



## DECISION

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

**Medibank Health Solutions Telehealth Pty Ltd**  
(AG2017/6605)

### **MHST ENTERPRISE AGREEMENT 2017**

Health and welfare services

COMMISSIONER WILSON

MELBOURNE, 23 APRIL 2018

*Application for approval of the MHST Enterprise Agreement 2017.*

[1] An application has been made for approval of an enterprise agreement known as the *MHST Enterprise Agreement 2017* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Medibank Health Solutions Telehealth Pty Ltd (Medibank Health Solutions). The Agreement is a single enterprise agreement.

[2] During the initial stages of consideration of the application by the Commission a number of matters were identified to Medibank Health Solutions as being relevant factors for whether or not the Agreement could be approved. Three of the concerns raised by the Commission had been identified in the statutory declaration filed on behalf of the Australian Nursing and Midwifery Federation (ANMF). The three matters were; that inadequate steps had been taken to explain the terms and effects of the Agreement to employees (s.180(5)); whether nursing employees engaged under the Agreement would be better off when compared to the Nurses Award 2010; and that the introduction by Medibank Health Solutions of a new category of employment to be known as “Flexible Employee” was either an unlawful term or a term that was inconsistent with the National Employment Standard.

[3] In respect of the Flexible Employee provision, the ANMF initially put forward two concerns; that the category of employment might result in indirect discrimination against women, thereby being an unlawful term; and secondly that the provisions of the Agreement might mean that a Flexible Employee could be required to work an unreasonable number of additional hours (with reference to the Act’s provisions in s.62(1)(a) and (b), s.55 and s.186 (2) (c)).

[4] Responses provided to the Commission by Medibank Health Solutions largely satisfied the concerns initially held by the Commission in relation to all of these matters. However one matter remained, to do with the Flexible Employee provision. While the Commission was satisfied that the Flexible Employee provision did not amount to an unlawful term it was nonetheless concerned that the scope of the provision might be inconsistent with the National Employment Standards and that an inadequate undertaking had

been given by Medibank Health Solutions on the subject. As result, a conference of the parties was conducted by me on Thursday, 12 April 2018 for the purposes of discussing the Commission's remaining areas of concern; identifying any residual concerns held by the ANMF; and determining the extent to which Medibank Health Solutions may be prepared to provide an alternative undertaking.

[5] In the course of the conference the Commission identified to the Applicant that its remaining concern was to do with a potential lack of clarity about the status of the new Flexible Employee category and whether it was a subset of part-time employment. The Commission also identified its concern that as then drafted the provisions dealing with a Flexible Employee's hours of work may be insufficiently robust, potentially giving rise both to questions regarding the consistency of the provision with the National Employment Standards as well as whether the Commission can be satisfied that a Flexible Employee was better off overall.

[6] As a result of the matters discussed within the conference, the Applicant has provided revised written undertakings which alleviate the concerns otherwise held by the Commission in relation to its ability to meet the approval requirements set out in ss.186 – 187 of the Act. 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. Following the conference on 12 April 2018, and after being given an opportunity to do so, neither the ANMF or any other bargaining representative has sought to be heard about the proposed approval of the Agreement.

[7] 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.

[8] The ANMF being a bargaining representative for the Agreement has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[9] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 30 April 2018. The nominal expiry date of the Agreement is 30 November 2020.

The seal of the Fair Work Commission is circular, featuring the Australian coat of arms in the center. The text 'THE SEAL OF THE FAIR WORK COMMISSION' is written around the perimeter, and 'AUSTRALIA' is written below the coat of arms. A blue ink signature is written across the seal.

COMMISSIONER

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## ANNEXURE A

### UNDERTAKING

1. Medibank Health Solutions Telehealth Pty Ltd (**Medibank**) has applied to the Fair Work Commission pursuant to s 185 of the *Fair Work Act 2009* (Cth) (**FW Act**) for the approval of the *MHST EA 2017 (Agreement)*.
2. In support of that application, pursuant to section 190 of the FW Act and regulation 2.07 of the *Fair Work Regulations 2009* (Cth), Medibank hereby gives the following written undertakings in support of the Agreement.

#### Clause 15 - Flexible Employment

3. For the avoidance of doubt:
  - a) employees engaged in the Flexible Employment category (**Flexible Employees**) are employed by Medibank on a part time basis and will have their minimum number of contracted hours (**Minimum Hours**) documented in a contract of employment, and have agreed to enter into a Flexible Employment arrangement pursuant to clause 15 of the Agreement;
  - b) the "arrangement", for the purposes of clause 15.1 of the Agreement, will be reflected in a written document setting out the Flexible Employee's minimum hours and the agreed additional hours that the employee is prepared to work, if required, over the course of a fortnight roster period (**Flexible Hours**). The written document will record the agreed days of the week the flexible hours may be rostered and the times of day or night the flexible hours may be rostered within;
  - c) as a bilateral agreement, either Medibank or a Flexible Employee can elect to end a Flexible Employment arrangement at any time and upon ending the Flexible Employment arrangement, the employee will revert to their minimum number of contracted part time hours;
  - d) where a Flexible Employee receives notice of the requirement to work Flexible Hours, such Flexible Hours will constitute part of the Flexible Employee's ordinary hours of work in the relevant fortnight;
  - e) further to clause 15.8 of the Agreement, where a Flexible Employee receives notice of the requirement to work Flexible Hours:
    - (a) they will be paid for any Flexible Hours which are subsequently cancelled; and
    - (b) they will be entitled to take personal leave during Flexible Hours, provided that the eligibility, notice and evidence requirements set out in clause 38 of the Agreement are complied with;
  - f) further to clause 15.8 of the Agreement, where a Flexible Employee receives less than 7 days' notice of the requirement to work Flexible Hours, the additional hours will not constitute Flexible Hours. The hours will be treated as overtime and as such the employee can refuse to work the hours if they are not reasonable. If the hours are worked they will be paid as overtime in accordance with clause 31.4 of the Agreement.
  - g) where a Flexible Employee works more than the Minimum Hours and Flexible Hours in a given daily or fortnightly roster period, such hours will be paid as overtime in accordance with Clause 31.4 of the Agreement.

Date: 12 April 2018

Signed: .....

Name: Kylie Bishop

Position: Group Executive, People and Culture

(A person duly authorised to give this undertaking on behalf of Medibank Private Limited)

**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.**

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## **MHST Enterprise Agreement 2017**

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## PART ONE: GENERAL TERMS

### 1. Introduction

**At Medibank, our purpose is Better Health for Better Lives – we remain committed to helping Australians improve their health and wellbeing to lead a better quality life.**

Medibank is united through four key values that were developed and refined by our employees. These values are central to our organisation and must be in everything we do, from the decisions we make to the way we serve our customers and community.

- **Customers First.** Our customers are at the centre of everything we do.
- **Own It. Do It.** We are accountable. We deliver on our promises, even when it's hard. We make it happen.
- **Show Heart.** We show compassion. We care for each other, our customers and our community.
- **One team.** We work better and smarter together. More we, less me.

