

DECISION

s.185—Enterprise agreement

*Fair Work
Act 2009*

Siena Management Services Pty Ltd T/A Martyn Claver Aged Care
(AG2020/1899)

MARTYN CLAVER NURSING HOME ENTERPRISE AGREEMENT 2020

Aged care industry

DEPUTY PRESIDENT BOYCE

SYDNEY, 15 OCTOBER 2020

*Application for approval of the Siena Management Services Pty Ltd T/A Martyn Claver
Nursing Home Enterprise Agreement 2020.*

[1] An application has been made for approval of an enterprise agreement to be known as the *Martyn Claver Nursing Home Enterprise Agreement 2020* (**Agreement**). The application was made pursuant to s.185 of the *Fair Work Act 2009* (**Act**). It has been made by Siena Management Services Pty Ltd (**Employer**). The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings dated 9 September 2020. Those undertakings are attached at **Annexure A** to this decision and become terms of the Agreement. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement (as compared to the relevant provisions of the *Nurses Award 2010*, *Aged Care Award 2010*, and *Health Professionals and Services Award 2010* respectively), and that the undertakings will not result in substantial changes to the Agreement.

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

[4] I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[5] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[6] The Australian Nursing and Midwifery Federation New South Wales Branch, and Health Services Union of Australia NSW Branch, both being bargaining representatives for

the Agreement, have given notice under s.183 of the Act that they want to be covered by the Agreement. In accordance with s.201(2) of the Act, I note that the Agreement covers these organisations.

[7] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 22 October 2020. The nominal expiry date of the Agreement is 31 March 2022.



DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter no:

AG2020/1899

Applicant

Siena Management Services Pty Ltd T/A Martyn Claver Nursing Home

UNDERTAKING SECTION 190

I, Claudio Pasquali Director of Siena Management Services Pty Ltd T/A Martyn Claver Nursing Home (Martyn Claver), give the following undertakings with respect to the Martyn Claver Nursing Home Enterprise Agreement 2020 (the Agreement):

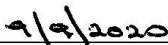
1. I have the authority given to me by Martyn Claver to provide this undertaking in relation to this Application before the Fair Work Commission.
2. Martyn Claver undertakes that in regard to clause 16, after "and service is ceased" add "and appropriate notice paid".
3. Martyn Claver undertakes that in regard to clause 25.1, the following shall be applied:

25.1 To meet the operational requirements of the business, the ordinary hours of work will be 38 hours per week, or an average of 38 hours per week worked over 76 hours per fortnight or 114 hours per 21 days or 152 hours per four week period, and will be worked either:

 - (a) in a period of 28 calendar days of not more than 20 work days in a roster cycle;
 - (b) in a period of 28 calendar days of not more than 19 work days in a roster cycle, with the twentieth day taken as an accrued paid day off (ADO);
 - (c) eight hours on a day shift or 10 hours on a night shift; or,
 - (d) as agreed between the employer and the employee.
4. Martyn Claver undertakes that in regard to clause 31, where a casual Health Professional's rostered hours work would attract a shift penalty, this will be paid at 140% of their base pay point rate. The rate includes any penalty rate and the casual loading.
5. Martyn Claver undertakes that in regard to clause 37.1 (c), this clause shall also apply to Health Professionals as per Aged Care employees.



Signature



Date

Siena Management Services Pty Ltd T/A Martyn Claver Nursing Home Enterprise Agreement 2020

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 this agreement.

PART 1 – APPLICATION AND OPERATION

1 TITLE

This Agreement will be known as the Martyn Claver Nursing Home Enterprise Agreement 2020 (“the Agreement”).

2 ARRANGEMENT

This Agreement shall be arranged as follows:

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3 COMMENCEMENT AND EXPIRY

- 3.1 This Agreement will commence seven days after approval by the Fair Work Commission and will nominally expire on 31 March 2022.
- 3.2 The employer agrees that discussions regarding bargaining for a new Agreement shall commence not later than 3 months prior to the expiry date of this Agreement
- 3.3 The employer and employee/s have the right to appoint a representative that may include Leading Age Services Australia and the Union/s, to represent the parties’ interests.

4 DEFINITIONS AND INTERPRETATION

- 4.1 Where a term in this Agreement has a corresponding definition in the Act, the Regulations or the NES, the definition more favourable to the employee will apply. Where this Agreement is silent, the NES definition will apply.

- 4.2 For the purposes of the Agreement:

Act means the Fair Work Act 2009 (Cth);

Agreement means this Enterprise Agreement;

Base rate of pay means the rate of pay for a period worked that does not include incentive based payments and bonuses, loadings, monetary allowances, penalty rates or any other similar separately identifiable entitlements;

Board means the Nursing and Midwifery Board of Australia and shall also be taken to mean a reference to AHPRA as appropriate/applicable;

Day Worker means an employee who works their ordinary hours between 6am and 6pm Monday to Friday;

De-facto partner means a person who, although not legally married to the employee lives with them in a relationship as a couple on a genuine domestic basis (including same sex relationships);

Employee(s) means persons employed by the Employer, in positions within the scope of the classifications set out in Appendix 2 to the Agreement;

Employer means Martyn Claver Nursing Home and has the meaning in the Act;

Experience in relation to an Enrolled Nurse, Registered Nurse or Assistant in Nursing means experience both before and/or after the commencement of this Agreement whether within New South Wales or elsewhere and in the case of an Enrolled Nurse or Assistant in Nursing who was formerly a Student Nurse includes experience as such Student Nurse;

FWC means the Fair Work Commission;

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

National Employment Standards (NES) means the legislated minimum standards provided in chapter 2, Part 2-2 of the Fair Work Act 2009 (Cth);

Nurse includes Registered Nurses, Enrolled Nurses, Enrolled Nurses (with notation) and Assistants in Nursing;

Ordinary rate of pay means the applicable rate of pay set out in Appendix 1 as adjusted according to Clause 12, but excludes overtime, penalty rates, shift allowances, bonuses or any other ancillary payments of a like nature. For casual Nursing employees, unless otherwise described, this includes their base rate of pay and the casual loading;

Regulations mean the Fair Work Regulations 2009;

Shift worker means an Employee who regularly works rostered hours as part of the shift system outside of the ordinary hours of work for a day worker;

Superannuation Law means any requirement under the Superannuation Industry (Supervision) Act 1993, Superannuation Industry (Supervision)

Regulations 1994, Superannuation Guarantee (Administration) Act 1992, Superannuation Guarantee (Administration) Regulations 1993, Superannuation Guarantee Charge Act 1992, Superannuation Guarantee (Administration) Amendment Act 2012 and any other present or future legislation which the Employer must comply with to satisfy its superannuation obligations to its Employees.

Unions in this Agreement means the NSW Nurses and Midwives Association (NSWNMA), Australian Nursing and Midwifery Federation – NSW Branch (ANMF NSW Branch) and the Health Services Union NSW Branch (HSU NSW);

4.3 In this Agreement:

- (a) the singular shall include the plural and the plural shall include the singular;
- (b) "including" and similar words or expressions are not words of limitation; and
- (c) headings are for convenience only and do not form part of the Agreement.

5 HOW THIS AGREEMENT RELATES TO AWARDS AND OTHER AGREEMENTS

5.1 This Agreement represents a consolidation of the wages and conditions of employment that apply to all Employees of Martyn Claver Lodge who are covered by the scope of this Agreement:

- (a) This Agreement constitutes the entirety of the terms of the agreement that exists between the parties. It replaces and operates to the exclusion of any industrial instrument that may apply, or may have previously applied, to the Employees including any awards or industrial agreements. This does not exclude the Employer and Employee entering into common law agreements providing additional terms outside of this Agreement.
- (b) The parties bound by this agreement acknowledge that this Agreement settles all claims in relation to the terms and conditions of employment of the employees to whom it applies and agree that they will not pursue any extra claims during the term of this Agreement.
- (c) Subject to an employer meeting its obligations to consult arising under this Agreement or a contract of employment, it is not the intent of this provision to inhibit, limit or restrict an employer's right or ability to introduce change at the workplace.

5.2 Subject to the requirements of the Fair Work Act 2009 ('the Act') an application to vary the terms of the Agreement can be made under Chapter 2-Pt2-4-Div 7 of the Act. Such application must be in writing and agreed to by the parties.

6 PARTIES TO THIS AGREEMENT

6.1 The parties to the Agreement are:

- (a) Siena Management Services Pty Ltd T/A Martyn Claver Nursing Home (**The Employer**); and,
- (b) The Employees of Martyn Claver Nursing Home except as shown at clause 6.3.

6.2 It is understood that the unions will apply to be covered by this Agreement.

6.3 The Agreement does not apply to or cover persons employed by the Employer in the roles of Facility Services Managers, Deputy Facility Services Managers, State Manager, General Quality Assurance Managers, Facility Managers, and Residential Services Managers or the like positions, or any other State or National office Employee employed by the Employer.

7 ACCESS TO THE AGREEMENT AND THE NES

7.1 The Employer will ensure that copies of this Agreement and the NES are available to all employees to whom they apply either on a notice board or a place which is conveniently located at or near the workplace or through electronic means.

8 NATIONAL EMPLOYMENT STANDARDS AND THIS AGREEMENT

8.1 The NES and this Agreement contain the minimum conditions of employment for employees covered by the Agreement.

8.2 The NES applies to employees covered by the Agreement except where this Agreement provides a greater condition or entitlement whereby this Agreement will prevail to the extent that it is more favourable than the NES.

9 INDIVIDUAL FLEXIBILITY ARRANGEMENTS

9.1 Notwithstanding any other provision of this agreement, an employer and an individual employee may agree to vary the application of certain terms of this agreement to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed in relation to the timing of breaks and time off in lieu of overtime;
- (b) allowances and the inclusion of allowances in base salary;
- (c) leave loading; and
- (d) overtime and/or penalty rates.

- 9.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress.
- 9.3 The agreement between the employer and the individual employee must:
- (a) be confined to a variation in the application of one or more of the terms listed above and be about matters permitted under section 172 of the Fair Work Act 2009; and
 - (b) not include unlawful terms under section 194 of the Fair Work Act 2009;
 - (c) result in the employee being better off overall than the employee would have been if no individual flexibility agreement had been agreed to.
- 9.4 The agreement between the employer and the individual employee must also:
- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
 - (b) state each term of this agreement that the employer and the individual employee have agreed to vary;
 - (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
 - (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
 - (e) state the date the agreement commences to operate.
- 9.5 The employer must give the individual employee a copy of the agreement within 14 days of it being agreed to and keep the agreement as a time and wages record.
- 9.6 Except as provided in subclause 9.4 the agreement must not require the approval or consent of a person other than the employer and the individual employee.
- 9.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must take measures, including translation into an appropriate language, to ensure the employee understands the proposal.
- 9.8 The agreement may be terminated:
- (a) at any time, by written agreement between the employer and the employee;
or

- (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

Note: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in s.144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the Act).

- 9.9 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this agreement.

PART 2 – CONSULTATION AND DISPUTE RESOLUTION PROCEDURES

10 INTRODUCTION OF CHANGE AND CONSULTATION

- 10.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:
 - (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
 - (b) discuss with affected employees and their representatives (if any):
 - (i) the introduction of the changes; and
 - (ii) their likely effect on employees; and
 - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and,
 - (iv) commence discussions as soon as practicable after a definite decision has been made.
- 10.2 For the purposes of the discussion under clause 10.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
 - (a) their nature; and
 - (b) their expected effect on employees; and,
 - (c) any other matters likely to affect employees.
- 10.3 Clause 10.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

- 10.4 The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 10.1(b)
- 10.5 In clause 10, significant effects, on employees, includes any of the following:
- (a) termination of employment; or
 - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
 - (c) loss of, or reduction in, job or promotion opportunities; or
 - (d) loss of, or reduction in, job tenure; or
 - (e) alteration of hours of work; or
 - (f) the need for employees to be retrained or transferred to other work or locations; or,
 - (g) job restructuring.
- 10.6 Where this Agreement makes provision for alteration of any of the matters defined at clause 10.5, such alteration is taken not to have significant effect.

Consultation about changes to rosters or hours of work

- 10.7 Clause 10.8 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- 10.8 The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 10.9 For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives mentioned in clause 10.7 information about the proposed change (for example, information about the nature of the change and when it is to begin); and,
 - (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- 10.10 The employer must consider any views given under clause 10.9(b).
- 10.11 Clauses 10.7 to 10.10 are to be read in conjunction with any other provisions of this Agreement concerning the scheduling of work or the giving of notice.

11 DISPUTE RESOLUTION PROCEEDURE

- 11.1 This clause sets out the procedures to be followed if a dispute arises about a matter under this Agreement or in relation to the NES.
- 11.2 The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.
- 11.3 If the dispute is not resolved through discussion as mentioned above, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- 11.4 If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under this clause, a party to the dispute may refer it to the Fair Work Commission.
- 11.5 The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 11.6 If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.
- 11.7 The parties agree that the Fair Work Commission shall have the power to conduct conciliation only in regard to a Personal Grievance not directly related to the FW Act, NES or to the terms of this Agreement.
- 11.8 While procedures are being followed under this clause in relation to a dispute:
 - (a) work must continue in accordance with this Agreement and the Act; and
 - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 11.9 An employee who is a party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 11.
- 11.10 Clause 11.8 is subject to any applicable Workplace Health and Safety legislation.

