

**Know  
YOUR  
Rights !**

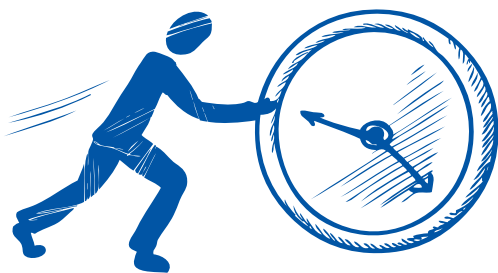


# **Top need to know Award Clauses**

*Public Health System Nurses' and  
Midwives' (State) Award*

**[www.nswnma.asn.au](http://www.nswnma.asn.au)**

ISSUE JANUARY 2023



# Overtime

## CLAUSE 25

You may be required to work reasonable overtime. Clause 25(c) provides some of the reasons when overtime may not be reasonable and can be refused by the employee.

Some reasons when overtime may be unreasonable include:

- You have worked so much overtime that you have not had a 10 hour break between your shifts
- Your personal circumstances, including carers' responsibilities
- Any risk to your health and safety, including a safe way for you to get home
- Any other relevant matter

Overtime must be paid unless there is an agreement between the parties for time off in lieu to be taken. You cannot be forced or directed to take time off in lieu instead of payment for overtime.

If you are recalled to work overtime after you have left the premises, you should be paid for a minimum of four hours at overtime rates, even if it takes less than that to complete the work. This includes in the event an overtime shift may have been rostered and then cancelled with less than 24 hours' notice.

If you are required to work so much overtime between the end of your rostered shift and the commencement of your next rostered shift that you do not have at least 10 consecutive hours off duty between shifts, then you should be released at the end of overtime until you have had 10 hours off duty without loss of pay for any rostered shift. Alternatively, if you cannot be released until you have had 10 hours off duty, overtime will continue to apply until you have had 10 hours off duty.

### Examples:

1. You are rostered to work on Wednesday 13:00 – 21:30 and then Thursday 07:30 – 15:30. You are required to stay back and end up doing the full night shift finishing at 07:30. You should be paid at overtime rates for the shift 21:30-07:30, released from duty, and be paid your base rate for your rostered shift on Thursday. You should not return to work until 1730 on Thursday.
2. You are rostered to work on Wednesday 13:00 – 21:30 and then Thursday 07:30 – 15:30. You are required to stay back and end up working until 23:30. You should be paid at overtime rates for 21:30 – 23:30. You should then be released from duty until 09:30. You would be required to come in to complete your rostered shift, working 09:30 – 15:30. You will be paid for the entire rostered shift.



# Hours of work and free time of employees

## CLAUSE 4

Clause 4(iv): Your manager cannot roster you to work more than seven shifts in a row without you requesting to do so. That said, 10 shifts in a row is the maximum you can work at your request. You are not permitted to work more than that.

Your manager is also not permitted to roster you on more than three 'quick shifts' in a pay fortnight unless you requested to do so. For example, you can't be rostered an evening shift then a day shift more than three times in the same pay fortnight.

### **Additional Days Off**

Employees should work their contract hours on no more than 19 days in any 28 day cycle.

ADOs are determined by mutual agreement having regard to the service requirements and should, where practicable, be consecutive to days off.

Up to three ADOs may be accumulated by mutual agreement. Any subsequent ADOs must be taken as they fall due. You cannot have your ADOs rostered on a public holiday unless you receive six weeks annual leave and this should only be by mutual agreement.

## 10 hour break between shifts

You are entitled to a minimum 10 hour break between shifts unless you have agreed to have an eight hour break or have swapped a shift before or after an overtime period with a colleague.

Lots of members sign or have signed a ten hour break waiver form, meaning they are happy to have less than a 10 hour break between shifts. This is a personal choice of the employee. However, if at any time you change your mind, you can rescind your waiver. This should be done in writing to your direct line manager (e.g. NUM, NM).