- 1.1 At Medibank, we are committed to creating an inclusive culture – one that acknowledges and embraces difference in all its forms and leverages the benefits that diversity and inclusion brings to our people, our shareholders, our customers and our community. We recognise that we have a unique mix of commercial, clinical and customer facing employees, from a diverse range of backgrounds. Each employee represents different life experiences, skills, abilities, gender, age, ethnicity, religious and cultural background, family status and sexual orientation. We are all different, and we know, that when combined, these differences make us better.
- 1.2 Medibank recognises the benefit of providing training and development to its employees to assist employees with career development, internal mobility and retention, and to execute their role in a compliant manner.
- 1.3 At Medibank, we encourage a performance-based culture and we recognise our employees through a range of wellbeing and reward programs.

### 2. Title

This Agreement shall be known as the "MHST Enterprise Agreement 2017".

### 3. Period of Operation

This Agreement shall reach its nominal expiry date on 30 November 2020.

### 4. Scope and Parties Bound

- 4.1 This Agreement ["Agreement"] is made under Section 172 of the Fair Work Act 2009 [the "Act"] and will cover:
- a) Medibank Health Solutions Telehealth Pty Ltd ["MHST"]; and
  - b) Employees who are employed by MHST to work within the telehealth business in the classifications set out in Schedule 1 of this Agreement and who perform the functions of:
    - (i) Triage Nurse
    - (ii) Mental Health Professional
    - (iii) Mental Health Counsellor



- (iv) Health Support Officer
- (c) Any employee organisation recorded in the Fair Work Australia's approval notice as being covered by the Agreement.
- (d) The classifications covered by this Agreement are those that are in existence as at the date of Approval of this Agreement.
- (e) The terms of this Agreement entirely replace and supersede any industrial instruments, agreements or awards that may have previously applied to any employee now to be covered by this Agreement, including but not limited to, the Medibank Health Solutions Enterprise Agreement 2015; the Health Professionals and Support Services Award 2010 and the Nurses Award 2010.

#### **5. Relationship to Policies and Procedures**

Medibank (including MHST specific) policies and procedures supplement this Agreement and will be made accessible to and will apply to all employees. These policies and procedures may be varied from time to time and are not incorporated into this Agreement. To the extent of any inconsistency, the express terms of this Agreement will prevail.

#### **6. Relationship to National Employment Standards**

The National Employment Standards apply as minimum entitlements and have effect subject to any terms of this Agreement as permitted by Section 55 of the Fair Work Act.

#### **7. Employment Flexibility**

- 7.1 MHST and an employee covered by this Agreement may agree to make an individual flexibility arrangement as set out in Schedule 2 of this Agreement.
- 7.2 Parties to the Agreement acknowledge that individual flexibility arrangements shall not be applied to individuals covered by the Agreement, in a manner that varies a condition of the Agreement collectively across the workforce.

#### **8. Work Health and Safety**

- 8.1 MHST recognises the importance of maintaining a healthy and safe workplace that is free of discrimination, harassment and bullying.
- 8.2 MHST will continue to meet the requirements of the statutory Work Health and Safety Legislation including the Commonwealth WHS Act and Regulations (2011), associated Codes of Practices and other relevant industry practices and standards.
- 8.3 Employees must exercise reasonable care and diligence in the performance of their work duties, and comply with all reasonable instructions to protect their own health and safety and the health and safety of others.
- 8.4 All matters pertaining to WHS, including issues and disputes, will be addressed in accordance with this Agreement, the relevant WHS legislation, regulations and government regulatory authority to which MHST is respondent. Disputes relating to WHS issues may be dealt with under Clause 12 (Dispute Settlement Procedure), where appropriate, and/or in accordance with the Medibank HSW Issue Resolution process. All other WHS matters will be addressed in accordance with the relevant WHS legislation including the Act and Regulations.
- 8.5 Rehabilitation and Return to Work

- a) In the case of a return to work from a workplace injury or illness, the employee's return to work will be facilitated by MHST, and will be actively pursued and supported by the employee, MHST and treating health practitioners in accordance with the appropriate legislation.
- b) In the event of a workplace injury, MHST will make early contact with the employee to discuss matters pertaining to rehabilitation and return to work.
- c) The parties acknowledge that MHST requires the cooperation of the employee's qualified medical practitioner to assist with the employee's rehabilitation and return to work. Therefore, the employee will not unreasonably withhold their consent (written or otherwise) for MHST to discuss matters relating to the rehabilitation and return to work with their medical practitioner. MHST will respect and maintain the employee's medical privacy and confidentiality.

**9. Fitness for Work**

- 9.1 On all occasions, an employee must present for work ready, willing and able to perform their normal work, in a manner that will be safe for the employee and other people having contact with the employee. MHST may direct an employee to either not attend, or to leave the workplace, if it considers the employee unfit for work.
- 9.2 Where MHST forms a reasonable opinion that an employee may be unfit for work, MHST will discuss the circumstances with the employee in a timely manner to promote employee safety.
- 9.3 If further information is required to determine the employee's fitness for duty, MHST may request a report from the employee's treating medical practitioner on the employee's fitness for work for MHST. The employee will not unreasonably withhold their consent (written or otherwise) for MHST to obtain a copy of the report.
- 9.4 If insufficient medical information is provided by the employee's treating medical practitioner, MHST may request an employee to attend an independent medical examination. The purpose of this examination is to advise MHST on the employee's fitness for work. MHST will provide the employee a copy of any correspondence to the independent medical examiner. If on receipt of the medical report, MHST continues to have a reasonable cause that the employee is unfit for work, MHST will provide the employee sufficient information (which may include a copy of the report (where appropriate) on the employee's fitness for work, so that the employee can provide a response.
- 9.5 Where an employee has a disability (whether permanent or temporary), MHST will make reasonable adjustments if the employee is able to perform the inherent requirements of the role after the adjustment is made.

**10. Excess Travel Time**

Employees who are required to travel at MHST's direction to regional areas or interstate away from their usual work location will be paid excess travelling time at their ordinary rate of pay for each hour (or part thereof):

- a) in excess of 9 hours combined travel and work per day; or
- b) when you are directed to travel for work and you fly and return on the same day, any hours prior to 7.30am and any hours after 6.00pm.

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**PART TWO: CONSULTATION AND DISPUTE RESOLUTION****11. Consultation**

11.1 This clause applies if:

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

**Major Change**

11.2 For a major change referred to in 11.1(a):

- a) The Employer must notify the relevant employees of the decision to introduce the major change; and
- b) Subclauses (11.3) to (11.9) apply

11.3 The relevant employees may appoint a representative for the purposes of the procedures in this clause.

11.4 If:

- a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- b) the employee or employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

11.5 As soon as practicable after making its decision, the Employer must:

- a) discuss with the relevant employees:
  - (i) the introduction of the change; and
  - (ii) the effect the change is likely to have on the employees; and
  - (iii) measures the Employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- b) for the purposes of the discussion — provide, in writing or by other means, to the relevant employees:
  - (i) all relevant information about the change, including the nature of the change proposed; and
  - (ii) information about the expected effects of the change on the employees; and
  - (iii) any other matters likely to affect the employees.

11.6 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

11.7 The Employer must give prompt and genuine consideration to matters raised, about the major change by the relevant employees.