12 STAFFING ARRANGEMENTS

- 12.1 The employer is committed to ensuring staffing levels are appropriate for the delivery of high quality resident care, that work is done safely and within rostered working hours and that employees take appropriate breaks.

Replacing Leave Absences

- 12.2 Leave absences including sick leave will be replaced by the same skilled level of employee e.g. RN with RN, EN with EN as far as practicable.
- 12.3 If all avenues to backfill the absence with a nurse at the same classification are exhausted and the only remaining option is to backfill the absence with an employee of a lower classification, the DON/Facility Manager/In Charge must be satisfied that the delivery of high quality resident care in the facility can be safely and appropriately performed by an employee at a lower classification.

Required Staffing Levels

- 12.4 The following will be considered when determining the staffing levels required and clinical workloads of nurses:
 - (a) The clinical assessment of resident acuity;
 - (b) Skill mix and specialisation;
 - (c) Geography and facility layout;
 - (d) The maintenance of safe working conditions in accordance with relevant guidelines and statutory Workplace Health and Safety legislation;
 - (e) Professional nursing and midwifery standards, obligations and codes of conduct set down by relevant regulatory bodies;
 - (f) Reasonable workloads (such as roster arrangements);
 - (g) The completion of mandatory e-learning modules;
 - (h) Access to meal and rest breaks; and
 - (i) Accreditation standards.

Upholding Professional Obligations

- 12.5 The employer is committed to quality resident care and to supporting nurses in complying with their registration and recognising their professional obligations.
- 12.6 Where a nurse or group of nurses consider that their ability to provide safe resident care may be compromised, or they are unable to safely transfer care of their residents to other rostered nursing employees, and where this may put their professional registration at risk, they have a responsibility to report this immediately to their manager.

Workload Management

- 12.7 Where an employee or group of employees feels workloads are unreasonably heavy on a regular basis, then they have an opportunity and responsibility to

discuss their concerns with their immediate manager who will investigate the request and will make every endeavour to provide a response within 48 hours.

- 12.8 If a solution cannot be identified and implemented, the matter should be referred to an appropriate senior manager or Facility Manager for further discussion.
- 12.9 The outcome of the discussions at each level and any proposed solutions should be recorded in writing and fed back to the effected employees.
- 12.10 If the issue is still unresolved, the employee/s may advance the matter through Clause 11 Dispute Resolution Procedure. Arbitration of workload management issues may only occur by agreement of the employer and the employee representative, which may include the union/s.
- 12.11 The employer will include workloads issues in staff meetings at ward and/or unit level on at least a quarterly basis. Items in relation to workloads must be recorded in the minutes of the staff meeting, as well as actions to be taken to resolve the workloads issue/s. Employees shall be encouraged to raise issues of concern regarding workloads at such meetings. Management accepts and commits to consider and respond to all concerns about workloads raised at such meetings

PART 3 – TYPES OF EMPLOYMENT AND TERMINATION OF EMPLOYMENT

13 EMPLOYMENT STATUS

Contract at Time of Employment

- 13.1 All full-time and part-time Employees, within 28 days of the commencement of this Agreement or for new employees at the time of engagement, shall be issued with a written statement clearly indicating their type of employment. Part time employees shall also be advised in the statement of the minimum hours per fortnight they are required to work.

Full Time Employee

- 13.2 A full time Employee is an Employee engaged to work an average of 76 ordinary hours per fortnight.
- 13.3 In addition to their ordinary hours of work, an Employee may be required to work reasonable additional hours in accordance with the overtime provisions of this Agreement.

Part Time Employee

- 13.4 A part-time Employee is one who is engaged as such and who is permanently appointed to work for a specified number of hours, which are less than those prescribed for a full-time Employee.

- 13.5 A part time Employee will receive the same terms and conditions paid on a pro rata basis to that of a full time Employee.

Right to Request Additional Hours for Part Time Employees

- 13.6 The guaranteed minimum number of hours of a part time employee may be varied temporarily by agreement and recorded in writing. This must be additional hours only.
- 13.7 Such approved additional hours shall be paid at ordinary rate of pay only, unless an Employee works more than 10 hours in one shift or in excess of 76 hours in a fortnight, in which case overtime shall be payable in accordance with Clause 26.
- 13.8 The working of such additional hours must be by genuine mutual agreement.
- 13.9 If an Employee raises concerns over duress, such concerns will be dealt with in accordance with the Dispute Resolution Procedure.

Annual Review of Part time Hours

- 13.10 At the request of an employee, the hours worked by the employee will be reviewed annually.
- 13.11 Where the employee is regularly working more than their specified contracted hours then such contracted hours shall be adjusted by the employer, to reflect the hours regularly worked, which may include moving to full time employment.
- 13.12 The hours worked in the following circumstances will not be incorporated in the adjustment:
- (a) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, parental leave, workers compensation; and
 - (b) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident or client.

- 13.13 Any adjusted contracted hours resulting from a review, should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.

Casual Employees

- 13.14 A casual Employee is one who is advised they are a casual employee engaged on an hourly basis and paid a casual loading as and when required by this Agreement.
- 13.15 A casual Employee will additionally be paid a casual loading of 25% of their ordinary rate of pay.

- 13.16 Where a casual Nurse works on a shift that attracts overtime, shift penalties, public holiday penalties, or weekend penalties, those payments will be calculated on the casual loaded rate of pay as defined in subclause 13.15.
- 13.17 For all other staff, overtime and public holiday and weekend penalties are calculated on the base rate of pay, with the casual loading component as defined by clause 13.15 added to the penalty rate of pay.
- 13.18 Where a non-Nursing casual employee works on a shift that attracts shift penalties as defined in subclause 31 the employee will be paid shift allowances as calculated on the ordinary rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.

Casual Conversion

- 13.19 A casual Employee who has reasonably predictable hours of work and has been rostered on a regular and systematic basis over a period of 26 weeks has the right to request conversion to permanent employment:
- (a) on a full-time contract where the Employee has worked on a full-time basis throughout the period of casual employment; or
 - (b) on a part-time contract where the Employee has worked on a part-time basis throughout the period of casual employment. Such contract would be on the basis of the same number of hours as previously worked, unless other arrangements are agreed between the Employer and the Employee.
- 13.20 The Employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request.
- 13.21 Casual conversion will not apply where a casual has covered absences of permanent staff.

14 NOTICE ON TERMINATION

- 14.1 Notice of termination is provided for in the NES.
- 14.2 Notice of termination is provided for in the NES and applies to all employees other than casual employees.
- 14.3 Notice of termination by either the employer or employee is:

Employees Period of Continuous Service	Notice Requirement
Not more than 1 year	one (1) week
More than 1 year but not more than 3 years	two (2) weeks
More than 3 years but not more than 5 years	three (3) weeks
More than 5 years	four (4) weeks

- 14.4 Where the employee is over 45 years of age and has completed two continuous years of service with the employer the employee is entitled to an additional week's notice.

- 14.5 The notice of termination required to be given by an employee is the same as that required of an employer as set out at Clause 14.1 except that there is no requirement on the employee to give additional notice based on their age.
- 14.6 The employer may summarily dismiss an employee for serious misconduct. An employee who is summarily dismissed does not receive notice, or payment in lieu of notice.
- 14.7 Where the employer terminates the employment of the employee and does not require the serving of notice the employer will pay the employee the amount in lieu of working out the notice period.
- 14.8 In respect of any forfeiture by the employee of wages in lieu of providing notice, the employee may at any time authorise the employer in writing to deduct from their wages payable up to, or on, termination relevant wages payable in lieu of notice.
- 14.9 Should an employer not receive such an authorisation from the employee, the employer may recover such outstanding amount from the employee in the appropriate statutory tribunal. It is acknowledged that the employee has the same rights to pursue an employer for underpayment in the appropriate jurisdiction.
- 14.10 In respect of this requirement for an employer to provide notice or pay in lieu of notice under this clause, nothing in this clause shall exclude the application of Subdivision C Division 11 of Part 2-2 of the Act.
- 14.11 It is the intention of this clause that the employer and employee provide appropriate notice upon termination.
- 14.12 Casual Employees are to be given notice of termination to the end of the current shift worked or payment in lieu thereof.

15 REDUNDANCY

Redundancy is governed by legislation, currently the NES.

16 ABANDONMENT OF EMPLOYMENT

- 16.1 Where an Employee is absent from work for a continuous period of two working days without the consent of the Employer, and without notification to the Employer, the Employer shall be entitled to inform the Employee by written correspondence that unless the Employee provides a satisfactory explanation for their absence within two days of such a request, the Employee will be considered to have abandoned their employment and service is ceased.

17 SUSPENSION DUE TO ABSENCE OF MANDATORY REQUIREMENTS

- 17.1 Where, by negligence or omission, an employee is unable to meet the inherent requirements of the role by way of the absence of a mandatory registration, license, clearance, qualification, or similar, the employee shall not be paid until the mandatory requirement is met. During suspension, the Employee may elect

to take accrued annual leave or where available, entitled long service leave or ADO or any combination of these.

PART 4 – MINIMUM WAGES AND RELATED MATTERS

18 CLASSIFICATIONS

- 18.1 Nursing Classification definitions are set out in Appendix 1 of this Agreement.
- 18.2 Aged Care Classifications are set out in Appendix 2 of this Agreement.
- 18.3 Health Professional Classifications are set out in Appendix 3 of this Agreement.
- 18.4 Employers must advise their employees in writing of their classification upon commencement and of any subsequent changes to their classification.

19 WAGES AND ALLOWANCES

- 19.1 The minimum weekly wages are set out in Tables 1, 2 and 3 of this Agreement.
- 19.2 Allowances are set out in Table 4 of this Agreement.
- 19.3 The monetary obligations imposed on the employer by this agreement including, but not limited to, allowances, loadings, penalties and overtime may be absorbed by agreement with the employee into an annualised salary or remuneration package.

20 RECOGNITION OF SERVICE, QUALIFICATIONS AND EXPERIENCE (NURSING CLASSIFICATIONS ONLY)

- 20.1 From the time of commencement of employment an employee has two months in which to provide documentary evidence to the employer detailing any other relevant service qualification or experience not disclosed at the time of commencement. This evidence, of experience, in the absence of other documentary evidence, may take the form of a statutory declaration.
- 20.2 Until such time as the employee furnishes any such documentation outlined in 22(a) the employer shall pay the employee at the level for which proof has been provided.
- 20.3 If within two months of commencing employment an employee does provide documentary evidence of other previous relevant service or/and experience the employer shall pay the employee at the appropriate rate as from the date of commencement that would have been paid from that date had that documentary evidence been provided.
- 20.4 If the employee provides documentary evidence of other previous relevant service and/or experience after two months from commencement the employer

shall pay the employee at the appropriate rate from the date the documentary evidence is received. This rate will not be back dated to the time of commencement.

- 20.5 For the purpose of yearly progression based on service and experience an employee must complete 1976 hours, or in the case of a casual or part time employee 1824 hours.

21 REGRADING (AGED CARE CLASSIFICATIONS ONLY)

- 21.1 Where the nature of the work undertaken by an employee changes, such that the majority of the work regularly performed is work of a type normally associated with a higher classification and has been performed for a period of at least 12 months, the employee may apply to have their position reclassified to the higher classification.
- 21.2 An application for re-grading by an employee must be made in writing.
- 21.3 The employer will respond to the request in writing within a reasonable timeframe, and where possible no less than one month after receiving the written request, indicating whether the application is approved or denied.
- 21.4 Simply performing more work at the same classification or different work at the same classification does not qualify for re-grading.
- 21.5 Factors with a bearing on the decision may include whether the changes:
- (a) involve the exercise of skills, responsibility and/or autonomy normally undertaken at a higher classification; and/or
 - (b) are permanent or temporary.

22 ALLOWANCES

- 22.1 Uniform and Laundry Allowances
- (a) Staff covered by this Agreement must wear their Employer's staff uniform when requested.
 - (b) This clause applies where the Employer requires the Employee to wear the Employer's uniform.
 - (c) A uniform allowance as set out in Table 4 shall be paid for either each shift worked (maximum of 10 shifts per fortnight) or per week, whichever is the lesser.
 - (d) From the commencement of the Agreement a laundry allowance as set out in Table 4 shall be paid to Employees either for each shift worked (maximum of 10 shifts per fortnight) or per week, whichever is the lesser.

