



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Hardi Aged Care T/A Hardi Nursing Home Management
(AG2016/6563)

HARDI AGED CARE NURSING STAFF ENTERPRISE AGREEMENT 2016

Aged care industry

COMMISSIONER ROE

MELBOURNE, 16 DECEMBER 2016

Application for approval of the Hardi Aged Care Nursing Staff Enterprise Agreement 2016.

[1] An application has been made for approval of an enterprise agreement known as the *Hardi Aged Care Nursing Staff Enterprise Agreement 2016* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Hardi Aged Care T/A Hardi Nursing Home Management. The Agreement is a single enterprise agreement.

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

[3] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met. The Agreement does not cover all of the employees of the employer, however, taking into account the factors in Section 186(3) and (3A) I am satisfied that the group of employees was fairly chosen.

[4] The New South Wales Nurses and Midwives' Association and Australian Nursing and Midwifery Federation being a bargaining representatives for the Agreement, have given notice under s.183 of the Act that it wants the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers the organisations.

[5] The Agreement was approved on 16 December 2016 and, in accordance with s.54, will operate from 23 December 2016. The nominal expiry date of the Agreement is 30 June 2019.



COMMISSIONER

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Annexure A

Hardi Aged Care Nursing Staff Enterprise Agreement 2016

Matter No AG2016/6563

UNDERTAKING

The employer, Hardi Aged Care Group, makes the following undertaking:

- (1) That the Enrolled Nurse (with Notation) classification contained in Schedule A: Rates of Pay be replaced with the below corrected and consolidated wage table.

Enrolled Nurse (with Notation)	2016	2017	2018
Enrolled Nurse (with Notation)	\$25.17	\$25.48	\$25.80

Signed by:



Jo Anne Dalton
General Manager

14 December 2016

Hardi Aged Care Group

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.

**Hardi Aged Care Nursing Staff
Enterprise Agreement 2016**

Contents

1. Title	5
2. Parties to this Agreement	5
3. Commencement and Expiry of Agreement.....	5
4. Definitions.....	6
5. Interaction with the National Employment Standards (NES)	7
6. Agreement Flexibility	7
7. Types of Employment.....	8
7.2 Full time	9
7.3 Part time.....	9
7.4 Annual Review of Part Time Hours	9
7.5 Casual Employees	10
7.6 Casual Conversion.....	10
8. Ordinary Hours of Work and Rostered Days Off	11
9. Additional Day Off	12
10. Meal and Tea Breaks	12
11. Length of Shifts	13
12. Rosters.....	13
13. Rates of Pay and Pay Increases	14
14. Payment and Particulars of Salaries	14
15. Penalty Rates for Shift Work and Weekend Work	15
16. Overtime.....	16
16.1 Overtime.....	16
16.2 Part-time Employees.....	17
16.3 Casual Employees	17
16.4 Time Off Instead of Payment for Overtime.....	17
16.5 Rest Period After Overtime	18
16.6 Rest Break during Overtime.....	18
16.7 Meal and Tea breaks on overtime.....	18
16.8 Recall to Work.....	19
17. Reasonable Additional Overtime	19
18. Time in Lieu.....	20

19. Public Holidays	20
19.1 Payment for work done on public holidays	20
19.2 Public Holiday Substitution – State Law	21
19.3 Public holiday substitution	21
19.4 Public holidays occurring on rostered days off	21
19.5 Part-time employees	21
19.6 Casual employees	21
20. Superannuation	22
20.2 Contributions	22
20.3 Salary Sacrifice to Superannuation	22
21. Allowances	23
21.1 Uniform and Laundry Allowance	23
21.2 Private Vehicle Allowances	24
21.3 Higher Grade Duty	24
21.4 Continuing Education Allowance	24
21.5 In-charge Allowance	25
21.6 On-call Allowance	25
22. Annual Leave	26
22.1 Accrual of Annual Leave	26
22.2 Payment of Annual Leave	26
22.3 Taking of Annual Leave	27
22.4 Cashing out of Annual Leave	27
22.5 Annual Leave Loading	28
22.6 Annual Leave and Service	28
23. Personal/Carer's Leave	28
23.1 The National Employment Standards (NES)	28
23.2 Entitlement to Paid Personal/Carer's leave	28
23.3 Taking Personal/Carer's Leave	28
23.4 Notice and Evidence Requirements	29
24. Compassionate Leave	30
25. Parental Leave	32
26. Grandparents Leave	32
27. Long Service Leave	33
27A Accrual of Long Service Leave for staff employed subsequent to 18 June 2014	33

27B	Accrual of Long Service Leave for staff employed prior to 18 June	
2014	34	
28.	Employment Qualifying Period	36
29.	Termination of Employment.....	36
30.	Consultation regarding major workplace change.....	37
31.	Redundancy	38
32.	Attendance at Meetings and Fire Drills.....	39
33.	Training for Nurses	40
34.	Workloads	41
35.	Labour Flexibility and Mixed Functions	42
36.	Amenities.....	42
37.	Grievance and Dispute Resolution Procedures	42
38.	Work Health and Safety	44
39.	National Criminal History Checks	44
40.	Professional Registration	45
41.	Community Services Leave.....	46
42.	No Further Claims	46
	CLASSIFICATIONS	47
	Schedule A: RATES OF PAY	49
	Schedule B: ALLOWANCES.....	50
	SIGNATURE PAGES.....	51

1. Title

This Agreement shall be known as *the Hardi Aged Care Nursing Staff Enterprise Agreement 2016* (hereafter referred to as "the Agreement").

2. Parties to this Agreement

The parties to this Agreement are:

- (a) Hardi Aged Care Group, head office located at Unit 10, 5- 11 Hollywood Avenue, Bondi Junction, NSW 2022 ("the employer") which is made up of the following companies:
 - 1. Budumu Pty Ltd T/as Blacktown Nursing Home (ABN 43 651 217 414)
 - 2. Guildford Management Pty Ltd T/as Guildford Nursing Home (ABN 57 080 995 679)
 - 3. Manly Vale Nursing Home Pty Ltd (ABN 81 000 863 178)
 - 4. Mountainview Nursing Home Pty Ltd (ABN 41 058 055 959)
 - 5. Seven Hills Nursing Home Pty Ltd (ABN 49 000 626 077)
 - 6. Wyoming Nursing Home Pty Ltd (ABN 48 000 695 312)
- (b) New South Wales Nurses and Midwives' Association and Australian Nursing and Midwifery Federation New South Wales Branch (ABN 85 726 054 782) ("the Associations") located at 50 O'Dea Avenue, Waterloo, NSW 2017; and
- (c) Nursing staff described within the classifications of this Agreement and employed by Hardi Aged Care Group.

3. Commencement and Expiry of Agreement

- (a) This Agreement will commence in accordance with the requirements of the *Fair Work Act 2009* and will expire on 30 June 2019.
- (b) The parties to this Agreement commit to discussions for a new Agreement no later than 3 months prior to the expiry of this Agreement.

4. Definitions

For the purposes of this Agreement:

Act means the *Fair Work Act 2009* and related Regulations as amended from time to time.

Board means the Nursing and Midwifery Board of Australia and shall also be taken to mean the Australian Health Practitioner Regulation Authority.

Day Worker means an employee who works ordinary hours from Monday to Friday inclusive and who commences work on such days at or after 6.00 am and before 10.00 am, otherwise than as part of the shift system. The ordinary hours of a day worker will be between 6.00am and 6pm Monday to Friday.

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.

Experience in relation to a registered nurse, enrolled nurse or assistant nurse means experience both before and/or after the commencement of this agreement whether with this employer or a previous employer, within New South Wales or elsewhere in Australia or other country as recognised by the employer and by the Board in regards to ENs and RNs.

Facility means a Nursing Home.

FWC means the Fair Work Commission.

Immediate Family means a spouse, de facto partner (including same sex relationship), child, parent, grandparent, grandchild or sibling of the employee; or a child, parent or grandparent, grandchild or sibling of a spouse or de facto of the employee.

NES means the National Employment Standards.

Nursing Home means a residential aged care facility which is licensed to provide care for residents in accordance with the Aged Care Act.

Regulations mean the *Fair Work Regulations 2009* as amended from time to time.

Shift Worker for the purpose of annual leave and Public Holidays means a worker who is not a day worker as defined and who is regularly rostered to work over seven days of the week and regularly works on weekends. **Shiftworker** for all other purposes means a worker who is regularly rostered to work outside the ordinary hours of work of a day worker as defined.