If you wish to rescind your waiver and are having difficulty or would like further information, you can contact the NSWNMA info line on (02) 8595 1234 or via email [gensec@nswnma.asn.au](mailto:gensec@nswnma.asn.au).

## Temporary Individual Roster Agreement (TIRA)

Did you know?

If your personal circumstances change and you need some flexibility in your roster to assist you to better balance your work and family life until the issue is resolved, you can apply for a Temporary Individual Roster Agreement (TIRA). A TIRA is described in the 'NSW HealthShare Roster Resource Manual' (page 48). There is a sample TIRA request form on page 54 of the manual. These are temporary and are usually reviewed every three months. As such, they may not be suitable if you require flexibility on a temporary but longer term basis, such as when returning from parental leave or other carer's responsibilities. Once an employee has applied for the TIRA, a response should be given within 14 days and, if the application has been rejected include the reasons for the decision.

See NSW Health Roster resource manual for further information:

**[www.health.nsw.gov.au/Rostering/Publications/rostering-resource-manual.pdf](http://www.health.nsw.gov.au/Rostering/Publications/rostering-resource-manual.pdf)**



# Annual Leave

## CLAUSE 30

Annual leave is usually taken at a mutually agreed time. While your employer can direct you to take accrued annual leave, they should discuss this with you in the first instance.

Award cl.30(vii)(c) states that an employer should give, where practicable, three months' notice of when an employee's leave is to commence. Where it is not practicable for three months' notice to be given, no less than 28 days' notice must be given.

For example, if you request annual leave to start in six weeks' time. Your employer has a maximum of two weeks to notify you of if the leave has been approved. They must also not unnecessarily decline that leave.

All employees will get paid annual leave loading on the maximum of four weeks' ordinary salary. For example, if you are a seven day worker and accrue six weeks' leave, you are only paid annual leave loading on the first four weeks.

### Excess Annual Leave

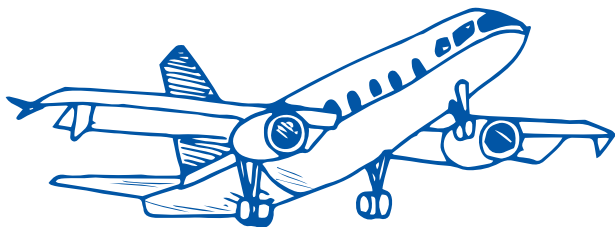
Excess annual leave is defined as an accrued entitlement of more than 30 days. So, if you have more than 30 days accrued annual leave, your employer is likely to approach you and advise you to reduce it. In the first instance, they should discuss with you how it can be reduced and if a time suitable to both parties can be found. Remember that your employer should not unreasonably withhold approval.

If a mutually convenient time cannot be agreed on, then your employer has the right to direct you to take excess leave. A minimum of 28 days' notice must be given in this case. For example, they cannot direct you to take annual leave in one week's time.

While your pro-rata (this year's) leave is included in your overall leave calculation, it should not form part of your excess leave and you cannot be directed to take any of your pro-rata leave.

So, if you have 30 days or more of accrued annual leave, then they can direct you to take annual leave.

For further information see: **Leave Matters for NSW Health Service PD2019\_010**



# Long Service Leave

## CLAUSE 33

Full time and part time employees accrue long service leave (LSL), under the Award, at the rate of two months after ten years of service and five months for each subsequent ten years. Under the Award, if you are a full time or part time employee, you can access your LSL on pro rata basis after seven years.

If you are changing jobs between public health organisations (e.g. Local Health Districts), you are considered to remain employed by the same employer. You will need to notify your public health organisation where you are going so they can transfer the leave. If you have had a break from nursing or midwifery in the public health system and return, your prior service will be recognised regardless of the length of the break.

If you are a part timer, your actual hours worked will be counted towards the calculation of your LSL. A combination of part time and full time service will also be counted.

LSL can be taken at Full, Half or Double pay. This is elected by the employee, not the employer. While on LSL other leave entitlements still accrue. The pay rate while on LSL is at your base rate – with no loading.

