be made by a date nominated by the Employer.

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- (v) The Employer's approval of purchased leave will be based on the operational requirements of the Employer, having regard to the personal needs and family responsibilities of staff.
 - (vi) Once a period of purchased leave has been approved, it may only be revoked by the Employer where exceptional circumstances exist. In the event of revocation, any accumulated leave may be paid out to the Employee, or the leave deferred to a date mutually agreed by Employer and Employee.
 - (vii) Where an Employee leaves the Employer during a year in which purchased leave has been approved, final payment will be adjusted to take account of deductions not yet made and leave not taken.
 - (viii) Annual leave loading is not payable on purchased leave.

52. STAFF AMENITIES

The Employer shall provide for the use of Employees:

- (i) A suitable changing room and adequate washing and toilet facilities;
- (ii) A locker fitted with lock and key or other suitable place for the safe keeping of clothing and personal effects of such Employee;
- (iii) An 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.

53. MANDATORY TRAINING

All Employees have a responsibility to maintain and upgrade their skills commensurate with the requirements of their position. Mandatory training including e-learning will be provided and undertaken at the hospital in paid time. For clarity, mandatory training will be paid at the Ordinary Rate, provided that in the case of AIN/M or Trainee Enrolled Nurse where such mandatory training is undertaken outside the Employee's rostered ordinary hours, up to 10 hours of such training per year may be paid at the Ordinary Rate. Such training that falls outside an Employee's rostered ordinary hours and is in excess of 10 hours per year will be paid at the applicable overtime penalty rate.

54. LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE

- (i) This clause applies to all Employees, including casuals.
- (ii) Definitions
In this clause:
 - (a) **family and domestic violence** means violent, threatening or other abusive behaviour by a family member of an Employee that seeks to coerce or control the Employee and that causes them harm or to be fearful.
 - (b) **family member** means:
 - (1) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or
 - (2) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee; or
 - (3) a person related to the Employee according to Aboriginal or Torres Strait Islander kinship rules.
 - (c) A reference to a spouse or de facto partner in the definition of family member in clause 54(ii)(a) includes a former spouse or de facto partner.

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- (iii) Entitlement to leave
 - (a) An Employee is entitled to 10 days' leave to deal with family and domestic violence, as follows:
 - (1) The entitlement to leave is paid for full and part time employees and unpaid for casual employees;
 - (2) the leave is available in full at the start of each 12 month period of the Employee's employment; and
 - (3) the leave does not accumulate from year to year;
 - (b) A period of leave to deal with family and domestic violence may be less than a day by agreement between the Employee and the Employer.
 - (c) The Employer and Employee may agree that the Employee may take additional unpaid leave to deal with family and domestic violence.
 - (iv) Taking leave to deal with family and domestic violence
 - (a) An Employee may take leave to deal with family and domestic violence if the Employee:
 - (1) is experiencing family and domestic violence; and
 - (2) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the Employee to do that thing outside their ordinary hours of work.
 - (b) The reasons for which an Employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.
 - (v) Service and continuity

The time an Employee is on leave to deal with family and domestic violence, which is:

 - (a) paid leave – does count as service for all purposes.
 - (b) unpaid leave - does not count as service but does not break the Employee's continuity of service
 - (vi) Notice and evidence requirements
 - (a) Notice

An Employee must give the Employer notice of the taking of leave by the Employee under this clause. The notice:

 - (1) must be given to the Employer as soon as practicable (which may be a time after the leave has started); and
 - (2) must advise the Employer of the period, or expected period, of the leave.
 - (b) Evidence
 - (1) An Employee who has given the Employer notice of the taking of leave under this clause must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 540.
 - (2) Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.
 - (vii) Confidentiality
 - (a) Employers must take steps to ensure information concerning any notice an Employee has given, or evidence an Employee has provided under clause 540, is treated confidentially, as far as it is reasonably practicable to do so.

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- (b) Nothing in clause 54(vii) prevents the Employer from disclosing information provided by an Employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the Employee or another person.

Note: Information concerning an Employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the Employee. The Employer may consult with such Employees regarding the handling of this information.

(viii) Compliance

An Employee is not entitled to take leave under clause 54 unless the Employee complies with clause 54.

55. FLEXIBLE WORKING ARRANGEMENTS

The NES provides particular Employees with an entitlement to request a flexible working arrangement, including:

- that the Employee's request be in writing and set out the details of the change sought and of the reasons for the change;
- that the Employer must give the Employee a written response to the request within 21 days

In addition to the NES, if the Employer does not agree to the Employee's request, the Employer must discuss the request with the Employee to better understand the Employee's circumstances and then the Employer must provide any available counter-proposals to the Employee in writing. Any agreed arrangement must be recorded in writing.