Union means the New South Wales Nurses and Midwives' Association and Australian Nursing and Midwifery Federation New South Wales Branch.

Workplace Representative(s) means a person(s) nominated by an employee or employees to represent them in relation to their employment. This may be a union representative.

5. Interaction with the National Employment Standards (NES)

- (a) It is the intention of this Agreement that the NES, as it may be varied from time to time, shall apply to the employees the subject of this Agreement.
- (b) Where the NES provides, or is varied to provide, a condition or entitlement more favourable (to the employee) in a particular respect than that set out in this Agreement, the condition or entitlement set out in this Agreement shall be overridden to the extent that it is less favourable than the NES.
- (c) Where the NES is varied to provide a condition or entitlement less favourable (to the employee) in a particular respect than that set out in this Agreement the condition or entitlement set out in this Agreement shall apply.

6. Agreement Flexibility

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

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

6.3 The employer must ensure that the individual flexibility arrangement:

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

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

6.5 The employer or employee may terminate the individual flexibility arrangement:

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

7. Types of Employment

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

- (a) Full time

- (b) Part time
- (c) Casual

7.2 Full time

- (a) A full time employee is one engaged as such and whose ordinary hours of work are an average of 38 per week or 76 per fortnight or 152 hours per 28 calendar days rostered in accordance with Clause 12.
- (b) Employees engaged on a full time basis shall be paid the appropriate hourly rate prescribed in Schedule A and where applicable the allowances in Schedule B.

7.3 Part time

- (a) A permanent part time employee is one who is permanently appointed to work a specified number of hours which are less than 38 hours per week. By agreement between the employer and the employee, the specified number of hours may be balanced over a week and/or a fortnightly period.
- (b) There shall be no interruption to the continuity of employment merely by reason of an employee working on a "week on, week off" basis in accordance with subclause (a).
- (c) Employees engaged on a permanent part time basis shall be paid the appropriate hourly rate prescribed in Schedule A and where applicable the allowances in Schedule B.
- (d) Permanent part time employees shall have the benefit of all of the other entitlements set out in this Agreement on a pro rata basis in the same proportion as their ordinary hours of work bear to full time hours.
- (e) For each start permanent part time employees shall be paid a minimum of three (3) hours including the appropriate allowance/s.
- (f) Before commencing part time employment, the employer and employee will agree in writing the guaranteed minimum number of hours to be worked per fortnight and the rostering arrangements which will apply to those hours. The terms of the agreement may be varied by agreement and recorded in writing.

7.4 Annual Review of Part Time Hours

- (a) A permanent part time employee has the right to request their ordinary hours to be reviewed if they have been regularly working more than their contracted hours.

- (b) At the request of an employee, the hours worked by the employee will be reviewed annually. Where the employee is regularly working more than their specified contract hours then such contract hours may be adjusted by the employer, to reflect the hours regularly worked. The hours worked in the following circumstances will not be incorporated in the adjustment:
 - (i) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; and
 - (ii) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident or client.
- (c) Any adjusted contracted hours resulting from a review, should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.
- (d) Notwithstanding all of the above, regard shall be given to the business operations and requirements of the employer when considering review requests made by employees. The employer will not unreasonably withhold making adjustments to the employee's contract hours, subject to the needs of the facility.

7.5 Casual Employees

- (a) A casual employee is one engaged on an hourly basis otherwise than as a permanent part time or full time employee.
- (b) A casual employee will be paid an hourly rate equal to 1/38th of the weekly rate appropriate to the employee's classification plus a 25% casual loading.
- (c) In addition, a casual employee shall be paid any other relevant or applicable allowances and/or penalty rates which are to be calculated against the base rate of pay.
- (d) A casual employee shall receive a minimum payment of three (3) hours for each start.

7.6 Casual Conversion

- (a) A casual employee who has been rostered on a regular and systematic basis over a period of 52 weeks has the right to request conversion to permanent employment:
 - (i) on a full-time contract where the employee has worked on a full-time basis throughout the period of casual employment; or

- (ii) 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 conversion will not apply where a casual has covered absences of permanent staff that are expected to return to work.

8. Ordinary Hours of Work and Rostered Days Off

- (a) The ordinary hours of work will be 38 hours per week, or an average of 38 hours per week worked over 76 hours per fortnight, or 152 hours per 4 week period and will be worked either:
 - (i) in a period of 28 calendar days of not more than 20 work days in roster cycle; or
 - (ii) in a period of 28 calendar days of not more than 19 work days in a roster cycle, with the twentieth day taken as an accrued paid day off (ADO); or
- (b) The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.
- (c) The hours of work on any day or shift will be continuous except for meal breaks.
- (d) Notwithstanding the provision of paragraph (a) of this clause, employees may, with the agreement of the employer work shifts of less than eight hours each over 20 days in each cycle of 28 days. 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.
- (e) Each employee shall be free from duty for not less than two consecutive full days in each week or four full days in each fortnight or eight full days in each 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 p.m. and before 4.00 p.m.

- (f) An employee, at his or her request, may be given free-from-duty time in one or more periods but no period shall be less than one full day. For the purpose of this subclause, "full day" means from midnight to midnight or midday to midday.

NOTE: This subclause is designed to ensure that rosters achieve increased leisure time for nurses, rather than reduced daily hours. This can be achieved by the working of shifts of longer than eight hours per day, with the result that less than 19 days are worked in 28, but without the accrual of an additional day off, as well as by the working of a 19 day month with an accrued additional day off.

9. Additional Day Off

- (a) Where an employee is entitled to an Additional Day Off (ADO) the employer is to decide when the employee takes their days off prescribed in clause 8 of this Agreement. 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.
- (b) Once set, the day off duty may not be changed, except in accordance with the provisions of clause 12, Rosters.
- (c) Where the employer's decision is that an employee's days off be accumulated, no more than six days may be accumulated in any one year of employment. All days in excess of the six accumulated days shall be paid out periodically in each pay period until the balance is reduced back to six.
- (d) Notwithstanding, by mutual agreement this may be extended to no more than 12 days at any one time. In such cases, all days in excess of the twelve shall be paid out periodically in each pay period until the balance is reduced back to twelve.

10. Meal and Tea Breaks

- (a) Each ordinary shift of 5 hours or more shall attract a half an hour unpaid meal break that will not count as time worked. Employees shall also be entitled to tea breaks in addition to their unpaid meal break.
- (b) Two separate ten minute paid tea breaks in addition to "meal breaks" shall be allowed to each employee on duty during each shift of 7.6 hours or more. Where less than 7.6 hours are worked, employees shall be allowed one ten minute paid tea break in each four hour period. Tea breaks may be taken as one 20 minute cumulative break during a shift, subject to management approval.

- (c) Where an employee is required by the employer to work through their meal break, the employee shall be paid for such time worked.

11. Length of Shifts

- (a) Each shift shall consist of no more than ten hours with not less than eight hours break between each shift.
- (b) An employee shall not work more than seven consecutive shifts unless the employee so requests and the Facility Manager agrees.
- (c) An employee shall not work more than two quick shifts in any period of seven days, i.e., an evening shift followed by a morning shift, where the break between ordinary shifts is less than ten hours.
- (d) Except for breaks for meals, the hours of duty each day shall be continuous.

12. Rosters

- (a) The ordinary hours of work for each employee, shall be displayed on a roster as set by the employer, to be displayed in a place conveniently accessible to employees.
- (b) The roster shall, where practicable, be displayed at least two weeks, and in any event not less than one week, prior to the commencing date of the first working period in the roster.
- (c) Subclause 12(a) and 12(b) shall not make it obligatory for the employer to display any roster of ordinary hours of work of members of the casual or relieving staff.
- (d) A roster may be altered at any time by agreement between the employee and employer.
- (e) Prior to the date of the changed shift, such change of roster shall be notified verbally or in writing to the employee concerned.
- (f) Where an employee is entitled to an additional day off duty in accordance with Clause 9 of this Agreement, such day is to be shown on the roster of hours for that employee.
- (g) All rosters shall be retained for at least six years.

13. Rates of Pay and Pay Increases

- (a) The minimum hourly rates of pay are contained in Schedule A, Rates of Pay of this Agreement. Annual wage increases of 1.25% each year will be applied based on the details in Schedule A.
- (b) Allowances are contained in Schedule B, Allowances of this Agreement. Annual increases to allowance of 1.25% per year will be applied based on the details in Table 2.