Casual employees are entitled to LSL under the *Long Service Leave Act 1955* (the *Act*). Under the *Act*, casual employees are entitled to two months after 10 years and additional one month after each subsequent five years of continuous service.

For further information see **Leave Matters for NSW Health Service PD2019\_010**.



# Family and Community Services Leave (FACS)

## CLAUSE 32

You are entitled to three working days in the first year of service and six working days in any two year period thereafter OR one working day per year cumulatively after two years of continuous service since 1 January 1995, minus any days already taken. You may be able to access other accrued leave entitlements for the purpose of FACS leave if you require more time.

Part time employees receive the above entitlement on pro-rata basis.

Unpaid bereavement and personal carer's leave are available to casual employees.

FACS leave is available to you for unplanned or emergency situations, including:

- to provide care/support for a sick relative or member of the household
- on compassionate grounds on the death of a relative
- to take a relative to a medical appointment where there is an element of emergency
- provide childcare in cases of emergency
- if you are experiencing domestic violence
- if adverse weather conditions/natural disasters are preventing you from being able to travel to work and/or are threatening your or your family's lives or property.

FACS leave may also be granted in non-emergency situations, including:

- school commitments such as education week activities and parent/teacher meetings
- meeting elder-care requirements of a relative where there is no element of emergency
- performing community services
- attending court, if management determine that FACS leave is appropriate.



## Who is a relative?

A “relative” is defined in cl. 32A(iv)(a) of the Award as anyone related to you by blood, marriage or affinity. This includes:

- your spouse or de facto spouse, including same sex relationships
- a child - including your child, adopted child, step-child, foster child, child of your partner/spouse, grandchild or sibling
- a parent – including step parent, foster parent, grandparent, legal guardian or
- anyone living in the same household who is related to you by blood marriage or affinity to you or your partner/spouse.



# Trade Union Activities

## CLAUSE 54

As an Association member you have a range of rights to access leave under the Award.

Under clause 54A of the Award, as a branch representative or WHS Rep, you must be allowed time when on duty to attend to union activities, such as attending workplace meetings with management and preparing for these, inductions (orientations), distribution of Association materials around the workplace and attendance to WHS Committee, amongst others. If you are not rostered on duty, time spent on such activities is not paid.

You will be provided with trade union leave with pay if you are required to attend the Association's, ACTU or Unions NSW's annual conferences, meeting of the Association's Council or to attend the NSW Industrial Relations Commission as a witness for the Association.

Members are also entitled to a maximum of 12 working days paid trade union training leave in any two year period to attend training courses by or on behalf of the Association or the ACTU, including WHS training courses.

To apply for trade union leave, in most cases you just need to apply in the same way you would apply for annual leave, replacing the type of leave with 'Trade Union Leave'.

If you have trouble accessing the above leave, please contact the Association via **[gensec@nswnma.asn.au](mailto:gensec@nswnma.asn.au)**



# Domestic Work

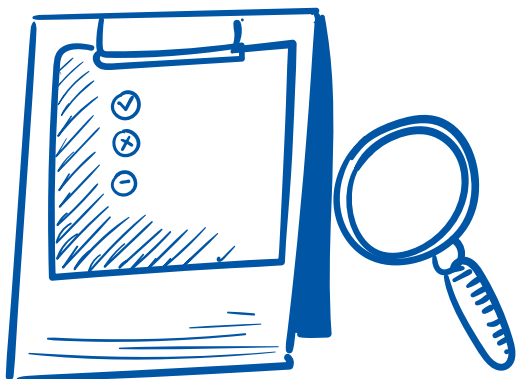
## CLAUSE 44

The Award states that nurses and midwives shall not be required to, **as a matter of routine**, undertake domestic duties (cleaning, making beds, mopping floors) where there is, or can be, someone else employed to do so, except in isolation blocks or when performing those duties involves disinfection.

Clause 46, however, allows your employer to direct you to perform duties that are within your skills, competence and training, providing such duties are not designed to promote deskilling.

The Association's position is that you may, **on occasion** and in the absence of the classification who would normally perform these duties, be asked to perform these duties. This however **should not** become a matter of routine.