- 11.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the Enterprise of the employer, the requirements set out in 11.2 (a); 11.3 and 11.5 are taken not to apply.
- 11.9 In this clause, a major change is likely to have a significant effect on employees if it results in:
- a) the termination of the employment of employees; or
  - b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - d) the alteration of hours of work; or
  - e) the need to retrain employees; or
  - f) the need to relocate employees to another workplace; or
  - g) the restructuring of jobs.
- 11.10 In this clause, relevant employees mean the employees who may be affected by the major change.

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

- 11.11 For changes referred to in 11.1 (b):
- a) the employer must notify the relevant employees of the proposed change; and
  - b) sub clauses 11.12 to 11.16 apply.
- 11.12 The relevant employees may appoint a representative for the purposes of the procedures in this clause.
- 11.13 If:
- a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - b) the employee or employees advise the Employer of the identity of the representative;
- the Employer must recognise the representative.
- 11.14 As soon as practicable after proposing to introduce the change, the Employer must:
- a) discuss with the relevant employees the introduction of the change; and
  - b) for the purposes of the discussion - provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 11.15 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

- 11.16 The Employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 11.17 In this term "relevant employees" means the employees who may be affected by a change referred to in 11.1.

## **12. Dispute Settlement Procedure**

- 12.1 If a dispute relates to:
- a) a matter arising under the Agreement; or
  - b) the National Employment Standards; then
- this term sets out procedures to settle the dispute.
- 12.2 An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 12.3 In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees, and relevant people leaders (however titled) and/or management.

### 12.4 The Procedure

#### **Step 1:**

The employee should discuss the matter with their People Leader (however titled) in the first instance and if the employee so chooses, their employee representative.

#### **Step 2:**

If the dispute remains unresolved after Step 1, either party may refer the matter to their People & Culture (P&C) Business Partner (however titled). The employee may choose to have an employee representative involved.

#### **Step 3:**

If the dispute remains unresolved, either party may refer the matter to the relevant senior People Leader and/or senior member of P&C for resolution. The employee may choose to have an employee representative involved.

#### **Step 4**

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

- 12.5 The Fair Work Commission may deal with the dispute in 2 stages:
- a) the Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
  - b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
    - (i) arbitrate the dispute; and
    - (ii) make a determination that is binding on the parties.

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

- 12.6 A decision that the Fair Work Commission 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.
- 12.7 While the parties are trying to resolve the dispute using the procedures in this term:
- a) an employee must continue to perform their work as they would normally unless they have a reasonable concern about an imminent risk to their health or safety; and
  - b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:
    - (i) the work is not safe; or
    - (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
    - (iii) the work is not appropriate for the employee to perform; or
    - (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.
- 12.8 The parties to the dispute agree to be bound by a decision made by the Fair Work Commission, in accordance with this term.

### **PART THREE: CATEGORIES OF EMPLOYMENT**

#### **13. Full time employment**

- 13.1 A full time employee is defined as one who works an average of thirty seven and one half (37.5) hours per week (excluding unpaid meal breaks); seventy five (75) hours over a fortnight or one hundred and fifty (150) hours over a four week period.

#### **14. Part time employment**

- 14.1 A part-time employee is defined as one who works on average less than thirty-seven and one half (37½) ordinary hours per week; whose hours are reasonably predictable and whose hours can be averaged over a period of 28 days.
- 14.2 A part-time employee's salary (including salary related allowances), annual leave, personal leave, long service leave and public holidays will accrue on a pro-rata basis.
- 14.3 A part-time employee will be rostered to work a minimum of 3 consecutive hours on any occasion unless otherwise agreed between the Employer and the employee.
- 14.4 A part-time employee's hours of work will be paid at ordinary rates of pay, unless overtime is payable for the part time employee as provided for in this Agreement.
- 14.5 Before commencing employment, or at any time during employment, a part time employee's minimum ordinary hours of work to be worked and the rostering arrangements that will apply to those hours will be agreed in writing. A part time employee's days of work may be varied in writing by mutual consent.
- 14.6 Where an employee is regularly working more than their specified ordinary hours per week, and such hours are likely to continue, the employee may apply for a review of their specified ordinary hours per week.

**15. Flexible Employment**

- 15.1 At the commencement of employment, or at any time during employment, an employer and an employee can enter into an arrangement for the employee to be engaged as a flexible employee.
- 15.2 A flexible employment arrangement can be temporary or permanent.
- 15.3 A "Flexible Employee" is an employee who is engaged to work a minimum number of contracted hours but will be required to complete up to a nominated amount of additional hours (to be known as 'flexible hours') on a flexible basis, determined on commencement of the contract. The nominated additional hours may vary in reality depending on the requirements of the business and the employee will be notified in advance of the changes to their roster.
- 15.4 A flexible employee will receive a 15% loading on their base hourly rate for all hours worked (contracted and flexible hours) when working under the 'Flexible Employment' category. This excludes overtime worked that is above their combined contracted and flexible hours or for any other hours that constitute overtime under this Agreement.
- 15.5 The flexible employee loading is paid in addition to any other shift penalty rate that might be applicable to their hours of work (excluding overtime which is dealt with in clause 31) and is paid in recognition of the requirement to work additional hours with notice on elected days. The flexible loading will be calculated on the base rate of pay with the amount added to the penalty rate of pay.
- 15.6 A flexible employee will be paid no less than the minimum number of fortnightly hours stated in their contract per fortnight regardless of how many hours they are actually rostered to work.
- 15.7 A flexible employee will be rostered to work a minimum of 3 consecutive hours on any occasion unless otherwise agreed between MHST and the employee.
- 15.8 An employee operating under this clause will be provided notice of the requirement to work the additional hours with no less than 7 days' notice.
- 15.9 A flexible employee is not a casual employee as defined in Clause 17 of this Agreement.
- 15.10 A flexible employee's annual leave, personal leave and long service leave will accrue pro rata depending on their total hours of work. Flexible employees will continue to accrue the above listed leave types on the flexible hours they work under this arrangement. For the avoidance of doubt, leave does not accrue when overtime is worked in accordance with Clause 31 of this Agreement.
- 15.11 For the avoidance of doubt, employees already engaged with MHST on any other form of employment contract will not be directed to enter into a flexible employment arrangement however they may do so, at their absolute discretion.

**16. Fixed term and Fixed task employment**

- 16.1 A fixed term employee is defined as one who is employed for a defined period of time. For the avoidance of doubt, where a fixed term employee's employment ends on the date specified in their contract of employment, no redundancy will have arisen.
- 16.2 A fixed task employee is defined as one who is employed to perform or complete a specified task or role. A fixed task employee generally does not have a defined end date but rather is employed for the duration of time that the task or role requires. For the avoidance of doubt, where a fixed task employee's employment ends upon completion of a specified task or role,

no redundancy will have arisen. An example of a fixed task contract is backfilling an employee on parental leave.