14. Payment and Particulars of Salaries

- (a) All salaries and other payments shall be paid weekly or fortnightly.
- (b) Payment for any overtime may be deferred to the next weekly or fortnightly payday but for no longer.
- (c) Payment of shift and weekend penalties relating to work performed in the second week of a fortnightly roster period may be deferred to the next weekly or fortnightly pay day, but for no longer.
- (d) For the purpose of adjustments of wages related to variations in the minimum rates of pay as set out in Schedule A - Rates of Pay and Schedule B - Allowances, the pay period shall be deemed to be fortnightly.
- (e) Employees shall have their salary paid into one account with a bank or other financial institution as nominated by the employee. Salaries shall be deposited by facilities in sufficient time to ensure that wages are available for withdrawal by employees by no later than pay day, provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions; but in such cases facilities shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.
- (f) On each pay day an employee, in respect of the payment then due, shall be furnished with a written statement containing the following particulars, namely: name, the amount of ordinary salary, the total number of hours of overtime worked, if any, the amount of any overtime payment, the amount of any other moneys paid and the purpose for which they are paid, the amount of the deductions made from the total earnings and the nature thereof.

(g) Underpayment of wages

- (i) Where an employee is underpaid all or part of their pay they should raise the error with their employer as soon as practicable.
- (ii) If the amount paid is equal to or greater than one day's gross base pay the underpayment will be rectified within three working days;
- (iii) If the amount is less than one day's gross base pay it will be rectified by no later than the next normal pay. However if the employee is experiencing undue hardship every effort will be made by the employer to rectify the underpayment within three working days.

(h) Overpayment

- (i) Where an employee is overpaid all or part of their pay they should raise the error with their employer as soon as practicable.
- (ii) In all cases where overpayments have occurred, the employer shall as soon as possible advise the employee concerned of both the circumstances surrounding the overpayment and the amount involved. The employer will also advise the employee of the pay period from which the recovery of the overpayment is to commence.
- (iii) One off overpayments will be recovered in the next normal pay, except that where the employee is experiencing undue hardship, the recovery rate shall be at 10% of an employee's gross fortnightly base pay or otherwise by agreement.
- (iv) Where an employee's remaining period of service does not permit the full recovery of any overpayment to be achieved on the fortnightly basis prescribed in this clause the employee agrees to the employer's right to deduct any balance of such overpayment from monies owing to the employee on the employee's date of termination, resignation or retirement, as the case may be.
- (v) Subject to the provisions of this clause the employer may exercise discretion in regard to recovery of overpayments.

15. Penalty Rates for Shift Work and Weekend Work

- (a) Employees working afternoon or night shift falling Monday to Friday inclusive shall in addition to their base rate be paid the following percentages calculated against the base rate of pay. 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 a.m. or finish subsequent to 6.00 p.m.

- (i) Monday to Friday afternoon shift commencing at 10.00 a.m. and before 1.00 p.m – 10% penalty rate
- (ii) Monday to Friday afternoon shift commencing at 1.00 p.m. and before 4.00 p.m – 12.5% penalty rate
- (iii) Monday to Friday Night shift commencing at 4.00 p.m. and before 4.00 a.m – 15% penalty rate
- (iv) Monday to Friday Night shift commencing at 4.00 a.m. and before 6.00 a.m – 10% penalty rate

"Day shift" means a shift which commences at or after 6.00 a.m. and before 10.00 a.m.

"Afternoon shift" means a shift which commences at or after 10.00 a.m. and before 4.00 p.m.

"Night shift" means a shift which commences at or after 4.00 p.m. and before 6.00 a.m. on the day following.

- (b) 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 the base rate and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three quarters the base rate. These extra rates shall be in substitution for and not cumulative upon the shift premiums prescribed in this clause.
- (c) Subclause (b) shall apply to employees who work less than 38 hours per week, but casual employees shall not be entitled to be paid the additional casual loading prescribed by clause 7.5 Casual Employees, in respect of their employment between midnight on Friday and midnight on Sunday.
- (d) The additional payments prescribed by this clause shall not form part of the employee's ordinary pay for the purposes of this agreement, except as provided in clause 22, Annual Leave.

16. Overtime

16.1 Overtime

- (a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 8, Ordinary Hours of Work, are to be paid as follows:
 - (i) Monday to Saturday (inclusive) - time and a half for the first two hours and double time thereafter;
 - (ii) Sunday - double time;
 - (iii) Public holidays - double time and a half.
- (b) Overtime penalties as prescribed in this clause do not apply to managers as those classifications have additional benefits factored into their salaries.
- (c) Overtime rates under this clause will be in substitution for and not cumulative upon the shift premiums prescribed in clause 15, Penalty Rates for Shift and Weekend Work and the casual loading as noted in clause 7.5, Casual Employees.

16.2 Part-time Employees

- (a) All time worked by part-time employees in excess of 38 hours per week or 76 hours per fortnight will be paid for at the rate of time and a half for the first two hours and double time thereafter, except that on Sundays such overtime will be paid for at the rate of double time and on public holidays at the rate of double time and a half.
- (b) All time worked by part-time employees which exceeds 10 hours per day or shift, will be paid at the rate of time and a half for the first two hours and double time thereafter, except on Sundays when overtime will be paid for at the rate of double time, and on public holidays at the rate of double time and a half.

16.3 Casual Employees

- (a) Overtime rates shall only be payable to a casual when they work in excess of 38 hours per week or 76 hours per fortnight depending on the pay period.
- (b) Payment of overtime to casual employees shall be calculated against the hourly ordinary rate (1/38th) and shall be in lieu of the casual loading and any shift penalty rates

16.4 Time Off Instead of Payment for Overtime

By mutual agreement, an employee may be compensated by way of time off instead of payment of overtime (time for time) in accordance with the requirements of clause 18.

16.5 Rest Period After Overtime

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

16.6 Rest Break during Overtime

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

16.7 Meal and Tea breaks on overtime

- (a) An employee required to work overtime following the completion of 7.6 hours, in addition to the breaks prescribed by clause 10 Meals and Tea Breaks payable for their ordinary shift, shall be allowed a further 20 minute paid meal break for the partaking of a meal and a further 20 minute paid meal break after each subsequent four hours overtime.
- (b) For the purpose of meals consumed during the breaks referred to in 16.7(a), the employer shall provide a meal to the employee free of charge.
- (c) 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 10 Meal and Tea Breaks shall apply.

16.8 Recall to Work

- (a) An employee who is recalled to work after leaving the employer's premises will be paid for a minimum of four hours work at the appropriate overtime rate.
- (b) The time spent travelling to and from the place of duty will be deemed to be time worked. Except that, where an employee is recalled within three hours of their rostered commencement time, and the employee remains at work, only the time spent in travelling to work will be included with the actual time worked for the purposes of the overtime payment.
- (c) An employee who is recalled to work will not be obliged to work for four hours if the work for which the employee was recalled is completed within a shorter period

Annual Leave, Personal Leave and Long Service Leave, will not accrue on hours worked as overtime.

This clause is subject to clause 17 Reasonable Additional Overtime.

17. Reasonable Additional Overtime

- (a) Employees may be requested to work reasonable overtime by the employer.
- (b) 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.
- (c) For the purposes of subclause (b) what is unreasonable or otherwise will be determined having regard to:
 - (i) any risk to employee health and safety;
 - (ii) the employee's personal circumstances including any family and carer responsibilities;
 - (iii) the needs of the facility;
 - (iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (v) any other relevant matter.

18. Time in Lieu

- (a) By agreement between the employee and employer, an employee may be compensated by way of time off in lieu of payment of overtime on the following basis:
 - (i) Time off in lieu of payment of overtime must be taken at ordinary rates within three months of it being accrued.
 - (ii) Where it is not possible for a nurse to take the time off in lieu of overtime within the three-month period, it is to be paid out within the following pay period at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
- (b) Nurses cannot be compelled to take time off in lieu of overtime.
- (c) Time off in lieu of payment of overtime should only be considered as an option in those circumstances where the employer is able to provide adequate replacement staff.
- (d) Records of all time off in lieu of overtime owing to nurses and taken by nurses must be maintained by the employer.