- (e) In lieu of paying the uniform allowance as prescribed in this clause , the Employer shall provide sufficient suitable and serviceable uniforms, including one cardigan or jacket which shall be supplied free of cost to each Employee within the nursing-care classification stream required to wear a uniform or part of a uniform. Other Employees will be supplied with sufficient suitable and serviceable uniforms. Where the Employer requires any Employee to wear headwear, the facility shall provide headwear free of charge to the Employee. In lieu of paying the laundry allowance in this clause the Employer may launder, or have laundered at its expense, the uniform.
- (f) The uniform allowance, if payable, must be paid during periods of paid leave, however the laundry allowance will not be paid during such times.

22.2 In Charge Allowance

- (a) A registered nurse who is designated to be in charge during the day, evening or night of a residential aged care facility shall be paid in addition to the appropriate salary, whilst so in charge, the relevant per shift allowance set out in Table 4 of this Agreement.
- (b) This sub-clause shall not apply to registered nurses holding classified positions of a higher grade than a registered nurse.

22.3 Work of a dirty or offensive nature (Non Nursing-Care Classifications)

- (a) An allowance as set out in Table 4 of this Agreement is payable in the circumstances where a non-nursing care Employee is required to perform work of an unusually dirty or offensive nature having regard to the person's classification and usual duties.

22.4 Nauseous Linen (Non Nursing-Care Classifications)

- (a) Employees shall be paid an amount per hour extra or part thereof as set out in Table 4, for all time engaged in handling linen of a nauseous nature which is not contained in sealed bags, containers or the like.

22.5 Travel Time

- (a) An employee required to perform work at a place other than their regular place of work shall be paid for all excess travelling time at the appropriate rate of pay and reimbursed excess travelling expenses.

22.6 Vehicle/Travelling Allowance

- (a) Where an Employee is called upon and agrees to use their private vehicle for official business, the Employee shall be paid the per kilometre allowance set out in Table 4 to this Agreement excluding travel to and from the Employee's home to the first place of work and return to home at the end of their duties.

- (b) Where an Employee is required to use public transport for travel on official business such Employee is to be reimbursed actual expenses incurred for such travel, excluding travel from the Employee's home to the first place of work and return to home at the cessation of his or her duties.
- (c) No payment shall be made under this sub-clause 22.6 (a) and (b) unless the Employer has approved the travel and the expenses do not exceed the mode of transport, meals or standard of accommodation agreed with the Employer for these purposes and the Employer is satisfied that the Employee has incurred expenditure for such travel.

22.7 On Call Allowance

- (a) Except in circumstances outlined in this subclause, an Employee who agrees to be on call, that is, the Employee agrees to, and does, make themselves ready and available to return to work at short notice whilst off duty, shall be paid the allowance, for each period of 24 hours or part thereof, set out in Table 4 of this Agreement.
- (b) An Employee who agrees to be on call, that is, the Employee agrees to, and does, make themselves ready and available to return to work at short notice whilst on rostered days off, shall be paid the allowance, for each period of 24 hours or part thereof, set out in Table 4 of this Agreement.
- (c) An Employee who is directed to remain on call during a meal break shall be paid the meal break allowance set out in Table 4 of this Agreement, provided that no allowance shall be paid if, during a period of 24 hours, including such period of on call, the Employee is entitled to receive the allowance prescribed in sub-clauses 22.7 (a) or (b).
- (d) Where an Employee on call in accordance with sub-clauses 22.7 (a) or (b), leaves the residential aged care facility and is recalled to duty, they shall be reimbursed all reasonable expenses actually incurred. Where in these circumstances the Employee elects to use his or her own vehicle the Employee shall be paid the per kilometre allowance set out in Table 4 to this Agreement.

22.8 Broken Shift Allowance

- (a) See Table 4 of this Agreement.

22.9 AIN Duty Allowances

- (a) Assistant in Nursing – Team Leader means an employee who holds at least a Certificate Level IV in Aged Care Work or other appropriate Qualifications/Experience acceptable to the employer who is designated by the employer as having the responsibility for coordinating the work of other AIN's and performing specialist functions such as but not limited to orientation of new staff, mentoring, fire-safety, training, medication administration, specialist wound care, continence management, infection control or palliative care under RN/EN supervision. It should be noted that

where an AIN with a Cert IV is not rostered to be on shift, an AIN who has a Cert III shall be paid the allowance for that shift.

- (b) Table 4 of this Agreement sets out the AIN Duty allowances.

22.10 Continuing Education Allowance (Nurse Classifications and Health Professionals only)

- (a) A Registered Nurse (RN) or Enrolled Nurse (EN) who holds a continuing education qualification in a clinical field, in addition to the qualification leading to registration or enrolment, shall be paid an allowance subject to the conditions set out in this clause.
- (b) The qualification must be accepted by the employer to be directly relevant to the competency and skills used by the employee in the duties of the position.
- (c) The allowance is not payable to Deputy Directors of Nursing or Directors of Nursing unless it can be demonstrated to the satisfaction of the employer that more than fifty per cent of the employees time is spent doing clinical work.
- (d) The allowance is not payable to Clinical Nurse Specialists, Clinical Nurse Consultants or Clinical Nurse Educators.
- (e) A RN or EN holding more than one relevant qualification is only entitled to the payment of one allowance, being the allowance of the highest monetary value.
- (f) The employee claiming entitlement to a continuing education allowance must provide evidence to the employer that they hold that qualification.
- (g) A RN who holds a relevant postgraduate certificate in a clinical field (not including a hospital certificate) that is accepted by the employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of the position shall be paid a weekly allowance as set out in Table 4.
- (h) A RN who holds a relevant postgraduate diploma or degree in a clinical field (other than a nursing undergraduate degree) that is accepted by the employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of the position shall be paid a weekly allowance as set out in Table 4.
- (i) A RN who holds a relevant Masters degree or Doctorate in a clinical field that is accepted by the employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of the position shall be paid a weekly allowance as set out in Table 4.
- (j) An EN who holds a relevant certificate IV qualification in a clinical field (not including a certificate IV qualification which has the effect of upgrading the qualification leading to enrolment) that is accepted by the

employer to be directly relevant to the competency and skills used by the EN in carrying out the duties of the position shall be paid a weekly allowance as set out in Table 4.

- (k) A Health Professional who holds qualifications directly relevant to the employer shall be paid an allowance as set out in Table 4, subject to the conditions set out in this clause. The qualification must be accepted by the employer to be directly relevant to the competency and skills used by the employee in the duties of the position.
- (l) The allowances set out in sub-clauses (g), (h), (i) (j) and (k) are not included in an Employee's ordinary rate of pay and will not constitute part of the all-purpose rate.
- (m) A RN, EN or Health Professional who is employed on a part-time or casual basis shall be paid these allowances on a pro rata basis.
- (n) The rates for these allowances shall be adjusted in accordance with increases in other wage related allowances contained in this Agreement.
- (o) Where a disagreement or dispute arises concerning the eligibility of an employee for payment of a continuing education allowance, the dispute resolution procedures of this Agreement apply.

23 SUPERANNUATION

23.1 Superannuation Legislation

- (a) Superannuation legislation, including the Superannuation Guarantee (Administration) Act 1992 (Cth), the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the agreement covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

23.2 Employer Contributions

- (a) An employer must make such superannuation contributions equal to the SGC level to a complying superannuation fund for the benefit of an employee.

23.3 Casual Employees

- (a) An employer must make such superannuation contributions to a superannuation fund for the benefit of a casual employee who has earned in

excess of \$450 per month or \$2,000 ordinary time earnings during their employment in the course of any one year (1 July to 30 June).

23.4 Voluntary Employee Contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in Clause 23.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under Clauses 23.4 (a) or 23.4 (b) no later than 28 days after the end of the month in which the deduction authorised under Clauses 23.4 (a) or 23.4 (b) was made.

23.5 Superannuation Fund

- (a) Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in Clause 23.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in Clause 23.2 and pay the amount authorised under Clauses 23.4 (a) or 23.4 (b) to the Health Employees Superannuation Trust of Australia (HESTA).

24 PAYMENT OF WAGES

- 24.1 Wages must be paid fortnightly unless otherwise mutually agreed up to a monthly maximum period.
- 24.2 Employees will be paid by cheque or electronic funds transfer, as determined by the employer, into the bank or financial institution account nominated by the employee.
- 24.3 When notice of termination of employment has been given by an employee or an employee's services have been terminated by the employer, payment of all wages and other monies owing to an employee will be made to the employee by close of business on the last day of employment or no later than three (3) business days.
- 24.4 Notwithstanding the above, an employer will not be held liable for any unforeseen event outside the control of the employer which prevents the employer's ability to meet the requirements of this clause, for example bank error or delay.
- 24.5 Where a Public Holiday day falls on a pay day the employer will, where practicable, make payment on the day prior to the Public Holiday day and will notify employees of this change.

24.6 Pay Slips

- (a) In accordance with the Act each employee will be provided a payslip each pay day which provides the employees hours worked and accrued entitlements. This will include but is not limited to:
 - (i) the employee's classification and rate of pay;
 - (ii) ordinary and overtime hours worked;
 - (iii) any penalty rates payable;
 - (iv) annual leave;
 - (v) accrued days off; or,
 - (vi) time off in lieu.
- (b) Employees have the right to request the balance of any of their leave accruals at any time.

24.7 Underpayment of Wages

- (a) Where an employee is underpaid all or part of their pay on any occasion they should raise the error immediately with the employer.
- (b) The employer, upon agreement with the identified error, will rectify the error as soon as practicable.

24.8 Overpayment of Wages

- (a) Where the employee has been overpaid all or part of their pay on any occasion they, or the employer, should raise the error immediately.
- (b) The employee, upon agreement with the identified error will agree to the employer rectifying the error as soon as practicable.
- (c) Any payment arrangements will be agreed to and authorised by the employee in writing.

PART 5 – HOURS OF WORK AND RELATED MATTERS

25 HOURS OF WORK

- 25.1 Ordinary hours shall be arranged by the Employer to meet the operational requirements of the business, but shall not exceed:
 - (a) agreement between the Employer and
 - (b) the Employees concerned, an average of 152 in a four week cycle.

- 25.2 The ordinary hours of work for a part-time Employee will be a specified number of hours, which are less than those prescribed for a full-time Employee. The specified number of hours may be balanced over a week, fortnight or by agreement four (4) weeks, provided that the average weekly hours worked shall be deemed to be the specified number of hours for the purposes of accrual of leave provided for by this Agreement. Provided further that there shall be no interruption to the continuity of employment merely by reason of an Employee working on a "week-on", "week-off" basis in accordance with this subclause.
- 25.3 The ordinary hours of a Day Worker span between 6:00 am and 6:00 pm Monday to Friday.
- 25.4 Breaks Between Shifts
- (a) The normal break between shifts shall be 10 hours however by mutual agreement a minimum break of 8 hours between ordinary rostered shifts, other than broken shifts, on successive days can apply.
- 25.5 Days Off in a Roster Cycle
- (a) An Employee shall be entitled to not less than four full days in each fortnight free from duty or two full days in each week free from duty and such rostered days off shall where practical include from midnight to midnight and should provide one of the following combinations;
- (i) two periods comprising two (2) consecutive days each,
- (ii) three (3) consecutive days and one (1) stand alone day,
- (iii) one period of 4 consecutive days
- 25.6 Provided that any one of these combinations may be amended by mutual agreement.
- 25.7 Minimum Hours per Shift
- (a) The minimum number of ordinary hours per shift for full time and part time employees will be three (3) and for casual employees will be two (2) except where the Employee is required to attend compulsory paid training required for accreditation, support contact or unannounced visits or for outbreak management purposes in which case the minimum number of hours will be one (1) per occasion.
- 25.8 Maximum Hours per Shift
- (a) The maximum ordinary hours per shift will be ten (10) hours. Hours worked beyond ten (10) hours will attract overtime and shall be paid at time and a half for the first 2 hours and double time thereafter.
- 25.9 Broken Shifts

- (a) Hours of work on any one shift will be continuous. Notwithstanding this, broken duty shifts can only be worked where there is mutual agreement between the Employer and the Employee with a maximum spread of 12 hours, but total hours worked shall not to be more than 8 hours over 2 duty periods. Any time worked beyond the 12 hour span will attract overtime in accordance with the provision of this Agreement. An Employee can withdraw agreement to work broken shifts with seven days' notice.

25.10 Accrued Days Off (ADOs)

- (a) Any hours accrued as ADOs prior to the commencement of this Agreement will remain in an Employee's leave balance until taken at a time mutually agreed between the Employee and the Employer or at the Employer's direction if they have not been taken within 6 months.
- (b) A system of accrued time off may operate for full time Employees by agreement between the Employer and Employee(s) concerned:
 - (i) Full time Employees working in accordance with the ADO system will be required to work an average of 152 ordinary hours over 19 days in a 4 week period with time off accruing toward one additional day off per 4 week cycle.
 - (ii) Accrued time off shall be taken at a time or times agreed between the Employer and the Employee but within 12 months of accrual.
- (c) With the consent of the Employer, ADOs may be accumulated by an Employee to a maximum of five (5) days. Accrued ADOs, when taken, are paid at the ordinary rate of pay at the time the leave accrued. Accrued ADOs are taken on the basis of first accrued first taken.
- (d) A system of accrued time off does not apply to part time or casual Employees.
- (e) The Employer may schedule ADOs and display them on a roster. Scheduling decisions will generally be based on the needs of the workplace and having regard to employee preferences.
- (f) The Employer may review the ADO system at any time and where it is found to be adversely affecting the operations of the business the Employer will consult with the affected Employee and after such consultation, may genuinely agree with the Employee as to the cessation of the ADO system. At the cessation of the ADO system, the Employee will be paid all ADOs accrued at that time. ADOs shall be paid at ordinary rate of pay at the time the leave accrued.