**17. Casual employment**

- 17.1 A casual employee must be advised specifically that they are engaged and paid as a casual.
- 17.2 A casual employee is engaged on an hourly basis when required by MHST with a minimum payment of 3 (three) hours for each occasion the casual employee is required to attend work.
- 17.3 All casual employees will be paid an hourly rate of pay commensurate to no less than the relevant minimum salary in Schedule 1 of this Agreement plus a twenty five (25) per cent casual loading. The casual loading is paid in recognition of the casual nature of the work and in lieu of annual leave, paid personal leave, paid compassionate leave, public holidays, the Good Health Day, the parental leave provisions in this Agreement or other forms of entitlement not applicable to casuals, except as provided for under the Act.
- 17.4 All casual employees, where applicable, will be paid the relevant overtime rate, on their base rate of pay (excluding the twenty five (25) per cent casual loading) and calculated on each occasion. The casual loading component is then added to the overtime rate of pay.
- 17.5 All casual employees will be paid shift loadings (referred to in Clause 29) calculated on the base rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.
- 17.6 Where a casual employee has been working on a regular and systematic basis for over 12 months, and is likely to continue to do so for the foreseeable future, the employee may apply for conversion to permanent employment.

**PART FOUR: SALARY AND RELATED MATTERS**

**18. Salary**

- 18.1 From the commencement date of this Agreement, an employee's salary will be no less than the relevant minimum salary for their classification listed in Schedule 1 of this Agreement.
- 18.2 Salaries will be paid in arrears electronically into the employee's nominated bank account on a fortnightly basis no later than 5 days after the end of the corresponding pay period. The employer may adjust the pay period frequency or payment days on reasonable notice to employees.

**19. Annualised Salary**

- 19.1 For employees hired after the Commencement date, the Employer may offer employment (but not as a condition precedent of employment) on the basis of an Annualised Salary. Subject to the terms of the offer, the Annualised Salary may be inclusive of, and paid in lieu of the following provisions of this Agreement:
  - a) Overtime
  - b) Shift penalties
  - c) Excess travel time
  - d) Time off in lieu
  - e) The relevant Minimum Salary contained in Schedule 1
- 19.2 An Annualised Salary must result in the employee being better off overall in receipt of the Annualised Salary than they would have been had the employee been paid those remuneration components incorporated into the Annualised Salary under the Agreement.



**20. Annual Salary Review**

- 20.1 MHST is committed to ensuring its employees are competitively remunerated for their performance.
- 20.2 Minimum salaries for all classifications are set out in Schedule 1 of this Agreement.
- 20.3 There will be an annual salary review, with any resulting increase effective on the first full pay period following July 1 each year.
- 20.4 Any increase will be calculated in accordance with Medibank's Remuneration policy, which has regard to an employee's relevant position within the salary range (which is based upon market conditions) and the employee's most recent performance rating.

**21. Overpayments**

- 21.1 In the event of an overpayment occurring, MHST will promptly advise the employee that an overpayment has occurred.
- 21.2 MHST will provide employees' with documentary evidence detailing the nature of the overpayment including pay period(s), and gross and net amounts.
- 21.3 Employees are encouraged to regularly review their payslips and immediately bring to the attention of Payroll any overpayments and/or other anomalies.
- 21.4 An overpayment will need to be repaid as soon as practicable. Arrangements for the recovery of any overpayments will be agreed between MHST and the employee. MHST will take into consideration the circumstances of the overpayment, including the amount owed and an employees' individual financial circumstances.
- 21.5 Any overpayment, not repaid prior to termination of employment, will be deducted from the employee's final termination pay.

**22. Multiple Loadings and Penalties**

The penalty rates and loadings prescribed in this Agreement, including but not limited to overtime penalties, shift penalties and loadings for Sunday and Public Holiday work, do not have cumulative or concurrent effect. With the exception of clauses 15; 17.4 and 17.5, where more than one of the rates or loadings referred to in this agreement applies to an employee, the employee is only entitled to the rate or loading that provides the employee with the greatest entitlement.

**23. Salary Packaging**

- 23.1 An employee may, with the agreement of MHST, package part of their base salary.
- 23.2 The salary for superannuation contributions referred to in Clause 26 will be their pre-salary sacrifice base salary.
- 23.3 An employee will pay any fringe benefits tax and administration costs incurred as a result of the salary packaging arrangement.
- 23.4 Employees are encouraged to seek their own financial advice before entering into a salary packaging arrangement.

**24. Professional Development and Study Assistance**

- 24.1 MHST supports and encourages employees to undertake study which is relevant to their position and will enhance their long term professional and career development at MHST.

- 24.2 All permanent full time, part time; flexible and fixed term employees with more than 12 months' service and an expectation of at least a further 12 months' service are eligible to apply for financial assistance and/or paid study leave as follows:
- a) Up to \$1500 per annum (pro-rated for part time and flexible employees) towards course fees plus 2 days paid study leave; or
  - b) Up to 4 days paid study leave (but no financial assistance)
- 24.3 The benefits outlined at 24.2 (a) and (b) do not accumulate. They are allocated on the eligible employee's anniversary date with MHST and are forfeited if unused after 12 months from that date.
- 24.4 The proposed study/course must be in line with an employee's performance and development plan as agreed with their People Leader and be relevant to their position or to the agreed career pathway they have with MHST.
- 24.5 Business needs and course outcomes must be mutually beneficial and compatible.
- 24.6 An employee's current performance must meet the required standards in all areas and their performance must continue at this level throughout the course of the study.
- 24.7 Further eligibility and assessment criteria for applications for study assistance will be as per MHST policy.

**25. Private Health Insurance**

In accordance with the Medibank Private Health Insurance (PHI) Subsidy Policy, all permanent full time, part time and flexible employees, and fixed term employees on a contract of more than 12 months, are eligible to receive a subsidised reduction in their private health insurance premium with Medibank Private or ahm Health Insurance. At the time of making this Agreement, the subsidised reduction is thirty five (35) per cent but this rate is subject to the policy as amended from time to time. For the avoidance of doubt, fixed term employees on a contract less than 12 months; fixed task and casual employees are not entitled to this subsidy.

**26. Superannuation**

- 26.1 Superannuation will at all times be managed subject to relevant legislation.
- 26.2 MHST will make superannuation contributions for all employees covered by this Agreement at the rate of 10% of their ordinary time earnings as defined by superannuation legislation.
- 26.3 Employees may elect which complying superannuation fund they wish contributions to be paid in to. Where an employee does not specify a fund, MHST will make contributions into its default complying fund.

**27. Eligibility for Higher Duties**

- 27.1 An employee may agree, at any time during the term of this Agreement, to perform duties in excess of their current role ("Higher Duties"). Subject to this clause, an employee who agrees to perform Higher Duties shall receive a Higher Duties payment consistent with this clause, at the payment level agreed between the employee and the People Leader for such work.
- 27.2 An employee will be eligible for a Higher Duties payment under this clause provided that:
- (i) the role the higher duties relates to is a role listed in Schedule 1 of this Agreement; and

- (ii) the employee demonstrates the necessary skills and competencies, and where applicable, credentialing to perform the Higher Duties; and
- (iii) the employee is prepared to assume the additional responsibilities of the Higher Duties.

27.3 To qualify for Higher Duties payment an employee must complete three (3) consecutive working days of Higher Duties for a particular classification.