APPENDIX 1 –WAGE RATE SCHEDULE

PART B

Table 1 – Monetary Rates

CLASSIFICATION	FFPPOA 1 January 2019	FFPPOA 1 January 2020	FFPPOA 1 January 2021	FFPPOA 1 January 2022
		2.50%	2.50%	2.50%
Assistant in Nursing/ Midwifery or Trainee Enrolled Nurse				
1 st Year	\$894.21	\$916.57	\$939.48	\$962.97
2 nd Year	\$922.51	\$945.57	\$969.21	\$993.44
3 rd Year	\$951.68	\$975.47	\$999.86	\$1,024.86
Thereafter	\$981.22	\$1,005.75	\$1,030.89	\$1,056.66
Enrolled Nurse - without medication qualification				
1 st Year	\$1,097.28	\$1,124.71	\$1,152.83	\$1,181.65
2 nd Year	\$1,121.35	\$1,149.38	\$1,178.11	\$1,207.56
3 rd Year	\$1,145.77	\$1,174.41	\$1,203.77	\$1,233.86
4 th Year	\$1,169.83	\$1,199.08	\$1,229.06	\$1,259.79
Thereafter	\$1,194.27	\$1,224.13	\$1,254.73	\$1,286.10
Enrolled Nurse				
1 st Year	\$1,121.80	\$1,149.85	\$1,178.60	\$1,208.07
2 nd Year	\$1,146.02	\$1,174.67	\$1,204.04	\$1,234.14
3 rd Year	\$1,170.20	\$1,199.46	\$1,229.45	\$1,260.19
4 th Year	\$1,194.27	\$1,224.13	\$1,254.73	\$1,286.10
Thereafter	\$1,218.95	\$1,249.42	\$1,280.66	\$1,312.68
Advanced Enrolled Nurse	\$1,358.25	\$1,392.21	\$1,427.02	\$1,462.70
Registered Nurse/ Midwife				
1 st Year	\$1,244.20	\$1,275.31	\$1,307.19	\$1,339.87
2 nd Year	\$1,311.89	\$1,344.69	\$1,378.31	\$1,412.77
3 rd Year	\$1,379.60	\$1,414.09	\$1,449.44	\$1,485.68
4 th Year	\$1,452.39	\$1,488.70	\$1,525.92	\$1,564.07
5 th Year	\$1,524.33	\$1,562.44	\$1,601.50	\$1,641.54
6 th Year	\$1,596.16	\$1,636.06	\$1,676.96	\$1,718.88

7 th Year	\$1,678.44	\$1,720.40	\$1,763.41	\$1,807.50
8 th Year	\$1,747.33	\$1,791.01	\$1,835.79	\$1,881.68
CN/MS				
Grade 1	\$1,818.43	\$1,863.89	\$1,910.49	\$1,958.25
Grade 2 (classification applies FPPOA 1.7.09)	\$2,015.31	\$2,065.69	\$2,117.33	\$2,170.26
CN/MC	\$2,235.99	\$2,291.89	\$2,349.19	\$2,407.92
Nurse/ Midwifery Unit Manager				
Level 1	\$2,191.89	\$2,246.69	\$2,302.86	\$2,360.43
Level 2	\$2,295.90	\$2,353.30	\$2,412.13	\$2,472.43
Level 3	\$2,357.76	\$2,416.70	\$2,477.12	\$2,539.05
Clinical Nurse/ Midwifery Educator	\$1,818.43	\$1,863.89	\$1,910.49	\$1,958.25
Nurse/ Midwifery Educator				
1 st Year	\$2,017.24	\$2,067.67	\$2,119.36	\$2,172.34
2 nd Year	\$2,074.25	\$2,126.11	\$2,179.26	\$2,233.74
3 rd Year	\$2,125.16	\$2,178.29	\$2,232.75	\$2,288.57
4 th Year	\$2,235.99	\$2,291.89	\$2,349.19	\$2,407.92
Senior Nurse/ Midwifery Educator				
1 st Year	\$2,290.08	\$2,347.33	\$2,406.01	\$2,466.16
2 nd Year	\$2,336.98	\$2,395.40	\$2,455.29	\$2,516.67
3 rd Year	\$2,415.49	\$2,475.88	\$2,537.78	\$2,601.22
Assistant Director of Nursing – 100 beds and over	\$2,357.64	\$2,416.58	\$2,476.99	\$2,538.91
Deputy Director of Nursing				
Less than 100 beds	\$2,295.90	\$2,353.30	\$2,412.13	\$2,472.43
100 beds, less than 200 beds	\$2,357.64	\$2,416.58	\$2,476.99	\$2,538.91
Director of Nursing				
Less than 25 beds	\$2,366.27	\$2,425.43	\$2,486.07	\$2,548.22