25.11 Cashing in ADOs and Payment of ADOs on Termination

- (a) An Employee may at any time, by written agreement with the Employer, be paid for any or all of the ADOs standing to the Employee's credit in lieu of taking the time off.

- (b) An Employee shall be paid for any untaken ADOs on termination of their employment at the ordinary rate of pay at the time the leave accrued.
- (c) Payment under this subclause shall be on an 'hour for hour' basis.

26 OVERTIME

- 26.1 Subject to this clause, overtime will occur where an Employee is required to work in excess of their prescribed ordinary hours in accordance with Clause 25 (Hours of Work) and Clause 27 (Rosters).
- 26.2 Overtime will only be paid if, before starting overtime, the overtime has been approved by the authorised management representative. All overtime is calculated according to an Employee's ordinary rate of pay.
- 26.3 Approved authorised overtime will be paid at the rate of time and one half for the first two hours and double time thereafter with the exception of all overtime worked on Sundays which will be at the rate of double time and all overtime worked on Public Holidays will be at the rate of double time and a half.
- 26.4 Any additional hours worked by a part time Employee by mutual agreement in accordance with Clause 27 of this Agreement will not attract overtime, unless the part-time or casual Employee works more than 10 hours in one shift or in excess of the maximum ordinary hours in clause 25. Where an Employee works:
 - (a) more than 10 hours in one shift, they will be paid at the rate of time and a half for the first two hours and double time thereafter;
 - (b) With the exception of Employees working broken shifts, Employees who are recalled to work overtime after leaving the Employer's place of work shall be paid a minimum of four hours at the applicable overtime rate for each time so recalled.
- 26.5 An Employee recalled to work overtime shall be reimbursed reasonable travel expenses incurred in respect of the recall to work. Provided that where an Employee elects to use his or her own vehicle the Employee shall be paid the per kilometre allowance set out in Table 2 of this Agreement.
- 26.6 For the purposes of assessing overtime, each day shall stand alone, provided that where anyone period of overtime is continuous and extends beyond midnight, all overtime hours in this period shall be regarded as if they had occurred within the one day.
- 26.7 All time worked by permanent part time employees in excess of the hours prescribed in clause 25 of this Agreement shall be paid for at overtime rates.
- 26.8 For the avoidance of doubt overtime rates are in substitution for and not cumulative upon any shift and/or weekend penalties.
- 26.9 Overtime rates do not apply to Registered Nurse levels 4 and 5.

27 ROSTERS

- 27.1 Rostering is subject to the service delivery needs of each of the Employer's facilities based on many factors such as occupancy, care needs and complexities of resident and operational management. The Employer will attempt to post a fortnightly roster within fourteen (14) days, but will do so not less than seven (7) days prior to the commencement of each roster period.
- 27.2 In cases of emergency, or where another Employee is absent (eg. illness, injury or the like), changes may be made to the roster to enable the functions of the facility to be properly carried out. In such cases the Employer will endeavour to contact the proposed replacement Employee immediately after the necessity arises prior to making the roster change.
- 27.3 Where such alteration involves a permanent Employee being requested to work on a day which would have been his or her rostered day off, such Employee may elect to be paid at overtime rates provided in the case of a full time employee the total hours worked in a fortnight are greater than 76.
- 27.4 Sub-clause 27.3 shall not apply where the only change to the roster of a part-time Employee is the mutually agreed addition of extra hours to be worked such that the part-time Employee still has two rostered days off in that week or four rostered days off in that fortnight, as the case may be.
- 27.5 Where an Employee genuinely requests and the Employer agrees, changes may be made to the roster at any time, including but not limited to, working additional hours or shifts and shift swapping. Any additional hours requested by the Employee will be paid at their ordinary rate of pay unless an Employee works more than 10 hours in one shift or the maximum ordinary hours in clause 25, in which case overtime shall be payable.
- 27.6 The Employer must provide 2 weeks' notice to all part time Employees of any reduction in regular working hours. Provided that, the number of hours provided by the Employer shall not fall below the minimum hours specified in the statement required under clause 13.
- 27.7 The employer should be committed to maximising permanent workforce in line with occupancy levels. The employer should always offer additional shifts in the first instance to permanent part time staff were practicable. The employer could then offer additional shifts to casual staff were applicable.
- 27.8 It is not obligatory for the Employer to display any roster for casual or relieving staff.
- 27.9 If there is an issue arising individually or collectively regarding the roster the Employee/s shall first raise the issue with the Employer at the workplace level.

28 MEAL BREAKS AND REST PAUSES

28.1 Meal Breaks

- (a) Where an Employee is rostered to work a shift of greater than 5 hours, the Employee will be entitled to an unpaid meal break of between 30 and 60 minutes duration. The Employer, acting reasonably, may require the timing of the meal break to be flexible to fit in with workflow and resident needs.
- (b) Where an Employee is required to remain on premises or be available during their meal break, and they are not in receipt of an in charge or on call allowance, the meal break shall be paid at ordinary time and be counted as time worked. Such paid meal breaks must be authorised by the shift supervisor.
- (c) Where the Employee is required by the Employer to remain on duty during a meal break, they will be paid at overtime rates until the break is taken.
- (d) Notwithstanding the provisions of sub-clause 28.1(a), an Employee required to work shifts in excess of 10 hours shall be entitled to at least 60-minutes of meal breaks. Such time shall be taken as either two thirty-minute meal breaks or one 60 minute meal break, subject to agreement between the Employer and Employee.
- (e) An Employee who is required to work overtime for more than one (1) hour after their rostered finishing time, or in the case of shift workers when overtime work on any shift exceeds one (1) hour shall, at the option of the Employer, be supplied with a meal or shall be paid a meal allowance as set out in Table 4. Where such overtime exceeds four (4) hours a further meal allowance will be paid.

28.2 Rest Pauses

- (a) Employees will be entitled to a rest pause of 10 minutes duration within each period of 4 ordinary hours of work at a time to be agreed between the Employer and the Employee.
- (b) Where an Employee works a shift of greater than 8 hours, by mutual agreement the Employer and the Employee may decide to combine two rest pauses into one 20 minute rest pause.
- (c) Rest pauses will be counted as time worked.

29 HIGHER GRADE DUTIES

29.1 A non-nursing staff employee engaged in any duties carrying a higher wage rate than the classification in which they are ordinarily employed in any one day or shift will be paid at the higher wage rate for:

- (a) The time so worked for two hours or less; or
- (b) A full day or shift where the time so worked exceeds two hours.

- 29.2 Where a nursing staff Employee is required to perform higher duties above their appointed classification for a duration of two (2) working days or more, the Employee will be paid higher grade duties at the higher classification for all hours worked at the higher classification on that shift.
- 29.3 Higher grade duties must be authorised by the relevant authorised management representative.

30 SHIFT PENALTIES – NURSING EMPLOYEES

- 30.1 Where an employee works a rostered afternoon shift between Monday and Friday, the employee will be paid a loading of 12.5% of their ordinary rate of pay.
- 30.2 Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of 15% of their ordinary rate of pay.
- 30.3 The provisions of this clause do not apply where an employee commences their ordinary hours of work after 12.00 noon and completed those hours at or before 6.00 pm on that day.
- 30.4 For the purposes of this clause:
- (a) Afternoon Shift means any shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on the same day; and
 - (b) Night Shift means any shift commencing on or after 6.00 pm and finishing before 7.30 am on the following day.

31 SHIFT PENALTIES – NON NURSING EMPLOYEES

- 31.1 Where a non-nursing employee works a rostered early morning shift between Monday and Friday, the employee will be paid a loading of 10% of their ordinary rate of pay.
- 31.2 Where an employee works a rostered early afternoon shift between Monday and Friday, the employee will be paid a loading of 10% of their ordinary rate of pay.
- 31.3 Where an employee works a rostered late afternoon shift between Monday and Friday, the employee will be paid a loading of 12.5% of their ordinary rate of pay.
- 31.4 Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of 15% of their ordinary rate of pay.
- 31.5 For the purposes of this clause:
- (a) Early Morning Shift means any shift commencing at or after 4.00 am and before 5.30 am on the same day; and

- (b) Early Afternoon Shift means any shift commencing at or after 10.00 am and before 1.00 pm; and finishing after 6.00 pm on the same day; and
- (c) Late Afternoon Shift means any shift commencing at or after 1.00 pm and before 4.00 pm, and finishing after 6.00 pm on the same day; and
- (d) Night Shift means any shift commencing on or after 4.00 pm and finishing before 4.00 am on the following day.

32 WEEKEND PENALTIES

32.1 Saturday Penalty

- (a) All ordinary hours worked between midnight Friday and midnight Saturday will be paid at the rate of 150% of their ordinary hourly rate of pay.

32.2 Sunday Penalty

- (a) All ordinary hours worked between midnight Saturday and midnight Sunday will be paid at the rate of 175% of the ordinary hourly rate of pay.

32.3 Casual Nursing Employees are paid weekend shift penalties on their ordinary rate as per the Clause 13.15 of this Agreement.

32.4 All other Casual Employees are paid the casual loading in addition to weekend shift penalties as per the Clause 13.15 of this Agreement.

32.5 The weekend penalties are in substitution for and not cumulative upon any shift penalties.

33 CALCULATION OF PENALTIES

33.1 Where an Employee works hours which would entitle the Employee to payment of more than one of the penalties payable in accordance with Clause 26 - Overtime, Clause 32 -Weekend Penalties, Clause 30 - Shift Penalties Nursing Employees, Clause 31- Shift Penalties Non Nursing Employees and Clause 37 - Public Holidays unless otherwise specified only the highest of any such penalty shall be payable.

PART 6 – LEAVE AND RELATED MATTERS

34 ANNUAL LEAVE

34.1 The National Employment Standards (NES)

- (a) Annual leave is governed by legislation, currently the NES.
- (b) Nursing Staff receive a minimum of five (5) weeks annual leave per annum.

- (c) Nursing Staff Shift workers as defined in Clause 3 Definitions will be entitled to an additional week of annual leave per annum in accordance with the NES.
- (d) Non-Nursing Staff employees receive four (4) weeks annual leave per annum, plus an additional week if they are a shift worker and/or they work more than four ordinary hours on 10 or more weekends per calendar year.

34.2 Taking of Annual Leave

- (a) An Employee is entitled to take an amount of annual leave during a particular period if:
 - (i) at least that amount of annual leave is credited to the Employee; and
 - (ii) the Employer has authorised the Employee to take the annual leave during that period.
- (b) In the taking of leave, the Employee shall make written application to the Employer, giving timely notice of the desired period of such leave. In ordinary circumstances, four (4) weeks notice is required to be given by an Employee to the Employer.
- (c) Annual leave shall be taken in an amount and at a time which is approved by the Employer subject to the operational requirements of the workplace. The Employer shall not unreasonably withhold or revoke such approval.
- (d) An Employee must take an amount of paid annual leave during a particular period if the Employer directs the Employee to take the period of leave. The Employer can only make such direction where the employee has more than two (2) years accrued annual leave. In addition the Employer can make a direction to take paid annual leave by providing at least eight (8) weeks' notice, but only if it is reasonable for the Employer to make the direction in the circumstances. Such direction for an Employee to take annual leave must not be for a period less than one (1) week, and must leave the Employee with at least 6 week's of annual leave remaining following the taking of the directed leave period.

34.3 Cashing Out of Annual Leave

An Employee may "cash out" an amount of annual leave credited to the Employee (in lieu of the amount of annual leave taken) subject to mutual agreement between the Employer and the Employee and is also subject to the following:

- (a) on each occasion the Employee or the Employer wishes to cash out an amount of annual leave, it must be by separate written agreement; and
- (b) any annual leave that is "cashed out" will be paid so the Employee is paid the full amount that would have been payable had the employee taken the leave forgone; and

- (c) to cash out annual leave an Employee must have a remaining balance of at least four (4) weeks (or the pro rata equivalent for Part-Time Employees) annual leave after cashing out.