19. Public Holidays

Public holidays are provided for in the NES and are as follows: New Year's Day; Australia Day; Good Friday; Easter Saturday; Easter Sunday, Easter Monday; Anzac Day; Queen's Birthday; Labour Day; Christmas Day; Boxing Day. This clause contains additional provisions.

19.1 Payment for work done on public holidays

- (a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at 250% of their ordinary rate of pay.
- (b) Payments and entitlement under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.
- (c) Notwithstanding (a), an employee required to work a public holiday, may elect at the commencement of each calendar year to be paid an amount of 150% of their ordinary rate of pay and accrue a day off (or pro rata part day if applicable). Such additional leave must be utilised within six months of the leave accruing. If the employee has not utilised and extinguished the additional leave accumulated, it shall be paid out in the next roster cycle

unless alternate arrangements are made with the employer. Unless otherwise agreed, the employee shall provide no less than 4 weeks' notice prior to taking their additional leave.

19.2 Public Holiday Substitution – State Law

- (a) If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday because of subclause 19, then the substituted day or part-day is the public holiday.
- (b) In addition to those named public holidays specified in Clause 19, employees shall be entitled to an extra public holiday each year. Such extra public holiday shall occur on a date declared by the Employer at the commencement of the calendar year, not coinciding with a date that is already a gazetted public holiday for that calendar year;
- (c) In any one year, where an “additional” public holiday or half public holiday is proclaimed and applied in addition to those Public Holidays named within the NES, this subclause and therefore the extra public holiday shall not apply. To be clear, an “additional” public holiday is not to be mistaken for a “substitute” day.

19.3 Public holiday substitution

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

19.4 Public holidays occurring on rostered days off

All full-time employees will receive a day's ordinary pay for public holidays that occur on their rostered day off except where the public holidays fall on Saturday or Sunday with respect to Monday to Friday employees.

19.5 Part-time employees

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

19.6 Casual employees

- (a) A casual employee will be paid only for those public holidays they work at the total rate of 250% for hours worked.

- (b) Payments under subclause (a) are in lieu of any casual loading otherwise payable under this agreement.

20. Superannuation

20.1

- (a) The employer will make superannuation contributions into an approved Superannuation Fund nominated by the employee in accordance with the Superannuation Guarantee (SG) legislation as varied from time to time.
- (b) An employee will nominate one approved fund to which all statutory superannuation contributions shall be paid.
- (c) Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in Clause 20(b) to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in Clause 20(b) and pay the amount to one of the following superannuation funds:
 - (i) the Health Employees' Superannuation Trust Australia (H.E.S.T.A)
 - (ii) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and offers a MySuper product.
- (d) Should an employee fail to nominate a fund, the employer will choose Health Employees' Superannuation Trust Australia (H.E.S.T.A.) as the default fund into which contributions shall be paid under this Agreement.
- (e) The superannuation contributions will be paid at ordinary time earnings, which for the purpose of this Agreement include ordinary time worked on public holidays and public holiday loadings.

20.2 Contributions

The employer shall make, in respect of qualified employees, superannuation contributions into an approved fund on a monthly basis. With respect to casual employees, contributions shall be remitted at the time that employees receive their annual group certificates.

20.3 Salary Sacrifice to Superannuation

- (a) An employee can elect to sacrifice a portion of salary to superannuation. Such election must be made prior to the commencement of the period of

service to which the earnings relate and be in accordance with relevant legislation.

- (b) Salary sacrifice to superannuation means the option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre tax dollars). This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- (c) The employer will not use any amount that is salary sacrificed by an employee to count towards the employer's obligation to pay contributions under the SG legislation.
- (d) Contributions payable by the employer in relation to the SG legislation shall be calculated by reference to the salary which would have applied to the employee under this Agreement in the absence of any salary sacrifice.
- (e) Any additional superannuation contributions made in accordance with this clause shall be paid into the same superannuation fund that receives the employer's SG contributions.
- (f) Any allowance, penalty rate, overtime payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post-salary sacrificed amount.

21. Allowances

21.1 Uniform and Laundry Allowance

- (a) The following applies where the employer requires an employee to wear a uniform:
 - (i) The employer may require an employee to wear a uniform. In lieu of supplying uniforms free of charge to an employee, the employer shall pay the Uniform Allowance set out in Schedule B.
 - (ii) Where the employer requires any employee to wear headwear or personal protection equipment, the facility shall provide same free of charge to the employee.
- (b) The Uniform allowance is payable during any period of paid leave.

- (c) Where such employee's uniforms are not laundered by or at the expense of the employer, the employee will be paid a laundry allowance as reflected in Schedule B, Allowances.
- (d) The Laundry allowance is not payable during any period of leave.

21.2 Private Vehicle Allowances

- (a) Where an employee is called upon and agrees to use their own private vehicle for official business they will be paid the motor vehicle allowance in Schedule B, Allowances.
- (b) This subclause shall apply to all employees.

21.3 Higher Grade Duty

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 he/she so acts the minimum payment for such higher classification.

21.4 Continuing Education Allowance

- (a) A registered nurse or enrolled nurse who holds a continuing education qualification in a clinical field, in addition to the qualification leading to registration or enrollment, shall be paid an allowance subject to the conditions set out in this clause.
- (b) The qualification must be accepted by the employer to be directly relevant to the competency and skills used by the employee in the duties of the position.
- (c) The allowance is not payable to Facility Educators, Clinical Unit Managers, Evening Night or Weekend Day Managers.
- (d) A registered nurse or enrolled nurse holding more than one relevant qualification is only entitled to the payment of one allowance, being the highest monetary value.
- (e) The employee claiming entitlement to a continuing education allowance must provide evidence to the employer that they hold that qualification.
- (f) A registered nurse who holds a relevant postgraduate certificate in a clinical field (not including a hospital certificate) that is accepted by the employer to be directly relevant to the competency and skills used by the registered

nurse in carrying out the duties of the position shall be paid a weekly allowance as set out in Schedule B, Allowances.

- (g) A registered nurse who holds a relevant postgraduate diploma or degree in a clinical field (other than a nursing undergraduate degree) that is accepted by the employer to be directly relevant to the competency and skills used by the registered nurse in carrying out the duties of the position shall be paid a weekly allowance as set out in Schedule B, Allowances.
- (h) A registered nurse who holds a relevant master's degree or doctorate in a clinical field that is accepted by the employer to be directly relevant to the competency and skills used by the registered nurse in carrying out the duties of the position shall be paid a weekly allowance as set out in Schedule B, Allowances.
- (i) The allowances set out above are not included in the employee's ordinary rate of pay and will not constitute part of the all purpose rate.
- (j) A registered nurse who is employed on a part-time or casual basis shall be paid these allowances on a pro rata basis.
- (k) Where a disagreement or dispute arises concerning the eligibility of an employee for payment of a continuing education allowance, and such disagreement or dispute is not resolved by the process set out in subclauses 1 and 2 of clause 37 Grievance and Disputes Resolution Procedures, negotiations between the employer and the affected employees and their nominated workplace representative(s) must occur prior to referral to the FWC for determination.

21.5 In-charge Allowance

- (a) A registered nurse designated by the employer to be in charge on a shift by shift basis, during the day, evening or night of a facility, shall be paid, in addition to his or her appropriate salary, whilst so in charge, the relevant sum set out in Schedule B, Allowances.
- (b) This allowance does not apply to any nurse holding a manager title, leader role or position that through the operations of this Agreement has been grandparented.

21.6 On-call Allowance

- (a) An employee required to be "on call" and therefore available to work during their meal break, Rostered Day Off, ADO or between rostered shifts, shall be paid an "on call" allowance or pro rata part thereof as set out in Schedule B, Allowances.

- (b) Except for the RN preserved classification and Mobility Nurse classification this allowance does not apply to a position that through the operations of this Agreement have been grandparented or any nurse holding a manager title.

22. Annual Leave

22.1 Accrual of Annual Leave

- (a) Full time employees, other than shiftworkers, are entitled to five weeks annual leave.
- (b) Part time employees, other than shiftworkers, are entitled to five weeks annual leave on a pro-rata basis.
- (c) For the purpose of this clause a shiftworker is an employee who:
 - (i) regularly rostered over seven days of the week; and
 - (ii) regularly works on weekends.

Full time shiftworkers are entitled to six weeks week of annual leave. Part time shiftworkers are entitled to six weeks week of annual leave on a pro-rata basis.