#### **PART FIVE: HOURS OF WORK AND RELATED MATTERS**

##### **28. Ordinary hours of work**

- 28.1 Ordinary hours are able to be worked, subject to the penalties payable under Clause 29, any day or hour per week.
- 28.2 The maximum number of hours an employee can be rostered to work in any one day is ten (10) hours.
- 28.3 Meal breaks are not considered time worked, but paid rest breaks are counted as time worked.
- 28.4 The employer may require employees to work reasonable additional hours in excess of their ordinary hours of work.
- 28.5 Shifts and additional hours will be organised to give employees a minimum of 10 hours off duty between successive periods of work. However, an employee, at their absolute discretion, may agree to work successive periods of work without a minimum of 10 hours off duty. If an employee agrees to work without a minimum of 10 hours off duty, no overtime will be payable despite clause 31.3 (b) for any part of the successive shift, except for work in excess of 10 hours.
- 28.6 Where an employee has, at their absolute discretion, agreed to work successive periods of work without a minimum of 10 hours off duty under Clause 28.5 of this Agreement:
- a) The period from the commencement of the first successive period of work to the end of the second successive period of work (excluding the period off duty) shall not exceed 12 hours; .
  - b) Following completion of the two successive periods of work, the employee must be given a minimum of 10 hours off duty; and
  - c) Overtime may apply in accordance with Clause 31.
- 28.7 Employer meetings with the employee and employer provided training will occur during paid work time.
- 28.8 A split shift is defined as a single rostered shift that an employee has requested or agreed to work in two or more blocks of time over a 24 hour period.

*For example, an employee may be rostered to work an 8 hour shift but request to work the shift as a 'split shift' in two blocks of four hours over a 24 hour period. As the shift is defined as a single 'shift' the two blocks of work will not be regarded as successive periods of work for the purposes of Clause 28.5.*

- 28.9 In the event that the total time of the shift [excluding the break between the two blocks worked] exceeds the prescribed periods in either Clause 31 or Clause 28, overtime may apply.

- 28.10 A split shift is distinct from an employee agreeing to work hours in addition to their agreed rostered shift.
- 28.11 A split shift is distinct from an employee agreeing to work more than one shift in a 24 hour period as outlined in Clause 28.5 and 28.6.

## **29. Shift Work**

- 29.1 Employees whose ordinary hours of work are arranged via roster and are considered shift workers, will be eligible for the following penalties when work is performed. Shift work hours or patterns of work may be changed by the Employer to meet operational needs.
- 29.2 **Day Shift:** hours worked between 7am and 6pm will not attract any shift penalty.
- 29.3 **Evening Shift:** hours worked between 6pm and midnight will attract a 15% penalty.
- 29.4 **Night Shift:** hours worked between 12 midnight and 7am will attract a 25% penalty.
- 29.5 **Saturday Shift:** hours worked anytime on a Saturday will attract a 50% penalty.
- 29.6 **Sunday Shift:** hours worked anytime on a Sunday will attract a 75% penalty.
- 29.7 The shift penalties prescribed in clauses 29.1 – 29.6 are paid per hour worked within the shift period (e.g. an employee working 4pm – 11pm will not receive a penalty for the hours between 4pm and 6pm but will then receive the evening penalty for all hours between 6pm and 11pm).
- 29.8 Rosters setting out each employee's ordinary hours of work will be made available at least 14 days in advance. 28 days' notice will be given by MHST of a change in roster, however, a roster may be altered at any time where another employee is absent from duty on account of illness, or in an emergency. Regard will be had to carer responsibilities when considering changes in rosters.
- 29.9 For absolute clarity, the definition of a shift worker for the purposes of this clause is different to the definition of a shift worker for the purposes of Clause 35 Annual Leave.

## **30. Breaks**

- 30.1 An employee will receive an unpaid meal break of not less than 30 minutes duration after no more than 4 hours of work, provided their scheduled hours of work during a relevant shift exceeds 5 hours.
- 30.2 Where an employee works 4 hours in succession (including meal breaks) they are entitled to a paid rest break of 10 minutes duration within each 4 hour period.
- 30.3 MHST will, wherever possible, ensure that breaks are appropriately spaced out over the length of a shift, taking into account day to day unplanned activities such as personal leave and broader operational requirements.
- 30.4 All rest breaks must be taken at a time agreed with MHST and take into account operational requirements.
- 30.5 Wherever possible MHST will be flexible where an employee makes a request for a specific pattern of breaks during any one shift.
- 30.6 Subject to agreement between the Employer and employee, rest breaks may be combined.

## **31. Overtime**

- 31.1 Employees are required to work reasonable additional hours as overtime as directed by the Employer.

31.2 Overtime is not payable unless it is approved by the Employer in advance of the overtime being worked.

31.3 Full Time Employees

Subject to other provisions in this Agreement, a full time employee will be paid overtime at the rate of time and one half for the first 2 hours work, and double time thereafter, for additional hours that exceed:

- a) the employee's rostered hours of work on a particular day; or
- b) 10 hours per day; or
- c) 75 hours in a fortnight.

31.4 Part Time Employees

- a) For part time and casual Mental Health Professionals; Counsellors and Health Support Officers:

Subject to other provisions in this Agreement, a part time mental health professional; counsellor or health support officer will be paid overtime at the rate of time and one half for the first 2 hours work, and double time thereafter, for additional hours that exceed the ordinary hours of work for that employee which have been agreed in accordance with Clause 14 of this Agreement, and for casuals in these classifications exceed the hours they have agreed to work on any shift.

- b) Part Time and Casual Nurses:

Subject to other provisions in this Agreement, a part time nurse will be paid overtime at the rate of time and one half for the first 2 hours work, and double time thereafter, for additional hours that exceed more than 7.5 hours per day.

**32. Time off in Lieu**

32.1 Where an employee remains at work beyond the scheduled finishing time for their shift for up to 15 minutes, time off in lieu will be granted to the employee instead of overtime (if overtime is applicable).

32.2 Time off in lieu will equate to the additional time actually worked, and will be managed at the local level between an employee and their Manager.

32.3 With the agreement of the Employer, time off in lieu may be granted in advance to meet an individual employee's personal circumstances. Any outstanding advanced time off in lieu can be recovered from monies owed upon termination.

32.4 Time off in lieu must be taken (or repaid) within 6 weeks of being worked and the Employer and employee will use their best endeavours to facilitate this occurring.

**33. Public Holidays**

33.1 Employees may be rostered to work on public holidays, in accordance with the Act.

33.2 An employee who is rostered to work but is not required to work will receive their ordinary rate of pay for that shift.

33.3 An employee who is rostered to work on a public holiday and attends work will be paid at two and a half times their ordinary rate of pay for that shift.

33.4 An employee who is not rostered to work and does not work is not entitled to any payment for that day.

33.5 Public holidays are days gazetted for the State or Territory in which the relevant employee works.

- 33.6 If substitute days are gazetted for any of 25 December, 26 December or 1 January, such days and the substitute days will be regarded as public holidays. Public holidays will include Easter Saturday.
- 33.7 Where the Employer and employee agree, another day may be substituted for any public holiday.

#### **PART SIX – LEAVE AND RELATED MATTERS**

##### **34. Good Health Day**

- 34.1 Full time, part time and flexible employees are entitled to one day off per calendar year to be known as the 'Good Health Day'.
- 34.2 The Good Health Day will be paid at an employee's ordinary rate of pay.
- 34.3 Employees may apply to take their Good Health Day on any day throughout the year, as agreed with their manager and approval of the date will be with consideration given to the operational requirements of the business.