34.4 Annual Leave Loading

- (a) An Employee other than a shift worker will be entitled to annual leave loading of 17.5% for annual leave taken calculated on the Employee's ordinary rate of pay to a maximum of 152 hours or 4 weeks annual leave per year.
- (b) A shift worker shall be paid whilst on annual leave his or her ordinary pay plus any usual shift allowances and weekend penalties relating to ordinary time the shift worker would have worked if they had not been on annual leave or an additional period of annual leave loading whichever is the greater. Provided that shift allowances and weekend penalties shall not be payable for public holidays which occur during a period of annual leave, for days which have been added to annual leave in accordance with the provisions of Clause 37 - Public Holidays.
- (c) No loading is payable where the annual leave is taken wholly or partly in advance, provided however, that if the employment of such an Employee continues until their next anniversary date, the loading then becomes payable:

34.5 Leave Without Pay

- (a) An employee, other than a casual, may request leave without pay in exceptional circumstances when all accrued leave has been exhausted.
- (b) The employee must make such application
 - (i) in writing,
 - (ii) including reason/s for leave,
 - (iii) at least 14 days prior to the taking of leave without pay; or,
 - (iv) as otherwise agreed between the employee and employer.
- (c) The employer has the right to refuse a request for leave without pay at their discretion.
- (d) Leave without pay is to be taken in week blocks or as otherwise agreed.
- (e) A period of leave without pay does not break an employee's continuity of service, but does not count as service.

35 LONG SERVICE LEAVE

- 35.1 Long service leave is governed by legislation, currently the Long Service Leave Act 1955 (NSW).
- 35.2 Employees will receive 8.66 weeks long service leave for the first ten (10) years of service. After the first ten (10) years of service employees will then accrue 4.33 weeks long service leave per five (5) years of service. An additional week of long service leave will be provided at fifteen (15) years of completed service. At each completed five (5) years thereafter each employee will be entitled to an additional two (2) weeks of long service leave. The additional entitlements do not accrue pro-rata on uncompleted periods of service.

Completed Years of Service	Number of Weeks Leave
Ten years	8.66
Ten – Fifteen years	4.33 + 1 week additional at 15 years service
Fifteen – Twenty years and each five years thereafter	4.33 + 2 weeks additional at 20 years service

36 PERSONAL/ CARER'S LEAVE

- 36.1 Employees are entitled to personal/carer's leave and compassionate leave in accordance with the provisions of the NES.
- 36.2 Personal/carer's and compassionate leave entitlements for casual employees are as set out in the NES.
- 36.3 Entitlement to Paid Personal/Carer's and Compassionate Leave:
- (a) For each year of service with the employer, an employee is entitled to 10 days of paid personal/carer's leave.
 - (b) An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.
 - (c) An employee is entitled to two days compassionate leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household:
 - (i) contracts or develops a personal illness that poses a serious threat to their life; or

- (ii) sustains a personal injury that poses a serious threat to his or her life;
or
- (iii) dies.

36.4 Taking of Personal/Carer's Leave

36.5 An employee may take paid personal/carers leave:

- (a) where the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
 - (i) a personal illness, or personal injury, affecting the member; or
 - (ii) an unexpected emergency affecting the member.

36.6 Notice and Evidence Requirements

- (a) To be entitled to leave under Clause 36, an employee must give the employer notice of the period, or expected period of the leave as soon as reasonably practicable (which may be at a time before or after the leave has started) that the employee is (or will be) absent from their employment.
- (b) To be entitled to personal leave during the period, the employee may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the personal leave has started) either:
 - (i) a medical certificate stating that in their opinion, the employee was, is, or will be unfit for work during the period because of a personal illness or injury; or
 - (ii) a statutory declaration made by the employee stating that the employee was, is, or will be unfit for work during the period because of a personal illness or injury; or
 - (iii) evidence that would satisfy a reasonable person that the leave was taken for a permissible reason or occasion.

36.7 To be entitled to carer's leave during the period, the employee may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the carer's leave has started) either:

- (a) a medical certificate stating that in their opinion the member requires or required care and support during the period due to personal illness or injury; or
- (b) a statutory declaration made by the employee stating that the employee requires or required leave during the period to provide care or support to a

member of the employee's immediate family or household because of personal illness, or injury, or an unexpected emergency; or

- (c) evidence that would satisfy a reasonable person that the leave was taken for a permissible reason or occasion

36.8 Evidence Requirements

- (a) To be entitled to compassionate leave during the period, the employee may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the compassionate leave has started):
 - (i) a medical certificate stating that in their opinion the member is suffering from an illness or injury that poses a serious threat to the member's life; or
 - (ii) a statutory declaration made by the employee stating that the employee requires or required leave during the period due to the death of the member.
 - (iii) evidence that would satisfy a reasonable person that the leave was taken for a permissible reason or occasion

36.9 Payment of Paid Personal/Carer's Leave

- (a) If an employee takes a period of paid personal/carer's leave and meets the notice requirements set out at subclause 36.3(c) the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (b) In addition, an employee may use accumulated personal/carer's leave when on workers compensation only where their workers compensation payments are less than their normal full pay. In this case a personal/carer's leave entitlement may be used to make up the difference between the full normal pay and the workers compensation payment.

36.10 Service

- (a) A period of paid personal/carer's leave or compassionate leave does not break an employee's continuity of service and counts as service for all purposes.
- (b) A period of unpaid personal/carer's leave does not break an employee's continuity of service, but does not count as service.

36.11 Cashing Out of Personal/Carer's Leave

- (a) In the event an Employee takes 2 or less days personal leave in a year commencing from the start of this Agreement, the Employer will cash out up to 3 days personal leave at an increased rate of time and one quarter subject to the following:

- (i) written agreement from the Employee on each occasion;
- (ii) the Employee has at least 15 days accrued personal leave remaining after cash out; and,
- (iii) as the Employee shall be paid at the rate of time and one quarter, the Employee shall receive at least the full amount that would have been payable to the Employee had they taken the leave.

36.12 Other Use of Personal Leave – Special Disaster Leave

- (a) An employee is entitled to access up to three (3) days paid personal leave per occasion at their base rate of pay when the employee is unable to attend for duties due to a declared natural disaster which:
 - (i) threatens an employee's life; or
 - (ii) their property.
- (b) This entitlement does not accumulate.
- (c) The employer may request an employee to provide evidence to satisfy the employer of the reason for taking this type of leave.

36.13 Other Forms of Leave

- (a) Where an employee is unfit for work in accordance with the NES, and has exhausted their paid personal leave, the employer will not unreasonably refuse other forms of paid or unpaid leave. An employee may elect to take:
 - (i) Annual leave;
 - (ii) Long service leave in accordance with the Long Service Leave Act 1955 (NSW);
 - (iii) Where an employee seeks to access another form of paid leave for the purposes of personal/carer's leave above, approval will be subject to the notice and evidence requirements per clause 36.3 as appropriate.

37 PUBLIC HOLIDAYS

37.1 Public Holiday entitlements

- (a) Public holidays are governed by legislation, currently the NES and as gazetted from time to time.
- (b) In determining whether an Employee has reasonable grounds for refusing a request to work on a public holiday regard must be had to the matters set out in the Act. This Agreement expressly contemplates that the Employer will require work on public holidays and the parties acknowledge that the nature of the work performed by the Employee, the type of employment (for example,

whether full-time, part-time, casual or shift work) and the nature of the Employer's workplace or enterprise (including its operational requirements) will require work on public holidays.

- (c) An Employee who is required to and does work on any public holiday prescribed in this clause shall be paid in lieu of all other shift allowances (except broken shift allowances), weekend penalties, overtime and casual loading as follows:

Full Time and Part Time Employees

Full-time and part-time Employees will be paid on a public holiday at 250% of their ordinary rate of pay for all time worked.

Casual Nursing Employees

Casual nursing staff will be paid 250% calculated on the ordinary rate of pay for all time worked. Such payment is inclusive of and not in addition to the casual loading.

Casual Aged Care Employees

Casual Aged Care employees working on a Public Holiday shall be paid at 275% of the base rate for time worked (inclusive of any casual loading or shift or weekend penalty).

Additional Public Holiday

Permanent Employees shall be provided with an additional day of leave to be taken:

- On a day between Christmas and New Year at a time agreed with the Employee, but otherwise at the Employer's discretion, that does not coincide with a date that is already declared a public holiday for that calendar year; or
- On a day, which may be agreed between the Employer and Employee.

This leave is not cumulative.

38 PARENTAL LEAVE

- 38.1 Parental leave is governed by legislation, currently the NES.
- 38.2 Permanent and eligible employees entitled to parental leave under the NES and the Commonwealth Parental Paid Leave Scheme will also be entitled to an additional payment to top up their wage to their ordinary rate of pay for the first ten (10) weeks of parental leave. The top up payment amount will be determined by averaging the number of hours worked per week on average for the preceding twelve (12) months.
- 38.3 Request to return to work part-time

Where an Employee wishes to make a request to return to work on a part time basis, such a request must be made as soon as possible but no less than seven (7) weeks prior to the date upon which the Employee is due to return to work from parental leave.

39 COMMUNITY SERVICE LEAVE

39.1 Community Service Leave is governed by legislation, currently the NES.

40 CEREMONIAL LEAVE

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

41 FAMILY AND DOMESTIC VIOLENCE LEAVE

41.1 Definitions

- (a) Family and Domestic Violence **includes** acts or threats of violence, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same household as the victim or a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules
- (b) Family and Domestic Violence **includes** physical, sexual, financial, verbal or emotional abuse by a family member.

42.2 An employee may, for the purposes of this clause, be required to produce suitable evidence of Family and Domestic Violence, such as documents issued by the Police Service, a Court, a Doctor, a Domestic Violence Support Service, a Lawyer or counselling professional or by statutory declaration.

42.3 Measures

- (a) No adverse action will be taken against an employee on the basis of being the victim of Family and Domestic Violence.
- (b) All personal information concerning Family and Domestic Violence will be kept confidential in line with the Employer's Privacy Policy and relevant legislation.
- (c) Upon receipt of a reasonable request from an employee who has satisfied the criteria of this clause, the Employer, will, subject to operational requirements facilitate flexible working arrangements, which may include:
 - (i) changes to working times;
 - (ii) changes to the employee's company email address.

- (iii) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.
- 42.4 An employee experiencing family and domestic violence may be referred to the Employee Assistance Program (EAP) and/or other local resources that include professionals trained specifically in family and domestic violence.
- 42.5 A employee who has established evidence of being the victim of Family or Domestic Violence may utilise the following leave entitlements for medical appointments, counselling, legal proceedings, arrange to relocate and/or other activities related to the effects of Family and Domestic Violence:
 - (a) 5 days of unpaid family and domestic violence leave in a 12 month period, in accordance with the NES.
 - (b) Leave without pay or other forms of paid leave, such as annual leave or long service leave.
 - (c) Leave under this clause can be taken as a part day absence.

42 LEAVE TO ATTEND THE FUNERAL OF RESIDENTS

- 42.1 The Employer values and encourages the strong relationships that staff develop with residents of the facility, and recognises the significant impact the passing of residents can have on staff where these strong relationships have been formed.
- 42.2 Where an employee wishes to attend a resident's funeral, and the time of the funeral is scheduled during the employee's ordinary hours, the employee may request time off work to attend the funeral. All requests must be made by the employee to the employer with as much notice as reasonably practicable.
- 42.3 Upon receipt of such request, the employer will consider the following options to facilitate the employee's request:
 - (a) Temporary variation of roster;
 - (b) Period of annual leave or unpaid leave (may be a part day); or,
 - (c) Any other arrangement by agreement between the employee and the employer.
- 42.4 This clause does not provide an automatic approval for staff to attend resident funerals that are scheduled during working hours. All requests will be considered having regard to the operational requirements of the facility, the care needs of other residents and the capacity to change the working arrangements of other employees to accommodate the request.

PART 7 – PROFESSIONAL DEVELOPMENT AND OTHER MATTERS

43 PROFESSIONAL DEVELOPMENT LEAVE

- 43.1 Full time employees shall be entitled to two (2) days paid study/ examination/ conference/ professional development leave per annum for the purposes of attending courses/ conferences and/or undertaking or preparing for examinations in a course of nursing or aged care study relevant to the work they perform and conducted by a recognised institution. Part time employees who regularly work at least four (4) shifts per fortnight shall be entitled to leave under this clause, on a pro rata basis.
- 43.2 Leave entitlements pursuant to this clause shall not accumulate from year to year.
- 43.3 Study Leave shall be taken at a time that is mutually agreed between the Employer and the employee.
- 43.4 In order to fulfil the continuing professional development requirements of the Nursing and Midwifery Board of Australia, registered nurses and enrolled nurses will be provided access to training and reimbursement of reasonable and approved costs associated with the training. This training may involve any combination of the following and must be authorised by Management:
- (a) Writing or reviewing nursing educational materials;
 - (b) Presenting at or attending workplace education sessions;
 - (c) Attendance or presentation at external conferences, lectures, seminars or professional meetings; or,
 - (d) Undertaking relevant online or face to face undergraduate or post graduate studies which are relevant to their clinical practice.