- (d) Casual employees have no entitlement to annual leave.
- (e) An employee shall accrue an amount of paid annual leave, for each completed 4 week period of continuous service with the employer, based on one thirteenth of the number of ordinary hours worked by the employee for the employer during that 4 week period.
- (f) Annual leave shall accrue on a pro-rata basis and be credited to the employee monthly.
- (g) An employee shall not accrue annual leave for any hours paid at the overtime rate in accordance with clause 16.

22.2 Payment of Annual Leave

- (a) If an employee takes annual leave during a period, the annual leave shall be paid at the employee's ordinary pay immediately before the period begins.
- (b) Annual leave loading shall be paid in accordance with subclause 22.5 of this Agreement.
- (c) Annual leave accumulated but not taken is paid out upon termination.

22.3 Taking of Annual Leave

- (a) An employee is entitled to take an amount of annual leave during a particular period if:
 - (i) at least that amount of annual leave is credited to the employee; and
 - (ii) the employer has authorised the employee to take the annual leave during that period.
- (b) In the taking of leave, except in exceptional circumstances, the employee shall make written application to the employer, giving at least 4 weeks' notice of the desired period of such leave.
- (c) 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. Single day absences are not encouraged and shall only be granted in exceptional circumstances. The employer shall not unreasonably withhold or revoke such approval.
- (d) The employer may direct an employee to take extensive accumulated annual leave in accordance with the NES. Extensive accumulated leave shall be any amount accumulated in excess of five weeks.

22.4 Cashing out of Annual Leave

- (a) Annual leave credited to an employee may be cashed out in extenuating circumstances subject to the following conditions:
 - (i) 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
 - (ii) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and
 - (iii) 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.
- (b) When agreement is reached to cash out annual leave the relevant annual leave loading is payable. Management reserves the right to decline any request for cashing out annual leave.

22.5 Annual Leave Loading

- (a) Employees shall be entitled to annual leave loading of 17.5% on four weeks of the appropriate weekly rate of pay, or shift allowances and weekend penalties as set out in subclause (b) of this clause, whichever is the greater.
- (b) A shift worker shall be paid whilst on annual leave his or her ordinary pay plus shift allowances and weekend penalties relating to ordinary time the shift worker would have worked if he/she had not been on annual leave. Provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during a period of annual leave.
- (c) Where cessation of employment occurs, annual leave loading is paid out for annual leave not taken.

22.6 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.

23. Personal/Carer's Leave

23.1 The National Employment Standards (NES)

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

23.2 Entitlement to Paid Personal/Carer's leave

- (a) Employees are entitled to 10 days paid personal leave per annum (or pro rata for part time employees).
- (b) Personal/Carer's Leave is paid in accordance with the NES and is paid at the employee's base rate of pay.
- (c) An employee's entitlement to paid personal/carers leave accrues progressively during a year of service according to the employee's ordinary hours of work and accumulates from year to year.

23.3 Taking Personal/Carer's Leave

- (a) Personal leave is either paid or unpaid leave taken by an employee because of a personal illness, or injury of the employee; or paid or unpaid leave taken by an employee to provide care or support to a member of the

employee's immediate family, or a member of the employee's household, who requires care or support because of:

- (i) a personal illness, or injury, of the member; or
 - (ii) an unexpected emergency affecting the member.
- (b) As per the NES, should the Employee exhaust their accumulation of personal leave and remain absent by reason of personal illness or injury, or carers reasons as prescribed by the Act, they shall commence use of unpaid personal leave, subject to certification requirements being satisfied. No period of personal leave may be supplemented by any other form of paid leave entitlement unless express permission is obtained from the Employer.
- (c) In exceptional circumstances personal leave, paid or unpaid, may be requested and granted for personal emergencies experienced by the individual that do not fall into the category of personal injury or illness or compassionate leave. Such emergencies may include but is not limited to, unforeseen emergencies or domestic violence. In order to access personal leave, either paid or unpaid, for reasons as mentioned, the employee must produce a Statutory Declaration detailing the reason for requesting such leave. Employees must note that even though a Statutory Declaration may be produced, the ultimate discretion at granting the leave lies with management.

23.4 Notice and Evidence Requirements

- (a) Notice
- (i) An employee must give his or her employer notice of the taking of leave under this clause by the employee.
 - (ii) The notice:
 - a. must be given to the employer prior to the absence commencing and in any case as soon as practicable, however may also in exceptional circumstances be a time after the absence has started and
 - b. must advise the employer of the period, or expected period, of the leave.
- (b) Evidence
- (i) An employee who has given his or her 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:

- a. if it is paid personal/carer's leave—the leave is taken for reason specified in s.97 of the Act (ie for a personal illness or injury or to provide care or support to an immediate family or household member); or
 - b. if it is unpaid carer's leave—the leave is taken for a permissible occasion in circumstances specified in subsection 103(1) of the Act (ie to care for a partner, or immediate family member etc who has their own personal illness or personal injury); or
 - c. if it is compassionate leave—the leave is taken for a permissible occasion in circumstances specified in subsection 105(1) of the Act (ie to care for a partner, or immediate family member etc who has their own personal illness or personal injury that poses a serious threat to their life or dies);.
 - (ii) Generally, evidence will be in the form of certification from a medical practitioner, GP or Dentist or a Statutory Declaration acceptable to the employer.
 - (iii) Personal information given to an employer under this clause may be regulated under the Privacy Act 1988.
- (c) Compliance
- (i) This requirement (ie to give notice and/or evidence) does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.
 - (ii) Generally, absences that are not notified as per this Agreement or certified as per this Agreement may risk being deemed personal leave without pay.

24. Compassionate Leave

Employees are entitled to compassionate leave in accordance with the provisions of the NES

- (a) Casual employees have no entitlement to paid compassionate leave. However casual employees are entitled to unpaid compassionate leave provided the casual employee would otherwise be entitled to such leave and complies with the provisions of this clause. The employer agrees not to fail to re-engage a casual employee because the employee accessed the entitlements provided for in this subclause. The rights of the employer to engage or not to engage a casual employee are otherwise not affected.

- (b) Compassionate leave is paid leave taken by an employee:
 - (i) for the purposes of spending time with a person who:
 - a. is a member of the employee's immediate family or a member of the employee's household; and
 - b. has a personal illness, or injury, that poses a serious threat to his or her life; or
 - c. after the death of a member of the employee's immediate family or a member of the employee's household.
- (c) An employee is entitled to a period of 2 days of compassionate leave for each occasion when a member of the employee's immediate family or a member of the employee's household:
 - (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
 - (ii) sustains a personal injury that poses a serious threat to his or her life; or
 - (iii) dies.
- (d) However, the employee is entitled to compassionate leave only if the employee gives the employer any evidence that the employer reasonably requires of the illness, injury or death.
- (e) An employee is entitled to one additional day should they be required to travel and if the employee provides such evidence.
- (f) An employee who is entitled to a period of compassionate leave is entitled to take the compassionate leave as:
 - (i) a single, unbroken period of 2 days; or
 - (ii) 2 separate periods of 1 day each; or
 - (iii) any separate periods to which the employee and the employer agree.
- (g) If an employee takes compassionate leave during a period, the compassionate leave shall be paid at the employee's ordinary pay immediately before the period begins.

- (h) A period of compassionate leave does not break an employee's continuity of service and compassionate leave counts as service for all purposes.
- (i) The employer may request evidence in accordance with 107(5) of the *Act* regarding the entitlement to compassionate leave.

25. Parental Leave

Employees are entitled to parental leave in accordance with the provisions of the NES.

26. Grandparents Leave

- (a) After 12 months continuous service, an employee, other than a casual, may request to take up to one month's unpaid grandparents leave once per twelve month period for the purpose of caring for a grandchild/grandchildren.
- (b) Approval of grandparents leave is discretionary, and an application for grandparents leave may be refused on business grounds such as but not limited to, staffing requirements, notice provided, operational requirements and consideration of the employee's current paid leave balances.
- (c) An employee requesting leave under this clause is required to provide a statutory declaration outlining their requirement to take grandparents leave and may, in addition to a statutory declaration be required to provide other such evidence to satisfy the employer of the need for that employee to take leave under this clause.
- (d) Reasons for taking grandparents leave may include but are not limited to helping out at the time of the birth of a grandchild or in order to help care for grandchild/grandchildren during school holidays.
- (e) When requesting grandparents leave, an employee will give the employer where practicable, three (3) months notice prior to when the proposed period of leave is to commence, in any event, such notice shall not be less than one month.
- (f) The employer recognises that in some situations the employee may not be able to provide one months notice of their intention to take grandparents leave. In those situations the employer will assess the request taking into account any extenuating circumstances on an individual case by case basis.