##### **35. Annual Leave**

- 35.1 For the purposes of annual leave, a shift worker is defined as an employee whose regular roster includes shifts other than day shifts Monday to Friday (as defined in Clause 29).
- 35.2 Employees defined as shift workers under Clause 35.1 will receive a base entitlement of 5 weeks' annual leave (pro rata for part time and flexible employees).
- 35.3 In addition to the 5 week base entitlement, a shift worker who works hours between midnight and 7am will accrue pro rata annual leave for any such hours worked, on the basis of an annual leave entitlement of 6 weeks per year.
- 35.4 Employees who only work day shift Monday to Friday will receive a base entitlement of 4 weeks annual leave per year (pro rata for part time and flexible).
- 35.5 Annual leave will be paid at an employee's ordinary rate of pay and will accrue progressively, and leave loading will be payable, for full time employees (pro rata for part time and flexible employees) on the following basis:

<b>Regular Shift Worked</b>	<b>Weeks of annual leave accrued per year</b>	<b>Hours of annual leave accrued per year</b>	<b>Leave loading</b>
Day Shift – Mon to Fri (hours worked between 7am and 6pm)	4 weeks	150 hours	Nil
Day Shift – Sat or Sun (hours worked)	5 weeks	187.5 hours	20%
Evening Shift (hours worked between 6pm and midnight)	5 weeks	187.5 hours	20%
Night Shift (hours worked between 12 midnight and 7am)	6 weeks	225 hours	20%

- 35.6 Subject to the Act and the relevant employer policies, annual leave is to be taken at times agreed between an employee and their manager.
- 35.7 MHST may direct an employee to take annual leave:
- a) Within a period of 3 months from when their accrued annual leave exceeds 8 weeks (or pro rata equivalent for part time employees); or
  - b) when a part of the Employer's business closes down associated with Christmas or Easter periods, subject to:
    - (a) a minimum of 4 weeks' notice being provided of the close down; and
    - (b) the period of close down not exceeding 2 weeks (including public holidays and weekends)
    - (c) Employees with less than the required balance of leave will utilise any unused time off in lieu (in accordance with clause 32), or else be provided with annual leave in advance or elect to take unpaid leave.
  - c) For the avoidance of doubt, where an entitlement to annual leave loading exists under this Agreement, the balance of such annual leave loading amount will be paid upon termination
- 35.8 Casual employees are not eligible to receive annual leave.

### **36. Cashing Out Accrued Annual Leave**

- 36.1 An employee may submit a request in writing that the Employer cash out accrued annual leave entitlements at the same amount that would have been payable if the employee had taken the leave, up to the equivalent of 2 weeks accrued annual leave per annum, subject to:
- a) the employee having taken at least 2 weeks annual leave in the past 12 months;
  - b) the cashing out not resulting in the employee's remaining accrued annual leave balance being less than 4 weeks; and
  - c) each agreement to cash out being documented separately in writing.

### **37. Purchase of Additional Annual Leave**

- 37.1 Full time, part time, flexible and fixed term employees (with greater than 12 months' service) may purchase a maximum of 4 weeks annual leave (pro rata depending on their contracted hours) in addition to the entitlement in clause 35 above, on the basis of a regular salary deduction of the value of leave purchased over a maximum period of 12 months. Upon termination, any outstanding amounts will be either recovered by the Employer from any monies owed, or paid to the employee.

### **38. Personal Leave**

- 38.1 Full time employees are entitled to accrue 10 days paid personal leave per year of service. Part time and flexible employees accrue on a pro rata basis. Casual employees are entitled to unpaid leave as per the Act.
- 38.2 For the purposes of applying this clause, 'personal leave' means leave taken because of either:
- a) A personal illness or injury to the employee; or
  - b) Due to carers' responsibilities - meaning the requirement for the employee to care for a member of the employee's immediate family or household, who requires care or support because of a personal illness or injury or unexpected emergency affecting the employee.

- 
- 38.3 Immediate family is defined as an employee's spouse and the employee's or spouse's child (including adopted child; stepchild, an ex-nuptial child or an adult child); the employee or spouse's parent, grandparent, grandchild or sibling. For the purposes of this clause, "spouse" includes de facto spouse (including same sex relationships), a former spouse and a former de facto spouse.
- 38.4 Where a reasonable cause exists, the employer may require an employee to substantiate their absence by either a medical certificate or a statutory declaration.
- 38.5 In the case of an employee who has taken leave for personal injury or illness, and in MHST's reasonable opinion, the documentation requested or required under clause 38.4 provides insufficient information, MHST may direct the employee to seek and provide more detailed documentation from their treating medical practitioner. If, on receipt of the documentation, MHST continues to hold a reasonable opinion it contains insufficient information, MHST may direct the employee to attend an independent medical examination. The purpose of this examination is to advise MHST on the employee's fitness for work. The employee will authorise access by MHST to relevant reports produced as a result of such a direction to the employee. MHST will pay the costs associated with these processes.
- 38.6 Failure to appropriately substantiate an absence, when requested to do so, may result in salary not being paid for the relevant period of absence.
- 38.7 MHST acknowledges the employees' right to privacy and will require all parties to keep confidential any information pertaining to the use of personal leave. This does not preclude necessary information being provided to People & Culture, senior levels of management and the WHS Committee.
- 38.8 Personal leave is cumulative but is not paid out on termination of employment.
- 39. Compassionate Leave**
- 39.1 Employees are entitled to access paid compassionate leave to attend to a critically or terminally ill or injured member of the employee's immediate family/household, or in the unfortunate event of the death of a member of the employee's immediate family/household.
- 39.2 Full time employees are entitled to up to 5 days paid compassionate leave per occasion. Part time and flexible employees are entitled on a pro rata basis. Casual employees are entitled to unpaid compassionate leave as per the Act.
- 39.3 MHST may require an employee to provide appropriate documentation to substantiate the absence.
- 39.4 Compassionate leave is non-cumulative and is not paid out on termination of employment.
- 40. Domestic and Family Violence Support Leave**
- 40.1 Any employee who is experiencing domestic or family violence can raise the issue with their People Leader or People & Culture in the knowledge that the matter will be treated respectfully and confidentially.
- 40.2 MHST will provide full time, part time and flexible employees' with access to paid leave that will be available to any employees directly experiencing domestic or family violence, and who need time off work for medical and legal assistance; court appearances; counselling; relocation or to make other safety arrangements. Casual employees can access unpaid leave.



- 40.3 The amount of leave provided will be determined by the individual's situation through consultation between the employee, People & Culture and the People Leader where appropriate.
- 40.4 Requests for leave either through the People Leader or directly through People & Culture (in accordance with Medibank's Domestic and Family Violence Support Leave Policy) will be handled confidentially with particular regard for how the leave is captured both in the system and on payslips.
- 40.5 An employee may be required to produce documentation to support the request for leave such as a medical certificate; a support letter from a relevant service; a police or court issued document or statutory declaration.
- 40.6 MHST will consider any reasonable request from an Employee experiencing domestic or family violence to provide temporary or ongoing changes to their work arrangements.