44 TRAINING AND EDUCATION

- 44.1 An employer may make in-service training available to all employees to assist those employees to maintain professional registration or endorsement and skill development.
- 44.2 The employer shall provide a minimum of 12 hours of in-service training per annum to Nursing Assistants.
- 44.3 Each employee shall provide to their employer details of their attendance at in-service training and the employer shall keep a record of this attendance.
- 44.4 The employer will provide to an employee, who is employed in a nurse classification, on the termination of their employment, a written statement of the hours of in-service training attended by the employee.

44.5 Where practicable, such training shall be provided to employees during the normal rostered hours of work. Where it is not practicable to provide such training during the normal rostered hours of work then:

- (a) Employees shall attend in-service training outside their normal rostered working hours when required to do so by the employer.
- (b) An employer shall provide employees with two weeks' notice of the requirement to attend training outside of their normal rostered working hours.
- (c) Attendance at such training shall be paid at the appropriate rate.
- (d) Attendance at such in-service training outside the normal rostered working time of an employee shall not affect the ordinary rate paid to the employee during normal rostered working time.

44.6 The employer will review all requests for external training on a case by case basis having regard to the operational needs of the business. Subclause

45 ATTENDANCE AT MEETINGS, FIRE DRILLS AND FIRST AID TRAINING

45.1 Fire Drills

Any employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety practices (e.g. fire drill and evacuation procedures) will be entitled to receive payment at the ordinary rate for the actual time spent in attendance at such meetings. Such time spent in attendance shall be paid at the appropriate rate.

45.2 Work Health and Safety Committee and/or Board of Management Meetings

Any employee required to attend Work Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, if such meetings are held outside the ordinary hours of work, be entitled to receive payment at the ordinary rate for the actual time spent in attendance at such meetings. Such time spent in attendance shall be paid at the appropriate rate.

45.3 First Aid Training

Where an employer directs an employee to attend First Aid training the employer will bear the cost of the training. If such training is held outside the ordinary hours of work, the employee will be entitled to receive payment at the ordinary rate for the actual time spent in attendance at such meetings. Such time spent in attendance shall be paid at the appropriate rate.

46 UNION REPRESENTATIVE LEAVE

46.1 The employer recognises the right of all employees to join a union, to access union representation and to participate collectively in workplace issues.

- 46.2 The employer will recognise union representative(s) upon written notification from each of the union/s.
- 46.3 Union representative(s) will be released from work to attend union business in accordance with the following:
- (a) up to a maximum of three (3) days per calendar year (1 January to 31 December) per facility for the totality of all applications of trade union, union representative training leave, attendance at union conferences, meetings and courses provided that:
 - (i) the courses are directed to the enhancement of a more productive, aware and harmonious workplace environment;
 - (ii) at least four (4) weeks' notice is provided to the employer;
 - (iii) the approval of leave must have regard to the operational requirements of the employer;
 - (iv) the union representative provides evidence of attendance to the employer when requested; and
 - (v) subject to operational requirements an employer shall not unreasonably refuse such a request.
- 46.4 A union representative may access accrued paid leave or unpaid leave for the purpose of attending union training, meetings, conference and courses as detailed in this clause.

47 WORKPLACE HEALTH AND SAFETY

- 47.1 The employer recognises that improved workplace health and safety is a priority for improving the working lives of employees and the overall productivity of the sector.
- 47.2 The employer and employee acknowledge their responsibilities under the *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2017*.
- 47.3 The employer and employee recognise the need for appropriate workplace health and safety training subject to the relevant roles and responsibilities of the employees.
- 47.4 Where there is a Work Health and Safety Representative they must be elected and will carry out the tasks associated with the role of Work Health and Safety Representative set out within the *Work Health and Safety Act 2011*.
- 47.5 Where the employer has been requested to form a Health and Safety Committee (HSC) by a Health and Safety Representative (HSR), or by five or more employees, the employer must do this within two months of being requested. The employee can also form a HSC on its own initiative.

- 47.6 Members comprising a HSC can be agreed between the employer and employees, however, at least half the members of the HSC should not be nominated by the employer. Existing HSRs are automatically part of a HSC, unless they choose otherwise.
- 47.7 If unable to reach agreement on the composition of a HSC, the matter may be escalated by either party to SafeWork NSW for assistance.
- 47.8 The employer recognises the right of all employees to join a union, to access union representation and to participate collectively in workplace issues.
- 47.9 The employer will recognise union representative(s) upon written notification from each of the union/s.

48 DISCIPLINARY AND MANAGING UNDERPERFORMANCE PROCEDURES

- 48.1 When there a question has been raised about the Employees underperformance, conduct or behaviour the Employer will conduct a fair investigation having proper regard to procedural fairness and the factors set out below.
- 48.2 Important procedural factors at this point in time include:
 - (a) The reason for any interview is explained.
 - (b) A reasonable opportunity is to be provided for a representative or support person of the Employee's choice to attend any interviews or meetings conducted by the Employer with the Employee provided that this shall not unduly delay processes. Other than the Employee, attendance may be in person, by videoconference or by telephone.
 - (c) Prior to a response being sought from the Employee to the matters raised, the Employee will be provided in writing relevant details of the Employer's concerns and specific allegations, as well as possible outcomes if the allegations are proven or the underperformance continues.
 - (d) The Employee will be given opportunity to respond to the concerns or allegations. This may be given in writing and any responses given shall be taken into account before a decision is reached.
 - (e) The Employee may decline to answer any questions relating to the investigation. In which case, the Employer may reach a decision on the information and evidence to hand.
 - (f) If the Employee raises an issue in their response to concerns or allegations, that warrants further investigation, the Employer shall take reasonable steps to investigate the other matters either concurrently or at a later time if the issue is not relevant to the outcome of the performance/ underperformance concerns.
 - (g) The employer may suspend an employee with pay (including allowances, loadings and penalty rates) for a period as is reasonably necessary to conduct the investigation or to deliver the outcome of the investigation.

The employee's pay will be determined by calculating the average pay received by the employee for time worked in the six months prior to the suspension.

- (h) When the investigation has been completed, the Employer will advise the Employee of the Employer's decision in regard to the investigation in writing, with reasons provided for the outcome. Where the outcome is delivered in a meeting, the employee may invite a support person or representative to be present.

Outcome of Investigation

48.3 After considering all the information reasonably available on the matter, and if the employer determines that misconduct/behaviour or underperformance issues have occurred, the Employer may, having regard to the degree of misconduct or underperformance :

- (a) Take no further action;
- (b) Counsel the employee and identify and provide appropriate training;
- (c) Issue a verbal warning;
- (d) Issue a formal written warning; or,
- (e) Issue a 'first and final' formal written warning for a significant breach not warranting dismissal.

48.4 In regard to misconduct only, the Employer may decide to:

- (a) Terminate the Employee's employment with notice where the conduct warrants this outcome or results from a breach of a 'first and final' warning; or,
- (b) Terminate the Employee's employment without notice where the conduct is determined to be serious misconduct within the meaning of the Fair Work Act.

48.5 In regard to continued underperformance, the Employer may dismiss the employee with notice where the underperformance has continued and a reasonable period to improve have been given, and the employee having had the opportunity to improve their performance and has failed to meet expectations.

SIGNING CLAUSE

DATED this 24th day of June 2020

.....
Signature on behalf of Martyn Claver Nursing Home

.....
Print Name - CLAUDE PASQUALI
DIRECTOR

I declare that I am authorised to sign this Agreement on behalf of the Employer

200 Megalong Street, Leura, NSW 2780
Address

DATED this day of 2020

.....
Signature on behalf of the Australian Nursing and
Midwifery Federation as a Nominated Bargaining
Representative

.....
Print Name

50 O'Dea Avenue, Waterloo NSW 2017
Address

I declare that I am authorised to sign this Agreement on behalf of the named Bargaining
Representative

DATED this day of 2020

.....
Signature: on behalf of the Health Services Union
as a Nominated Bargaining Representative

.....
Print Name

Level 2, 109 Pitt Street, Sydney NSW 2000
Address

I declare that I am authorised to sign this Agreement on behalf of the named Bargaining
Representative

Brett Holmes

Brett Howard Holmes
Branch Secretary
Australian Nursing and Midwifery Federation
New South Wales Branch
50 O'Dea Ave
WATERLOO NSW 2017

Margaret Potts

WITNESS

Margaret Mary Potts
50 O'Dea Ave, Waterloo

O'Bray Smith

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

Margaret Potts

WITNESS

Margaret Mary Potts
50 O'Dea Ave, Waterloo

Authority to sign Agreement on behalf of employees is in accordance with Rule 40 of the Rules of the Australian Nursing and Midwifery Federation and as bargaining representative in accordance with the Fair Work Act 2009.

TABLE 1

<u>Nursing Classifications</u>	P/W 3/10/2018	P/W 1/07/2019	P/W 1/07/2020	P/W 1/07/2021
Nursing Assistant		1.50%	1.50%	1.50%
1st Year	800.66	820.00	832.34	844.68
2nd Year	815.48	840.00	852.78	865.51
3rd Year	836.00	850.00	862.81	875.92
4th Year	854.62	875.00	888.27	901.77
Thereafter	859.94	880.00	893.28	906.78
Nursing Assistant Cert III	859.94	900.00	913.34	927.22
Nursing Assistant Cert IV		910.00	922.26	935.94
Nursing Assistant Cert IV (Duty)		967.00	981.61	996.26
Enrolled Nurse (With Notation)	994.08	1,008.99	1,024.03	1,039.46
Enrolled Nurse				
1st Year	1,027.14	1,042.55	1,058.36	1,074.17
2nd Year	1,040.47	1,056.05	1,071.86	1,088.06
3rd Year	1,054.24	1,069.93	1,086.13	1,102.33
4th Year	1,069.79	1,085.75	1,101.94	1,118.53
5th Year & Thereafter	1,083.12	1,099.25	1,115.83	1,132.42
Registered Nurse - level 1				
Pay point 1	1,188.26	1,206.08	1,224.21	1,242.73
Pay point 2	1,244.50	1,263.17	1,282.07	1,301.35
Pay point 3	1,300.74	1,320.25	1,339.92	1,359.98
Pay point 4	1,363.82	1,384.28	1,405.11	1,426.32
Pay point 5	1,417.02	1,438.28	1,459.87	1,481.86
Nursing Unit Manager	1,688.34	1,713.67	1,739.51	1,765.73
Clinical Nurse Specialist	1,473.64	1,495.74	1,518.12	1,540.87
Clinical Nurse Consultant - RN 3	1,729.00	1,754.94	1,781.16	1,807.78
Clinical Nurse Educator - RN 3	1,473.64	1,495.74	1,518.12	1,540.87
Nurse Educator - RN 3	1,689.10	1,714.44	1,740.28	1,766.51

Senior Nurse Educator	1,862.38	1,890.32	1,918.86	1,947.79
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TABLE 2

Aged Care Classifications

	P/W 3/10/2018	P/W 1/07/2019	P/W 1/07/2020	P/W 1/07/2021
Wage Skill Group ACE 1		1.50%	1.50%	1.50%
GSO Grade 1 (initial 3 months in industry)	779.76	810.00	822.15	834.48
Clerk Grade 1 (initial 3 months in industry)	779.76	810.00	822.15	834.48

Wage Skill Group ACE 2

Clerk Grade 2 - First Year	830.30	845.00	857.68	870.54
GSO Grade 2	812.44	845.00	857.68	870.54
Gardener Non-Trade (Unqualified)	812.44	845.00	857.68	870.54
Motor Vehicle Driver under 3 Ton	813.96	845.00	857.68	870.54

Wage Skill Group ACE 3

Clerk Grade 2 - Second Year	851.58	875.00	888.13	901.45
GSO Grade 3	844.36	875.00	888.13	901.45
Recreational Activities Officer	844.36	875.00	888.13	901.45
Cook Grade B	844.36	875.00	888.13	901.45
Maintenance (non-trade)	891.48	904.85	918.35	932.24

Wage Skill Group ACE 4

Clerk Grade 3 - First Year	869.06	882.10	895.33	908.76
Clerk Grade 3 - Second Year and thereafter	882.74	895.98	909.42	923.06
GSO Grade 4	854.24	882.10	895.33	908.76
Cook Grade A (Trade qualified plus 50 beds average)	854.24	882.10	895.33	908.76
Gardener (Qualified)	854.24	882.10	895.33	908.76
Maintenance/Handyperson (qualified)	932.52	946.51	960.71	975.12

Wage Skill Group ACE 5

Clerk Grade 4 - First Year	900.60	915.00	928.73	942.66
Clerk Grade 4 - Second Year	912.00	925.68	939.57	953.66
Chef - First Year	883.12	915.00	928.73	942.66

Wage Skill Group ACE 6

Senior Maintenance / Handyman (qualified)	973.18	987.78	1,002.59	1,017.63
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Wage Skill Group ACE 7

Clerk Grade 5	947.34	1,000.00	1,015.16	1,030.20
Clerk Grade 5 - Second Year	948.10			
Maintenance (trade qualified) In Charge	973.18	1,000.00	1,015.16	1,030.20