27. Long Service Leave

An employee's entitlement to long service leave shall be in accordance with the provisions of this Agreement and the *Long Service Leave Act 1955 (NSW)* provided that should there be any inconsistency between that legislation and the provisions of this Agreement these provisions shall prevail if they are more beneficial to the employee.

27A Accrual of Long Service Leave for staff employed subsequent to 18 June 2014

- (a)
 - (i) For staff employed prior to 18 June 2014, please refer to Clause 27(B) of this Agreement
 - (ii) For staff employed after 18 June 2014 the following shall apply.
- (b)
 - (i) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after 15 years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one half months' long service leave on full pay.
 - (ii) Where the service of an employee with at least five years' service is terminated by the employer for reasons other than serious or wilful misconduct, or by the employee on account of illness, incapacity or domestic or other pressing necessity, or by reason of the employee's death, the employee shall be entitled to long service leave as follows:
 - a. For the first five years service - one month.
 - b. For the next ten years service - a proportionate amount calculated on the basis of one month for each additional five years. For the purpose of calculation, each completed whole month of continuous service gives an entitlement equal to 0.0722 weeks pay.
 - c. For all subsequent service - a proportionate amount calculated on the basis of 1.5 months for each additional five years. For the purpose of calculation, each completed whole year of continuous service gives an entitlement equal to 1.2996 weeks pay.

27B Accrual of Long Service Leave for staff employed prior to 18 June 2014

- (a)
 - (i) For staff employed prior to 18 June 2014 the following shall apply.
 - (ii) Each employee shall be entitled to two months long service leave on ordinary pay after ten years' service; thereafter additional long service leave shall accrue on the basis of five months long service leave for each ten years' service. This additional leave may be taken on a pro-rata basis each five years after completing the initial 10 year period of service.
- (b) Where an employee with at least five years' service leaves or is terminated by the employer for any reason other than for serious and wilful misconduct he/she shall be entitled to be paid a proportionate amount of LSL on the basis of two months for ten years service.
- (c) Employees of the employer previously covered by long service leave provisions or arrangements contained in industrial instruments or State legislation will have their long service leave accrued entitlement carried over but the accrual and access to long service leave entitlements from the date of transfer shall be in accordance with this Agreement.

27C Taking of Long Service Leave for all employees

- (a) Subject to the giving of three months notice, where an employee requests and the employer agrees, an employee may access and take their Long Service Leave prior to ten years of service and no earlier than seven years of service on a pro rata basis.
- (b) Where an employee has acquired a right to long service leave the employer may direct an employee to take their leave, subject to the giving of three months notice. Such leave shall be taken at a time to be arranged between the employer and the employee as soon as practicable after each period of leave falls due, having regard to the reasonable preferences of each party. Where required by the employer, the term "as soon as practicable" shall mean that leave is taken by the employee within 12 months of the date that the leave falls due. The leave is to be taken in one continuous period unless the employer and employee agree otherwise.
- (c) Notwithstanding anything contained elsewhere in this clause, an employer and an employee may mutually agree that the taking of the leave be deferred beyond the initial twelve months referred to above. In such a case the employer and employee may agree that the employee shall be paid for that leave at the rate of pay applicable at the time of the agreement to

further postpone the leave, and not at the rate of pay applicable at the time that the leave is taken. For any such agreement to be valid, it must be in writing and be signed by both the employer and the employee.

- (d) Where an employee has acquired a right to long service leave, then:
 - (i) If, before such leave has been entered upon and the employment of the employee has been terminated by either party, the employee shall be entitled to receive the monetary value of the leave to which the employee has become entitled, calculated at the rate of salary which the employee had been receiving immediately prior to the termination of employment.
 - (ii) If an employee dies before entering upon extended leave, or if, after having entered upon the same, dies before its termination the employer shall pay the employee's personal representative 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.
- (e) For the purpose of this clause:
 - (i) Continuous service in the same facility prior to the coming into force of this agreement shall be taken into account.
 - (ii) One month equals four and one third weeks.
 - (iii) Continuous service shall be deemed not to have been broken by:
 - a. absence of an employee from the facility while a member of the Defence Forces of the Commonwealth in time of war;
 - b. any period of absence on leave without pay not exceeding six months or longer if agreed.
- (f) 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.
- (g) Any period(s) of part-time employment with the same employer shall count towards long service leave. 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.

- (h) 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.
- (i) 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.

28. Employment Qualifying Period

New employees will be required to serve a qualifying period for the first six months of engagement. At any time during the employment qualifying period the employer or the employee can terminate the employment by giving one week's notice.

29. Termination of Employment

- (a) Employment, other than of a casual, will be terminated by either party only by appropriate notice, as required beneath, being given and served or by the payment by the employer or forfeiture by the employee of wages in lieu of notice. Provided that employment may be terminated by part of the period of notice specified, and part payment or forfeiture, in lieu of the period of notice specified.

Notice of termination by the employer and the employee:

Period of Continuous Service	Minimum Period of Notice
1 year or less	1 Week
More than 1 year but not more than 3 years	2 Weeks
More than 3 years but not more than 5 years	3 Weeks
More than 5 years	4 Weeks

- (b) The employer will also give an additional week's notice or payment in lieu of to employees (other than casuals) aged 45 years or older with at least two years continuous service for the employer. This extra week's notice is not a prescription required of the employee.
- (c) Casuals are to be given notice to the end of the current shift worked.

The employer may, without notice, summarily dismiss an employee at any time for serious misconduct or disobedience. Payment is up to the time of dismissal only.

The employer will give the employee a statement signed by the employer stating

the period of employment and when the employment was terminated if the employee requests.

30. Consultation regarding major workplace change

30.1 Consultation regarding major workplace change

(a) Employer to notify

- (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (ii) **Significant effects** include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this award makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

(b) Employer to discuss change

- (i) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 30.1(a), the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- (ii) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 30.1(a).
- (iii) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

30.2 Consultation about changes to rosters or hours of work

- (a) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
- (b) The employer must:
 - (i) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence);
 - (ii) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities);and
 - (iii) give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- (c) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- (d) These provisions are to be read in conjunction with other Agreement provisions concerning the scheduling of work and notice requirements.

31. Redundancy

- (a) For the purposes of this clause, "continuous service" shall be interpreted in the same manner as "service of a worker" is interpreted in the *Long Service Leave Act 1955 (NSW)* as at the date this Agreement comes into operation. Periods of leave without pay, including parental leave without pay, do not break the continuity of service of an employee but are not to be taken into account in calculating length of service for the purposes of this clause.
- (b) Redundancy occurs where the employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.
- (c) Where the employment of an employee other than a casual is to be terminated for reasons relating to redundancy, the employer shall pay, in

addition to other payments due to that employee, the following retrenchment pay in respect of the following continuous periods of service:

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

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

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

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

- (d) "Weeks pay" means the rate of pay for the employee concerned at the date of termination, and shall include in addition to the ordinary pay any shift allowances and/or weekend penalties.

32. Attendance at Meetings and Fire Drills

- (a) Any employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety practices (e.g., fire drill and evacuation procedures) Work Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, be entitled to be paid the "ordinary rate" for the actual time spent in attendance. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.
- (b) For the purposes of this clause, "ordinary rate" shall include the ordinary hourly rate, allowances and for employees engaged otherwise than as a full-time or permanent part-time employee casual loading.