For example; you may be asked to mop up a spill if this task is within your skillset (trained in and know what agent to use, mop head and so on), due to the cleaner going home sick and unable to be replaced, but you cannot be asked to do this on an ongoing basis (a matter of routine) as a cleaner should and is employed to do this.



# Rosters

## CLAUSE 8

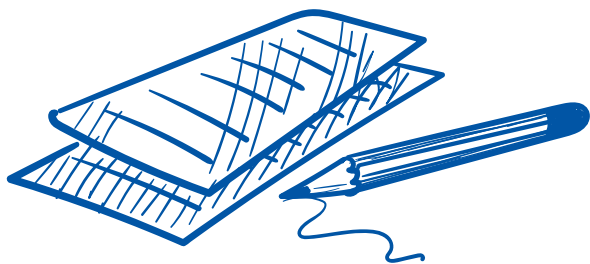
Rosters must be displayed in an accessible place for employees at least four weeks in advance.

Your individual shifts being available to you via Health Roster is not a roster being displayed, as it only contains your shifts.

A commonly suitable display type is, for example, the roster (with all staff shifts) printed and in a folder in a staff only area, or an electronic version emailed to all staff within the roster. This would be accessible to all staff within that roster, at all times.

The roster should not be locked in the NUMs office after hours, as this is not accessible.

For information on how nursing shifts should be arranged on the roster see the section on *Hours of Work and Free Time* on page 4 of this booklet.



# 12 Hour Pilot Rosters

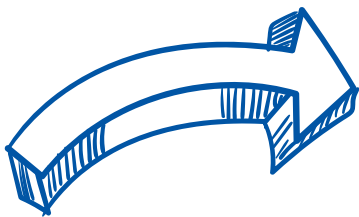
## CLAUSE 5

These are formal roster agreements between your employer and the Association. Your employer must consult with you prior to implementing a 12 hour roster. There are two roster models for 12 hr shifts - a six week roster (19 x 12hr shifts) or a four week roster (12 x 12hr shifts + 1 x 8hr shift). If you work an exclusively 12 hour roster you do not accrue ADOs. If you work a mix of 12, 10 and eight hour shifts, then you accrue ADOs on any 10 or eight hour shifts you do.

When working 12 hour shifts, you can only be rostered three shifts in a row and no single days off should be rostered (unless requested by the employee).

Some other things to note include:

- 1) You can be expected to work 50% nightshift, but not more unless agreed to.
- 2) No overtime is to be worked after a 12 hour shift.
- 3) You can't be forced to work a 12 hour roster. It is voluntary.
- 4) If you participate in a 12 hour roster and wish to withdraw, you are required to give notice equivalent to one roster period.
- 5) If a 12 hour roster is unable to be maintained by the ward/unit, consultation must take place with affected employees. After this has taken place and a decision has been made to cease the 12 hour roster, a minimum of three months' notice must be given.



# Introduction of Change

## CLAUSE 6

Where the employer has made a definite decision to introduce changes in the workplace that would have a significant effect on employees, they must notify affected employees and the Association and commence consultation.

“Workplace changes” include changes to organisational structure, technology or health service delivery. This also includes a decrease in staffing numbers or bed base through to decrease in ancillary staff, such as cleaners and admin support staff, as this affects your work.

“Significant effect” includes

- termination
- major changes in composition, size or skills of the workforce
- changes in employment/promotional opportunities or job tenure for a classification of employees
- alternation of hours of work
- need for training or transfer of a group of employees to other work or location and restructuring of jobs.



# In-charge of Shift Allowance

## CLAUSE 12

You should receive the In-Charge allowance if the NUM is not rostered on duty or if the NUM is rostered on duty but the clinical day to day management of the unit is delegated to you (the RN). You need to have been designated the responsibility for the clinical management of the ward. If the NUM is on duty but not available for day to day clinical management and may not have delegated this responsibility to anyone (such as a Team Leader), staff should clarify with the NUM who carries that responsibility.