TABLE 3**Health Professionals****Classifications**

	P/W 3/10/2018	P/W 1/07/2019 1.50%	P/W 1/07/2020 1.50%	P/W 1/07/2021 1.50%
Heath Professional - Level 1				
Pay Point 1 - Undergraduate entry / first year	896.04	919.60	933.39	947.28
Pay Point 2 - 3 year degree entry / second year	930.62	950.00	964.25	978.91
Pay Point 3 - 4 year degree entry / third year	971.66	988.00	1,002.82	1,017.86
Pay Point 4 - Masters degree entry / fourth year	1,005.10	1,026.00	1,041.39	1,057.20
Pay Point 5 - PhD degree entry / fifth year	1,095.16	1,140.00	1,157.10	1,174.46
Pay Point 6 / sixth year		1,178.00	1,195.67	1,213.80

Heath Professional - Level 2

Pay Point 1	1,204.60	1,222.67	1,241.18
Pay Point 2	1,254.00	1,272.81	1,292.10
Pay Point 3	1,292.00	1,311.38	1,331.05
Pay Point 4	1,330.00	1,349.95	1,370.39

TABLE 4**Allowances**

		3/10/2018	1/07/2019 1.50%	1/07/2020 1.50%	1/07/2021 1.50%
In Charge	Shift	23.15	23.50	23.85	24.21
In Charge > = 100 beds	Shift	37.28	37.84	38.41	38.99
On Call during meal break	Shift	11.16	11.33	11.50	11.67
Vehicle/ Travelling Allowance	KM	0.90	0.91	0.92	0.93
Continuing Education Allowance - RN – Post Graduate Certificate	Week	19.42	19.71	20.01	20.31
Continuing Education Allowance - RN - Diploma or	Week	32.37	32.86	33.35	33.85

Degree					
Continuing Education Allowance - RN - Masters or Doctorate	Week	38.85	39.43	40.02	40.62
Continuing Education Allowance - EN - Certificate IV	Week	12.94	13.13	13.33	13.53
Continuing Education Allowance - Health Professional	Week	12.94	13.13	13.33	13.53
Broken Shift	Shift	8.56	8.69	8.82	8.95
Overtime < = 4 hours - Meal Allowance	Shift	12.21	13.29	13.49	13.69
Overtime > 4 hours - Meal Allowance	Shift	11.00	11.98	12.16	12.34
Linen Handling - nauseous nature	Hour	0.23	0.23	0.23	0.23
Leading Hand Allowance - in charge 2 - 5 employees	Week	21.86	25.00	25.38	25.76
Leading Hand Allowance - in charge 6 - 10 employees	Week	30.67	37.00	37.56	38.12
Leading Hand Allowance - in charge 11 - 15 employee	Week	38.85	47.00	47.71	48.43
Leading Hand Allowance - in charge 16 - 19 employees	Week	47.52	57.00	57.86	58.73
Uniform Allowance (Nurses)	Hour	0.37	0.38	0.39	0.40
Uniform Allowance (Nurses)	Week	14.05	14.26	14.47	14.69
Laundry Allowance (Nurses)	Hour	0.14	0.14	0.14	0.14
Laundry Allowance (Nurses)	Week	5.51	5.59	5.67	5.76
Uniform Allowance (Aged Care Employees)	Hour	1.51	1.53	1.55	1.57
Uniform Allowance (Aged Care Employees)	Week	7.62	7.73	7.85	7.97
Laundry Allowance (Aged Care Employees)	Hour	0.39	0.40	0.41	0.42
Laundry Allowance (Aged Care Employees)	Week	1.83	1.86	1.89	1.92
Work of a dirty or offensive nature	Hour	0.47	0.48	0.49	0.50
Cert IV Duty Allowance	Hour	2.24	1.50	1.52	1.54

RN On call Monday to Friday (24 hours)	Per period	26.27	26.66	27.06	27.47
RN On call all other times (24 hours)	Per period	39.30	39.89	40.49	41.10

Appendix 1 – Nursing Classifications

Nursing Classifications

Assistant in Nursing (AIN)

Assistant in Nursing is a Nursing Assistant, and means an employee, other than one registered pursuant to the provisions of APRHA. An AIN may provide full range of personal care services according to care plan including Blood Sugar Levels (BSLs), blood pressure and temperature checks, simple wound dressings, and implementation of continence programs. An AIN will participate in achieving clinical outcomes under the direction of an RN, EN or EN (with Notation). An AIN may be required to use limited discretion, within acceptable scope of practice for the role, although the choice of actions will be reasonably clear.

Nursing Care

- giving assistance to a person who, because of disability, is unable to maintain their bodily needs without frequent assistance;
- carrying out tasks which are directly related to the maintenance of a person's bodily needs where that person because of disability is unable to carry out those tasks for themselves; and/or
- assisting a registered nurse to carry out the work described in RN1.

Enrolled Nurse (with Notation)

Enrolled Nurse **means** a person enrolled by the Board with the notation '***Does not hold Board-approved qualification in administration of medicines***' placed on their registration.

Enrolled Nurses

Enrolled Nurse

Enrolled Nurse **means** a person enrolled by the Board as such who is "authorised to administer medications".

Enrolled Nurse Year 1

An employee will be appointed based on training and experience including:

- having satisfactorily completed a hospital based course of training in nursing of not more than 12 months duration leading to enrolment as an EN; or
- having satisfactorily completed a course of training of 12 months duration in a specified branch of nursing leading to enrolment on a register or roll maintained by a state/territory nurses registration board; and
- having practical experience of up to but not more than 12 months in the provision of nursing care and/or services, and, the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Skill Indicators

The employee is required to demonstrate some of the following in the performance of their work

- the employee has limited or no practical experience of current situations; and
- the employee exercises limited discretionary judgment, not yet developed by practical experience.

Enrolled Nurse Year 2

An employee will be appointed to this classification based on training and experience including:

- having satisfactorily completed a hospital based course of general training in nursing of more than 12 months duration and/or 500 or more hours theory content or a course accredited at advanced certificate level leading to enrolment as an EN; or
 - not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Year 1; and
- the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Skill indicators

The employee is required to demonstrate some of the following in the performance of their work

- a developing ability to recognise changes required in nursing activity and in consultation with the RN, implement and record such changes, as necessary;
- an ability to relate theoretical concepts to practice; and/or
- requiring assistance in complex situations and in determining priorities.

Enrolled Nurse Year 3

An employee will be appointed to this classification based on training and experience including:

- not more than one further year of practical experience in the provision of nursing care and/or services, in addition to the experience, skill and knowledge requirements specified for Year 2; and
- the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Skill indicators

The employee is required to demonstrate some of the following in the performance of their work

- an ability to organise, practise and complete nursing functions in stable situations with limited direct supervision;
- observation and assessment skills to recognise and report deviations from stable conditions;
- flexibility in the capacity to undertake work across the broad range of nursing activity and/or competency in a specialised area of practice; and/or
- communication and interpersonal skills to assist in meeting psycho-social needs of individuals/groups.

Enrolled Nurse Year 4

An employee will be appointed to this classification based on training and experience including:

- not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Year 3; and
- the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

Skill indicators

The employee is required to demonstrate some of the following in the performance of their work:

- speed and flexibility in accurate decision making;
- organisation of own workload and ability to set own priorities with minimal direct supervision;
- observation and assessment skills to recognise and report deviations from stable conditions across a broad range of patient and/or service needs; and/or
- communication and interpersonal skills to meet psychosocial needs of individual/groups.

Enrolled Nurse Year 5

An employee will be appointed to this classification based on training and experience including:

- not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for Year 4; and
- the undertaking of relevant in-service training, subject to its provision by the employing agency, from time to time.

Skill indicators

The employee is required to demonstrate some of the following in the performance of their work:

- contributes information in assisting the RN with development of nursing strategies/improvements within the employee's own practice setting and/or nursing team, as necessary;
- responds to situations in less stable and/or changed circumstances resulting in positive outcomes, with minimal direct supervision; and
- efficiency and sound judgment in identifying situations requiring assistance from an RN.

Registered Nurses

Registered Nurse Level 1 (RN1)

An employee at this level performs their duties:

- according to their level of competence; and
- under the general guidance of, or with general access to a more competent registered nurse (RN) who provides work related support and direction.

An employee at this level is required to perform general nursing duties which include substantially, but are not confined to:

- delivering direct and comprehensive nursing care and individual case management to patients or clients within the practice setting;
- coordinating services, including those of other disciplines or agencies, to individual patients or clients within the practice setting;
- providing education, counselling and group work services orientated towards the promotion of health status improvement of patients and clients within the practice setting;

- providing support, direction and education to newer or less experienced staff, including AIN's, EN's (with notation) and EN's;
- accepting accountability for the employee's own standards of nursing care and service delivery; and
- participating in action research and policy development within the practice setting.

Registered Nurse Level 2 (RN2)

An employee at this level may be an RN, CNS or CNE:

- holds any other qualification required for working in the employee's particular practice setting; and
- is appointed as such by a selection process or by reclassification from a lower level when the employee is required to perform the duties detailed in this subclause on a continuing basis.
- in addition to the duties of an RN1, an employee at this level is required, to perform duties delegated by a nurse in a higher classification.

Duties of a Level 2 nurse will substantially include, but are not confined to:

- delivering direct and comprehensive nursing care and individual case management to a specific group of patients or clients in a particular area of nursing practice within the practice setting;
- providing support, direction, orientation and education to RN1's, AIN's, EN's (with notation) and EN's;
- being responsible for planning and coordinating services relating to a particular group of clients or patients in the practice setting, as delegated by a nurse in a higher classification.
- acting as a role model in the provision of holistic care to patients or clients in the practice setting; and
- assisting in the management of action research projects, and participating in quality assurance programs and policy development within the practice setting.

Registered Nurse Level 3 (RN3)

An employee at this level:

- holds any other qualification required for working in the employee's particular practice setting; and
- is appointed as such by a selection process or by reclassification from a lower level when that the employee is required to perform the duties detailed in this subclause on a continuing basis.
- an employee at this level may also be known as a Clinical nurse consultant, Nurse Manager or Nurse Educator.
- in addition to the duties of an RN2, an employee at this level will perform the following duties in accordance with practice settings and patient or client groups:

Duties of a Clinical Nurse Consultant will substantially include, but are not confined to:

- providing leadership and role modelling, in collaboration with others including the Nurse Manager and the Nurse Educator, particularly in the areas of action research and quality assurance programs;
- staff and patient/client education;

- staff selection, management, development and appraisal;
- participating in policy development and implementation;
- acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
- delivering direct and comprehensive nursing care to a specific group of patients or clients with complex nursing care needs, in a particular area of nursing practice within a practice setting;
- coordinating, and ensuring the maintenance of standards of the nursing care of a specific group or population of patients or clients within a practice setting; and
- coordinating or managing nursing or multidisciplinary service teams providing acute nursing and community services.

Duties of a Nurse Manager will substantially include, but are not confined to:

- providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse Educator, particularly in the areas of action research and quality assurance programs;
- staff selection and education;
- allocation and rostering of staff;
- occupational health;
- initiation and evaluation of research related to staff and resource management;
- participating in policy development and implementation;
- acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care);
- being accountable for the management of human and material resources within a specified span of control, including the development and evaluation of staffing methodologies; and
- managing financial matters, budget preparation and cost control in respect of nursing within that span of control.

Duties of a Nurse Educator will substantially include, but are not confined to:

- providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse Manager, particularly in the areas of action research;
- implementation and evaluation of staff education and development programs;
- staff selection;
- implementation and evaluation of patient or client education programs;
- participating in policy development and implementation;
- acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care); and
- being accountable for the assessment, planning, implementation and evaluation of nursing education and staff development programs for a specified population.

Registered Nurse Level 4 (RN4)

An employee at this level:

- holds any other qualification required for working in the employee's particular practice setting; and
- is appointed as such by a selection process or by reclassification from a lower level when the employee is required to perform the duties detailed in this subclause on a continuing basis.
- an employee at this level may also be known as an Assistant Director of Nursing (clinical), Assistant Director of Nursing (management), or Assistant Director of Nursing (education).
- appointment at a particular grade at this level will depend upon the level of complexity associated with the duties described in this clause. In this connection the number of beds in a facility will be a relevant consideration.
- in addition to the duties of an RN3, an employee at this level will perform the following duties:

Duties of an Assistant Director of Nursing (clinical) will substantially include, but are not confined to

- providing leadership and role modelling, in collaboration with others including the Assistant Director of Nursing (management) and Assistant Director of Nursing (education), particularly in the areas of selection of staff within the employee's area of responsibility;
- provision of appropriate education programs, coordination and promotion of clinical research projects;
- participating as a member of the nursing executive team;
- contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
- managing the activities of, and providing leadership, coordination and support to, a specified group of Clinical nurse consultants;
- being accountable for the establishment, implementation and evaluation of systems to ensure the standard of nursing care for a specified span of control;
- being accountable for the development, implementation and evaluation of patterns of patient care for a specified span of control;
- being accountable for clinical operational planning and decision making for a specified span of control; and
- being accountable for appropriate clinical standards, through quality assurance programs, for a specified span of control.