33. Training for Nurses

- (a) Employees will be given on-going training as necessary, relevant to their roles and responsibilities.
- (b) Each employee shall provide to the employer details of their attendance at training and the employer shall keep a record of this attendance.
- (c) Upon termination of the employee's employment the employer shall provide to the employee a written statement of the hours of training attended by the employee.
- (d) Where practicable, such training shall be provided to employees during their normal rostered hours of work. Where this is not practicable:
 - (i) employees shall attend training outside their normal rostered working hours when required to do so by the employer;
 - (ii) the employer shall provide employees with two (2) weeks' notice of the requirement to attend training outside of their normal rostered working hours;
- (e) Notwithstanding clause 16, Overtime, attendance at such training shall be paid ordinary pay for the period of training.
- (f) The employer requiring an employee to attend training shall also pay to the employee ordinary pay for time travelling to and from a period of training referred to in subclause (d) that is in excess of the time normally taken for that employee to attend work.
- (g) When receiving travelling time as set out in subclause (f), an employee using his or her own vehicle for attendance at such training shall be paid the per kilometre allowance set out in Schedule B, Allowances.
- (h) Training provided outside the normal rostered hours of work shall be arranged so as to allow full-time employees to have at least eight or ten hours off-duty before or after training and the end or beginning of their shift, whichever is applicable as set out in clause 8 Ordinary Hours of Work or clause 16 Overtime. Where practicable, similar arrangements should also be made available to all other employees.
- (i) Any training undertaken by an employee that occurs at a workplace is not intended to replace or supplement staffing levels and the normal levels of service delivery at such a workplace.

- (j) Notwithstanding clause 8 Ordinary Hours of Work and clause 16 Overtime, overtime will not apply where attendance at such training is outside the normal rostered working time of other than full-time employees or where it interrupts the applicable eight or ten hour break between shifts.

(k) Online Education

- (i) The employer will provide computer access in the workplace for employees to undertake online education.
- (ii) Employees are requested to complete online education during their rostered shift.
- (iii) Where an employee is unable to complete education during their rostered shift due to workload, computer access or other issues then the employee will speak to their manager to discuss alternative arrangements to ensure the education is completed.

34. Workloads

- (a) The Employer is committed to rostering staffing levels per shift that are appropriate for the delivery of quality resident care and in keeping with the necessary accreditation principles.
- (b) To ensure that employee views involving workloads are effectively dealt with by Management the following procedures should be applied:
 - (i) In the first instance, employee/s should discuss the issue and their views with their immediate supervisor and, where appropriate, explore actions that may resolve the situation. The supervisor shall investigate any relevant material or matters and provide a response to those concerned, including actions that may be taken, within an agreed time frame.
 - (ii) Where actions are not required, the matter shall be considered closed. If however there is still a need for further action the matter should be referred to an appropriate senior manager for further discussion. The senior manager shall investigate any relevant material and matters and provide a response within an agreed time frame, including a deadline for implementing possible actions to be taken.
 - (iii) Where no actions are required, the matter shall be considered concluded. If however there is still a need for further action, the matter should be referred to the Facility Manager or Management delegate for discussion. The Facility Manager or delegate shall investigate the matter and the employee/s views, taking into account relevant

information. A response to the matter shall be provided within an agreed time frame, including a deadline for implementing possible actions to achieve resolution to the situation.

- (iv) The outcome of the discussions at each level and any proposed action plan if necessary, should be recorded in writing and fed back to the effected employee/s.
- (v) Where workload management is an agenda item at staff meetings, the items in relation to workloads must be recorded in the minutes of the staff meeting, as well as whether or not actions are necessary to resolve the matter at hand.
- (vi) If the issue is not resolved in a reasonable time, either the employer or the employee/s may advance the matter through clause 37, Grievance and Dispute Resolution Procedures.

35. Labour Flexibility and Mixed Functions

- (a) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training
- (b) The employer may direct an employee to carry out such duties and use such tools and equipment as may be required, provided the employee possesses the relevant skills and competence to perform such tasks. Where the employee does not possess such skills and competence, appropriate training shall be facilitated.
- (c) Any 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 residents and/or clients.

36. Amenities

- (a) The minimum standards as set out in all relevant workplace health and safety legislation shall be met in the provision of amenities to employees. Such amenities will include:
 - (i) Lockers and change rooms, toilets, areas for the partaking of meals and meal storage, coffee and tea making facilities.

37. Grievance and Dispute Resolution Procedures

- (a) If a dispute relates to:

- (i) a matter arising under the agreement; or
- (ii) the NES;

this term sets out procedures to settle the dispute.

- (b) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- (c) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- (d) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to FWC.
- (e) The FWC may deal with the dispute in 2 stages:
 - (i) the FWC will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - (ii) if the FWC is unable to resolve the dispute at the first stage, the FWC may then:
 - a. arbitrate the dispute; and
 - b. make a determination that is binding on the parties.

Note: If FWC arbitrates the dispute, it may also use the powers that are available to it under the Act.

- (f) A decision that FWC makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.
- (g) While the parties are trying to resolve the dispute using the procedures in this term:
 - (i) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - (ii) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:

- a. the work is not safe; or
 - b. applicable occupational health and safety legislation would not permit the work to be performed; or
 - c. the work is not appropriate for the employee to perform; or
 - d. there are other reasonable grounds for the employee to refuse to comply with the direction.
- (h) The parties to the dispute agree to be bound by a decision made by FWC in accordance with this term.

38. Work Health and Safety

- (a) The employer and employee acknowledge their responsibilities under the *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2012*.
- (b) Where there is a Work Health and Safety Representative they must be elected and will carry out the tasks associated with the role of Work Health and Safety Representative set out within the *Work Health and Safety Act 2011*.

39. National Criminal History Checks

- (a) In accordance with the *Aged Care Act 1997* an applicant will not be offered employment with the employer unless they are able to provide a satisfactory police check.
- (b) Current employees of the employer are required to provide the employer with regular police checks.
- (c) Each applicant and employee is responsible for the expense associated with obtaining and renewing a police check.

39.1 Police Check Renewal

- (a) Each employee is responsible for renewing their police check.
- (b) In the event an employee fails to produce a satisfactory police check by the expiry date of their existing check, the employee will be stood down without pay until the police check is provided.
- (c) Where an employee is unable to produce their police check by the expiry date of their existing check due to reasons that are outside of their control, the employee will bring this to the attention of the employer immediately. The employee will be removed from the roster without pay and offered the

option of taking annual leave or long service leave, if available, until a satisfactory police check is provided.

39.2 Police Check Status Change

- (a) If an employee's police check status changes, or may change (subject to the completion of legal proceedings) prior to the expiry of the existing police check, the employee is required to advise and consult with the employer in regard to the circumstances. The employer will then decide whether the change, or potential change, impacts the employee's capability and right to work.

40. Professional Registration

- (a) In accordance with the *Health Practitioner Regulation National Law (NSW)* relevant employees are responsible for ensuring they maintain current professional registration with the Board.
- (b) An applicant will not be offered employment with the employer unless they are able to provide proof of current professional registration and ability to practice within the scope of the position applied for.
- (b) It is acknowledged that the employer can check employees' registration online and any conditions that may apply. Otherwise the employer may request an employee provide proof of registration.
- (c) Each applicant and employee is responsible for the expense associated with obtaining and renewing professional registration.

40.1 Professional Registration Renewal

- (a) Each employee is responsible for renewing their professional registration.
- (b) In the event an employee fails to produce evidence to satisfy the employer that they have current professional registration the employee will be stood down without pay until evidence of professional registration is provided.
- (c) The employer recognises there may be extenuating circumstances that prevent an employee from renewing their registration on time. In these circumstances the employer and employee will discuss the reasons for the failure to renew and the employer will agree to the employee taking a period of paid or unpaid leave, depending on available leave accrual balances, until the registration is renewed.

40.2 Professional Registration Conditions

- (a) Where the Board imposes conditions on an employee's professional registration the employee has a responsibility to advise the employer immediately. The employer will then consider whether the conditions placed on the employee's practice impact the employee's ability to continue employment in their role.

41. Community Services Leave

Employees will be entitled to Community Services Leave in accordance with the NES.

42. No Further Claims

During the term of this Agreement the Parties shall make no extra claims for any changes to remuneration or conditions of employment. The Parties to this Agreement agree that this Agreement is comprehensive and settles all claims in relation to the terms and conditions of employment.

CLASSIFICATIONS

Assistant in Nursing means an employee employed as such by the employer, other than a registered nurse, trainee or enrolled nurse.

Assistant in Nursing Certificate III &/or IV means an employee employed as such by the employer, other than a registered nurse, trainee or enrolled nurse, and who has completed a certificate III or IV recognised course.

Resident Care Nursing Assistant is an employer appointed position. An employee at this level shall hold a relevant Certificate IV as an Assistant in Nursing and will carry out additional tasks which may include administering medication within a delegated or assigned range of duties.