Some of the responsibilities may include department or ward patient flow in or out, clinical oversight (e.g. the other nurses in the ward report any concerns to you), and clinical supervision of less experienced staff.

See Clause 12(v) of the Award and *New South Wales Nurses and Midwives' Association v Crown in Right of the State of New South Wales (Director General, NSW Ministry of Health in respect of Sydney Local Health District)* [2014] NSWIRComm 54 for further details.



# Higher Grade Duties (HGD)

## CLAUSE 24

If you are called upon to work or relieve in a higher classification, for example as an 'acting NUM' or 'Acting CNC', and you work five working days consecutively in this role, then you are entitled and should be paid the appropriate rate for that classification. Unfortunately, if you only work, say three days, in this role, then one day in your substantive role, then you are not entitled to this payment of HGD.

That said, your employer can not roster you in such a way as to avoid payment of the HGD allowance under this clause.

The role you are acting in does not need to be vacant for HGD to apply.

The *Higher Grade Duty Payments to Nurses and Midwives* information bulletin (IB2008\_054) provides further information and examples on when HGD would apply if you are working different roster patterns.





# Continuing Education Allowance

## CLAUSE 13

If you have a qualification, such as a PhD/Masters/Graduate Certificate/Diploma/post-registration Hospital Certificate, in a clinical field and it relates to the clinical area that you work in (eg. Critical Care Grad Dip and you work in ED or ICU), then you qualify to be receiving the CEA.

The same applies if you hold a postgraduate midwifery qualification and work in maternity services as a midwife.

Things to note:

- You must prove that you have the qualification
- You can only get one allowance, regardless of how many post grad qualifications you have (the highest paid allowance applies)
- The proof of entitlement must be given to your employer within three months of completing the qualification or commencing employment. If you provide evidence later than three months, you will start receiving the allowance from the date you provided the evidence and no backpay will apply.

You can find further information on when the CEA applies in clause 13 of the *Public Health System Nurses' and Midwives' (State) Award* and *Continuing Education Allowances - Public Health System Nurses' and Midwives' (State) Award* policy directive PD2018\_008.



# Casual Conversion

## CLAUSE 29

If you are employed as a casual and have been working regular and systematic shifts for at least six months, you have the right to elect to have your contract changed to permanent full time or part time (reflecting the hours you have been working).

Your employer must provide you with written notification of this right once you have reached the qualifying period of six months. Alternatively, you can provide four weeks' notice to your employer that you elect to convert to permanent full time or permanent part time. Your employer must respond to you within four weeks and must not unreasonably withhold approval.

If you wish to convert and are having difficulties or would like further information, contact the NSWNMA via **[gensec@nswnma.asn.au](mailto:gensec@nswnma.asn.au)**



# WHS

## THE RIGHT OF A WORKER TO CEASE UNSAFE WORK – SECTION 84 (WHS ACT)

A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from **immediate or imminent** exposure to a hazard.

The definition of "immediate or imminent exposure to a hazard" is not always clear cut and needs to be assessed on a case by case basis. Any decision to cease work can impact your professional obligations.

**If you believe a situation at work is such that it poses immediate or imminent risk of exposure to a hazard, you should contact your NSWNMA Organiser or the Association's WHS Professional Officers as a matter of urgency.**

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## FURTHER INFORMATION

For further information on the above conditions and entitlements please refer back to the *Public Health System Nurses' and Midwives' (State) Award*, the relevant local and/or Ministry of Health policy directive, and/or by contacting your NSWNMA Organiser or the Association directly on (02) 8595 1234 or via [gensec@nswnma.asn.au](mailto:gensec@nswnma.asn.au).

For more information on your rights at work, visit our Know Your Rights website:

**[bit.ly/phs-rights](https://bit.ly/phs-rights)**



## NOT A MEMBER OF THE NSWNMA?

Being part of the Association means we have more collective power to deliver positive change on pay and conditions at your work.

**Join us today and together, we can make our future stronger.**

**[www.nswnma.asn.au](http://www.nswnma.asn.au)**