Duties of an Assistant Director of Nursing (management) will substantially include, but are not confined to:

- providing leadership and role modelling, in collaboration with others including the Assistant Director of Nursing (clinical) and Assistant Director of Nursing (education), particularly in the areas of selection of staff within the employee's area of responsibility;
- coordination and promotion of nursing management research projects;
- participating as a member of the nursing executive team;

- contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
- managing the activities of, and providing leadership, coordination and support to, a specified group of Nurse Managers;
- being accountable for the effective and efficient management of human and material resources within a specified span of control;
- being accountable for the development and coordination of nursing management systems within a specified span of control; and
- being accountable for the structural elements of quality assurance for a specified span of control.

Duties of an Assistant Director of Nursing (education) will substantially include, but are not confined to:

- providing leadership and role modelling, in conjunction with others including the Assistant Director of Nursing (clinical) and the Assistant Director of Nursing (management), particularly in the areas of selection of staff within the employee's area of responsibility;
- coordination and promotion of nurse education research projects;
- participating as a member of the nursing executive team, and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
- managing the activities of, and providing leadership, coordination and support to a specific group of Nurse Educators;
- being accountable for the standards and effective coordination of education programs for a specified population;
- being accountable for the development, implementation and evaluation of education and staff development programs for a specified population;
- being accountable for the management of educational resources including their financial management and budgeting control; and
- undertaking career counselling for nursing staff.

Registered Nurse Level 5—(RN5)

An employee at this level:

- holds any other qualification required for working in the employee's particular practice setting; and
- is appointed as such by a selection process or by reclassification from a lower level when the employee is required to perform the duties detailed in this subclause on a continuing basis.
- an employee at this level may also be known as a Director of nursing.
- appointment at a particular grade at this level will depend upon the level of complexity associated with the duties described in this clause. In this connection the number of beds in a facility will be a relevant consideration.

In addition to the duties of an RN4, an employee at this level will perform the following duties:

- being accountable for the standards of nursing care for the health unit and for coordination of the nursing service of the health unit;

- participating as a member of the executive of the health unit, being accountable to the executive for the development and evaluation of nursing policy, and generally contributing to the development of health unit policy;
- providing leadership, direction and management of the nursing division of the health unit in accordance with policies, philosophies, objectives and goals established through consultation with staff and in accordance with the directions of the Board of Directors of the health unit;
- providing leadership and role modelling, in collaboration with others, particularly in the areas of staff selection, promotion of participative decision making and decentralisation of nursing management and generally advocating for the interests of nursing to the executive team of the health unit;
- managing the budget of the nursing division of the health unit;
- ensuring that nursing services meeting changing needs of clients or patients through proper strategic planning; and
- complying, and ensuring the compliance of others, with the code of ethics and legal requirements of the nursing profession.

Nurse Practitioner

- is a registered nurse/midwife appointed to the role;
- has obtained an additional qualification relevant to the state regulating authority to enable them to become licensed Nurse Practitioners.

A Nurse Practitioner is authorised to function autonomously and collaboratively in an advanced and extended clinical role.

Role of a licensed Nurse Practitioner

- The Nurse Practitioner is able to assess and manage the care of clients/residents using nursing knowledge and skills. It is dynamic practice that incorporates application of high level knowledge and skills, beyond that required of a registered nurse /midwife in extended practice across stable, unpredictable and complex situations.
- The Nurse Practitioner role is grounded in the nursing profession's values, knowledge, theories and practice and provides innovative and flexible health care delivery that complements other health care providers.

Scope of practice

- the Nurse Practitioner is authorised to practice. The Nurse Practitioner therefore remains accountable for the practice for which they directed; and
- the professional efficacy whereby practice is structured in a nursing model and enhanced by autonomy and accountability.
- the Nurse Practitioner is authorised to directly refer clients/residents to other health professionals, prescribe medications and order diagnostic investigations including pathology and plain screen x-rays.
- Nurse Practitioners exhibit clinical leadership that influences and progresses clinical care, policy and collaboration through all levels of health service.

Progression through pay points

Progression for all classifications for which there is more than one pay point, or year, will be by annual movement to the next pay point (year), or in the case of a part time or casual employee 1786 hours of experience, having regard to the acquisition and use of skill described in Appendix 1 and knowledge gained through experience in the practice settings over such a period.

Appendix 2 – Aged Care Definitions and Classifications

"Chef" means an Employee appointed as such whose duties include supervision of staff, giving necessary instructions in all branches of cooking, and responsibility for requisitioning the items necessary for the preparation and serving of meals.

"Clerk-Grade 1" means an Employee who may be required to work under direct supervision, performing, for the most part, work of a routine and repetitive clerical nature which involves the application of clearly prescribed standard practices which require the exercise of limited discretion. Their duties may include: filing; sorting and matching documents; checking figures; handling mail. On completion of 3 months experience in the industry, the Employee shall move to Clerk-Grade 2.

"Clerk-Grade 2" means an Employee who works under general supervision performing general clerical duties which involve the exercise of some initiative and minor decision making within a regular work routine. In addition to performing the duties of a Clerk Grade 1, their duties may include: receptionist/switchboard operation; typing; and word-processing and/or data entry and other basic computer operation.

"Clerk-Grade 3" means an Employee who in addition to performing the duties of a Clerk Grade 2 performs clerical duties which may include: stenography; ledger posting or similar accounting machine operating; and computer operating tasks of a more complex nature.

"Clerk-Grade 4" means an Employee who may work under limited supervision, performing clerical duties which regularly require the exercise of independent initiative and judgement and who has knowledge of office procedures and the Employer's business. In addition to performing the duties of a Clerk Grade 1, 2 or 3 their duties may include: bookkeeping; and the direct supervision of at least two other Employees in the clerical stream.

"Clerk-Grade 5" means an Employee who is fully competent in their work and exercises substantial responsibility and independent initiative and judgement with a requisite knowledge of office procedures and the Employer's business. In addition to performing the duties of a Clerk Grade 1, 2, 3 and 4 their duties may include: liaison with external persons and organisations as required by the Employer in connection with the administration of the business and/or the requirement to accept responsibility for the work of a department or section.

Notation: The definition of Clerks Grades 1 to 5 shall have no application to a person employed in a managerial capacity, that is a person who is employed primarily to control the conduct of the Employer's business, either in whole or in part and who in the performance of their duties regularly makes decisions and accepts responsibility on matters relating to the administration and conduct of the business and whose performance of clerical duties is merely ancillary to their managerial employment.

"Cook-Grade A" means an Employee who performs cooking and related duties in respect of a facility with an adjusted daily average of 50 or more occupied beds at the preceding 30 June.

"Cook-Grade B" means an Employee employed as a cook, other than a Chef, Cook - Grade A, or Assistant cook.

"Gardener (Qualified)" means an Employee appointed as such and who holds a recognised certificate in gardening and horticulture and has four years' gardening experience.

"Gardener (Unqualified)" means an Employee who is engaged in horticulture, gardening, green-keeping, floral decoration and all phases of allied works such as rockery building, paving, landscaping and the like and shall include the driving and/or operation of motorised tractor-hauled or mechanical equipment.

"General Services Officer-Grade 1" means an Employee who performs any or all of the following duties: general cleaning duties; household chore type duties; laundry duties using domestic machinery; and seamstress duties. On completion of 3 months experience in the industry, the Employee shall move to General Services Officer-Grade 2.

"General Services Officer-Grade 2" means an Employee who performs any or all of the following duties: all cleaning associated with pots, pans, stoves, refrigerators or any other kitchen machinery; general kitchen cleaning; high cleaning; inside cleaning; outside cleaning; stripping or sealing floors; portering of patients or residents and/or heavy equipment; operation of industrial washing machines; loading and unloading of commercial type washing machines; cleaning of tooth and vomit bowls; sanitising of bed pans and other equipment; the cooking and/or preparation of light refreshments (e.g. eggs, toast, salads etc); the making of unoccupied beds; cleaning garbage bins; sweeping paths; keeping the outside of buildings clean and tidy; assisting the gardener in labouring duties, under supervision; mowing lawns; and may in addition perform the duties of a General Services Officer - Grade 1.

"General Services Officer-Grade 3" means an Employee who in addition to the duties contained within Grade 2 performs handyperson/storesperson duties or the duties of an assistant cook. This Grade is by appointment only.

"General Services Officer-Grade 4" means an Employee who in addition to the duties contained within Grade 3 is able to provide direct assistance to a therapist, diversional therapist, recreation activities officer, dietician or hostel supervisor with routine professional, recreational activity and personal care services. This Grade is by appointment only.

"Maintenance" means a qualified Employee who carries out repairs of a minor nature. Where tradesmen are not employed and the handyperson is required to perform the work of a tradesman in an emergency. **"Senior Maintenance"** means a qualified Employee considered to have more or wider experience.

"Head Gardener (Qualified)" means an Employee appointed as such who is the holder of a certificate in gardening and horticulture with four years' gardening experience and is in charge of at least three other Employees, one of whom is a Gardener.

"Maintenance Supervisor" means an Employee who has overall responsibility for maintenance at the place of employment, who may be required to supervise other maintenance staff and who holds trade qualifications.

"Recreation Activities Officer" means an Employee other than a Diversional Therapist who is responsible for diversional activities of residents.

Aged Care Classifications

Aged Care Employee - Level 1 (Entry Level) – less than 3 months in industry

An employee who has less than three months work experience in the industry and performs basic duties:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Aged Care Employee - Level 2

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

Aged Care Employee - Level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- in the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Aged Care Employee - Level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.

- in the case of a Personal care worker, holds a relevant Certificate 3 qualification (or possesses equivalent knowledge or skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

Aged Care Employee - Level 5

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team; may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Aged Care Employee - Level 6

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities; possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Aged Care Employee - Level 7

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;

- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- Possesses developed administrative skills and problem solving abilities;
- Possesses well developed communication, interpersonal and/or arithmetic skills; and
- May require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Appendix 3 – Health Professional Classifications

Health Professional Classifications

This agreement aims to cover Health Professionals who are engaged in the aged care industry, such as Diversional Therapists

Health Professional - Level 1

Positions at level 1 are regarded as entry level health professionals and for initial years of experience.

This level is the entry level for new graduates who meet the requirement to practise as a health professional (where appropriate in accordance with their professional association's rules and be eligible for membership of their professional association) or such qualification as deemed acceptable by the employer. It is also the level for the early stages of the career of a health professional.

Progression through Level 1

Employees will enter at the relevant pay point based on service and experience. For the purpose of yearly progression, an employee must complete 1976 hours of work, or in the case of a part time or casual employee, 1824 hours, until they reach pay point 5.

Health Professional - Level 2

A health professional at this level works independently and is required to exercise independent judgment on routine matters. They may require professional supervision from more senior members of the profession or health team when performing novel, complex, or critical tasks. They have demonstrated a commitment to continuing professional development and may have contributed to workplace education through provision of seminars, lectures or in-services. At this level the health professional may be actively involved in quality improvement activities or research.

At this level the health professional contributes to the evaluation and analysis of guidelines, policies and procedures applicable to their clinical/professional work and may be required to contribute to the supervision of discipline specific students.

IN THE FAIR WORK COMMISSION

FWC Matter no:

AG2020/1899

Applicant

Siena Management Services Pty Ltd T/A Martyn Claver Nursing Home

UNDERTAKING SECTION 190

I, Claudio Pasquali Director of Siena Management Services Pty Ltd T/A Martyn Claver Nursing Home (Martyn Claver), give the following undertakings with respect to the Martyn Claver Nursing Home Enterprise Agreement 2020 (the Agreement):

1. I have the authority given to me by Martyn Claver to provide this undertaking in relation to this Application before the Fair Work Commission.
2. Martyn Claver undertakes that in regard to clause 16, after "and service is ceased" add "and appropriate notice paid".
3. Martyn Claver undertakes that in regard to clause 25.1, the following shall be applied:

25.1 To meet the operational requirements of the business, the ordinary hours of work will be 38 hours per week, or an average of 38 hours per week worked over 76 hours per fortnight or 114 hours per 21 days or 152 hours per four week period, and will be worked either:

 - (a) in a period of 28 calendar days of not more than 20 work days in a roster cycle;
 - (b) in a period of 28 calendar days of not more than 19 work days in a roster cycle, with the twentieth day taken as an accrued paid day off (ADO);
 - (c) eight hours on a day shift or 10 hours on a night shift; or,
 - (d) as agreed between the employer and the employee.
4. Martyn Claver undertakes that in regard to clause 31, where a casual Health Professional's rostered hours work would attract a shift penalty, this will be paid at 140% of their base pay point rate. The rate includes any penalty rate and the casual loading.
5. Martyn Claver undertakes that in regard to clause 37.1 (c), this clause shall also apply to Health Professionals as per Aged Care employees.

Signature

9/9/2020

Date