Clinical Unit Manager means a registered nurse appointed by the management to supervise and coordinate all clinical and other relevant activities within a unit of the facility 7 days a week. Employees employed in this role prior to the commencement of this Agreement shall be entitled to continue in their position and receive all benefits as relevant under this Agreement. Subsequent to this Agreement coming into operation, no further staff shall be employed as clinical unit managers.

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

Enrolled Nurse is a nurse who holds current registration as an Enrolled Nurse with the Board and is authorised to administer medication.

Evening Manager means a registered nurse appointed by the management to be responsible for the supervision and coordination of all services in the facility in the evening in the absence of the Facility Management Team and the Clinical Unit Managers. Employees employed in this role prior to the commencement of this Agreement shall be entitled to continue in their position and receive all benefits as relevant under this Agreement. Subsequent to this Agreement coming into operation, no further staff shall be employed as evening managers.

Facility 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 facility. Employees employed in this role prior to the commencement of this Agreement shall be entitled to continue in their position and receive all benefits as relevant

under this Agreement. Subsequent to this Agreement coming into operation, no further staff shall be employed as Facility Educator.

Mobility Nurse Certificate III &/or IV means an employee employed as such by the Employer who has experience as an Assistant in Nursing and who has completed a certificate III or IV course (as recognized by the Employer) and who assists the Physiotherapist and Clinical Unit Manager deliver care according to relevant care plans. Employees employed in this role prior to the commencement of this Agreement shall be entitled to continue in their position and receive all benefits as relevant under this Agreement. Subsequent to this Agreement coming into operation, no further staff shall be employed as mobility nurses certificate III or IV.

Night Manager means a registered nurse appointed by the management to be responsible for the supervision and coordination of all services in the facility on night duty in the absence of the Facility Management Team and the Clinical Unit Managers. Employees employed in this role prior to the commencement of this Agreement shall be entitled to continue in their position and receive all benefits as relevant under this Agreement. Subsequent to this Agreement coming into operation, no further staff shall be employed as night managers.

Registered Nurse means a person enrolled by the Board as a Registered Nurse with current registration.

Weekend Day Manager means a registered nurse appointed by the management to be responsible for the supervision and coordination of all services in the facility on the weekend morning shift in the absence of the Facility Management Team and Clinical Unit Managers. Employees employed in this role prior to the commencement of this Agreement shall be entitled to continue in their position and receive all benefits as relevant under this Agreement. Subsequent to this Agreement coming into operation, no further staff shall be employed as weekend day managers.

Schedule A: RATES OF PAY

Classifications	1 July 2016 1.25%	1 July 2017 1.25%	1 July 2018 1.25%
Assistant in Nursing			
1 st year of service	\$19.73	\$19.98	\$20.23
2 nd year of service	\$19.73	\$19.98	\$20.23
3 rd year of service	\$21.47	\$21.74	\$22.01
4 th year of service and thereafter	\$21.47	\$21.74	\$22.01
Assistant in Nursing With Certification (ie Cert III or Cert IV)			
1 st year of service	\$22.57	\$22.85	\$23.14
2 nd year of service and thereafter	\$22.57	\$22.85	\$23.14
Thereafter	\$23.71	\$24.01	\$24.31
Resident Care Nursing Assistant (appointed position only)	\$25.10	\$25.41	\$25.73
Enrolled Nurse (with Notation)			
1 st year of service	\$26.41	\$26.74	\$27.07
2 nd year of service	\$26.41	\$26.74	\$27.07
3 rd year of service	\$26.98	\$27.32	\$27.66
4 th year of service and thereafter	\$26.98	\$27.32	\$27.66
Enrolled Nurse			
1 st year of service	\$26.41	\$26.74	\$27.07
2 nd year of service	\$26.41	\$26.74	\$27.07
3 rd year of service and thereafter	\$26.98	\$27.32	\$27.66
Registered Nurse			
Level 1 (1 st year to 4 th year)	\$31.36	\$31.75	\$32.15
Level 2 (5 th year and onward)	\$36.56	\$37.02	\$37.48
Grand Parented Positions			
Mobility Nurse Cert III& or/IV	\$23.71	\$24.01	\$24.31
RN Preserved Rate	\$38.39	\$38.87	\$39.36
Weekend Day Manager	\$40.94	\$41.45	\$41.97
Night Manager	\$41.42	\$41.94	\$42.46
NUM3	\$40.94	\$41.45	\$41.97
Evening Manager	\$40.94	\$41.45	\$41.97
Clinical Unit Manager	\$45.73	\$46.30	\$46.88
Facility Educator	\$47.95	\$48.55	\$49.16

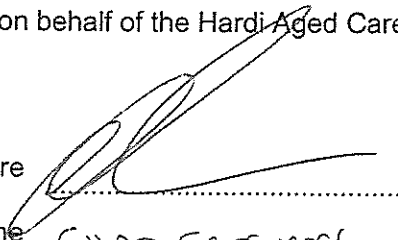
Schedule B: ALLOWANCES

	1 July 2016	1 July 2017	1 July 2018
	1.25%	1.25%	1.25%
Laundry per shift (p/s) or per week (p/w) whichever is higher	\$1.01 (p/s) \$5.16 (p/w)	\$1.02 (p/s) \$5.22 (p/w)	\$1.03 (p/s) \$5.29 (p/w)
Uniform per week or part thereof where whole of uniform is not provided free of charge	\$6.32 (p/w)	\$6.40 (p/w)	\$6.48 (p/w)
On call (RDO) per 24 hour period of part thereof	\$27.57	\$27.91	\$28.26
In charge per shift in charge	\$ 30.38	\$30.76	\$31.14
On call (between shifts) per 24 hour period or part thereof	\$18.31	\$18.54	\$18.77
On call during meal break per period or part thereof	\$11.14	\$11.28	\$11.42
Motor vehicle allowance per km	\$0.77	\$0.78	\$0.79
Continuing Education Allowance ENs and RNs			
EN Continuing education allowance Cert IV per week or part thereof	\$12.30	\$12.45	\$12.61
RN Certificate qualified per week or part thereof	\$18.47	\$18.70	\$18.93
RN Grad Dip or Degree qualified per week or part thereof	\$30.80	\$31.19	\$31.58
RN Masters or Doctorate qualified per week or part thereof	\$36.94	\$37.40	\$37.87

SIGNATURE PAGES

Signed for an on behalf of the Hardi Aged Care Services by its duly authorised officer:

Signature



Print Name

CHAD GREENBERG

Title

HUMAN RESOURCES MANAGER

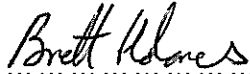
Address

10, S-11 HOLLYWOOD AVE

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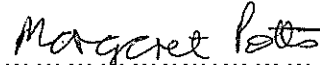
Date

20/10/16.



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

Branch Secretary
Australian Nursing & Midwifery Federation
New South Wales Branch
50 O'Dea Ave
WATERLOO NSW 2017



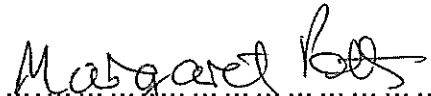
WITNESS

Margaret Mary Potts
50 O'Dea Ave, Waterloo



Coral Vicky Levett
President
New South Wales Nurses and
Midwives' Association, and;

President
Australian Nursing & Midwifery Federation
New South Wales Branch
50 O'Dea Ave
WATERLOO NSW 2017



WITNESS

Margaret Mary Potts
50 O'Dea Ave, Waterloo

Authority to sign Agreement on behalf of employees is in accordance with Rule 34 of the Rules of the New South Wales Nurses and Midwives' Association and Rule 40 of the Rules of the Australian Nursing & Midwifery Federation and as bargaining representative in accordance with the Fair Work Act 2009.

Hardi Aged Care Nursing Staff Enterprise Agreement 2016

Matter No AG2016/6563

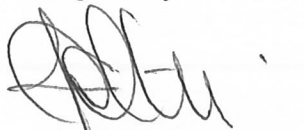
UNDERTAKING

The employer, Hardi Aged Care Group, makes the following undertaking:

- (1) That the Enrolled Nurse (with Notation) classification contained in Schedule A: Rates of Pay be replaced with the below corrected and consolidated wage table.

Enrolled Nurse (with Notation)	2016	2017	2018
Enrolled Nurse (with Notation)	\$25.17	\$25.48	\$25.80

Signed by:



Jo Anne Dalton
General Manager

14 December 2016

Hardi Aged Care Group