25 beds, less than 50 beds	\$2,505.30	\$2,567.93	\$2,632.13	\$2,697.93
50 beds, less than 75 beds	\$2,485.14	\$2,547.27	\$2,610.95	\$2,676.22
75 beds, less than 100 beds	\$2,612.98	\$2,678.30	\$2,745.26	\$2,813.89
100 beds, less than 150 beds	\$2,688.09	\$2,755.29	\$2,824.17	\$2,894.77
150 beds less than 200 beds	\$2,777.52	\$2,846.96	\$2,918.13	\$2,991.08

Table 2 – Allowances

ALLOWANCE DESCRIPTION	FFPPOA 1 January 2019	FFPPOA 1 January 2020	FFPPOA 1 January 2021	FFPPOA 1 January 2022
		2.50%	2.50%	2.50%
1. In charge hospital/nursing home, day, evening or night shift - Clause 18(i)(a) - per shift	\$ 35.64	\$36.53	\$37.44	\$38.38
2. In charge ward/unit in absence of Nurse Unit Manager – Clause 18(i)(b) - per shift	\$35.64	\$36.53	\$37.44	\$38.38
3. In charge ward/unit and hospital – Clause 18(i)(c) - per shift	\$53.47	\$54.81	\$56.18	\$57.58
4. On call – Clause 18(ii)(a) of the Agreement	\$3.89 per hour with a min. payment of \$31.10	\$3.98 per hour with a min. payment of \$31.88	\$4.08 per hour with a min. payment of \$32.68	\$4.18 per hour with a min. payment of \$33.50
5. On call on days off – Clause 18(ii)(b) of the Agreement	\$7.81 per hour with a min. payment of \$62.45	\$8.00 per hour with a min. payment of \$64.01	\$8.20 per hour with a min. payment of \$65.61	\$8.41 per hour with a min. payment of \$67.25
6. On call during meal break – Clause 18(ii)(c) of the Agreement – per break	\$15.34	\$15.72	\$16.11	\$16.51
7. Radiographic allowance - DON Clause 18(iii)(a) – per week	\$ 43.51	\$44.60	\$45.72	\$46.86
8. Radiographic allowance in absence of DON Clause 18(iii)(c)	\$8.89 per day max. of per week \$44.44	\$9.11 per day max. of per week \$45.55	\$9.34 per day max. of per week \$46.69	\$9.57 per day max. of per week \$47.86
9. Lead Apron Allowance – Clause 18(iv) – per hour or part thereof	\$2.16	\$2.21	\$2.27	\$2.33
10. Meal Allowance Overtime – Clause 23(ix)) - when overtime exceeds 1 hr		\$13.29	\$13.62	\$13.96
10. Meal Allowance Overtime – Clause 23(ix)) - where overtime exceeds 4 hrs		\$11.98	\$12.28	\$12.59
11. Uniform and laundry allowances				
Uniform – Cl 21(iii)(a)	\$7.54	\$7.73	\$7.92	\$8.12
Shoes – Cl 21(iii)(a)	\$2.32	\$2.38	\$2.44	\$2.50
Cardigan or jacket – Cl 21(iii)(c)	\$2.28	\$2.34	\$2.40	\$2.46

Stockings – Cl 21(iii)(b)	\$3.91	\$4.01	\$4.11	\$4.21
Socks – Cl 21(iii)(b)	\$0.76	\$0.78	\$0.80	\$0.82
Laundry – Cl 21(iii)(d)	\$6.28	\$6.44	\$6.60	\$6.77
13. Motor Vehicle Allowance – Cl. 18(ii)(d)	As per Australian Taxation Office “Cents per kilometre” schedule	As per Australian Taxation Office “Cents per kilometre” schedule	As per Australian Taxation Office “Cents per kilometre” schedule	As per Australian Taxation Office “Cents per kilometre” schedule
14. Motor Vehicle Allowance – Cl 20(v) – per km		\$0.78	\$0.78	\$0.78
15. Continuing Education Allowance – Cl 41				
Post-registration hospital certificate -per week	\$54.43	\$55.79	\$57.18	\$58.61
Post-graduate certificate - per week	\$54.43	\$55.79	\$57.18	\$58.61
Post-graduate diploma or degree -per week	\$61.51	\$63.05	\$64.63	\$66.25
Masters degree or doctorate- per week	\$75.18	\$77.06	\$78.99	\$80.96
Enrolled Nurses Certificate 4 - per week	\$30.76	\$31.53	\$32.32	\$33.13
Enrolled Nurse Advance Diploma of Nursing - per week	\$36.92	\$37.84	\$38.79	\$39.76