**41. Parental Leave**

- 41.1 All employees are entitled to unpaid parental leave in accordance with the Act and the National Employment Standards (NES).
- 41.2 In addition to the provisions outlined at clause 41.1, MHST will provide employees' (excluding Casual employees) with at least 12 months' continuous service (at the expected date of birth or adoption of the child), and who will be the child's primary caregiver, with the first 14 week's parental leave paid at the employee's base rate of pay or 28 weeks' at half (1/2) pay.
- 41.3 Parental leave can begin from six (6) weeks prior to the expected date of birth or adoption of the child.
- 41.4 A primary carer is the parent who provides primary care to the child either after giving birth; upon adoption of the child and in surrogacy situations.
- 41.5 A primary carer (for the purposes of paid parental leave) is defined as the parent who has sole responsibility for the child, for a time equivalent to a minimum of 80% of their normal work hours.
- 41.6 An employee who has completed twelve (12) month's continuous service at the expected birth or date of adoption of the child, and who will be the child's secondary carer, can access up to two (2) weeks paid leave at their base rate of pay.
  - a) A secondary carer is the parent who opts to be the secondary carer of the child on its birth or adoption and takes leave at this time.
- 41.7 In the unfortunate event that an employee's pregnancy terminates within twenty (20) weeks of the expected date of birth, the employee may access up to fourteen (14) weeks paid Parental Leave for any absence resulting from the termination. The period of absence must be supported by a medical certificate. Leave taken in this circumstance may not be taken at half pay.
- 41.8 **Extended Parental Leave**

Requests to extend Parental leave must be applied for, and shall be considered, in accordance with the National Employment Standards.
- 41.9 **Returning from Parental Leave**
  - a) An employee may request to return from parental leave on a part time or flexible basis. MHST will give genuine consideration to any request for part time work and

grant such requests, where it can reasonably do so while meeting the operational requirements of the business.

#### **42. Long Service Leave**

- 42.1 Long service leave will accrue pro rata at a rate of 1.3 weeks per annum, and shall be provided to the employee as a pro rata 'entitlement' on completion 7 years' continuous service.
- 42.2 Where employment is terminated as a consequence of death, permanent disability, redundancy or retirement, and the employee completed five (5) years' continuous service at the time of termination, the employee, or the employee's estate, will receive payment of unused pro rata Long Service Leave as part of their final pay. For the purpose of applying this clause, "retirement" means an employee who is sixty (60) years of age, or over, and has provided MHST with written notice of their intention to retire from employment.
- 42.3 An employee who has completed seven (7) years' continuous service will receive, upon termination of employment, payment of unused pro rata Long Service Leave as part of their final pay, except that MHST may, where permitted by law, be relieved from making such a payment if the employee's employment was terminated due to serious misconduct
- 42.4 An employee in NSW or ACT who has completed 5 years' continuous service and whose employment is terminated by the Employer for reasons other than serious misconduct will receive payment in lieu of pro-rata long service leave
- 42.5 In the event that an employee transfers as part of a transfer of business as defined under the Act, long service leave will not be paid out upon transfer.
- 42.6 Long service leave payments will be calculated in accordance with the long service leave legislation applicable in the State or Territory in which the employee works. The long service leave benefits provided in this clause are not intended to provide a dual benefit to employees who are entitled to benefits under the long service leave legislation in each State and Territory, or pursuant to an Award derived long service leave term.
- 42.7 If an employee is entitled to more generous long service leave provisions for any period of service under award derived long service leave terms in accordance with the Act, such as the Nurses (Victorian Health Services) Award 2000 or Health Services Union of Australia (Health Professional Services – Private Sector Victoria) Award 2004, those more generous provisions shall apply in lieu of the provisions of this clause.

### **PART SEVEN: TERMINATION OF EMPLOYMENT**

#### **43. Abandonment of Employment**

- 43.1 An employee has abandoned their employment if they:
  - a) Have been absent from work for a continuous period of three (3) or more working days without the prior consent of, authorisation or notification to MHST; and
  - b) The employee has not established to the satisfaction of MHST that the absence was due to a reasonable cause.
- 43.2 This clause does not apply to an employee who has either MHST's consent for the absence or has notified MHST of the absence and has had the absence approved ("Authorised Absence").

- 43.3 The employee's employment will be terminated by reason of abandonment and their last working day will be taken as their last date of attendance at work or last date of Authorised Absence.
- 43.4 Further, any absences from work which are not Authorised Absences may constitute misconduct.

#### 44. Notice of Termination of Employment

- 44.1 With the exception of summary dismissal, MHST will provide employees with the following notice:

Service When Notice is Given	Period
a) During Probation Period	1 week
b) After the expiration of any probation period	4 weeks
c) Employees 45 years of age or over and who have at least 2 years continuous service	5 weeks

- 44.2 With the exclusion of summary dismissal, if a probation period was to extend beyond 12 months, the employer would provide no less than the required notice under the NES.
- 44.3 The notice periods listed at clause 44.1 do not apply to a fixed term employee whose contract ends on the date specified in their fixed term contract; a casual employee or a fixed task employee.
- 44.4 MHST may elect to pay an employee an equivalent amount in lieu of notice or alternatively place the employee on gardening leave for part or all of their notice period on occasion where it may not be appropriate for the employee to work through a notice period.
- 44.5 A casual employee is engaged on an hourly basis and as such may be terminated on one (1) hours' notice that the casual engagement has ceased.
- 44.6 An employee (excluding a casual employee) is required to provide the notice period stated in clause 44.1 upon resignation, unless varied by mutual agreement of the employee and the authorised People Leader. MHST may deduct from the employee's total pre-tax (i.e. gross) termination pay the equivalent amount for notice not provided in accordance with this clause.
- 44.7 MHST may dismiss an employee without notice at any time for serious misconduct. If an employee's employment is terminated immediately, the employee will not be entitled to notice or payment in lieu of notice, and will only be entitled to be paid to the date of termination of the employment. The employee will be entitled to payment of any accrued entitlements payable on termination and in accordance with this Agreement but to no other compensation as a result of the termination.

#### 45. Redundancy, Redeployment and Retrenchment

- 45.1 The following provisions apply in conjunction with the Act.
- 45.2 In general, redundancy occurs when MHST has made a definite decision that it no longer requires the position or role an employee occupies or performs to be done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.
- 45.3 Retrenchment

- a) A permanent employee (i.e. not engaged on a fixed term/fixed task agreement or a casual basis) whose employment is terminated on account of redundancy ("Retrenchment") shall be provided written notice of Retrenchment including the exit date and estimate of final payment. Despite any other clause in this Agreement, a casual employee who has been employed on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months immediately prior to their termination will also be eligible for payments under this clause.
- b) Employees who are retrenched will be entitled to receive:
- (a) The notice, or payment in lieu of notice in Clause 44.1; and
- (b) A redundancy payment, calculated at the employee's ordinary rate of pay, as follows:

<b>Years of continuous service on termination</b>	<b>Under 45 years' of age</b>	<b>Over 45 years' of age</b>
<b>Less than 1 year</b>	<b>0</b>	<b>0</b>
<b>1-2 years</b>	<b>4 weeks</b>	<b>5 weeks</b>
<b>2-3 years</b>	<b>7 weeks</b>	<b>8.75 weeks</b>
<b>3-4 years</b>	<b>10 weeks</b>	<b>12.5 weeks</b>
<b>4-5 years</b>	<b>12 weeks</b>	<b>15 weeks</b>
<b>5-6 years</b>	<b>14 weeks</b>	<b>17.5 weeks</b>
<b>6 years and over</b>	<b>16 weeks</b>	<b>20 weeks</b>

45.4 Severance pay is not payable to any employee under this Agreement:

- a) Where an employee has less than 12 months' service;
- b) where the employee resigns prior to receiving written notice of Retrenchment (refer clause 45.3 (a));
- c) to casual employees, employees on fixed term or fixed task agreements or employees who are dismissed;
- d) where the employee is offered, and the employee declines the offer, of a suitable alternative position on terms and conditions which are substantially similar and no less favourable considered on an overall basis within MHST;
- e) where the employee accepts an alternative position within MHST. For the purpose of applying this provision, an "alternative position" can be any position and is not limited to a "suitable alternative position" as defined in Clause 45.4 (d);
- f) where MHST's business, or part of its business, transmits to another employer ("transmittee") and the employee accepts employment with a transmittee which recognises the period of continuous service which the employee had with MHST to be continuous service of the employee with the transmittee; or,
- g) where the employee rejects an offer of suitable alternative employment with the transmittee on terms and conditions which are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with MHST, and which

recognises the period of continuous service which the employee had with MHST to be continuous service of the employee with the transmittee.

h) "Transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

45.5 An employee given notice of termination due to retrenchment may terminate their employment during the notice period. In such circumstances, the employee will be entitled to the severance payment stipulated in clause 45.3 but no payment in lieu for any period of the notice not provided by the employee.

**46. Employment Flexibility**

46.1 An employer and an employee covered by this Agreement may agree to make an individual flexibility agreement as set out in Schedule Two of this Agreement.

**PART 8: SIGNATORIES**

- 1. **Medibank Health Solutions Telehealth Pty Ltd (ABN 40 069396 792)** by its authorised representative:



21 December 2017

Signature

Name: **KYLIE BISHOP**

Address: **720 BOURKE ST DOCKLANDS 3008**

In the presence of:



21 December 2017

Witness Signature

Witness Name: **EMILY WELCH**

Address: **720 BOURKE ST, DOCKLANDS 3008**

- 2. **Employee Representative**

Signed for and on behalf of the employees by:



21 DEC 17

Signature

Date

Name: **NASH - ARNOLD, NICOLE**

Address: **141/145 DUNCAN ST WEST END Q 4101**

In the presence of:



21 DEC 17

Witness Signature

Witness Name: **Tony Rose**

Witness Address: **102 ADELAIDE ST MELB/CITY 3000**

## SCHEDULE ONE CLASSIFICATIONS, SALARY AND ALLOWANCES

### 1. Classifications and Minimum Salary Levels

Classification	Minimum
Enrolled Nurse	\$52,650
Registered Nurse	\$64,000
Senior Nurse	\$77,452
Allied Health Professional (Mental Health Professional or Counsellor)	\$64,000
Health Support Officer	\$45,855

- 'Enrolled Nurse' means an employee who performs the duties of an enrolled nurse under the Nurses Award 2010
- 'Registered Nurse' means an employee who performs the duties of a registered nurse level 2 under the Nurses Award 2010
- 'Senior Nurse' means an employee who performs the duties of a registered nurse level 3 under the Nurses Award 2010.

### 2. Allowances

Allowance	Application	Amount
First Aid	A trained first aider appointed by MHST to act as such	\$14.40 per week
Meal	For approved overtime where more than 2 hours overtime is worked; a meal is not supplied and less than 24 hours' notice is provided of the requirement to complete overtime	\$27.75
Private Vehicle	Use of private vehicle, in accordance with travel policy	ATO rates

**SCHEDULE TWO: EMPLOYMENT FLEXIBILITY ARRANGEMENTS**

Model flexibility term (regulation 2.08)

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.
2. The employer must ensure that the terms of the individual flexibility arrangement:
  - a. are about permitted matters under section 172 of the Fair Work Act 2009 ; and
  - b. are not unlawful terms under section 194 of the Fair Work Act 2009 ; and
  - c. result in the employee being better off overall than the employee would be if no arrangement was made.
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.
4. The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
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.



## UNDERTAKING

1. Medibank Health Solutions Telehealth Pty Ltd (**Medibank**) has applied to the Fair Work Commission pursuant to s 185 of the *Fair Work Act 2009* (Cth) (**FW Act**) for the approval of the *MHST EA 2017* (**Agreement**).
2. In support of that application, pursuant to section 190 of the FW Act and regulation 2.07 of the *Fair Work Regulations 2009* (Cth), Medibank hereby gives the following written undertakings in support of the Agreement.

### Clause 15 - Flexible Employment

3. For the avoidance of doubt:
  - a) employees engaged in the Flexible Employment category (**Flexible Employees**) are employed by Medibank on a part time basis and will have their minimum number of contracted hours (**Minimum Hours**) documented in a contract of employment, and have agreed to enter into a Flexible Employment arrangement pursuant to clause 15 of the Agreement;
  - b) the "arrangement", for the purposes of clause 15.1 of the Agreement, will be reflected in a written document setting out the Flexible Employee's minimum hours and the agreed additional hours that the employee is prepared to work, if required, over the course of a fortnight roster period (**Flexible Hours**). The written document will record the agreed days of the week the flexible hours may be rostered and the times of day or night the flexible hours may be rostered within;
  - c) as a bilateral agreement, either Medibank or a Flexible Employee can elect to end a Flexible Employment arrangement at any time and upon ending the Flexible Employment arrangement, the employee will revert to their minimum number of contracted part time hours;
  - d) where a Flexible Employee receives notice of the requirement to work Flexible Hours, such Flexible Hours will constitute part of the Flexible Employee's ordinary hours of work in the relevant fortnight;
  - e) further to clause 15.8 of the Agreement, where a Flexible Employee receives notice of the requirement to work Flexible Hours:
    - (a) they will be paid for any Flexible Hours which are subsequently cancelled; and
    - (b) they will be entitled to take personal leave during Flexible Hours, provided that the eligibility, notice and evidence requirements set out in clause 38 of the Agreement are complied with;
  - f) further to clause 15.8 of the Agreement, where a Flexible Employee receives less than 7 days' notice of the requirement to work Flexible Hours, the additional hours will not constitute Flexible Hours. The hours will be treated as overtime and as such the employee can refuse to work the hours if they are not reasonable. If the hours are worked they will be paid as overtime in accordance with clause 31.4 of the Agreement.
  - g) where a Flexible Employee works more than the Minimum Hours and Flexible Hours in a given daily or fortnightly roster period, such hours will be paid as overtime in accordance with Clause 31.4 of the Agreement.

Date: 12 April 2018

Signed:



A handwritten signature in black ink, appearing to read 'Kylie Bishop', is written over a horizontal dotted line.

Name: Kylie Bishop

Position: Group Executive, People and Culture

(A person duly authorised to give this undertaking on behalf of Medibank Private Limited)