APPENDIX 2 – ROSTERING PRINCIPLES

- The roster will be developed to meet the unit/ward requirements.
- Rostering to take into account fluctuations in the demand of clinical requirements to meet the appropriate supply of nurses and midwives.
- Skill mix - appropriate mix of experience and competence to meet clinical requirements of the ward
- Based on ensuring provision of best care for patient/ client that actively enhances or improves patient outcomes
- Health and Safety workforce requirements met
- Consideration of Employee's roster requests
- Fairness and equality of staff with all shifts shared equally
- Work life balance that minimises the fatigue of staff
- Avoidance of rostering principles that contribute to unfair workload.
- Staff Development, education and mandatory training including e-learning will all be provided for during working rostered hours
- Permanent night staff to choose and work a two-week period annually during business hours to ensure skills and knowledge that are not frequently used on night shift are revised, to meet professional development obligations
- Consideration of professional registration
- Consideration of nursing standards
- AINs will not have a patient load and will only be used for care appropriate to their training and as directed by a Registered Nurse/Registered Midwife

I am authorised to sign this Agreement on behalf of CALVARY HEALTH CARE RIVERINA LIMITED

Robin 

MS ROBIN HABERECHT GM

SIGNATURE

PRINT NAME AND TITLE

CALVARY RIVERINA HOSPITAL

Address: 26 CHARDY AVENUE

Date: WAGGA WAGGA NSW 2650

6/3/2020

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

O'Bray Smith

O'Bray Smith
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.

FAIR WORK COMMISSION

MATTER NO: AG2020/601

APPLICANT: Calvary Health Care Riverina Ltd

UNDERTAKINGS

I, Robin Haberecht, General Manager, give the following undertakings on behalf of the Applicant employer, in accordance with section 190 of the Fair Work Act 2009, in regard to the *Calvary Health Care Riverina Ltd and the NSW NMA, ANMF NSW Branch, Nurses and Midwives, Enterprise Agreement 2019 (Agreement)*:

1. Reference to the term "misconduct" in clauses 36(v) and 36(viii) in the Agreement are replaced with the phrase "serious misconduct".
2. Clause 31(iv)(c)(1) is to be deleted and Clause 31(iv)(a) is to be amended to delete the phrase "with responsibilities" and is as follows:

(a) An Employee, other than a casual Employee, in relation to a class of person set out subparagraph (2) of paragraph (c) of sub-clause (iv) who needs the Employee's care or support, shall be entitled to use, in accordance with this subclause, any current or accrued paid personal leave entitlement, for absences to provide care or support for such persons when they are ill/injured, or who require care or support due to an unexpected emergency. Such leave may be taken for part of a single day.

3. Clause 31(iv)(c)(2)(iv) is to be replaced with the following:

(iv) a member of the Employee's household.

4. Clause 19(v) will be amended to include:

Provided that a casual AIN (with a Certificate III qualification):

- (i) *with less than 3 years' experience, the Ordinary Rate will be that of an AIN 3rd year for ordinary hours between midnight Friday and midnight Saturday;*
- (ii) *with less than 4 years' experience, the Ordinary Rate will be that of an AIN Thereafter for ordinary hours between midnight on Saturday and midnight on Sunday*

5. Clause 19(vii) will be amended to include the following new subclause (e):

(e) Notwithstanding subclause (d), for a casual Employee, the casual loading will be paid in addition to the 15% penalty rate.

6. Clause 23(iv)(d)(1) will be amended to include:

Provided that a casual AIN (with a Certificate III qualification) with less than 3 years' experience;

- (i) *the Ordinary Rate will be an AIN 3rd Year, and;*
- (ii) *the penalty rate applied for overtime:*
 - (1) *after 2 hours on Monday to Saturday; or*
 - (2) *on a Sunday;**will be 222% (in lieu of the casual loading).*

7. Clause 54(v)(b) will be amended (as underlined):

Service and continuity

The time an Employee is on leave to deal with family and domestic violence, which is

- (a) *paid leave – does count as service for all purposes.*
- (b) *unpaid leave - does not count as service but does not break the Employee's continuity of service*
(excepting that such unpaid leave will count as service in the express circumstances set out at ss.22(4) of the Fair Work Act 2009)



Robin Haberecht
General Manager

Date: 8/05/20